



MAPS

Methodology for Assessing
Procurement Systems

Moldova

Assessment of the public procurement system Volume I - Main report

The World Bank Group



Government of the Republic of Moldova



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Acronyms

ANI	National Integrity Authority
ANSC	National Agency for the Resolution of Complaints
ASD	State Road Administration
CAPCS	Centre for Centralised Public Procurement in Health
CC	Competition Council
CJEU	Court of Justice of the European Union
CNA	National Anticorruption Centre
CoA	Court of Accounts
CoE	Council of Europe
CoM	Council of Ministers
CSO	Civil Society Organization
EBRD	European Bank for Reconstruction and Development
EU	European Union
GPA	Government Procurement Agreement
MAPS	Methodology for Assessing Procurement Systems
MDB	Multilateral Development Bank
MDL	Moldovan leu
MoF	Ministry of Finance
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
PEFA	Public Expenditure and Financial Accountability
PPA	Public Procurement Agency
PPL	Public Procurement Law
PPP	Public-Private Partnership
SBD	Standard Bidding Document
SIA “RSAP”	Automated Information System “State Register of Public Procurement”
SIGMA	Support for Improvement in Governance and Management (EU and OECD)
SME	Small and Medium Enterprises
SOE	State-owned enterprises
SPP	Sustainable Public Procurement
TAG	Technical Advisory Group
WB	World Bank

Executive summary

The Ministry of Finance of the Republic of Moldova has requested the assistance of the World Bank with carrying out an assessment of the public procurement system and providing corresponding recommendations for reform. The assessment has been carried out by the World Bank in close cooperation with the competent national authorities, led by the Ministry of Finance, using the current (2018) version of the MAPS¹, the Methodology for Assessing Procurement Systems. It has involved interviews with the central and local contracting authorities, development partners supporting procurement reform in the country, training institutions and universities, professional bodies, and civil society organisations, as well as review and analysis of relevant documentation and data. The findings and recommendations have thus been derived from and validated with all key stakeholders.

The main development objective of the work has been to use the MAPS assessment tool to assess the quality and effectiveness of Moldova's public procurement system. In particular, the assessment has endeavoured to:

- 1) identify strengths and weaknesses of the public procurement system in Moldova, and benchmarking it with international best practices and standards;
- 2) identify any substantial gaps that negatively impact the quality and performance of the public procurement system; and
- 3) help the Government to prioritise efforts in public procurement reform by suggesting recommendations to enhance the public procurement system.

Special attention has been paid to the scope for completing and harmonising the legal and institutional framework; strengthening and promoting the procurement profession; enhancing the planning and preparation stages; improving the efficiency and transparency of the evaluation and award process; and strengthening contract management.

The assessment has covered central and local public authorities in general, in order to have a clear view of the common features of the public procurement system and to identify aspects and issues where reform initiatives could be expected to give results across the board. As a complement, at the request of the Minister of Finance, special attention has been paid to the health sector, including the work of the Centre for centralised procurement in the health sector, and to state owned enterprises, in particular as regards public procurement in the road sector. The findings and recommendations of the assessment have been reviewed and commented on by the authorities concerned, in particular the Ministry of Finance and the Public Procurement Agency, and by other stakeholders involved during the drafting and finalisation of the report. In addition, the World Bank's MAPS Global Team has thoroughly commented on the initial final draft. Comments from the MAPS Technical Advisory Group are being sought and will be duly considered in preparation for the official presentation of the report to the Government.

The main issue encountered in the process has been the lack of effective access to complete and accurate data for describing and analysing the actual practices and outcomes in the public procurement system. Many of the existing systems and data bases contain only incomplete or inaccurate information or are

¹ See <http://www.mapsinitiative.org/about/>.

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structured in such a way that relevant analyses are difficult to carry out. In many cases, if at all accessible, information is collected and archived only in the form of hard copy documents. A small enterprise survey with a total of 10 respondents and an analysis of 69 contract files have nevertheless allowed some quantitative data to be collected, used mainly to validate the findings of the qualitative analysis.

Moldova's legal framework for public procurement is being brought close to European Union (EU) standards in line with the obligations taken on by the country when concluding an association agreement with the EU. In application of the Association Agreement, Moldova adopted its first Strategy for development the public procurement system for 2016 – 2020. The public procurement law² now provides a largely satisfactory, basic regulatory framework incorporating the fundamental EU principles governing the award of public contracts, but will require further amendments. State owned enterprises are not covered by the public procurement law, not even utilities. A separate law on procurement by utilities has been drafted and was adopted by Parliament on 21 May 2020 and published³ on 26 June 2020, but it will only enter into force 12 months after the date of publication. Procurement in the area of defence remains unregulated. The legal framework governing concessions and public-private partnerships requires revision and alignment with relevant EU legislation, in particular the Concessions Directive⁴. A new strategy for the next five years will have to be adopted before the end of 2020, and the present MAPS assessment will provide essential elements for its preparation.

The main central government level institutions in charge of public procurement are the Ministry of Finance (MoF), in charge of policy development; the State Treasury (under the MoF), in charge of registering public contracts and paying corresponding invoices; the Public Procurement Agency (under the MoF), with a number of management and monitoring tasks for ensuring the smooth functioning of the public procurement system; and the National Agency for the Resolution of Complaints, in charge of reviewing and ruling on complaints from tenderers and other interested parties.

The main findings of the assessment reflect the situation with respect to the following critical issues, which should be duly considered in setting the priorities for further reform of the public procurement system:

- completing and harmonising the legal and institutional framework;
- strengthening and promoting the procurement profession;
- enhancing the planning and preparation stages of the procurement process;
- improving the adequacy, efficiency and transparency of the evaluation and award process;
- strengthening contract management and monitoring public procurement outcomes.

Enhancement of e-procurement would be one of the major means for addressing many of these points, which should be done in parallel with measures to raise transparency and improve integrity in public procurement.

The findings can be summarised as follows, with the observations grouped under the four main pillars that constitute the main structure of the assessment methodology. Given the broad picture of the situation thus outlined, the assessment also leads to some corresponding, main recommendations, set

² Law no. 131/2015 on public procurement, as subsequently amended;
https://www.legis.md/cautare/getResults?doc_id=113104&lang=ro

³ Law no. 74/2020 on procurement in the energy, water, transport and postal services sectors;
https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro

⁴ Directive 2014/23/EU

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out in *italics*. recapitulating the essence of the consolidated recommendations set out in Chapter 4. In each case, the detailed assessment in Chapter 3 gives further details, presented in strict accordance with the structure of the indicators, sub-indicators and corresponding evaluation criteria that compose each pillar.

Pillar I: Legislative and Regulatory Framework

- The primary legislation is well aligned with good international practice, but the corresponding secondary legislation is partly outdated and contradictory and requires revision

Continue amending the primary procurement legislation and update and revise all secondary legislation accordingly

- The public procurement law gives wide opportunities to select procurement procedures and award criteria appropriate to the individual case, but the e-procurement system does not allow the majority of them to be used

Ensure that the e-procurement system fully matches the requirements of the public procurement law

- Existing standard documentation⁵ is very detailed and prescriptive, but to the point of making it complicated to ensure formal compliance with all details and to adapt its use to the circumstances in ways that allow the focus to be put on the outcomes of the contracts to be concluded, especially on value for money

Simplify the form and contents of the standard documentation

- Publication of some procurement documentation⁶, in particular procurement plans, is not regulated in a way that ensures easy access and use

Require all public procurement documentation to be published and freely accessible on or through a central website in a machine readable format

Pillar II: Institutional Framework and Management Capacity

- Procurement planning and execution is mostly carried out on an annual basis, with operations often starting well after the beginning of the fiscal year and being rushed through towards its end

Align the time horizon and the approach for procurement planning and adjust budget and disbursement regulations to allow procurement to proceed in a regular fashion throughout the year

⁵ Here and in the following, “standard documentation” refers to standard tender documents and other prescribed forms for notices and reports

⁶ Here and in the following, “procurement documentation” includes standard documentation (cf. above) as well as items like procurement plans, minutes of evaluation and other records of the procurement process, and complaints made and corresponding rulings

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- The definition of public procurement authorities is broadly in line with that in the EU directives, but leads to a large number of them (around 3 000), many with very limited skills and resources, and leaves the status of many state and municipally owned enterprises unclear

Address the lack of skills and resources in many small contracting authorities; review and categorise all public enterprises according to which procurement rules they should apply

- Within contracting authorities, public procurement is not carried out by a dedicated administrative (sub-)unit but by “working groups” set up for the purpose and composed by officials who mostly have other tasks in their primary, official positions

Replace the “working groups” for public procurement by a requirement for all contracting authorities either to use an administrative unit dedicated to public procurement or, possibly, and only for small contracting authorities, to assign the public procurement function to a duly knowledgeable and experienced staff member having this as his or her primary duty

- Correspondingly, public procurement is not officially recognised as a profession and, as a consequence, there are no specific public procurement positions with dedicated, matching approaches for engagement, management, training, evaluation and promotion of staff concerned

Recognise public procurement as a profession, including it in the official classification of occupations of the Republic of Moldova (Clasificatorul Ocupațiilor din Republica Moldova)

- Centralised procurement is little developed, and its use in practice (mainly for medical supplies and equipment) is hampered by regulatory problems (e.g., no provisions for framework agreements) and inadequate e-procurement systems

Examine the scope for improving the use of centralised procurement and start piloting it for standard specification items in wide demand by central authorities and/or municipalities

- Public procurement data is generated in ways that are not fully conducive to easy collection, compilation and analysis, with some aspects (e.g. small value contracts) hardly covered at all; as a consequence, there is not a strong evidence basis available for policy making

Identify the measures required for generating, collecting, compiling, analysing and publishing a full range of data on what happens in public procurement, in particular, through an up-to-date e-procurement system, and take corresponding actions

Pillar III: Procurement Operations and Market Practices

- Data on actual public procurement practices is limited, and it is therefore difficult to identify skill gaps and training needs and to take action to address them, as well as to improve documentation and tools for facilitating public procurement

Collect more detailed and reliable data on actual procurement practices, and use for improving policies and procedures as well as documentation, information and training

- A not exactly known but possibly significant number of otherwise competent enterprises may refrain from participation in public procurement because of perceived barriers, like administrative complexity, unfair competition or corruption

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Examine in further detail the reasons why economic operators would or would not participate in public procurement, and change policies and practices accordingly in order to raise the level of trust in the system and encourage wider participation

- As noted by the public procurement agency and the review body, there is room for improvement of the skills of contracting authorities in planning and preparing public procurement, evaluating tenders and awarding contracts, and managing contracts concluded

Raise contracting authorities' skills in preparing and carrying out procurement, e.g. through improved guidance materials and training

- The characteristics of the Moldovan supply market for items in demand in public procurement is only incompletely known and understood by central government and contracting authorities

Analyse the Moldovan supply market from the point of view of public procurement, and use the findings when developing economic policies and refining public procurement practices

Pillar IV: Accountability, Integrity and Transparency of Public Procurement System

- Several civil society organisations have an interest in public procurement and are trying to monitor it, but point to limited access to data and occasional lack of effective consultations

Take steps to allow civil society to effectively monitor all stages of the public procurement cycle, and offer corresponding training

- A significant number of institutions have various roles and responsibilities in supervising public procurement and auditing procedures and performance; however, in the absence of a broad, overarching policy to this effect, there are some conflicts of roles and gaps and overlaps in responsibilities

Strictly observe existing legal obligations for public consultations; ensure that objectives and regulations for supervision and audits are harmonised

- Internal audit is well regulated, with corresponding training and guidance materials, but remains little applied in practice, in particular to public procurement

Intensify the introduction and development of internal audit, especially with respect to public procurement

- Audits are still little focussed on outcomes and performance, and recommendations made are not always well followed up

Refocus the approach for auditing public procurement towards the outcomes and the performance of public procurement; this would include revising the rules and procedures for monitoring the implementation of the recommendations of the Court of Accounts and for sanctioning any failure to abide by them

- Several supervisory and inspection agencies interpret and apply the public procurement law and corresponding secondary legislation when reviewing the operations of contracting authorities,

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but their approaches are not harmonised, so economic operators may face conflicting expectations and requirements

Institutionalise regular consultations between the policy making, advisory and supervisory institutions dealing with public procurement, so as to harmonise the understanding of the public procurement law and how it should be applied

- Formal measures for preventing, identifying and sanctioning fraud and corruption are in place, but handled by several institutions with partly overlapping roles; there is little evidence of effective sanctions being meted out, and the situation in public procurement is not quite clear

Review all measures in place for preventing, identifying and sanctioning fraud and corruption with a view to making them more efficient and effective; this would include raising the level of transparency of the review of declarations of conflicts of interest and of assets and of any corresponding sanctions

- A system for debarring delinquent tenderers is in place, but its operation is complicated, while other information on past performance of suppliers, contractors and service providers is difficult to find

Review the system for prohibiting economic operators from participating in public procurement, and introduce measures to make past performance more transparent

Spend Analysis: A separate report on this task is prepared. The report analyzes the efficiency and effectiveness of the public procurement system in Moldova using the available data to take a comprehensive look at the patterns of procurement outcomes by procuring entities and the firms that participate and win procurement contracts. The data analysis report assesses all public procurement data available in Moldova through the PPA and the MoF through the State Treasury. The reports will include (but not be limited to) the analysis of the following indicators; a) Competition i.e. the rate of participation of firms in procurement processes, b) Open Procurement Methods i.e. the use of competitive methods in Moldova over closed or restricted participation methods, c) Procedural Timeliness i.e. the time it takes for a procurement process to complete under different procurement methods and d) Firm Characteristics i.e. the types of firms participating and winning contracts in Moldova (SME, Incumbents, Non-Local Firms etc). Further, the report will also analyze the use of thresholds in Moldova to sort higher value procurement into e-Procurement and its effects on procurement outcomes. The main objective of the data analysis report will be to identify areas of policy interest and provide data driven policy recommendations. The report will also provide recommendations on the quality of data maintained by the PPA and the State Treasury.

1 Introduction

1.1 Context and rationale of the assessment

Reflecting the ambitions of the Government of Moldova to improve public financial management, promote efficiency, integrity and transparency in public administration, and raise the relevance and quality of the services provided to the citizens by public institutions, and given the importance of taking full advantage of the country's participation in the Government Procurement Agreement and its Association Agreement with the European Union, the Ministry of Finance requested the assistance of the World Bank with carrying out an assessment of the public procurement system and providing corresponding recommendations for reform.

The public procurement chapter of the Association Agreement includes a number of formal obligations which should be duly reflected in Moldovan legislation and practices. Among these, it requires the preparation of strategies for the development of public procurement, with the next one due by the end of 2020 in order to cover the period 2021-2025. The assessment and its findings and recommendations would be a timely and important contribution to this work.

Reviewing the public procurement system with a view to carry out necessary reforms is important also for a number of other reasons. Public procurement constitutes an important share of public budgets and is a key element of public financial management. It is an essential means for meeting citizens' needs for public infrastructure and services and for ensuring that the authorities can do their work under favourable conditions. It has the potential to support sustainable development and constitutes an important market for local businesses, including SMEs. Well-regulated and managed, it is a means for reducing fraud and corruption and for enhancing probity in public administration in general.

Having in mind the main shortcomings that had already been tentatively identified, the assessment has paid special attention to the following critical issues, which should be duly considered in setting the priorities for further reform of the public procurement system:

- completing and harmonising the legal and institutional framework;
- strengthening and promoting the procurement profession;
- enhancing the planning and preparation stages of the procurement process;
- improving the adequacy, efficiency and transparency of the evaluation and award process;
- strengthening contract management and monitoring public procurement outcomes.

Enhancement of e-procurement would be one of the major means for addressing many of these points, which should be done in parallel with measures to raise transparency and improve integrity in public procurement.

The procurement assessment has been carried out using the current (2018) version of the MAPS¹, the Methodology for Assessing Procurement Systems, originally created by a joint initiative of the World

¹ See <http://www.mapsinitiative.org/about/>.

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Bank and the OECD's Development Assistance Committee in 2003-2004 and updated in 2015-18 with a number of additional participants in order to match today's public procurement challenges.

The assessment has been carried out by the World Bank in close co-operation with the competent national authorities, led by the Ministry of Finance. It has involved interviews with the central and local contracting authorities, development partners supporting procurement reform in the country, training institutions and universities, professional bodies, and civil society organisations, as well as review and analysis of relevant documentation and data. The findings and recommendations have thus been derived from and validated with all key stakeholders.

1.2 Objectives of the assessment

The main development objective of the work has been to use the MAPS assessment tool to assess the quality and effectiveness of Moldova's public procurement system and on that basis create an evidence base for future reforms. In order to achieve this objective, the assessment has endeavoured to:

- 1) identify strengths and weaknesses of the public procurement system in Moldova, and benchmarking it with international best practices and standards;
- 2) identify any substantial gaps that negatively impact the quality and performance of the public procurement system;
- 3) help the Government to prioritize efforts in public procurement reform to enable:
 - a) balanced accountability mechanisms between the Government, citizens, and the private sector;
 - b) governance of risk management in the procurement cycle; and
 - c) integration of the public procurement system with the overall public finance management, budgeting and service delivery processes;
- 4) provide a comparative analysis of the country's two parallel procurement systems (Government and State Owned Enterprises (SOEs)), between each other and against MAPS standards; and
- 5) suggest recommendations to enhance the public procurement system and jointly with the Government elaborate an action plan for reforms to continuously enhance the quality and performance of the procurement system;

In addition, and at the request of the Ministry of Finance, the assessment will include spend analysis which will help the Government reduce procurement costs and improve efficiency in public procurement to generate savings.

1.3 Assessment methodology and challenges

The procurement assessment has been guided by the MAPS analytical framework, constituted by four pillars with the following contents:

- (i) Legal, Regulatory and Policy Framework
- (ii) Institutional Framework and Management Capacity
- (iii) Procurement Operations and Market Practices, and
- (iv) Accountability, Integrity and Transparency.

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The pillars contain a total number of 14 main indicators covering the full range of public procurement principles, policies and practices, in turn subdivided into sub-indicators, each one composed by a number of assessment criteria which represent internationally accepted principles and practices of good public procurement. The assessment reviews the actual situation, compares it with the assessment criteria and describes it accordingly, identifies any gaps, examines the underlying reasons for them and, on that basis, prepares recommendations for the further development of the public procurement system.

In line with the methodology¹, the collection, compilation and analysis of the information needed for the assessment has been carried out in three main steps:

Steps	Assessment activity
Step 1	<ul style="list-style-type: none">• Review of the system applying assessment criteria expressed in qualitative terms.• Preparation of a narrative report providing detailed information related to this comparison (actual situation vs. assessment criteria) and on changes underway.
Step 2	<ul style="list-style-type: none">• Review of the system applying a defined set of quantitative indicators (applying at least the minimum set of quantitative indicators defined).• Preparation of a narrative report detailing the findings of this quantitative analysis.
Step 3	<ul style="list-style-type: none">• Analysis and determination of substantive or material gaps (gap analysis).• Sub-indicators that exhibit a “substantive gap” need to be clearly marked to illustrate the need for developing adequate actions to improve the quality and performance of the system.• In case of identified reasons that are likely to prevent adequate actions to improve the system, “red flags” need to be assigned. Red flags are to highlight any element that significantly impedes the achievement of the main considerations of public procurement and that cannot be mitigated directly or indirectly through the system.

An Assessment Steering Committee led by the Ministry of Finance was set up, including representatives from key ministries, other public institutions, civil society, private sector as well as donors to make it a multi-disciplinary team.

A stakeholder analysis was carried out by the World Bank office in the course of the preparation of the Concept Note for the assessment, where its findings have been reflected (see Annex 1). A separate, corresponding report has not been published.

For carrying out the work, an assessment team was set up, co-led by a senior procurement specialist at World Bank headquarters and a procurement specialist in the Moldova office of the World Bank and

¹ See further <http://www.mapsinitiative.org/methodology/>

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further composed by an international consultant and three local consultants engaged for the purpose. The assessment team has been supported with premises and administrative assistance at the World Bank office in Chişinău. This work was carried out during the period November 2019 – June 2020.

During its work, the assessment team compiled and reviewed relevant documentation, held working meetings with the stakeholder groups and collected inputs from them, interviewed individual authorities concerned, carried out a survey of economic operators, analysed available statistical data and examined samples of procurement files and decisions on complaints lodged with the review body.

Representatives of the main stakeholder groups identified – contracting authorities, civil society organisations, and the business community – were invited to a series of workshops for carrying out situation and gap analyses and making initial recommendations, while other key stakeholders were visited individually.

Drawing on the findings from stakeholder workshops, interviews with the competent authorities and an enterprise survey and supported by the collection and review of documentary evidence, drafting of the preliminary report was done principally during the period February – June 2020. Delays were encountered due to the effects of the COVID-19 pandemic, preventing the team from holding regular meetings with various stakeholders and other sources of information.

In order to assess sub-indicators 9 (b) and 9 (c), 69 contract files were randomly selected from those archived at the Public Procurement Agency (PPA) in 2017-2019 and reviewed in detail by the assessment team. They represent contracts awarded, according to the main types of procedure, to a cross-section of enterprises of different size and in different sectors. Further findings from their review are detailed in Annex 7. With the assistance of the Chamber of Commerce and Industry, an enterprise survey was launched in order to gain information on sub-indicators 10 (b), 13 (c) and 14 (c) and (d). The questionnaire and the 10 responses received are presented in Annex 8. Although the small sample sizes in both cases limit the possibility to make inferences, the information obtained fully supports the conclusions of the qualitative review.

Following the three assessment steps indicated above and the finalisation of the initial draft report, internal quality control and corresponding revisions were followed by a validation phase involving key stakeholders in Moldova as well as external reviewers.

The assessment has covered central and local public authorities in general, in order to have a clear view of the common features of the public procurement system and to identify aspects and issues where reform initiatives could be expected to give results across the board. As a complement, at the request of the Minister of Finance, special attention has been paid to the health sector, including the work of the Centre for centralised procurement in the health sector, and to state owned enterprises, in particular as regards public procurement in the road sector.

The main issue encountered in the process has been the lack of effective access to complete and accurate data for describing and analysing the actual practices and outcomes in the public procurement system. As a consequence, it has not been possible to calculate values for several of the quantitative indicators normally required by the methodology.

Many of the existing systems and data bases contain only incomplete or inaccurate information or are structured in such a way that relevant analyses are difficult to carry out. In other cases, information is

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collected and archived only in the form of hard copy documents (such as most of the reports on low value procurement submitted to the Public Procurement Agency) or spread out across all the contracting authorities (such as their annual procurement plans, which cannot be published in the current e-procurement system, so each entity publishes them on its own website). The resources available for the assessment have not allowed the comprehensive, systematic identification, collection and analysis of unstructured data from such other sources, if at all available and accessible.

The review of the public procurement regulations that have been supposed be adopted by each individual state owned enterprise has been complicated by the fact that they have not been collected and held readily accessible at any central government body or the like and therefore would have had to be requested from each individual enterprise.

Finally, the review and assessment of actual practices has been rendered cumbersome by the sheer number of contracting authorities (around 3000), which has not been possible to determine with any accuracy, especially since in many municipalities, e.g., each one of a number of subordinate entities carries out public procurement on its own.

2 Analysis of Country Context

2.1 General situation of the country

2.1.1 Political situation

The Republic of Moldova is a small, economically and culturally open, lower middle-income country with 3.5 million people in 2018. It is landlocked between Romania to the west and Ukraine to the north, east and south. Although Moldova is the poorest country in Europe, it has made significant progress in reducing poverty and promoting inclusive growth since the early 2000s. The poverty rate declined from 26 percent in 2007 to 11 percent in 2014. Growth has been driven largely by consumption and poverty reduction mainly by remittances and pensions. Employment has declined because of emigration and falling labour force participation, so wage income has added little to improving living standards. Emigration of the working-age population and an annual population decline of around 1½ percent are adding to the country's economic, fiscal, and social fragility. Moldova is particularly vulnerable to changes in external demand and fluctuations of agricultural production (the experience of the previous years confirms a cyclical recurrence of drought every 3-4 years, with a profoundly negative impact.. It is also at risk because of the high external debt and a legacy of political instability. Business confidence is low, and the macroeconomic framework remains vulnerable.

In the last several years, the Republic of Moldova has passed through a period of political uncertainty caused by the lack of a clear legislative majority after the parliamentary elections of 2014, with many parliamentarians shifting political affiliations after the elections. This resulted in the appointment of governments that did not fully reflect the outcomes of the popular votes and which did not display a clear commitment to address the much needed reform of the judiciary system and also failed to vigorously pursue the required reforms. Despite some progress at technical level, resulting in approval of some progressive laws by Parliament, their implementation was poor. During the fifteen months following the November 2014 parliamentary election, there were seven substantive or acting governments, due partly to competition among oligarchic interests. In 2019, with a rank of 120 out of 180 countries, the Republic of Moldova dropped another point to score 32 out of 100 in Transparency International's Corruption Perception Index¹, indicating a widespread problem with perceived public sector corruption and continuing the decline from 2010.

More recently, the Moldovan authorities focused on political and electoral changes designed to maintain the political status quo by changing the electoral system and cancelling the results of Chisinau mayoralty elections held on 3 June 2018. One of the results was that, following a resolution² by the European Parliament, the EU suspended its macro-financial assistance and its justice sector budget support and scaled down its technical co-operation, including the suspension of the planned Economic Rule of Law Trust Fund, financed by the EU and intended to be managed by the World Bank. Adoption of the tax and capital amnesty package in 2018 further constrained support by key development partners, including budget support by the Bank. Following the February 2019 parliamentary elections and protracted

¹ See e.g., <https://www.transparency.org/en/countries/moldova#>

² https://www.europarl.europa.eu/doceo/document/RC-8-2018-0322_EN.html

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negotiations, two parties from a very opposing political spectrum (leftist Socialist party and pro-reformist ACUM block) managed to form a situational coalition against the former ruling Democratic party, forming a government and declaring Moldova a captured state and adopting an important package of laws designed to de-oligarchize the country and resume foreign financing. The contradictory nature of this coalition with differing underlying interests led to the fall of a pro-reformist government, just after five months in power, over differing visions on how to pursue justice sector reforms.

The new government under Maia Sandu that took over in June 2019 set itself the challenging task to bring Moldova on the reforms track and restore country's credibility among the development partners. However, following its dismissal by Parliament after five months, yet another government led by Ion Chicu, a former finance minister, replaced the preceding one on 14 November 2019.

The fourth direct presidential election since independence in 1991 was held on 1 November 2021. After a second round run-off, Maia Sandu was elected president, defeating the incumbent, Igor Dodon. The Chicu government resigned on 23 December 2021 following protests demanding early parliamentary elections. Ion Chicu was retained as acting prime minister but resigned and was replaced by Aurelio Ciucoi on 31 December 2021. Attempts by the president to nominate a new prime minister were not accepted by parliament but it is still uncertain if and when new parliamentary elections may be held and a new government can be appointed by parliament.

2.1.2 International co-operation

Since its independence, the Republic of Moldova has joined several international and regional structures. Thus, it became a member of the United Nations on 2 March 1992, following the adoption by the UN General Assembly of Resolution A/RES/46/223. Currently, more than 20 specialized UN agencies, funds and programs have offices in Chisinau, or project offices to support activities to promote democracy, good governance, prosperity, human rights and the consolidation of a modern and European rule of law.

Among other international fora one may note the membership of the Republic of Moldova in the Council of Europe (CoE) on 13 July 1995, accession to the Conference for Security and Cooperation in Europe on 30 January 1992 and signing of the Helsinki Final Act on 26 February 1992. Likewise, the Republic of Moldova has been a full member of the World Trade Organization since 6 June 2001. Moldova is a party to the Government Procurement Agreement (GPA) since 14 July 2016 and has also concluded an Association Agreement with European Union (EU), signed on 27 June 2014.

The Republic of Moldova is actively involved in regional cooperation such as: the Central European Initiative (CEI), the Organization for Democracy and Economic Development (GUAM), the Black Sea Economic Cooperation (BSEC), the Regional Cooperation Council (RCC), the South East European Cooperation Process (SEECP). It is a member of the Black Sea Trade and Development Bank (BSTDB), the Council of Europe Development Bank (CEB), the European Bank for Reconstruction and Development (EBRD) and the World Bank. In 1994, the Republic of Moldova became a member of the Commonwealth of Independent States (CIS). The Republic of Moldova has also established co-operation with the North Atlantic Alliance (NATO), implementing various joint projects, and in 2017 the NATO Liaison Office was opened in Moldova. Moldova also has observer status in the Eurasian Economic Union since April 2017.

2.1.3 Economic situation

The Moldovan economy grew by an estimated 4.2% in 2019, which is comparable to previous year 2018, when the economic growth increased by 4%. Growth was primarily driven by investments which increased by around 16%. Amidst buoyant investment activity, the construction sector showed the highest growth rate among the main sectors of the economy, increasing by 19% in 2019. In recent years, the economy has been driven also by consumption and fuelled by remittances. The latter have accounted for up to a quarter of GDP, among the highest share in the world. External trade increased only slightly in 2019, following dynamic growth in the previous years. In 2019, exports reached 2.8 billion US dollars, an increase of 2.7% compared to 2018, and imports amounted 5.8 billion US dollars, an increase of 1.4%. The negative trade balance amounted 3,062.6 million US dollars, compared to 3,053.9 million dollars in 2018. The considerable difference in the evolution of exports and imports led to an accumulation in 2019 of a trade deficit amounting to 3.1 billion US dollars, an increase of 0.3%, compared to 2018. According to preliminary data from the National Bank of Moldova, in 2019, the current account of the balance of payments recorded a deficit of US\$ 1,159.30 million, the capital account registered a negative balance amounting to US\$ 52.08 million, and the financial account recorded a net capital inflow of US\$ 1,205.94 million.

Inflation increased to a relatively high 7.5% at the end of 2019, but was expected to decline again in 2020. The budget deficit amounted to only around 1.5% of GDP. The economic situation remained stable, despite having three different governments in 2019, including three months of coalition negotiations. Ageing population and large emigration flows are eroding already low labour participation. Boosting skills is another challenge to sustainable growth, job creation and poverty reduction.

2.2 The public procurement system and its links with the public finance management and public governance systems

2.2.1 Nature and scope of public procurement

The volume of the Moldova's annual public spending in 2019 was about MDL 69.5 billion, of which public procurement allocations reached MDL 8.9 billion (excluding small value procurement, for which data is incomplete), equivalent to 12.9% of the country's public expenditure. The amount of public procurement in 2019 decreased by 15% compared with 2018, when the public procurement volume reached MDL 10.5 billion. The share of public procurement in the country's GDP in year 2019 was about 4.7% while it was 5.53% in 2018. Of the total volume of public procurement, procurement of goods equalled MDL 3.3 billion (36.4%), procurement of works MDL 4.5 billion (50.0%), and procurement of services MDL 1.2 billion (13.5%). The highest share of public procurement as a percentage of GDP was registered in 2014 (9.67%); it then decreased significantly in 2015 due to unfavourable macroeconomic trends and insufficient internal and external financing to cover the budget deficit. Since 2015, the volume of public procurement has remained at about the same level, with a slight increase in 2017. The value of public procurement in 2017 was around MDL 9.3 billion, out of which MDL 7.6 billion spent on goods and works and MDL 1.7 billion on services. In 2018, the value of public procurement was around MDL 10.5 billion, which represented an increase by 22.11% compared with 2017.

2.2.2 Regulatory framework of public procurement

The Public Procurement Law (PPL) No. 131 of July 3, 2015 entered into force on May 1, 2016. It covers the procurement of goods, works and services (including non-consulting and consulting services) by contracting authorities at central, sub-central and local level, with certain exceptions specified in the law. Since its adoption, the PPL has been amended through fifteen amendments, the most recent one from March 11, 2019, following the country's commitments in the context of the Association Agreement between the EU and Moldova. In addition to the PPL, there are a number of regulations adopted by Government Decrees or Ministry of Finance Orders meant to guide contracting authorities throughout procurement process.

The new law provides a satisfactory, basic regulatory framework and incorporates the fundamental EU principles governing the award of public contracts as per the EU Directives. However, some provisions are not yet fully compatible with EU requirements and will require further amendments. Procurement in the area of defence remains unregulated. The legal framework governing concessions and public-private partnerships requires revision and alignment with relevant EU legislation.

The PPL applies, with several exceptions, to public procurement contracts estimated at a cost equal to or above the following thresholds¹: Goods and services – MDL 200,000, works – MDL 250,000 and social services and other services defined in the law – MDL 400,000 (all thresholds exclusive of VAT). All contracts estimated to cost less than the above thresholds are required to be procured in accordance with the Public Procurement Regulation for small-value public procurement contracts² (note that this regulation uses lower thresholds than in the PPL for the definition of small value contracts). Public procurement primary and secondary legislation, including the Standard Bidding Documents, are published on the website of the Public Procurement Agency and are easily accessible to the public.

SOEs are not subject to the PPL, not even those in the utilities sector. Until recently, SOEs were required to have their own internal procurement regulations, to be developed by the institutions themselves, but these were not assessed for quality and relevance by the PPA or any other relevant institutions. A new regulation on procurement by SOEs was adopted by the Government on 10 June 2020 and published on 10 July 2020, with immediate entry into force. It reflects basic principles of good public procurement but does not cater for the quite varying market positions of SOEs; those operating autonomously in a competitive market and subject to bankruptcy may not necessarily need to be obliged to follow specific procedures typical for public sector entities. However, its application will take some time and municipal enterprises are only recommended, not obliged, to apply it. The utilities sector has become regulated in line with the EU's Utilities Directive, except that the new law³ will enter into force only on 26 June 2021.

2.2.3 Institutional framework

The main public entities involved in one way or another in the management and supervision of public procurement are the ones listed below.

¹ PPL, Art. 2(1)

² https://www.legis.md/cautare/getResults?doc_id=92984&lang=ro

³ Law no. 74/2020; https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro

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The *Ministry of Finance (MoF)*: its role in public procurement is to develop and promote policies in this area. For this purpose, a Directorate of public procurement was recently created, taking over staff positions formerly allocated to the Public Procurement Agency.

The *Public Procurement Agency (PPA)* is the institution, subordinated to the MoF, responsible for: (i) developing and submitting to the MoF proposals to amend and complete the public procurement legal framework; (ii) establishing, updating and maintaining the List of Debarred firms; (iii) monitoring the compliance of public procurement tenders with the national legislation and analysing the performance of the public procurement system; (iv) offering consulting and advisory services, as well as organizing various workshops on public procurement procedures; (v) developing and implementing mechanisms for certifying the specialists within contracting authorities responsible for conducting public procurement tenders; (vi) editing the Public Procurement Bulletin; (vii) maintaining the official website for public procurement; (viii) conducting quarterly and annual statistical analyses of public procurement; (ix) requesting from competent bodies any information required to perform its functions; (x) conducting communication campaigns on public procurement; (xi) issuing annual progress reports on public procurement system performance; and (xii) collaborating with international institutions and similar agencies in the area of public procurement.

Among the challenges facing the MoF and the PPA are the need to sort out any perceived discrepancies in their respective roles and responsibilities and, more importantly, to ensure that adequate staff and other resources are available and that they are properly allocated to the priority tasks at hand.

The *National Agency for the Resolution of Complaints (ANSC)* is an autonomous and independent institution, which examines complaints arising from public procurement tenders and issues corresponding decisions. The lack of a case management system and of a searchable data base of past decisions increases the efforts needed to ensure uniformity and consistency in its rulings.

The *State Treasury* is a General Directorate within the MoF responsible for development and implementation of the state policy in the field of management and transparency of public finances, including registration of public procurement contracts for payment purposes¹.

The *Financial Inspection* is an institution subordinated to the MoF which performs the centralized financial control on compliance with the legislation of operations and transactions related to the management of national public budget resources and public patrimony.

The *Court of Accounts (CoA)* is the Supreme Audit Institution which is responsible for financial and performance audits in Moldova's public sector. All its reports are publicly available but the facilities for monitoring and enforcing compliance with its recommendations are limited.

The *National Anticorruption Centre (CNA)* is the national institution specialized in preventing and combating corruption, acts related to corruption and acts of corrupt behaviour.

The *National Integrity Authority (ANI)* is the public authority that ensures integrity in the exercise of public office or public dignity and the prevention of corruption by controlling wealth and personal interests and compliance with the legal regime of conflicts of interest, incompatibilities and restrictions.

¹ Note that this applies to entities financed from the State budget and to local authorities, with the exception of SOEs and some autonomous public bodies, e.g. hospitals, which instead use commercial banks for handling payments to contractors

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The *Competition Council (CC)* is the public authority that ensures the observance of the legislation in the field of competition, through actions of anti-competitive practices, including bid rigging in public procurement; elimination of competitive infringements, including the consolidation of the competitive culture.

Common issues for the regulatory and supervisory authorities mentioned are a certain overlap of roles and responsibilities, leading to conflicts of competence and to gaps in enforcement, as well as a lack of harmonisation of their now varying and sometimes conflicting interpretation and application of the laws and regulations concerned.

The *Centre for Centralized Public Procurement in Health (CAPCS)*: its role, as a centralised procurement authority, is to plan and conduct tenders, award contracts and monitor contract execution for the supply of medicines, equipment and other medical products for health institutions.

The state enterprise “*State Road Administration*” (*ASD*) is responsible for the development, repair and maintenance of national public road network as well as for efficient management of the road fund and of external investments in the development of national public roads.

There are no other centralised purchasing bodies. Both agencies mentioned, in particular the CAPCS, have faced challenges through their partial reliance on outdated regulations and the lack of adequate tools for using modern procurement approaches, including for demand analysis and aggregation and for running framework agreements.

There are about 3,000 contracting authorities in the country, many of them quite small. There is no official list of them and their exact number is not known. They perform their public procurement duties not through a dedicated administrative (sub-)unit but through a working group established for this purpose and formed of public servants and experts with professional experience in the field of public procurement from within the contracting authority. These staff members thus have procurement as a secondary task, in addition to the normal duties of their regular, official position.

2.2.4 The e-procurement system

As defined in the PPL, Art. 1 (Key notions), Moldova’s e-procurement system, the Automated Information System “*State Register of Public Procurement*” (SIA “*RSAP*” MTender) is an online electronic system, accessible via the Internet at a dedicated address, used for the electronic application of public procurement processes, for posting invitations /notices at national level, submission and evaluation of tenders, award, and electronic signing of public procurement contracts. The SIA “*RSAP*” owner is the Ministry of Finance. However, the current edition of SIA “*RSAP*” (“*MTender*”) is not fully aligned with all e-procurement provisions in the PPL.

At the same time, a previous e-procurement system is still functional and is being used by the Centre for Centralized Procurement in Health (CAPCS), mainly due to the lack of technical functionalities for centralized procurement within the new system. As prescribed by the law, the CAPCS is intended to shift to the new e-procurement system starting January 1, 2021.

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The MTender platform started being developed by the MoF with the support of the EBRD in the framework of a Memorandum¹ between the competent authorities, the private sector and civil society that was signed on November 30, 2016. The current MTender system started working at the beginning of 2017 as a pilot project for small value procurement. While the old system was still in place, the contracting authorities had the right to decide to carry out electronically small value procurement through the new system. A year and a half later, in October 2018, the new electronic system became mandatory for conducting procurement under the PPL, despite a number of technical shortcomings, including the limitation to only two of the procedures provided for in the PPL, carried out through electronic auctions with price as the only award criterion.

Efforts have nevertheless continued to improve the system so that it would cover the entire procurement cycle, from planning to contract management, allowing the contracting authorities to conduct any procurement activity or procedure regulated by the PPL. This requirement for complete coverage of the procurement cycle was already prescribed in the Government decree² on the approval of the technical concept of the e-procurement system but, as actually implemented, the system does not yet fully meet this requirement. The Ministry of Finance and the EU Delegation to the Republic of Moldova have started to work together for further development of e-procurement, so as to ensure that it becomes fully aligned with the PPL and, by extension, with the applicable EU Directives.

2.3 National policy objectives and sustainable development goals

European integration has anchored successive governments' policy reform agendas, but reforms that are good on paper have yet to turn into tangible results. A vulnerable political system, worsening corruption indicators, a polarized society, an adverse external environment, and skill mismatches in the labour market, along with climate-related shocks, remain among Moldova's biggest challenges.

Transparency, accountability, and corruption have been recurrent, crucial concerns of successive governments. They have been set as priorities in various national strategies, such as the National Integrity and Anti-corruption Strategy, the National Development Strategy "Moldova 2030"³, the Strategy for SME Development, the Strategy for Justice Sector Development and the Strategy for Development the Public Procurement System 2016-2020. A Government Action Plan⁴ for the years 2019 – 2020, adopted by the former provisional government of Maia Sandu, included some corresponding actions. The government which started its activity in July 2019 then repealed this action plan and adopted its own, new one⁵, covering the years 2020 – 2023. Continued economic stabilisation, advancement of key economic reforms, reduced corruption, and the creation of a rule-based environment for businesses should therefore be expected to remain the country's key goals in the economic field.

¹ See <http://old.mf.gov.md/newsitem/10582>

² Decree no. 705/2018; https://www.legis.md/cautare/getResults?doc_id=113731&lang=ro#

³ A corresponding draft law "Moldova 2030" was recently included in the parliamentary agenda: see <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5098/language/ro-RO/Default.aspx>

⁴ See <https://gov.md/ro/content/planul-de-actiuni-al-guvernului-pentru-anii-2019-2020>

⁵ See https://www.legis.md/cautare/getResults?doc_id=119405&lang=ro

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These objectives and reform initiatives are aligned with those set out in the Association Agreement between the EU and Moldova, where the parties aim, among other objectives, to strengthen democracy, reinforce the rule of law, and contribute to political, economic and institutional stability, as well as to support Moldova's efforts to develop its economic potential.

The most important reforms envisaged by the Government in place since July 2019 were related to justice reform, ensuring the rule of law, fighting corruption, reestablishment of the macro-financial assistance, increasing transparency in public procurement and spending, and enhancing the business environment. All of these were among the reasons behind the decision to carry out a MAPS assessment, whose outputs would be used for informing policy making, in particular reform efforts in all the fields mentioned.

The primary objectives of the new Government in place since late 2019 largely align with those of its predecessor. Public procurement reform is thus an integral part of the Government's broad efforts to modernise the country, develop the economy and enhance the well-being of its citizens. Correspondingly, some recommendations of the MAPS assessment go beyond the public procurement system itself, since some of the issues at hand will require measures also in related areas like public financial management, public administration, administrative procedures, and the combat against fraud and corruption.

2.4 Public procurement reform

In the years immediately following its independence from the Soviet Union in 1991, public procurement in Moldova was characterized by an uncertain legal framework and a lack of firm government control over the expenditure of public funds on the procurement of goods, works and services. While much of the state orders and contracts systems, which the country inherited from the old central planning model, were quickly abolished, they left a legislative and procedural vacuum that the Government began to fill on a piecemeal basis, firstly through a Resolution on State Orders in 1991 and, later, by a Regulation on public works in 1993. However, neither of these instruments came close to achieving the kind of competitive, rules-based public procurement system that Moldova would need as an integral part of its journey towards a market economy. With assistance from the World Bank, Moldova's first significant step towards subjecting government contracts to meaningful competition was achieved by the enactment of the Law on Procurement of Goods, Works and Services for Public Needs, dated April 30, 1997. Shortly after the enactment of the law, the Government established the National Agency for Government Procurement (NAGP) which was charged with implementing procurement procedures on behalf of the public procurement institutions.

The World Bank's first Country Procurement Assessment Report (CPAR) on Moldova, conducted in June 2003, came at a time when the country had publicly committed itself to the signal departure of acceding to the Government Procurement Agreement (GPA) under the WTO. The report included an agreed Action Plan with short-, medium- and long-term actions for public procurement reform in Moldova. Since the 2003 CPAR, the World Bank has continued to support the Government's efforts in this area with analytical work and technical assistance, including the preparation of a new CPAR, issued on 21 June 2010. The issues identified and the measures recommended focussed mainly on further aligning the legal framework with international practice, preparing matching, secondary legislation including related standard documents and guidelines, shifting responsibility for ensuring compliance with the legal requirements from the PPA to the contracting authorities, and ensuring the independence of the review function.

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The EU, mainly through its SIGMA Programme, provided assistance with developing the national public procurement strategy in 2015/2016 and preparing the new public procurement law in connection with Moldova's accession to the GPA in 2016. It also provided other support and advice for further development of the public procurement system in connection with the preparations for concluding the association agreement between Moldova and the EU, in particular for building the capacity of the complaints review body. More recently, SIGMA assisted with drafting the new utilities law in 2019/2020 and developing a public procurement training programme in 2020.

Moldova's legal framework for its public procurement system is thus being brought closer to EU standards. While the PPL already provides a largely satisfactory, basic regulatory framework and incorporates the fundamental EU principles governing the award of public contracts, some provisions are not yet fully compatible with EU requirements and will require further amendments. A law on procurement by utilities has been drafted and adopted but is not yet in force. Procurement in the area of defence remains unregulated, while the legal framework governing concessions and public-private partnerships requires revision and alignment with relevant EU legislation.

Further revisions of the legislation will have to be made in application of the timetable for full alignment with the EU Directives on public procurement set out in the Association Agreement between the EU and Moldova. As an initial step, among the first obligations to be met in the public procurement field under the Association Agreement, Moldova adopted its first Strategy for development the public procurement system for 2016 - 2020 and its first action plan for the years 2016 – 2018 by Government Decision No. 1332 of 14 December 2016. It was developed for the purpose of implementing Title V, Chapter 8 of the Association Agreement between the EU and Moldova, as well as to enforce the provisions of the Government Procurement Agreement (Law No. 125 of 2 June 2016).

The strategy was developed to reflect a clear vision of reforming the entire public procurement system, in line with the general principles of good governance, so as to provide the basis for sustainable development in the country. At the same time, the strategy was expected to contribute to the achievement of the objective set out in the Government Strategy on Public Administration Reform, namely that "public procurement regulations meet EU standards, are harmonized with appropriate regulations in other areas and are effectively implemented." The strategy is also linked though its objectives and actions to other reforms related to the development of the private market, business sector, the rule of law, etc. Through this strategic document, the Government assumed the obligation to create a functional, competitive, accountable and transparent procurement system that generates and ensures the trust of Moldovan citizens and the international community in procurement. Nevertheless, it is important to be noted that the second action plan, required for the years 2019 – 2020, has not yet been approved, despite the short time left until the end of the implementation period of the strategy.

According to the schedule provided in the Association Agreement, the first action plan under the strategy envisaged four stages of reform implementation:

- Stage 1. Goods for the central government authorities - quarter IV 2016 - quarter IV 2017;
- Stage 2. Goods for the state, regional and local public law authorities and institutions; goods for all contracting entities in the utilities sector, service and works contracts for all contracting authorities - quarter IV 2017 - quarter IV 2018;
- Stage 3. Concessions for all contracting authorities - quarter II 2018 - quarter IV 2018;

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- Stage 4. Service and works contracts for all contracting entities in the utilities sector - quarter II 2018 - quarter IV 2018.

While certain achievements have been made in this process, there has also been failures and delays, particularly in e-procurement reform and in that the new utilities law¹ has not yet entered into force and that regulations for concessions in line with the Concessions directive have not yet been drafted. A civil society assessment report² on the strategy implementation shows that around one third of the actions (36%) were implemented without deficiencies, while another 32% (9 actions) were implemented, but with certain deficiencies. At the same time, 21% (6 actions) were only partially implemented and the rest, 11% (3 actions), remained unfulfilled. Regarding the actions implemented, the assessment shows that only 18% of them had a major impact and more than half (57%) only had a medium impact. A low impact was found in the case of 4 actions (14%) and a complete lack of impact in the case of 11% of the actions.

A new public procurement strategy for 2021-2026 and a corresponding action plan, reflecting the subsequent alignment steps, will have to be adopted before the end of 2020. The findings and recommendations of the present MAPS assessment will provide some of the inputs for the preparation of this new strategy. Conversely, the MAPS assessment has paid due attention to Moldova's engagements with respect to public procurement set out in the Association Agreement.

The recommendations in the present MAPS assessment are also intended to reflect and support the broader reform objectives and initiatives set out in 4.3 above.

With respect to reform efforts aimed at combatting corruption in public procurement, a Sectoral Anti-Corruption Action Plan in public procurement for the years 2018 – 2020 was approved by Government Decree No. 370 of 21 April 2018. It was developed and approved under the National Integrity and Anti-Corruption Strategy 2017 – 2020, where public procurement was identified, among others, as one of the sectors most vulnerable to corruption.

With regard to the implementation of the Plan, a civil society monitoring report³ reveals that only 10% of the actions set out in the 2019 plan have been accomplished (that is one out of the 10 commitments, which aimed to inform potential bidders about opportunities to participate in public procurement procedures and curb anti-competitive practices). Another 40% were partially accomplished, while the remaining half of the actions (50%) were deemed unaccomplished.

The findings showed that no actions were initiated to assess the impact of centralization in some sectors or regions, nor were any normative acts developed to regulate centralized procurement. Other shortcomings refer to the development of a unique policy and regulation of procurement by SOEs and the review of the ex-ante and ex-post control, which were previously set out in the PPL as a responsibility of the PPA. Ex-ante control was completely excluded from PPA competences in April 2017, while ex-post control was excluded in October 2018 through amendments to the PPL. However, no replacement measures were taken to prevent law violations committed by contracting authorities in the procurement process.

¹ Law on utilities no. 74/2020; https://www.legis.md/cautare/getResults?doc_id=121896&lang=ro

² See http://viitorul.org/files/Eval_Report.%20Strategy%20for%20the%20development%20of%20the%20public%20procurement.pdf

³ See http://viitorul.org/files/library/Raport%20de%20monitorizare%20Plan%20Anticoruptie%202018-2020_0.pdf

Concerning the development of e-procurement, the report found a lack of development and integration into the system of tools for automatically generating reports based on pre-established criteria that would allow authorities to make real time statistics, to oversee the procurement processes and outcomes, as well as allow monitoring by civil society.

The shortcomings mentioned thus remain to be addressed in coming reforms of the public procurement system.

3 Assessment

This section of the main report discusses the findings of the assessment in relation to each of the pillars and indicators based on the qualitative review of the system and the application of quantitative indicators as defined in the MAPS methodology. It describes the main strengths and weaknesses and identifies the areas that show material or substantive gaps and require action to improve the quality and performance of the system. Substantial gaps are classified into categories by the risk they may pose to the system and actions are recommended to address these weaknesses. Factors that are likely to prevent appropriate actions to improve the public procurement system or that constitute conditions for their success are specifically identified, using the criteria in paragraph 24 of Section I of the User's Guide of MAPS 2018. These include factors that impede the main goals of public procurement but lie outside the sphere of public procurement. The detailed assessment results covering each sub-indicator and each criterion is given in Annex 5 of this Main Report in a matrix form as well as in the form of a separate table (Annex 6) summarising the assessment results by indicator, sub-indicator and assessment criterion. All other back-up materials and documentation in support of this analysis are given in the annexes to this main report. The assessment team has used the guidance and assessment criteria given in the Methodology for Assessing Procurement Systems (MAPS 2018)¹.

The assessments of the situation and of the gaps are based on documentary evidence, constituted by the applicable laws and regulations listed in Annex 4 and by the written information provided by the PPA and other stakeholders, as well as on interviews with key stakeholders, review of selected contract files, and analyses of the responses to the enterprise survey carried out.

3.1 Pillar I - Legal, Regulatory and Policy Framework

Pillar I assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The practical implementation and operation of this framework is the subject of Pillars II and III. The indicators within Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also considers international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.

Summary findings under Pillar I:

¹ Available at <http://www.mapsinitiative.org/methodology/>

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The regulatory framework of public procurement in Moldova is constituted by the public procurement law (PPL) as well as several items of secondary legislation. The public procurement law itself is broadly aligned with internationally agreed principles, in particular with the public procurement directives of the European Union (EU). This reflects the engagement by Moldova under its Association Agreement with the EU to successively align its legislation with that of the EU. This process is still ongoing and is due to be completed by 1 September 2022, eight years from the entry into force of the Agreement, according to the timetable set out in the annexes to the Association Agreement.

The PPL is complemented by a number of Government decrees, some of them dating to before the adoption of the PPL and not amended. A full list of the relevant decrees is provided in Annex 4, which also includes references to the standard documentation promulgated by the Ministry of Finance and to other relevant legislation.

The focus of the PPL is essentially on the award procedures and the conditions for their application. It thus quite comprehensively regulates procurement plans, notices, tender documents, selection and award criteria, evaluation and award, and the handling of complaints. The preparatory stages, such as needs identification and goal setting, are hardly mentioned, and also not those following the signature of the contract, such as contract management and the evaluation of procurement outcomes.

Contracting authorities and entities are not defined in such a way that the scope of the PPL is complete. Utilities are not covered by the PPL, nor are publicly owned enterprises in general (these have recently become obliged to apply the new regulation on procurement by SOEs). The PPL applies to public contracts but its coverage of concessions and other public-private partnerships is limited.

The secondary legislation contains a large number of elements which, however, are not all up to date and in some cases fail to cover or to be aligned with what the PPL allows or requires. Consequently, contracting authorities are often confused about what regulation to apply and how. Also, the application of the secondary regulation and the use of the prescribed standard documentation requires considerable administrative efforts and is error prone.

In addition, in many respects, the regulations governing the existing e-procurement system as well as the way the system is designed and used in practice do not match the provisions of the PPL and are not in line with the EU Directives.

The picture is mixed concerning sustainable procurement. The PPL allows the use of sustainability approaches and criteria and there is official guidance for using them. However, their use in practice is very limited, both because of widespread lack of corresponding knowledge and skills and the failure of the compulsory e-procurement system to allow their incorporation among the award criteria.

Obligations deriving from international agreements are broadly reflected in the primary legislation, although the alignment of the PPL with the applicable parts of the EU's public procurement directives is not fully progressing according to the agreed timetable set out in the Association Agreement.

Against this background, the main recommendations for Pillar I of the MAPS assessment are for the PPL and other applicable laws to become adequately aligned with the EU Directives, for the secondary legislation to be brought up to date and complemented accordingly, for the e-procurement system to fully allow contracting authorities to apply the PPL in a way that not only meets its formal requirements but, even more so, the important general principles of transparency, economy and efficiency, for sustainable

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procurement to be more widely used and for the alignment with the EU Directives to be brought back on schedule.

3.1.1 Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

The indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, etc.) to detailed regulation, procedures and bidding documents formally in use.

- **Findings**

Main substantive gaps and recommendations for Indicator 1

No.	Substantive gaps / Red flags	Risk	Recommendations
1.1.	Apart from utilities (to be covered by the new Utilities law), some (other) state owned enterprises are excluded from the PPL but obliged to apply the SOE procurement regulation, irrespective of their characteristics, and the regulation of procurement by municipal enterprises is not clear; in addition, the legal instruments mentioned are not fully harmonised	High	Harmonise the PPL, the utilities law, the SOE procurement regulation and the procurement provisions of the PPP law, in order to reduce the diversity of procedures and of the conditions for their use, and review state owned enterprises and municipal enterprises in order to clarify which of the legal instruments mentioned each of them should apply for what kind of procurement
1.2	Effective access to procurement plans and to many other documents is hampered by incomplete obligations to publish and the use of document formats which are not machine readable	Medium	Require all public procurement documentation to be published on a central website (the e-procurement platform is likely to be most appropriate one for the purpose), using machine readable document formats
1.3.	The e-procurement system is not in line with the PPL and does not allow the full range of procedures and award criteria to be used, while the sequencing of the steps in the process is in contradiction with the PPL	High	Ensure that the implementing regulations and the corresponding functionalities of the e-procurement system fully match the (amended) requirements of the PPL

Sub-indicator 1(a) – Scope of application and coverage of the legal and regulatory framework

The purpose of this sub-indicator is to determine: i) the structure of the regulatory framework governing public procurement; ii) the extent of its coverage; and iii) the public access to the laws and regulations.

The legal framework for public procurement includes the PPL as the one item of primary legislation regulating the award of public contracts, as well as corresponding, secondary legislation in the form of Government decrees. However, several decrees issued before the adoption of the PPL have not been amended to align with it and some provisions in subsequent decrees, notably the ones on the new e-procurement system (see further sub-indicator 1 (j) below), also do not match what the PPL

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allows or requires. In line with Moldovan and international legal practice, the PPL would normally take precedence over the various Government decrees. As determined during the assessment, some contracting authorities, among which the CAPCS, nevertheless consider themselves obliged to follow the specific provisions in the various decrees rather than those in the law, even when the former contradict the latter.

The PPL covers goods, works and services, including consulting services, procured by contracting authorities financed from the state budget as well as regional and local authorities for contract values of MDL 200 000 and above for goods and services other than social services and other specific services, MDL 250 000 for works and 400 000 for social services and other specific services. Below these thresholds, small value procurement is regulated by Government decree HG 665/2016. However, this decree uses lower thresholds than those in the PPL for the definition of small value contracts; this creates further confusion in its application and complicates the monitoring of small value procurement.

The notion of 'contracting authority' is defined in the PPL, Art. 13, in line with the definitions in Directive 2014/24/EU, Art. 2.

State owned enterprises and municipally owned enterprises, including utilities, are thus not covered by the PPL but were instead required by law 246/2017 to adopt and apply their own procurement regulations. However, these were of widely varying quality, as further reviewed in Annex 9. The regulations that were actually prepared to date cover either individual SOEs or apply to certain sectors, in particular utilities (Decision of the National Agency for Energy Regulation no. 24 of 26 Jan. 2017 on the approval of the Regulation on procurement procedures for goods, works and services used in the activity of licensees in the electricity, heat, natural gas and operators providing public water supply and sewerage service¹). This Decision has been replaced by the new utilities law (see further under sub-indicator 1(I) below).

A new regulation², generally applicable to procurement by state enterprises and by joint-stock companies in which the State has a majority, was adopted by Government decree on 10 June 2020 and was published, with immediate entry into force, on 10 July 2020. It is now becoming implemented. However, municipal enterprises are only recommended, not explicitly required, to apply the provisions of this regulation. Further considerations regarding procurement by SOEs are found in Annex 9.

The PPL applies³ with respect to public procurement also to the forms of public-private partnership not prohibited by law, and also applied to the award of public works concession contracts until the entry into force early 2019 of the law on works concessions and services concessions⁴. The institution responsible for regulating the implementation of state policy in the fields of administration and de-nationalization of public property, as well as of the public-private partnership, is the Public Property Agency. The PPP law⁵ establishes the basic principles of the

¹ https://www.legis.md/cautare/getResults?doc_id=99127&lang=ro

² Government decree 351/2020; https://www.legis.md/cautare/getResults?doc_id=122110&lang=ro

³ PPL, Art. 2 (5)

⁴ Law no. 121/2018; https://www.legis.md/cautare/getResults?doc_id=105485&lang=ro

⁵ Law no. 179/2008; https://www.legis.md/cautare/getResults?doc_id=83632&lang=ro

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public-private partnership, the forms and the modalities of implementation, the procedure for its initiation and realization, the rights and obligations of the public partner and the private partner.

The entire regulatory framework is published and easily accessible to the public at no cost. The state register of legal acts of the Republic of Moldova is accessible online¹.

Sub-indicator 1(b) – Procurement methods

This sub-indicator assesses whether the legal framework includes: i) a clear definition of the permissible procurement methods; and ii) the circumstances under which each method is appropriate. The legal framework should provide an appropriate range of procurement methods comprising competitive and less competitive procedures, when appropriate.

The PPL lists the various procedures and related methods that may be used in public procurement (Art. 46) as well as the conditions for their use, reflecting the provisions in the applicable procurement directives of the European Union:

- a) open tender (Art. 47-50);
- b) restricted tender (Art. 51-53);
- c) competitive dialogue (Art. 54);
- d) negotiated procedure (Art. 55-56);
- e) request for proposals (Art. 57);
- f) design contest (Art. 58);
- g) procurement of social services and other specific services (Art. 59);
- h) innovation partnerships (Art. 60);

and, as the means for applying the above procedures or their outcomes,

- i) framework agreements
- j) dynamic purchasing systems
- k) electronic auctions
- l) electronic catalogues

Contracting authorities are free to use open and restricted tenders without any limitations, while the other procedures can be used only if specific conditions set out in the law are duly met.

The procurement methods prescribed include competitive and less competitive procurement procedures, proportionate to the nature and value of the contracts. As a result, not considering the negotiated procedure without prior publication of a contract notice, all types of procedures carried out in accordance with the law have the potential to ensure competitiveness, fairness, transparency, proportionality and integrity.

However, in practice, the limited set of functionalities available in the current e-procurement system have the effect of preventing its use for many of the procedures set out in the PPL.

Requests for proposals can be used for contract values not exceeding 800,000 lei for goods and services and 2,000,000 lei for works, as further regulated in the PPL² and the corresponding

¹ See <http://www.legis.md/>

² PPL, Art. 57

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implementing regulation¹ require the award to be made using an electronic auction (in MTender, the current e-procurement system)

The negotiated procedure without publication of a notice (that is, by direct agreement), is only allowed in exceptional, well defined circumstances. The PPL also contains corresponding provisions aimed at ensuring value for money, fairness, transparency, proportionality and integrity, as further detailed for each of the procedures listed.

A separate decree² regulates small value procurement. It does not prescribe any particular approach and only mentions some very general principles to be followed: risk minimisation, efficiency, impartiality and non-discrimination. However, the application of these principles is not systematically monitored and there is no evidence if and to what extent the provisions of the decree are followed by the contracting authorities.

Fractioning of contracts to limit competition is prohibited³ and is subject to sanction according to the Contravention Code⁴. The PPL also prohibits⁵ the division of procurement by concluding separate public procurement contracts for the purpose of applying a public procurement procedure other than the procedure that would have been used in accordance with this law if the procurement had not been divided.

On the other hand, division into lots is presumed to be the normal approach, as regulated in the PPL (Art. 39). When a contract is not divided into lots, the contracting authority is required to file the justification for this approach.

Appropriate standards for competitive procedures are specified⁶). Further details on the procedures are set out in the various standard documents⁷ issued by the Ministry of Finance. These include comprehensive provisions aimed at guiding the work of the contracting authorities, defining the contents of the documents to be used, and facilitating the recording of the various steps to be performed. However, while most of these are aligned with the current PPL, the regulation⁸ on framework agreements dates from 2012 and reflects the former public procurement law, not the corresponding provisions in the current PPL.

Sub-indicator 1(c) – Advertising rules and time limits

This sub-indicator assesses whether: i) the legal framework includes requirements to publish procurement opportunities as a matter of public interest and to promote transparency; ii) there is wide and easily accessible publication of business opportunities; and iii) there is adequate time provided between publication of opportunities and the submission date, consistent with the method and complexity of the procurement, to prepare and submit proposals.

The PPL sets out detailed requirements and modalities for the publication of procurement opportunities; however, they are not fully aligned with EU policies and practices and are not fully

¹ Government decree 987/2018

² <http://www.legis.md/cautare/rezultate/92984>; see also sub-indicator 1(a) above

³ PPL, Art. 4. (21)

⁴ Law 218/2008, Art. 327

⁵ PPL, Art. 76

⁶ PPL, Art. 46-60

⁷ Accessible at <https://tender.gov.md/ro/content/acte-ministeriale-%C8%99i-departamentale>.

⁸ https://www.legis.md/cautare/getResults?doc_id=21051&lang=ro

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matched by the corresponding Government decree no. 1419/2016 promulgating the Regulation on procurement planning. The decree defines the “procurement plan” as comprising all the needs for goods, works or services for the entire budget year, to be met by concluding one or more public procurement contracts, depending on how they are planned to be executed. On the other hand, according to the PPL, Art. 28, contracting authorities first have to publish a “notice of intention” separately for each procurement procedure no later than 30 days from the date of approval of the budget of the respective contracting authority; however, contracts whose estimated value is less than MDL 800,000 for goods and services and less than MDL 2,000,000 for works are not subject to mandatory publication of this kind (the PPL and the decree have differences in this respect). Then, as provided in the decree mentioned, after the publication of the notice of intention in the Public Procurement Bulletin and on the official website of the PPA (note that the PPL does not require publication on the PPA website), the contracting authority shall, within 15 days, approve the procurement plan, and then publish it on the contracting authority’s web page within 15 days from the approval.

The requirements for publication thus partly exceed the requirements in the EU Directives (they do not contain any obligation to publish a notice of intention for each procedure at the beginning of the year), and partly fail to meet them (the provisions¹ on prior information notices are not fully reflected in the PPL). As a consequence, the current provisions do not fully serve the purpose of giving advance notice to the business community in a way that promotes high participation and strong competition, while giving contracting authorities suitable flexibility for efficient procurement management.

(b) The time frames for publication of notices and the submission of tenders are set out in the PPL, which has a general requirement for the contract notices to be published as early as needed to offer all interested economic operators, without any discrimination, real possibilities of participation in the procedures for awarding the public procurement contract (PPL, Art. 29 (6)).

Minimum time frames are set out among the other PPL provisions for each procedure (see above under sub-indicator 1(b), item (a)), as a function of the value of the contract. As an example, open tenders (PPL, Art. 47) for contracts of MDL 2,300,000 or above for goods and services other than social services and other specific services, MDL 90,000,000 for works and MDL 13,000,000 for social services and other specific services have to be published no less than 35 days before the deadline for submission, and no less than 20 days for contracts below the amounts mentioned.

Additional rules apply for extending these time limits in case of amendments or clarifications of the tender documents. Requests for clarification must be submitted (PPL, Art. 35) within a short time (depending on the contract value) after the publication of a tender notice and the contracting authority must then issue a clarification by publishing it in the e-procurement system and sending it to the tenderer who requested it, normally within three working days. If the clarification is issued later, the deadline for submission must be extended accordingly. In practice, as applied in the current e-procurement system (MTender), while clarifications can be issued easily, other related changes that may be necessary cannot be made in the same way in the system, and the result is often additional delays to the procedure.

All tender notices (PPL Art. 29) have to be published in the Public Procurement Bulletin and on the website of the Public Procurement Agency in all cases provided by the PPL, according to the

¹ Directive 2014/24/EU, Art. 48

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procurement procedure applied. There is no charge for this and there are no particular barriers in place. For contracts of MDL 2,300,000 or above for goods and services other than social services and other specific services, MDL 90,000,000 for works and MDL 13,000,000 for social services and other specific services, the tender notices also have to be transmitted in electronic form for publication in the Official Journal of the European Union. Unfortunately, this provision in the PPL is not yet workable, for the simple reason that only the announcements of EU member countries can be published in the EU's Official Journal (more exactly, in Tenders Electronic Daily (TED)). The only exception for Moldova are the announcements for projects that are financed from the EU budget. However, efforts are being made¹ to create the necessary legal basis for allowing Moldovan procurement notices to be published in TED, though when the necessary arrangements are in place, all notices for contracts above the EU thresholds will then have to be published there, without exception.

Publication of notices on the PPA website is explicitly required in Art. 29 regarding contract notices and invitations to participate, while Art. 28 on 'notices of intention' and Art. 30 on award notices require publication in the Public Procurement Bulletin. This being said, it should be noted that the Public Procurement Bulletin is now issued in the form of the freely accessible web pages² on the PPA website; there is also a "Public Procurement Bulletin" published on MTender³, the current e-procurement system.

The tender notices have to be comprehensive, with their form and content and the method for their preparation provided in Annex no. 3 to the PPL.

Sub-indicator 1(d) – Rules on participation

This sub-indicator assesses the policies that regulate participation and selection, to ensure that they are non-discriminatory.

The PPL ensures, in principle, the equitable right of all economic operators to participate or not to participate in the framework of a public procurement procedure.

The PPL does not limit the right of the resident or non-resident economic operator, natural or legal person of public or private law or association of such persons to participate in public procurement procedures.

On the other hand, in practice, as stated by the PPA, because of the particularities of the applicable legislation, non-resident economic operators cannot submit tenders within the public procurement procedures if they do not have legal representatives on the territory of the Republic of Moldova.

These issues arise from the provisions of the PPL, Art. 33, para. 14 i), which mentions the obligation to apply an electronic signature on electronic offers, but also from the provisions of Law no. 91/2014 on electronic signature and electronic documents, according to which the electronic signature issued by authorities from other states than the Republic of Moldova is not recognized, as there are currently no agreements in this regard between the Republic of Moldova and other states (Art. 6). At the same time, the issuance of the electronic signature is conditioned by the identification of the holder (name, surname, identification number of the natural person), which implies the presentation

¹ See <https://ansc.md/ro/content/comunicat-privind-publicarea-anunturilor-contractuale-de-catre-autoritatile-contractante-din>

² See <https://tender.gov.md/ro/bap>.

³ See <https://mtender.gov.md/en/tenders> (section "electronic tenders", subsection "Public Procurement Bulletin")

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of the identity card of the Republic of Moldova, residence permit, or other document containing a personal identification code (IDNP). The only solution at the moment is the delegation by proxy of the right to electronically sign the offers to persons resident in the Republic of Moldova, holders of qualified electronic signatures. However, available data is not sufficient to determine to what extent this restriction affects public procurement.

The contracting authority has the obligation to establish the selection criteria for each procedure. The PPL contains detailed provisions for determining appropriate selection criteria of the tenderer or candidate in terms of grounds for exclusion (eligibility) and, as applicable, right to exercise an economic activity, economic and financial capacity, technical and professional capacity, quality assurance, and environmental protection requirements.

There are no specific rules aimed at creating a level playing field for the participation of state owned enterprises in public procurement. On the other hand, Art. 6 of the PPL establishes a special regime for protected workshops and social insertion companies if the majority of the employees involved are people with disabilities who, due to the nature or the severity of their condition, cannot carry out a professional activity under the same conditions as those of other tenderers capable of normal participation in the procedures for awarding public procurement contracts.

In order to determine the tenderer's eligibility, the contracting authority requests the completion and submission of the European Single Procurement Document (ESPD), which consists of an updated declaration of conformity with the eligibility requirements, as a preliminary proof, instead of the individual certificates issued by the public authorities or by third parties which confirm that the economic operator concerned fulfils the conditions stipulated by the contracting authority. The PPL also sets out other possible means for demonstrating conformity with the selection criteria, and the contracting authority has the obligation to indicate for each procedure the supporting documents required for this purpose, as further provided by the legislation in force.

However, the provisions in the EU Directives regarding lists of qualified economic operators¹ are no longer reflected in the PPL. The effect is that neither tenderers nor contracting authorities can benefit from the potential advantages offered by these provisions. At the same time, it should be noted that the creation and use of such lists remains optional.

The article of the PPL providing for the use of lists of qualified economic operators was thus deleted² with effect from 1 October 2018, without replacement. Nevertheless, Government decree 1420/2016 with approval of the Regulation of the List of qualified economic operators, based on the earlier wording of the PPL in this respect, has not been repealed. In addition, Government decree 134/2017 with approval of the Regulation on the organisation and functioning of the PPA and its staff still contains an obligation³ for the PPA to draw up, update and maintain the list of qualified economic operators. The list established by the PPA in line with earlier versions of the PPL has not been complemented since August 2018. The earliest entries are from March 2008 and do not appear to

¹ Directive 2014/24/EU, Art. 64

² By Law 169/2018 of 26 July 2018, Art. 527

³ Decree 134/2017, Annex 1, item 7. 8).

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have been updated. Nevertheless, the list is still published on the PPA website¹, creating additional confusion for contracting authorities and economic operators alike.

Also, the way the current e-procurement system is designed means that, in practice, only the qualifications of the winning tenderer are checked, and this only after an electronic auction has been held. Contrary to what the PPL requires, there is thus no possibility to exclude unqualified participants from the evaluation of their tenders and from participating in the electronic auction.

Sub-indicator 1(e) – Procurement documentation and specifications

The sub-indicator assesses the degree to which the legal framework specifies the content of procurement documents, to enable suppliers to understand clearly what is requested from them and how the procurement process is to be carried out.

The manner of drawing up, publishing and modifying the tender documents documentation is provided in the PPL, Art. 40 and 41. The rules regarding the description of goods, works and services in the tender documents are provided in Art. 37, requiring them to be clear, relevant and sufficient for the preparation of responsive tenders. In the description of the goods, services and works, the contracting authority must indicate the national or international standards to be used, without favouring a certain producer or supplier or contractor or service provider.

The PPL contains detailed regulations to be followed by the tenderers and the contracting authorities for the clarification of tender documents.

Sub-indicator 1(f) – Evaluation and award criteria

This sub-indicator assesses: i) the quality and sufficiency of the legal framework provisions in respect to the objectivity and transparency of the evaluation process; and, ii) the degree of confidentiality maintained during the process, to minimize the risk of undue influences or abuse.

As required by the PPL, the award criteria have to be objective, relevant to the object of the contract and specified in the tender documentation in advance. The decision to award the contract must not depart from the criteria initially set out.

According to the PPL, Art. 26, the four possible award criteria are the following: lowest price; lowest cost; best quality-price ratio; and best quality-cost ratio. The 'lowest cost' criterion would typically use life cycle cost. In addition to price, the 'best quality-price ratio' and 'best quality-cost ratio' criteria usually include evaluation factors referring to the qualitative aspects of the goods, works or services that are the subject of the purchase. In addition, depending on the objectives behind the procurement, it is also possible to use evaluation factors that include environmental or social aspects related to the items to be procured. However, the possibility to obtain best value for money is considerably limited by the requirement for the price or cost element of the 'best quality-price ratio' or 'best quality-cost ratio' criteria to be no less than

- 60% for goods
- 80% for works
- 40% for services

¹ See <https://tender.gov.md/ro/operatorii-economici-calificati>

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It is important to note that this provision presupposes and, in practice, even requires that price (or cost) is evaluated separately from quality characteristics and technical or functional merit, before somehow combining the two. This approach has methodological shortcomings which make it open to manipulation, but the wording of the provision would seem to prevent the use of alternative approaches, such as attributing a monetary value to the extent to which each non-price element exceeds the minimum characteristics required, and adjusting the evaluated price (or cost) accordingly for the purpose of determining the most advantageous tender. However, although the PPL sets out the four criteria for awarding the contract, the corresponding secondary regulatory framework is incomplete and not fully harmonized with the requirements of the PPL, creating confusion in the application of the law. As an example, the provisions of the Regulation on public works procurement, approved by Government decree 669/2016, regulate only two types of contract award criteria (point 40): "the lowest price" and "the most advantageous offer from a technical and economic point of view". Also, the Government decree 669/2016 does not provide for the submission of the ESPD by the bidders, as an integral part of the bid, although required by the PPL, Art. 20. Finally, Government decree 669/2016 establishes the obligation of the presence of at least three qualified tenders in the public tender of works (point 150.1), something which is not in line with what the PPL allows.

The PPL does not contain separate, special provisions for consulting services, though the general provisions are adequate for setting and assessing the technical capacity needed. On the other hand, the possibility to ensure high quality of consulting services is limited by the just mentioned restrictions in setting the award criteria to be applied.

The contracting authority must specify in the award documentation the relative weight it gives to each evaluation factor, as well as the calculation algorithm or the concrete scoring methodology that is applied to determine the most economically advantageous offer, unless the most economically advantageous offer is determined by applying the lowest price criterion. The method for applying the evaluation factors is provided in PPL Art. 26, para. 10-16. (The remark above under evaluation criterion b) under this sub-indicator applies also here.)

The examination, evaluation and comparison of the offers must¹ be performed without the participation of the bidders and other unauthorized persons.

Sub-indicator 1(g) – Submission, receipt and opening of tenders

This sub-indicator assesses how the legal framework regulates the reception of tenders and tender opening.

Tenders have to be opened² at the time specified in the award documentation as the deadline for submission of tenders or at the time specified as the deadline for the extended term, regardless of the number of tenderers, according to the established procedures in the award documentation.

According to point 21 of GD 667/2016, the working group is obliged to draw up, in the presence of the bidders, the minutes of the opening of the tenders. However, the regulation mentioned fails to cater for the use of e-procurement. The template of the evaluation report ("award decision") that has to be created

¹ PPL, Art. 69 (1)

² PPL, Art. 66 (2)

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at a later stage of the process contains elements concerning the opening of the tenders but it is not publicly available. See also sub-indicator 7 (a) d).

In all operations of communication, exchange and storage of information, the contracting authority must¹ ensure the maintenance of data integrity and the protection of confidentiality of tenders and requests to participate. The holder of the "State Register of Public Procurement" (MTender) is obliged² to ensure the confidentiality of the content of offers until the date for opening them. At the same time, the MTender operator () and platform operators must³ implement mechanisms to ensure the confidentiality of tenderers or candidates until the deadline for submission of tenders, defined by the contracting authority in the respective procurement procedure.

Regarding the rules applicable to communication, it must be reasonably ensured⁴ that no one has access to the information transmitted according to these requirements before the specified deadlines; only authorized persons have the right to establish or modify the data for the opening of the information received; during different stages of the procurement procedure or of the solution competition, access to all or part of the data submitted is allowed only to authorized persons; only authorized persons allow access to the information sent and only after the appointed date; information received and opened pursuant to these requirements shall remain accessible only to persons authorized to do so. Until the completion of the evaluation, the contracting authority must not⁵ disclose to tenderers or other persons not officially involved in the award procedure information on the examination, evaluation and comparison of tenders.

On the other hand, the way the current e-procurement system works, all tenders become publicly available once the evaluation has finished. This means that there are no possibilities for enterprises to request certain elements of their tenders to remain confidential for competitive reasons, contrary to what EU Directive 2014/24/EU, Art. 21 requires to be possible but what is only incompletely reflected in the PPL, Art. 54, 60 and 78.

The manner of presenting the offers is regulated by Art. 65 of the PPL and the annexes of Government decrees 705/2018 and 986/2018, which generally reflect EU practice.

Sub-indicator 1(h) – Right to challenge and appeal

The purpose of this indicator is to assess whether the legal framework establishes: i) the right to challenge decisions or actions and to appeal; ii) the matters that are subject to review; iii) the time frame for such reviews; and iv) the different stages in the review process.

The right to lodge complaints against contracting authority decisions before the signature of the contract is regulated in the PPL, Art. 82, which gives legal standing to "Any person who has or has had an interest in obtaining a public procurement contract and who considers that in public procurement procedures an act of the contracting authority has infringed a right recognized by law, as a result of which he has suffered or may suffer damages". However, the rules for publication of award notices and for the standstill periods (see also evaluation criterion d) here below and sub-indicators 7 (a) d) and 13 (a) d)) mean that, in practice,

¹ PPL, Art. 33 (5)

² Point 8, subpoint 17 of Government decree 986/2016 for the approval of the Regulation on the maintenance of the State Register of Public Procurement formed by the Automated Information System "State Register of Public Procurement" (MTender)

³ Id., point 93

⁴ PPL, Art. 33 (14)

⁵ PPL, Art. 9 (8)

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only participating tenderers have the possibility to complain against an award decision before the contract is signed, and this only for a limited range of contracts.

The competent body to resolve complaints regarding the public procurement procedures is¹ the National Agency for the Resolution of Complaints (ANSC), whose decisions can be appealed² in the competent court. See further the entries under Indicator 13 below.

Complaints can be filed regarding the tender documents, the procedure and the results of the procedure as well as any other matter where the complainant's rights have been infringed by the contracting authority (cf. quotation here above).

The PPL regulates³ the terms for filing, examining and resolving complaints. While not obviously contrary to the requirements of the EU Directives, the current provisions in the PPL mean that it is very difficult for a potential tenderer or any other interested party to effectively, that is, before the contract is signed, complain against e.g. the decision of the contracting authority to award a contract by negotiated procedure without publication of a notice. In fact, an effective possibility for any other interested parties than the participant(s) in the tender to file a complaint before the signature of the contract would require eliminating the exceptions to the standstill periods in the PPL, Art. 32 and introducing a requirement to publish the award notice at an earlier stage than at present (30 days after informing the participants in the tender about the outcome of the evaluation).

Complaints can be submitted online⁴ or at the headquarters of the National Agency for the Resolution of Complaints (ANSC). The application form can be downloaded from the ANSC website⁵. The decisions on the complaints submitted are published on the ANSC website⁶.

Sub-indicator 1(i) – Contract management

The purpose of this sub-indicator is to assess whether the legal framework establishes the following: i) functions and responsibilities for managing contracts; ii) methods to review, issue and publish contract amendments in a timely manner; requirements for timely payment; and iv) dispute resolution procedures that provide for an efficient and fair process to resolve disputes during the performance of the contract.

The legal framework for public procurement does not directly and clearly define the responsibilities of the parties to the contracts, other than as set out in the conditions of contract that form part of the standard documents for public procurement. The roles, responsibilities and tasks of the contracting authorities with respect to contract management are also not clearly and comprehensively regulated.

Public procurement contracts may be amended⁷ in the following situations:

1) when the following conditions are cumulatively met:

¹ PPL, Art. 84

² PPL, Art. 86 (12)

³ PPL, Art. 83-85

⁴ https://ansc.md/en/depunere_contestatie

⁵ <https://ansc.md/en/content/depunere-contestatii>

⁶ <https://ansc.md/node/661>

⁷ PPL, Art. 76

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- a) it becomes necessary to purchase from the initial contractor some additional goods, works or services that were not included in the initial contract, but which became strictly necessary for its fulfilment;
 - b) the change of the contractor is not possible;
 - c) any increase of the contract price representing the value of the additional goods / works / services does not exceed 15% of the value of the initial contract;
- 2) when the following conditions are cumulatively met:
- a) the amendment became necessary as a result of circumstances which a diligent contracting authority could not have foreseen;
 - b) the modification does not affect the general nature of the contract;
 - c) the price increase does not exceed 15% of the value of the public procurement contract / initial framework agreement;
- 3) when the contractor with whom the contracting authority initially concluded the public procurement contract / framework agreement is replaced by a new contractor, in one of the following situations:
- a) the rights and obligations of the initial contractor resulting from the public procurement contract or framework agreement are taken over [...] by another economic operator who meets the qualification and selection criteria initially established, provided that this amendment does not involve other substantial changes to the public procurement contract or framework agreement and is not carried out in order to circumvent the application of the award procedures provided by this law;
 - b) upon early termination of the public procurement contract or framework agreement, the main contractor assigns to the contracting authority the contracts concluded with its subcontractors, following a clear, precise and unequivocal review clause or an option established by the contracting authority in the documentation award;
- 4) when the changes, regardless of their value, are not substantial.

The PPL does not provide for the settlement of disputes during the execution of the contract other than by declaring¹ that any disputes and requests regarding the execution, nullity, cancellation, resolution, or termination of the public procurement contracts fall under the responsibility of the competent court according to the applicable provisions in commercial law or other civil law, as may be the case. In the field of public procurement, dispute resolution is thus dealt with in the courts and an alternative procedure – e.g., arbitration, is missing. For these reasons, litigation procedures are cumbersome, costly, time consuming and often ineffective, which makes it difficult to effectively sanction breaches of contractual obligations by either party, the end effect being to reduce value for money for all concerned. The courts mentioned issue final, binding and enforceable decisions as provided for in separate legislation.

Sub-indicator 1(j) – Electronic procurement (e-Procurement)

This sub-indicator assesses the extent to which the legal framework addresses, permits and/or mandates the use of electronic methods and instruments for public procurement.

¹ PPL, Art. 87

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The legal framework allows but only partly mandates the use of e-procurement solutions; in addition, the provisions of the public procurement law (PPL) are partly contradicted by the current implementing regulations and by their application through the existing e-procurement system.

The PPL includes a number of articles regulating e-procurement, in particular Art. 63 on electronic auctions. Electronic communications are required as the default approach. A requirement for publication of notices on the PPA website is explicitly stated regarding invitations¹ to participate but not for procurement plans², nor for award notices³.

The use of electronic auctions is set out⁴ in the PPL in terms aligned with those of the EU's public procurement directives⁵, and thus with good international practice. This includes the notion of 'electronic auction' as the final stage of a competitive procedure, after 'a complete initial evaluation of the tenders'. However, this initial evaluation is only required to be made 'according to the established award criterion'; thus without mentioning also the requirement under the EU Directives to examine whether the tenderers meet the qualification criteria and do not fall under any of the grounds for exclusion; only these should then be invited to participate in the electronic auction. The PPL also foresees the use of either price only as the sole award criterion in an electronic auction, or a combination of prices and other elements of the tenders that can be modified in the course of the auction, in order to identify the most economically advantageous tender.

The main implementing regulations are Government Decree 705/2018 on the approval of the technical concept for the "State registry for public procurement (MTender)", Government Decree 985/2018 on the accreditation of public procurement platforms working in the context of MTender, and Government Decree 986/2018 on the running of MTender.

The notional owner of the system is the Ministry of Finance⁶. However, in reality, at present, MTender appears to be owned by its developer, who was engaged and is paid for the purpose by the EBRD, since no formal agreement detailing the rights to the system appears to have been concluded with the Ministry of Finance to this effect. The MTender operator is the CTIF, the Centre for Information Technologies in Finance, a public institution founded by the Ministry of Finance. The e-procurement platforms that provide the interface between contracting authorities and economic operators during the electronic cycle of public procurement belong to the private sector. Their relation is described⁷ as "a partnership between the Ministry of Finance and commercial electronic platforms formed to provide collaboratively digital procurement services to public sector and commercial buyers in Moldova"; however, there is no public evidence of any formal agreements detailing this relation. Three such platforms are currently in operation. They are supposed, in principle, to be remunerated by the users (economic operators participating in tenders) but the legal basis for this is not transparent (Decree 705/2018 requires⁸ the preparation of a regulation for this purpose, but none has been adopted). Nevertheless, the platforms did not charge

¹ Id., Art. 29

² Id., Art. 28

³ Id., Art. 30

⁴ Id., Art. 63

⁵ See e.g. Directive 2014/24/EU, Art. 35 and recital 67

⁶ PPL, Art. 1

⁷ See e.g. <https://mtender.gov.md/en/join-mtender>

⁸ Decree 705/2018, Art. 4. 1)

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economic operators any fees other than a unique participation fee of 50 lei for small value procurement in the first phase (pilot for small value procurement) of the MTender project.

The current MTender system replaces an earlier system which, however, is still used by the CAPCS, the centre for centralised health sector procurement. This older system was defined and structured as set out in a technical concept note approved by Government decree 355/2009 of 8 May 2009. Its use remains regulated by the PPA's Order no. 18 of 20 June 2016, prepared in response to decision 56 of 8 December 2014 issued by the Court of Accounts, and replacing earlier instructions.

The MTender regulations mentioned and, correspondingly, the e-procurement system now in place, thus fail to meet the requirements of the PPL in several important respects, among which the following may be recalled:

- the obligations to use MTender do not fully cater for the cases foreseen in the PPL where it is not appropriate to use an electronic auction
- the modification of tender documents by the contracting authority, e.g. in response to requests for clarifications, is possible only to a lesser extent than allowed by the PPL
- lots cannot be handled in the manner prescribed by the PPL
- the MTender business processes contradicts the PPL in that, e.g., the electronic auction precedes the determination of the qualifications of the tenderers and the full evaluation of the tenders, instead of coming as the final step of the evaluation
- the system does not allow to examine if the tenders meet the requirements and the award criteria and if the tenderers meet the selection criteria for other tenders than the one that the system has determined to be the one best placed; it is therefore not possible to fully apply the PPL's provisions on opening and evaluation of tenders
- the price is the only award criterion possible to use, out of the four main criteria foreseen in the PPL

As a consequence, contracting authorities are in breach of the PPL each time they use the MTender system.

The system in place and the underlying approach also have various other shortcomings, among which one may mention:

- the private sector operated platforms that contracting authorities and economic operators have to use for interfacing with the system do not appear to have received any formal accreditation¹ for the purpose
- the collection of fees for the use of those platforms is not regulated
- the multitude of parties involved (developer, CTIF, Ministry of Finance, PPA, private sector platforms) makes it difficult to identify the nature, location and origin of any problems that are

¹ As regulated by Decree 985/2018

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faced in the operation of the system, and therefore the responsibility for resolving them, and complicates the provision of technical support

- many inputs have to be created and uploaded in the form of separately prepared documents in Word and PDF formats, but the data they contain cannot be readily extracted and reused or analysed elsewhere
- there are no specific facilities for tailoring the access to and the use of the system according to the particular needs of an individual contracting authority or the central authorities concerned, like the PPA, the ANSC, the Court of Accounts or the National Anticorruption Agency

The system creates separate records for each step in the procurement cycle, instead of a single one, as foreseen in the Open Contracting Data Standard (which the system is otherwise supposed to comply with). This makes it very difficult to track the plans, budgets, tenders, awards and contracts made in any single procurement process and thus to verify if the different steps properly match each other.

An interface for integration with or mutual access to other national data bases or e-commerce functions like e-invoicing is in place through the MConnect¹ platform, but the amount of information accessible in this way is still limited, and few contracting authorities use this facility for, e.g., verifying grounds for exclusion.

Further issues related to the MTender regulations and their implementation are set out in the EU's recent report on the development of the e-procurement system.

There is not full and unrestricted access to the e-procurement system. This is partly because several system functions, like up and down loading of tender documents and the submission of tenders, foresee the use of .pdf files which are not necessarily convertible into a searchable format, and partly because it is impossible for contracting authorities to access all elements of all tenders, as just mentioned.

The PPL does require that interested parties be informed which parts of the processes will be managed electronically, in that it includes² an obligation for the contracting authority to announce in advance the decision to use an electronic auction, in the case that this is contemplated at all. However, this PPL provision is inoperative to the extent that the MTender regulations do not properly reflect the limitations³ to the use of electronic auctions that are set out in the PPL and reflect the corresponding provisions⁴ of the EU Directives.

Sub-indicator 1(k) – Norms for safekeeping of records, documents and electronic data

The ability to look at implementation performance depends on the availability of information and records that track each procurement action. This information is also important for the functioning of both internal and external control systems, as it provides the basis for review.

The contracting authority has the obligation⁵ to draw up the public procurement file. All information related to a public procurement procedure registered in the e-procurement system is also considered to

¹ Cf. <https://mconnect.gov.md/#/>

² PPL, Art. 63 (3)

³ Id., Art. 63 (1)

⁴ Directive 2014/24/EU, Art. 35

⁵ PPL, Art. 45

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be part of the respective public procurement file. On the other hand, the list of documents to be included in the file and the manner of storage is still regulated by Government decree 9/2008 (as amended in 2009) which no longer matches the current PPL and therefore creates confusion, since no other implementing regulation has been issued to provide further details on the obligation to draw up the procurement file..

With the implementation of the MTender system, the tenders are presented in electronic format and not on paper, but the legal framework does not regulate exactly which documents can be kept electronically and which on paper. This legislative vacuum puts unnecessary obligations on the contracting authorities for the preparation, collection and safekeeping of all necessary documents for the procurement file. In practice, in order to comply with Government decree 9/2008 for the elaboration of the public procurement file, all the documents from the system are now still printed on paper, which creates high costs for staff and expenses (paper, ink for printers, facilities for storing the hard copies, etc.) and makes identification and retrieval of information very complicated, and very much complicates publication and transmission of the information in readily accessible form.

The procurement file has to be kept¹ available by the contracting authority for no less than five years from the initiation of the public procurement procedure. This obligation is in line with the normative acts² regarding the archival fund of the Republic of Moldova. This five year term is also compatible with the term for performing internal audit³ within public entities (three years). With respect to corruption offenses and related to acts of corruption which may occur in public procurement procedures, the Criminal Code classifies⁴ them as less serious or serious offenses, where the term limit for criminal prosecution is five and 15 years, respectively.

Applicable security protocols for the public procurement files are deficient, particularly for the electronic files in the e-procurement system. This is despite the requirements in the legislation on the protection of personal data that call for the development of security policies on the protection of personal data when processing them in information systems.

Sub-indicator 1(l) – Public procurement principles in specialised legislation

This sub-indicator assesses whether public procurement principles (e.g. competitive procedures, transparency, fairness, value-for-money decisions) and related laws apply across the entire spectrum of public service delivery as appropriate.

Utilities are exempt from the provisions of the PPL, in that its coverage explicitly excludes⁵ the public procurement contracts awarded by contracting authorities that carry out their activity in the energy, water, transport and postal services sectors and which are part of these activities. Enterprises majority owned by the State or municipalities operating in the electric power, thermal energy, natural gas and operators that provide the public water supply and sewerage service are currently obliged to follow a standard public procurement regulation issued by the National Agency for Energy Regulation in 2017. As applicable, other utilities fall under the special regulations governing the activities of state owned enterprises in general, obliging each of them to adopt and apply its own, internal procurement regulation. In order to meet the obligations under the EU-Moldova Association Agreement, the new utilities law (on

¹ Id., Art. 45

² Law no. 880/1992, Government decree no. 352/1992, Order 57/2016 of the State Archive Service

³ Law no. 229/2010 on public internal financial control, Art. 17 (3)

⁴ Law no. 985/2002, Art.60

⁵ PPL, Art. 5 (1)

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procurement in the energy, water, transport and postal services sectors) reflecting the provisions of the EU's Utilities Directive was adopted by Parliament on 21 May 2020 and published on 26 June 2020. It will enter into force one year after publication.

However, the internal procurement regulations of SOEs have not systematically and comprehensively reflected the principles and policies of the PPL, as further set out in the analysis in Annex 9. The oversight by the competent authority (the Public Property Agency) of procurement of medium and large budget contracts by SOEs has been incomplete and not transparent to the general public, and has not been demonstrated to be effective and efficient.

The new regulation¹ on procurement by SOEs is bringing uniformity in the policies and procedures to be used. The approach and the procedural requirements reflect established public procurement principles and practices but are not fully aligned with those of the public procurement law. It is binding only on enterprises owned by the State, and municipally owned enterprises are only recommended, not required, to apply it. Also, it would seem to overlap with the utilities law, since most utilities are publicly owned. Finally, some publicly owned enterprises may fall within the broader definition of contracting authorities; these should then apply the PPL rather than the SOE procurement regulation.

It is therefore not easy enough to determine on which legal basis procurement should be carried out by a particular, publicly owned enterprise, especially since these have not yet been reviewed and categorised with respect to the applicability of the legal instruments mentioned. In addition, the increased variety of broadly similar but not identical procedures and of the conditions for their application makes it more difficult for practitioners in contracting authorities, enterprises and Connect supervisory authorities to properly use the right one for the individual case at hand and raises the risk of formal errors.

In any case, publicly owned commercial or industrial enterprises operating individually in competitive markets should not necessarily need to have their procurement procedures regulated in detail; instead, it would often be more important to improve their governance in general, with a view to raise the transparency and efficiency of their operations and to increase their value to their public sector owners and the citizens.

The institution responsible for regulating the implementation of state policy in the fields of administration and denationalization of public property as well as public-private partnership is the Public Property Agency. Law no. 179/2008 establishes the basic principles of the public-private partnership, the forms and modalities of implementation, the procedure for its initiation and realization, the rights and obligations of the public partner and the private partner. In principle, the PPL is applicable to the awards, in particular for concession contracts in the sense of Directive 2014/23/EU, but this is not reflected in the provisions² of the PPP law on the selection of the private partner. The PPP law also has no provision for independent review of complaints against the procedure or the award decision, other than going to the courts.

- **Substantive gaps and their associated risks**

¹ Annexed to Government decree 351/2020 of 10 June 2020; https://www.legis.md/cautare/getResults?doc_id=122110&lang=ro

² Law no. 179/2008, Art. 27-29

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While each of them now broadly reflects appropriate public procurement principles and policies, the PPL, the utilities law and the regulation on procurement by SOEs, as well as the procurement related provisions of the PPP law, are not fully harmonised. As a result, there is a number of similar but not identical procedures, each calling for scarce resources to be spent on specific standard documentation and guidelines as well as on corresponding capacity building, and making it unnecessarily difficult for procurement practitioners to determine and apply the approach in the individual case. The applicability of the legal instruments mentioned to any particular SOE and its procurement is also not fully clear. As a consequence, there is a considerable risk that procurement by publicly owned enterprises is not carried out in an appropriate and transparent manner.

At present, effective access to procurement plans and to many other documents is hampered by incomplete obligations to publish and the use of document formats which are not machine readable. This gap is substantial by itself but would normally be possible to address when enhancing the e-procurement system, hence a risk rating of 'medium'.

With respect to the legal framework for e-procurement and its application, the major gap with respect to legal framework criteria is the failure of the current e-procurement system to meet PPL requirements regarding the limitations to the use of electronic auctions, the proper sequencing of the e-auction steps, the possibility to use other award criteria than price, and the need for contracting authorities to be able to fully access and examine all tenders submitted while at the same time ensuring the level of confidentiality that should be provided for in the law. Unless addressed, these shortcomings create a high risk that procurement is not carried out as the PPL requires or allows.

- **Main recommendations**

Given the inconsistency between the primary and secondary legislation, make an in-depth assessment of the entire legal framework on public procurement, fully align secondary legislation with primary legislation and simplify the former to the extent possible, by removing unused and unnecessary decrees which bring confusion and unjustified complexity to the framework and by adding clarity on aspects not yet sufficiently covered.

Review the characteristics of all state owned enterprises in a way that helps clearly determine which ones should apply the PPL, the utilities law or the regulation on procurement by SOEs and which ones should not have to apply any specific rules for awarding contracts¹, and take other suitable steps to ensure that their procurement is carried out in a manner that reflects their position in the markets, with adequate uniformity and transparency.

Expand on the PPL provisions for publishing procurement plans and notices, making tender documents available and providing free, easy access to other procurement information through a single, central access point, in particular by making the use of electronic documents the standard approach for public procurement communications.

Ensure that the implementing regulations and the corresponding functionalities of the e-procurement system fully match the (amended) requirements of the PPL.

¹ As evident from e.g. CJEU case C-18/01, if SOEs operate in normal market conditions, aim to make a profit and bear the losses associated with the exercise of their activity, it would not be meaningful to impose on them any specific rules for awarding the contracts, though other effective means for SOE governance should be in place.

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As a complement to the above, the following table sets out a number of specific gaps and other shortcomings, together with corresponding recommendations.

Specific gaps and corresponding recommendations for Indicator 1

No.	Specific gaps/shortcomings	Specific recommendations
1.a)	Procurement by state owned enterprises is incompletely regulated and the actual rules do not properly reflect their characteristics	Characterise state owned and municipally owned enterprises according to the EU Directives, distinguishing between utilities, commercial enterprises, and others, and regulate their procurement accordingly
1.b)	Most procurement procedures set out in the PPL cannot be used in the e-procurement system	Revise the e-procurement policies and systems in order to cover all procedures foreseen in the PPL and adjust applicable secondary legislation accordingly
1.c)	Small value procurement is regulated but the application of the regulation is not monitored	Monitor small value procurement, and facilitate this task by using the e-procurement system for compulsory publication of key data for each contract
1.d)	Procurement plans are not given full publicity while provisions on 'notices of intent' are unduly restrictive and do not give contracting authorities the flexibility to adjust them to market developments and to use them for shortening deadlines for tender submission	Require procurement plans to be published in the Public Procurement Bulletin, and adjust provisions on 'notices of intent' and tender submission time frames to match those in EU Directive 2014/24/EU, Art. 48 on prior information notices
1.e)	There are practical barriers to participation by foreign enterprises because electronic tenders (thus, those submitted through MTender) have to be authenticated using an electronic signature, but electronic signatures issued by other countries are not recognized in Moldova	Remove barriers for foreign economic operators to use the e-procurement system: seek mutual recognition of electronic signatures issued by foreign authorities, amend applicable regulations accordingly, and ensure that the e-procurement system matches these requirements
1.f)	Provisions on lists of qualified economic operators are incomplete and contradictory, and a list continues to be published without clear legal basis for its use	Amend the provisions to either clearly allow and regulate the use of lists of qualified economic operators or, in line with the current absence of provisions in the PPL, delete all references to them in other regulations and data bases
1.g)	Qualifications of tenderers are not possible to check as provided by the PPL	Amend applicable regulations and change the functionalities of the e-procurement system to allow verification of qualifications before qualified tenderers are invited to participate in an electronic auction or other award process
1.h)	The limits for the price or cost element in the 'best quality-price ratio' and 'best quality-cost ratio' award criteria restrict the possibility to achieve best value for money, and not all award criteria set out in the PPL have corresponding regulations duly allowing their full use in practice	Revise applicable regulations, in particular those for works, and raise the flexibility in applying value-for-money criteria
1.i)	Provisions on tender opening and evaluation do not cater for the use of e-procurement	Revise the regulatory framework for opening and evaluation of tenders to reflect the use of e-procurement, and make the requirements for the publication of the corresponding reports fully effective in line with the PPL, Art. 78 (2)

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No.	Specific gaps/shortcomings	Specific recommendations
1.j)	The rules and practices currently regulating the submission of complaints make it difficult in practice to address e.g. any inappropriate choice of negotiated procedure without prior publication of notice instead of any competitive procedure	Review the problem in consultation with all parties concerned in order to agree on effective ways to prevent and sanction inappropriate use of direct agreement
1.k)	Possibilities for speedy, effective and efficient dispute resolution in procurement contracts are limited	Review the scope for alternative dispute resolution mechanisms, in parallel with and as a complement to improved contract management by the parties, and adopt corresponding regulations and practices
1.l)	The current e-procurement system has a large number of specific deficiencies	See separate list of shortcomings and recommendations
1.m)	Rules for filing and safekeeping of records and other documents are not up to date and partly fail to reflect the particularities of e-procurement	Update the applicable provisions in the PPL and in other legislation, ensuring that they safeguard the integrity of the information contained and match other applicable regulations

3.1.2 Indicator 2. Implementing regulations and tools support the legal framework

This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard conditions of contract. Ideally the higher-level legislation provides the framework of principles and policies that govern public procurement. Lower-level regulations and more detailed instruments supplement the law, make it operational and indicate how to apply the law to specific circumstances.

- **Findings**

Main substantive gaps and recommendations for Indicator 2

No.	Substantive gaps / Red flags	Risk	Recommendations
2.1.	Secondary legislation is not quite complete and up to date and some of its provisions do not match the PPL	High	Repeal any incomplete or outdated secondary legislation; any prescriptions in the secondary legislation and the corresponding standard documentation should be fully aligned with the PPL and with any future amendments to it
2.2.	Some contracting authorities and supervisory institutions wrongly presume that specific provisions of secondary legislation, even if outdated, take precedence over primary legislation	High	Whenever the issue arises, the PPA or other competent authority would need to clearly confirm the precedence of the PPL and the right to apply it, for as long as any incomplete, outdated or contradictory requirements remain in secondary legislation

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No.	Substantive gaps / Red flags	Risk	Recommendations
2.3.	Secondary legislation and standard documentation prescribed is full of detailed prescriptions, raising the risk of errors and complaints and failing to put focus on value for money in achieving procurement objectives	High	Whenever the PPL is clear enough, there is no need for secondary legislation, but rather for more comprehensive guidance materials; simplify the form and contents of the standard documentation, add examples for their use, and leave some flexibility to contracting authorities to adapt certain details to the particular needs in the individual case
2.4.	Obligations to create and update secondary legislation, standard documents and guidance materials, are not fully met by corresponding action	High	Clarify, to the extent needed, the responsibilities for preparing, updating and publishing secondary legislation, standard documentation and other guidance materials; ensure that adequate resources are put to use for the purpose; and monitor the outcomes

Sub-indicator 2(a) – Implementing regulations to define processes and procedures

This sub-indicator aims at verifying the existence, clarity, accessibility and comprehensiveness of regulations to the law that further detail and clarify its application.

The normative framework does not fully cover all public procurement procedures regulated by law, and it is also not fully harmonized, with some of the secondary regulations either exceeding or contradicting what the PPL requires or allows.

On 1 October 1, 2018, amendments to the PPL entered into force, but so far the secondary regulatory framework has not been correspondingly adjusted, with the procedure for price quotations being the only exception. The normative framework for the other procurement methods has thus not been modified, which limits the application of the provisions in the PPL and creates confusion. This applies to e.g. the following Government decrees:

- GD 669/2016 procurement of works;
- GD 1419/2016 procurement planning;
- GD 665/2016 low value acquisitions;
- GD 667/2016 the activity of the working group;
- GD 9/2008 management of the procurement file, et
- The regulations on how to conduct the competitive dialogue and the negotiated procedure do not comply with the legislation in force.

There are also no implementing regulations at all on how to carry out restricted tenders and innovation partnerships.

The secondary legislation is readily accessible¹ on the website of the Public Procurement Agency. It is comprehensive, apart from the missing items mentioned above, and detailed, but at the same time also inflexible and prescriptive to the point that it does not fully meet the practical requirements for clarity and ease of use in all the various, specific cases that may occur. As now written, its proper application requires considerable efforts and great administrative skills and may nevertheless lead to frequent,

¹ See <https://tender.gov.md/ro/content/hot%C4%83r%C3%A2ri-de-guvern> and <https://tender.gov.md/ro/content/acte-ministeriale-%C8%99i-departamentale>.

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though minor, formal errors and omissions that then create opportunities for lodging frivolous complaints, while diverting the attention from substantive issues like the correct identification and description of needs and requirements in ways that encourage competition and create value for money, as well as the proper management of contracts concluded. Finally, some information now has to be repeatedly indicated in several different places when preparing tender documents; the existing facilities for this purpose in the current e-procurement system do not allow data entered once to be automatically repeated wherever applicable.

Many users among both contracting authorities and economic operators have therefore called for it to be revised for greater clarity, simplicity and flexibility of use.

Reflecting the insights received from its duties to monitor and analyse what happens in the field of public procurement and to provide methodological advice and consultations, the responsibility for preparing proposals for changing and supplementing the public procurement legislation lies with the PPA¹, for subsequent submission to the Ministry of Finance with a view to their adoption by the Government. However, this obligation has only partly been met, as illustrated by the outdated regulations mentioned above.

Sub-indicator 2(b) – Model procurement documents for goods, works and services

This sub-indicator covers the existence and contents of model procurement documents or, if not complete, standard elements and templates that may serve similar purposes.

Standard documentation is issued by the Ministry of Finance for the procurement of goods, works and services using competitive procedures as well as for the use of price quotations.

The standard documentation, including the ESPD, is readily accessible² on the website of the Public Procurement Agency. For the major procedures as well as for some particular types of goods and services, the standard documentation typically includes (example taken from the standard documentation for goods):

1. Instructions to tenderers
2. Tender data form
3. Tender form, including tender guarantee and performance guarantee forms
4. Technical specifications, price break-down form
5. Conditions of contract

However, as for the secondary legislation, the standard documentation is not quite up to date and is not fully harmonised with the actual functions of the e-procurement system (MTender) which, in turn, is not harmonised with the PPL.

Given the general duty³ of the PPA to provide methodological advice and consultations and to provide training in the field of public procurement and as explicitly required in Art. 7. 1) of the Regulation on the organisation and functions of the PPA, as adopted by Government decree 134/2017 (as amended), it is

¹ PPL, Art. 10 a)

² See <https://tender.gov.md/ro/documente/modele-de-documente>.

³ PPL, Art. 10 d)

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the obligation of the PPA to take charge of the preparation and updating of the standard procurement documentation. However, this obligation has only partly been met.

Sub-indicator 2(c) – Standard contract conditions

This sub-indicator focuses on the basic provisions that have to be included in a contract with the government.

All standard documentation issued by the Ministry of Finance contains forms of contract. They thus cover goods, works and services and are broadly in line with internationally accepted practice, with the exception that some economic operators contributing their views to the assessment have mentioned that the model forms of contract seem to be more in favour of the contracting authority, meaning that rights and obligations of the parties are not quite proportionate. This disproportion of penalties in contract execution adds risks of corruption and are not necessarily conducive to proper contract execution. As an example, if the contracting authority does not meet its obligations under the contract or, e.g. unduly delays the acceptance and payment of deliverables under the contract, the contractor has very limited possibilities to address the situation.

The applicable contract conditions, as set out in the standard documentation, are included in or attached to the tender documents issued and are thus made available together with these. However, not all procedural provisions are fully adapted to the use of electronic means for concluding and managing contracts.

Sub-indicator 2(d) – User’s guide or manual for procuring entities

This sub-indicator covers the existence of a user’s guide or manual for procuring entities.

Apart from what is contained in considerable detail in the secondary legislation issued by the Government, the standard procurement documentation issued by the Ministry of Finance contains a number of methodological details aimed at helping contracting authorities and economic operators to properly apply the procurement regulations. Further guidance is provided in manuals issued by the PPA. As an example, the principles and practicalities of preparing technical specifications is described in a corresponding guideline that can be downloaded¹ from the PPA website for free. In addition to the general guidance provided, it also contains 54 different, standard technical specifications for frequently procured items. In addition, the PPA has also developed a video guide which is published on its web page².

The document states that it has been elaborated in order to support the contracting authorities but does not include further details on its preparation, such as when the individual standard specifications were originally drafted and if and when they have been updated. It is therefore not possible for the occasional users to know if they are up to date and, consequently, if they match today’s market practices and refer to e.g. the latest, currently applicable standards and technical regulations. There are also cases when it is not clear whether e.g. precise, specific dimensions of various items are so indicated because of a corresponding standard or other legal obligation, or if the contracting authorities have some flexibility in setting those values in accordance with their particular needs (and, if so, what may need to be considered in order to keep the specifications suitably open in order to invite effective competition).

¹ See <https://tender.gov.md/ro/content/ghid-de-specifica%C8%9Bii-tehnice>.

² See <https://tender.gov.md/ro/content/instruc%C8%9Biuni>

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Several of the standard specifications listed have a relatively strong focus on the physical characteristics of the items, as opposed to their performance, and may not quite reflect the potential advantages of functional specifications. They also provide limited guidance on how to draft specifications and to set corresponding evaluation criteria with a view to obtain value for money (life cycle costing, value of quality or performance exceeding minimum requirements). On the other hand, sustainability considerations are presented in a separate guided issued by the PPA (see further sub-indicator 3(a) below).

The responsibility for maintaining the manuals lies with the PPA, in application of Art. 7. 1) - 3) of the Regulation on the organisation and functions of the PPA, as adopted by decree 134/2017 (as amended). Although a wide range of guidance documents has been published, not all of those have been updated.

- **Substantive gaps and their associated risks**

As noted also in the discussion of the primary legislation, the main gap with respect to implementing regulations, standard documents and related matters is that the secondary legislation is not quite complete and up to date and that, in particular, some of its provisions do not match what the PPL requires or allows. In recent months, efforts have been made to address this gap but unless and until it is fully closed, it creates a high risk of inappropriate procurement approaches.

This problem is compounded by the tendency of contracting authorities and supervisory institutions to wrongly presume that specific provisions of secondary legislation, even if outdated, take precedence over the primary legislation constituted by the PPL. The issue has been particularly acute in the CAPCS and, if not addressed, the risk of continued failure to properly use all the modern approaches and procedures allowed by the PPL is high, with negative consequences on timeliness, efficiency and value for money.

The secondary legislation and the standard documentation prescribed for use in public procurement is so full of detailed prescriptions that may not be strictly necessary or useful that it fails to facilitate the application of the law to specific circumstances and the achievement of overall objectives of economy, efficiency, value for money and transparency, instead multiplying the risk of formal errors and omissions which then invite complaints. These various risks are high and their consequences significant, unless mitigated.

Although the law and other regulations are sufficiently clear about the responsibilities for creating and updating the materials in question there seems to have been some confusion in practice on this point and it appears that the current distribution of resources for the purpose would have room for improvement. As a consequence, there is a high risk that the gaps with respect to preparation and updating of secondary legislation and standard documentation will remain, which in turn raises the risks of inadequacy and inefficiency when public procurement is carried out.

- **Main recommendations**

Review the need for secondary legislation to complement the PPL; when such secondary legislation is needed, align its prescriptions and the corresponding standard documentation with the PPL as amended, and repeal any outdated or unnecessary decrees.

Simplify the form and contents of the standard documentation, make it suitable for use in an e-procurement environment as well as in hard copy, and leave some flexibility to contracting authorities to adapt certain details to the particular needs in the individual case. Ensure that all public procurement

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procedures and methods (use of framework agreements, etc.) allowed or prescribed by the PPL are fully reflected in corresponding regulations and standard documentation, and update the latter as soon as the PPL is amended (before the entry into force of such amendments) or other circumstances so require.

Clarify, to the extent still needed, the responsibility for preparing, updating and publishing secondary legislation, standard documentation and other guidance materials, and ensure that adequate resources are put to use for the purpose.

A summary of specific gaps and recommendations is found below,

Specific gaps and corresponding recommendations for Indicator 2

No.	Specific gaps/shortcomings	Specific recommendations
2.a)	Existing procedural guidance in secondary legislation is excessively detailed and prescriptive, while not always readily applicable in all cases appearing in practice	Simplify the procedural requirements and give contracting authorities a minimum of flexibility to make transparent adjustments as reasonably required by circumstances, complementing this measure by corresponding information and training as well as risk based monitoring of actual practices
2.b)	Current tools for preparing tender documents and reports require repeated entry of similar data	Improve the functionalities of document processing in order to minimise the administrative effort needed, in ways that match other administrative approaches, systems and tools used in the contracting authorities
2.c)	Prescribed standard documents and forms are not suited to use in an e-procurement environment or with computerised document handling	Make standard documentation suitable for use in an e-procurement environment that is fully aligned with the PPL, and ensure that the prescribed forms of notices, reports and the like are aligned with the practicalities of publishing them by electronic means and with the need to make the contents easy to access and analyse
2.d)	The PPL foresees the publication of some notices in the EU's Tenders Electronic Daily (TED) but corresponding agreements and facilities are not yet in place	Finalise agreements with the EU about publication of notices in the TED, and amend the PPL and applicable secondary legislation accordingly
2.e)	Standard documents, including model specifications, and other guidance documents are not quite complete and up to date	Update and complete the range of standard documents, while leaving contracting authorities a minimum of flexibility to make transparent adjustments as reasonably required by circumstances
2.f)	Several of the existing model specifications focus on physical characteristics, while function and performance are less detailed	Revise the model specifications to better reflect functional characteristics, and complement by guidance for how this could be done in the general case

3.1.3 Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations

This indicator assesses whether horizontal policy objectives, such as goals aiming at increased sustainability, support for certain groups in society, etc., and obligations deriving from international

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agreements, are consistently and coherently reflected in the legal framework, i.e. whether the legal framework is coherent with the higher policy objectives of the country.

- **Findings**

Main substantive gaps and recommendations for Indicator 3

No.	Substantive gaps / Red flags	Risk	Recommendations
3.1.	Weak focus on sustainable public procurement in regulations and practices and lack of corresponding skills	Low	Include sustainability considerations in the curriculum for training of public procurement officials (as well as in that for economic operators)

Sub-indicator 3(a) – Sustainable Public Procurement (SPP)

Following up on more general information gathered in the analysis of the country context (Section II), this sub-indicator assesses whether (i) the country has adopted a policy and an implementation plan to implement Sustainable Public Procurement (SPP) in support of national policy objectives and (ii) the legal and regulatory framework includes provisions on the inclusion of sustainability criteria in public procurement.

In the Republic of Moldova, there is no strategy exclusively dedicated to sustainable public procurement. For the moment, the regulatory framework offers some possibilities to apply sustainability criteria but does not include an obligation to use them.

On the other hand, a “Programme for the promotion of the ‘green’ economy in the Republic of Moldova for the years 2018-2020” and the action plan for its implementation has been approved¹, and objective no. 8 of the action plan is “to ensure that, until 2020, at least 15% of all public procurement will meet sustainable procurement criteria”.

The SPP objective just mentioned was complemented by a list of actions required for operationalising, facilitating and monitoring the implementation of sustainable public procurement, but not all of them have been carried out. As a consequence, the objective has not yet been achieved.

Nevertheless, contracting authorities have access on the PPA website² to a comprehensive guide on sustainable public procurement, issued in 2017.

One of the principles governing public procurement is to support protection of the environment and promotion of sustainable development through public procurement³. In addition, the use of selection criteria related to environmental standards is covered in the PPL, Art. 18.

Further, the rules regarding the description of goods, works and services (PPL Art. 37, point 14) give the contracting authority the right to impose in the award documentation, insofar as they are compatible with Community law, special conditions for fulfilling the contract, by which it aims to achieve certain effects in relation to environmental protection and to promote sustainable development. Likewise, for

¹ Government decree no. 160/2018

² See https://tender.gov.md/sites/default/files/document/attachments/ghid_privind_achizitiile_publice_durabile.pdf.

³ PPL, Art. 7 (d)

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procurement of social services and other specific services¹, the award criteria to be used are the best quality-price ratio or the best quality-cost ratio, thus allowing to take into account quality and sustainability criteria.

On the other hand, the current e-procurement system does not allow the use of any other award criteria than price, even if it remains possible to incorporate sustainability aspects in e.g. qualification requirements and technical specifications.

Applicable legal provisions provide opportunities for a balanced application of sustainability criteria to ensure value for money in that the provisions² on award criteria allow the use of qualitative criteria related to SPP as well as the use of life cycle costs. In addition, the PPL provides³ detailed guidance for the calculation of life cycle costs. However, there is no general requirement to consider sustainability criteria, nor to give preference to ensuring value for money.

Sub-indicator 3(b) – Obligations deriving from international agreements

Based on the general information for the country context chapter, this indicator assesses (i) the existence of procurement-related provisions in binding international agreements and ii) the consistent reflection of those obligations in national procurement laws and regulations.

Contracts based on an international agreement are excluded⁴ from the coverage of the PPL. Apart from these provisions, obligations regarding public procurement arising from compulsory international agreements are not explicitly reflected in the PPL.

On the other hand, Moldova is a party to the Government Procurement Agreement (GPA) since 14 July 2016 and has thus agreed to abiding by its provisions on policies, procedures and reporting. Moldova is also party to the Association Agreement between the European Union and [...] the Republic of Moldova, signed on 27 June 2014. Chapter 8 of the Association Agreement covers public procurement, where Moldova essentially commits itself to successively aligning its legislation and practices with the EU's public procurement directives over an eight year period, according to the phases and detailed time schedules set out in Annex XXIX-B to the Association Agreement.

The obligations under the Association Agreement with respect to public procurement have largely been met, though with some delays relative to the agreed time schedule (e.g. concerning utilities) and some remaining discrepancies in the PPL and related regulations. In particular, a number of the provisions in the regulations governing the e-procurement system (MTender) are not in line with neither the PPL nor, by extension, the applicable EU directives (see further under sub-indicators 1(j) and 7(b)).

With the EU directives being fully aligned with the GPA, and as the basic public procurement requirements under the Association Agreement match those of the GPA and have already been met, the PPL itself is also, in principle, in line with the GPA. However, full observation of the GPA requires that also the secondary legislation is brought to full alignment with the PPL.

- **Substantive gaps and their associated risks**

¹ PPL, Art. 59.5

² PPL, Art. 26

³ PPL, Art. 27

⁴ PPL, Art. 5 (m)

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The main substantive gap found under Indicator 3 is the weak focus on sustainable public procurement in regulations and practices and the lack of corresponding skills at the level of the contracting authorities in all stages of the public procurement process. This, in turn, appears to reflect a general need to raise skill levels and strengthen the resources for carrying out public procurement as well as weaknesses in awareness raising about sustainability issues and in the operationalisation of existing sustainability policies. On the other hand, other national initiatives for promoting sustainable development would have benefits also in public procurement, so the procurement specific risk of this gap has been considered to be low.

An important contributing gap is constituted by the very limited possibilities, if any, offered by the current e-procurement system to apply sustainability related award criteria.

- **Main recommendations**

Include sustainability considerations in the curriculum for training of public procurement officials (as well as in that for economic operators), and include public procurement aspects in other information and training about sustainable development in general.

Ensure that sustainability considerations can be fully reflected in the e-procurement system, in the form of possibilities to e.g. include non-price elements in electronic auctions and to accommodate the use of life-cycle costs.

A summary of specific gaps and recommendations is found below,

Specific gaps and corresponding recommendations for Indicator 3

No.	Specific gaps/shortcomings	Specific recommendations
3.a)	Since the current e-procurement system only allows the use of price as the one, single award criterion, it is not possible to fully apply the sustainability criteria that the PPL allows to be used	Ensure that the e-procurement system can be used with other award criteria than price
3.b)	While the PPL gives wide opportunities to use sustainability criteria, their use is not explicitly recommended	Clarify the importance and advantages of the use of sustainability criteria in secondary legislation and promote their application in practice
3.c)	The timetable for alignment of the public procurement legislation with the EU Directives is not fully met	Bring the legislation in line with the timetable for alignment
3.d)	The observation of Moldova's obligations under the GPA is incomplete, to the extent that some items of secondary legislation is not yet in line with the PPL	Update the secondary legislation

3.2 Pillar II - Institutional Framework and Management Capacity

Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector.

Pillar II evaluates how effective the procurement system is in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses: i) whether it is adequately linked with the country's public finance management system; ii) whether institutions are in place in charge of necessary functions; and iii) whether the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

Summary findings under Pillar II:

The integration of public procurement in public financial management in general appears to be slightly lopsided, in that budget and disbursement regulations and practices put considerable constraints on the contracting authorities, while the potential for public procurement to improve value for money in the use of public funds is not fully utilised.

Procurement planning is regulated by the PPL and, with respect to financial management, by the law on public finance and fiscal and budgetary responsibility. Procurement cannot be initiated until funding is confirmed to be available but there are then only very limited possibilities to conclude contracts for a duration that goes beyond the end of the year. As a practical consequence, procurement starts relatively late in the year and there is a rush to use up the budget before the end of the year, limiting the possibility to use procedures that by their nature require longer lead times (e.g. restricted tender), to spread out the procurement workload over the year, and to ensure a regular, reliable supply of the various items needed during the year.

Financial procedures, both at the level of the individual contracting authorities and the Treasury, are not fully conducive to swift and efficient payments to suppliers, contractors and service providers who therefore may face the risk of running into financial problems preventing them from ensuring that subsequent deliveries can be made as required by the contract.

The roles and responsibilities of the central authorities in charge of key public procurement functions are defined in adequate detail in the PPL and in secondary legislation, in apparent accordance with the applicable EU Directives. However, the internal organisation of e.g. the PPA would seem to have room for improvement in order to better focus the available resources on its regulatory and advisory roles (proposals for secondary legislation and standard documentation and their updating; capacity building; and monitoring and analysis of the public procurement system in order to support evidence based policy making). This being said, the weaknesses of the current e-procurement system creates additional work for the PPA, limiting its ability to refocus in the short term.

The procuring entities suffer from being far more numerous than would likely be optimal and from a lack of dedicated, permanent and adequately staffed procurement departments, the two issues being closely related. The opportunities for joint and centralised procurement are very little used, with mixed results.

The picture is mixed regarding the use of electronic communications and information technology. Some regulations, e.g. for publishing notices, foresee a wide use of electronic means with wide and easy access,

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while others, e.g. for preparation and retention of procurement files, seem to ignore them. In practice, the full use of the notional advantages of electronic means is hampered by deficiencies in the e-procurement system that has been introduced.

The ability of the public procurement system to develop and improve is limited by the lack of full recognition of the need for skilled, dedicated public procurement staff with corresponding status and roles and of means for building their capacity.

3.2.1 Indicator 4. The public procurement system is mainstreamed and well integrated with the public financial management system

This indicator focuses on how well integrated the procurement system is with the public financial management system given the direct interaction between procurement and financial management, from budget preparation to planning treasury operations for payments.

- **Findings**

Main substantive gaps and recommendations for Indicator 4

No.	Substantive gaps / Red flags	Risk	Recommendations
4.1.	Contracting authorities find it difficult to reliably plan procurement in the medium term and to run procurements regularly throughout the year and with continuity from one year to another	Medium	Align the time horizon and the approach for high level procurement planning with that for the medium term budgetary framework, and adjust budget and disbursement regulations to allow procurement to proceed in a regular fashion throughout the year and across fiscal years

Sub-indicator 4(a) – Procurement planning and the budget cycle

This sub-indicator covers the preparation and use of procurement plans and their links with budgeting and expenditure management.

The main focus of the public procurement planning procedure set out in the PPL¹ is limited to the estimation of the contract value, in the first place as required for determining the procedures that would be have to be used as a function of the threshold amounts that have been set for this purpose. Government decree 1419/2016 further defines the essence of public procurement planning as well as the general requirements for it, including the obligation for the budgeted amounts to cover the future procurement procedures. The prescribed format of the procurement plan is simple but allows the uniform application of the legal requirements. However, earlier, preparatory stages in the planning process, such as needs identification and goal setting, are not well covered in the legislation, nor in any corresponding guidance materials. Apart from the financial regulations and the rules on administrative procedures, there is also no general system of public project management that comprehensively guides the process of project identification, preparation, appraisal, selection, budgeting, implementation and ex-post

¹ PPL, Art. 4

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evaluation as well as the allocation of duties and responsibilities of relevant government organs for each of these stages.

In accordance with the legal provisions, it is the responsibility of each contracting authority to elaborate its annual procurement plan and publish it on the institution's website. On the other hand, the current e-procurement system (MTender) does not offer the possibility to elaborate and publish those annual procurement plans; its only available facility is for developing plans for the procurement of each individual contract, particularly as is needed for initiating the corresponding procurement procedure.

The requirement for wide publication of the 'notices of intent' for all contracts to be concluded during the year, more than that of the procurement plans themselves, may seem to meet the important objective to inform the business community about coming business opportunities and thereby to encourage strong competition and high participation in public procurement. At the same time, the obligation to do so in often spurious detail at the beginning of the year creates an additional administrative burden on the contracting authority and does not help reach the full benefits of the approach foreseen in the EU Directives (prior information notices according to Directive 2014/24/EU, Art. 48, with flexibility in the timing of their publication and opportunity to use them for shortening the deadlines for tender submission). On the other hand, an examination of notices actually published indicates that the obligation to do so at the beginning of the year is not fully met in practice,

The **Contravention code** provides sanctions¹ for cases in which procurement plans are not developed or published. However, the authority that will check this obligation and apply these sanctions is not specified, so this rule is inapplicable in practice.

The practice of medium term budgeting is well established at the level of the Ministry of Finance, in that a medium term budgetary framework covering the next three years is approved by Government each year and notified to Parliament, as further regulated in law 181/2014 on public finance and fiscal responsibility. However, in practice, many contracting authorities work to a yearly cycle, delaying the start of procurement until fresh funds are available and using various ways to try to ensure that the funds available are spent before the end of the year. As a consequence, public procurement is not always carried out at a regular pace over the year, matching the timing of the actual needs, and officials may be tempted to use non-competitive procedures to ensure that money is spent quickly enough.

The budget allocations for the planned procedures must fully cover the estimated values of the procedures². If the institution's budget lacks the financial means, the procedures must not be initiated and must be excluded from the procurement plan. Another mechanism for enforcing budget availability is set up at the State Treasury, in that in case of a lack of financial means, the contracts awarded are not registered, which is then a sufficient reason for them not to be binding for the contracting parties.

If the allocations have been diminished as a result of a budget modification during the budget year, the budgetary institutions (contracting authorities financed from the State budget) are obliged to review the contractual relations with the suppliers of goods and services and to reduce the expenses (Law 181/2014, Art. 66 (4)).

¹ Law no. 218/2008, Art. 327/1, al.(3)

² Law 181/2014, Art. 66

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It is possible to assume multi-annual commitments for capital investment projects for a period of up to three years and, consequently, to include corresponding elements in the procurement plans. The possibilities for multi-annual commitments in other cases are not well developed. A draft Government decree is said to have been drafted early June 2020, covering a proposal to change law 181/2014 so as to allow multi-annual commitments for procurement of medicines, other medical supplies and medical equipment. However, no evidence is available.

However, while the proposed change, as now drafted, may certainly be useful for medical equipment, the objective of facilitating longer term procurement arrangements for medicines and other medical supplies would likely be better served by improved procedures and practices for using framework agreements. Also, it is not clear why the proposed facility for multi-annual commitments would be limited to the specific items mentioned. Other large and complex contracts, especially those with important needs for spare or wear parts and consumables and awarded on a life cycle cost basis, could also merit similar treatment.

Regarding the procedures for reporting the execution of contracts, the contracting authorities are required to draw up quarterly or half-yearly and annual reports on the execution of contracts and publish them on the institution's website.

In practice, not all contracting authorities publish, nor even prepare, reports on monitoring the performance of contracts. National normative acts do not provide any sanctions for non-compliance with these norms. In accordance with point 34 of Government decree no. 667/2016, the respective reports must include information on the stage of execution of contractual obligations, causes of non-execution, complaints and sanctions applied, mentions on the quality of contract execution, etc. The reports prepared by the public authorities (their working groups in charge of public procurement) and published on the web are usually prepared in the form of a table which includes the fields indicated in point 34 of Government decree no. 667/2016. The greatest problem is that the information in these monitoring reports is often merely of formal, statistical character and does not include specific information on possible non-performance of contractual obligations, the quality of contract performance, or complaints and sanctions against economic operators (and the latter, in any case, even if foreseen in the contract, are understood not to be actually applied by the contracting authority in many cases).

As a result, there is no practical possibility for contracting authorities to use the contract execution reports as a basis for excluding an economic operator because of significant or persistent deficiencies in the performance of any substantive requirement in a prior public contract, as allowed by the EU Directives¹. However, it must be mentioned that the Directive makes it optional to allow or to require this in national legislation.

Sub-indicator 4(b) – Financial procedures and the procurement cycle

This sub-indicator assesses whether budget laws and financial procedures adequately support the procurement process, i.e., the preparation and timely solicitation and award of contracts, contract execution and timely payments.

Assessment criteria:

¹ Directive 2014/24/EU, Art. 57 4. (g)

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The legal and regulatory framework, financial procedures and systems should ensure that:
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.
(b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.

Law 181/2014 on public finance and fiscal-budgetary responsibility clearly establishes that the initiation of procurement procedures is not allowed without corresponding financial coverage (Art. 66). The corresponding procedural rules are clear and are reported to be strictly applied.

Advance payments are restricted¹ to a few special cases. Invoices for goods, works or services delivered are processed in several steps, regulated in the Order of the Ministry of Finance no. 215 of 28 December 2015 on the approval of the Methodological norms regarding the cash execution of the component budgets of the national public budget and of the extra-budgetary means through the Single Treasury Account of the Ministry of Finance. The State Treasury and the regional treasuries of the Ministry of Finance are thus required (point 4.2.4.4) to perform additional checks on payment orders in terms of budget classification, as well as whether they correspond to the commitments made by the budgetary authority or institution.

When making payments by bank transfer, the budgetary authority or institution must (point 4.2.4.5) present supporting documents at the request of the State Treasury Department or the regional treasuries of the Ministry of Finance. In the model public procurement contracts there are corresponding provisions. As an example, for goods, "The Seller is obliged to present to the Buyer an original copy of the fiscal invoice together with the delivery of the Goods, in order to make the payment. For non-compliance by the Seller with this clause, the Buyer reserves the right to increase the payment term provided in point 3.4 corresponding to the number of days of delay and to be exempted from paying the penalty established in point 10.3."

Once the invoice has been submitted, the contracting authority can thus issue a payment order, which is then transmitted to the Treasury, which in turn prepares a disbursement order in favour of the contractor. The number of treasury operations usually peak towards the end of the year, when contracting authorities have been scrambling to use up their budgets before the end of the year and contractors are anxious to get paid while funds are still available. As a result, disbursements are often delayed during this period.

In principle, delays in the payment cycle may lead to difficulties for the economic operators to fulfil their contractual obligations, which puts them at risk of further problems if the contracting authority decides to sanction such failure to perform. Although several industry representatives have repeatedly indicated problems of this kind in meetings during the assessment, a random selection of 69 contracts from the files held by the PPA indicates that some 90% of invoices were paid on time, and in the survey of economic operators carried out in the course of the assessment, the question was asked if payments are made according to the contract provisions: seven out of 11 (64%) respondents said 'yes' while four out of 11 (36%) responded 'no'.

- **Substantive gaps and their associated risks**

A major gap in the integration of public procurement into public financial management is the limited possibilities for contracting authorities to reliably plan procurement in a medium term perspective and to run procurements regularly throughout the year and with continuity from one year to another. The

¹ Law 181/2014, Art. 66 (5)

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immediate reason is the rigidity (at least, as so presumed by many individual budget entities) of the budgetary and disbursement regulations, which do not seem to fully reflect the particularities of public procurement. At the same time, the development of medium term budgeting is proceeding, in parallel with other steps to improve public financial management, so the risk created by this gap is rated as 'medium'.

- **Main recommendations**

Align the time horizon and the approach for high level procurement planning with that for the medium term budgetary framework, and adjust budget and disbursement regulations in such a way that contracting authorities can proceed with public procurement in a regular fashion throughout the year and across fiscal years.

Further recommendations for addressing a number of specific gaps and shortcomings are found in the table below.

Specific gaps and corresponding recommendations for Indicator 4

No.	Specific gaps/shortcomings	Specific recommendations
4.a)	Provisions on procurement planning focus on cost estimation, while the broader needs to properly identify the needs to be served, determine the objectives to be met by the procurement, and set requirements that the markets can actually meet are little covered	Complement existing rules on cost estimation with practical examples and guidance materials, and ensure that the wider needs for thorough planning and preparation of public procurement are more explicitly addressed in the legislation
4.b)	Legal provisions on the preparation and publication of procurement plans and 'notices of intent' create an administrative burden and nevertheless fail to reach the full, potential benefits of advance information on upcoming business opportunities	Require early, wide publication of procurement plans, with focus on the needs at hand and how they are intended to be met, and change the provisions on 'notices of intent' to fully match those on 'prior information notices' in the EU Directives
4.c)	It is not easy to get an overview of upcoming business opportunities by examining procurement plans as now published, nor to get a clear picture of progress in their execution	Ensure that procurement plans can be published on the same centrally located, easily accessible website as other notices and in such a way that the implementation of the procurement plans can be followed
4.d)	Failure of contracting authorities to prepare and publish procurement plans and contract execution reports cannot be properly sanctioned, because the legal basis for this is incomplete	Clarify the responsibilities for monitoring the publication of procurement plans and contract execution reports and for sanctioning failure to do so as required (substantive contents as well as form)
4.e)	As now regulated, execution reports cannot be readily used for identifying cases of inadequate contract performance in the past	Reflecting improved approaches for effective contract management, revise the contents of the contract execution reports and the way they are published so as to facilitate external monitoring and allow them to be easily and reliably used for identifying cases of inadequate past performance

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No.	Specific gaps/shortcomings	Specific recommendations
4.f)	The use of multi-annual commitments is limited to capital investments at present	Expand the possibilities for multi-annual commitments, while recognising that better policies and practices for the use of framework agreements may also serve similar purposes and may have other advantages
4.g)	Invoice payment is at risk of delays and the time actually taken is difficult to monitor	Simplify the procedures for payment of invoices, monitor their application, including the time taken from each delivery to the corresponding disbursement, and consider how to best ensure timely disbursement
4.h)	Goods, works and services delivered are not always of the required quality and quantity, and failure to spot such cases and take action lowers value for money and creates risks of fraud and corruption	Review the skills and practices of contracting authorities with respect to quality control and acceptance of items delivered, and take corresponding measures for enhancing related training and monitoring

3.2.2 Indicator 5. The country has an institution in charge of the normative/ regulatory function

This indicator refers to the normative/regulatory function in the public sector and its proper discharge and co-ordination. The assessment of the indicator focuses on the existence, independence and effectiveness of these functions and the degree of co-ordination between responsible organisations. Depending on the institutional set-up chosen by a country, one institution may be in charge of all normative and regulatory functions. In other contexts, key functions may have been assigned to several agencies, e.g. one institution might be responsible for policy, while another might be in charge of training or statistics. As a general rule, the normative/regulatory function should be clearly assigned, without gaps and overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-co-ordinated joint effort.

- **Findings**

Main substantive gaps and recommendations for Indicator 5

No.	Substantive gaps / Red flags	Risk	Recommendations
5.1.	Limited ability of the PPA to focus its resources on its regulatory and advisory roles and to build its capacity in this respect	Medium	Review the priorities and means of the PPA and revise the organisational structure accordingly, likely leading to stronger focus of the PPA's staff resources to its regulatory and advisory roles (proposing secondary legislation and standard documentation; capacity building; monitoring and analysis of the public procurement system)

Sub-indicator 5(a) – Status and legal basis of the normative/regulatory function

This sub-indicator examines the regulatory framework that governs the assignment of key public procurement functions to various agencies.

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The elaboration and promotion of policy documents and draft normative acts in the field of public procurement is within the competence of the Ministry of Finance.

The Public Procurement Agency (PPA) is an administrative authority¹ subordinated to the Ministry of Finance, established in order to strengthen the capacities of contracting authorities and develop their business skills in the field of public procurement, to monitor compliance with public procurement procedures and to perform analyses of the public procurement system. The work of the PPA is regulated by the PPL, Art. 10, and Government decree no. 134/2017.

Sub-indicator 5(b) – Responsibilities of the normative/regulatory function

This sub-indicator examines the key public procurement functions and their actual distribution between agencies, identifying any gaps or overlaps.

According to the regulations mentioned above, the PPA has the following main roles and responsibilities:

- 1) implementation of normative acts in the field of public procurement and elaboration of proposals for modification and completion of the legislation on public procurement;
- 2) participation in the process of gradual harmonization of national legislation with Community legislation;
- 3) monitoring and evaluation of the efficient functioning of the public procurement system;
- 4) performing the ex-post control² regarding the application by the contracting authorities of the legal and procedural provisions in the field of public procurement

In order to carry out these basic functions, the PPA is required to perform the following tasks:

- 1) elaborate and implement standard documentation regarding public procurement procedures
- 2) provide methodological assistance and consultations in the field of public procurement to the contracting authorities
- 3) train contracting authority personnel involved in the organisation and development of public procurement procedures
- 4) edit the "Public Procurement Bulletin"
- 5) maintain in the global Internet network the web page "Public Procurement of the Republic of Moldova"
- 6) manage the automated information system of public procurement
- 7) examine reports on public procurement procedures in order to analyse and monitor the efficiency of the public procurement system
- 8) draw up, update and maintain³ the list of qualified economic operators and the list of economic operators prohibited from participating in public procurement
- 9) approve draft of normative acts that have an impact on the activities regulated by the legislation on public procurement
- 10) collaborate with international institutions and similar agencies and coordinate the use of foreign technical assistance in the field of public procurement

¹ PPL, Art. 9

² Not required by the PPL since 10 October 2018, but still retained in Government decree 134/2017 (as amended), Annex 1, item 6. 4).

³ No longer required by the PPL, but still retained in Government decree 134/2017 (as amended), Annex 1, item 7. 8).

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- 11) prepare, quarterly and annually, reports and statistical analyses on public procurement
- 12) carry out any other attributions established by the legislation

Much of this work would normally take place in an e-procurement context but this is not well reflected in the applicable regulations. In particular, item 6) above does not seem to be fully applied, in that the current e-procurement system is managed in other ways, as further described under e.g. sub-indicators 1(j), 7(a) and 7(b).

Sub-indicator 5(c) – Organisation, funding, staffing, and level of independence and authority

This sub-indicator covers the standing, independence and resources of the agency or agencies in charge of key public procurement functions, especially the normative/regulatory ones.

The PPA is a specialized administrative authority subordinated to the Ministry of Finance, established for the purpose of performing coordination in the field of public procurement. It is financed from the State budget, including fees that may be collected. However, at present, the PPA is not collecting any fees. The fee for publication in the Public Procurement Bulletin of procurement notices for projects with grant financing is paid directly to the national budget. The PPA's budget is elaborated, examined, approved and executed in the manner established by the legislation (PPL Art. 12). The agency is run by the director, whose appointment as well as any modification, suspension or termination of the employment are made by the Minister of Finance and in accordance with the law regarding the public function and the status of the civil servant.

Early 2020, the authorised staffing of the PPA was reduced in numbers from 43 to 25 full time positions, including civil servants which fall under Law no. 158-XVI of July 4, 2008, and contractual personnel which fall under the incidence of the labour legislation. However, the actual number of named staff members was only 28 already in the middle of 2019 and 29 at the end of 2019. The number was 25 in the middle of June 2020, so the effective reduction in numbers has been quite small.

In practice, for various reasons including the allegedly low salaries, the PPA states that it is difficult to engage and to retain skilled and experienced staff, and staff turnover is estimated at around 30% per year. Most of the employees are young people, the average age being 28 years. As a result, the PPA considers that it faces an effective lack of human resources, of professional competence in the field of activity, and of institutional memory.

Also due to the lack of necessary functionalities and the impossibility of the e-procurement system (MTender) to generate the necessary data and information, the nominal workload of the PPA for monitoring and analysis remains substantial. In practice, the PPA is still required to manually record and process data on public procurement procedures, which are necessary for the performance of the monitoring attribution, for the statistics on the public procurement system, for the Treasury, which needs reliable information on the procurement contracts awarded, as well as for providing information of interest to the public.

Manual data processing takes a lot of time and additional technical work without an impact on the quality of public procurement procedures monitored and reduces the resources available for other important duties, in particular the preparation and updating of proposals for secondary legislation and standard documentation and the planning and supervision of capacity building.

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Nevertheless, the present organisation of the PPA and the distribution of roles and responsibilities among its staff members¹ may have room for better alignment with its current, main tasks, thereby helping it better meet its obligations.

Sub-indicator 5(d) – Avoiding conflict of interest

This sub-indicator reviews the measures to address possible conflicts of interest or roles in the exercise of key public procurement functions, especially the normative/regulatory ones. It is thus related to sub-indicator 14(a).

General provisions regarding the prevention and mitigation of conflicts of interest are found in the PPL, Art. 79, as well as specific provisions for the particular cases of tenderers (Art. 19) and members of the ANSC (Art. 81).

Apart from these provisions in the PPL, all aspects and procedures regarding conflicts of interests in general, thus also applicable to the PPA and to contracting authorities, are regulated in more detail in the law on integrity no. 82/2017, the law regarding the declaration of wealth and personal interests no. 133/2016 and the law regarding the National Integrity Authority no. 132/2016. According to these normative acts, the observance of the legal regime of conflicts of interests implies the obligation of public agents to refrain from making an act or to participate in making a decision that is or can be influenced by their personal interest.

To mitigate the risk, the public agent is obliged (i) to declare in writing, within three days, to the leader of the public entity about the real conflict of interests that has arisen within his professional activity, and (ii) to prevent the negative effect of the conflict of interests by refraining from the exercise of his or her duties insofar as they are threatened by the conflict of interests, until its resolution. The head of the public entity is obliged to resolve the conflict of interests, and in case of impossibility of settlement, to address the National Integrity Authority. The National Integrity Authority has the obligation to resolve the conflicts of competences given within its mandate, but also the obligation to supervise the way of resolving conflicts of interests by the leaders of public organisations.

The focus of the regulations concerning conflicts of interest are thus focussed on the roles and interests of the individual. Conflicts of roles within and between public institutions, including the PPA and other central authorities dealing with public procurement, appear to be given much less attention, leading to overlaps in e.g. supervisory roles and obligations.

- **Substantive gaps and their associated risks**

The main gap with respect to the roles and responsibilities of the central authorities in charge of key public procurement functions seems to be the limited ability of the PPA to focus its resources on its regulatory and advisory roles and to build its capacity in this respect. One immediate reason for this is the inadequacy of the e-procurement system for generating suitable data for monitoring the public procurement system and the corresponding need for the PPA to assign staff resources to manual work for this purpose. While this gap is very important with respect to the proper functioning of the public procurement system, it should be possible to address in the course of enhancing the e-procurement system, so it is given a 'medium' risk rating.

¹ As appears from e.g., <https://tender.gov.md/ro/contacte-aap>

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- **Main recommendations**

Refocus the PPA's staff resources to its regulatory and advisory roles (monitoring and analysis of the public procurement system in order to support evidence based policy making; proposals for secondary legislation and standard documentation and their updating; and capacity building), as a complement to the updating of the e-procurement system.

Further, specific recommendations for addressing some additional gaps identified are summed up here below.

Specific gaps and corresponding recommendations for Indicator 5

No.	Specific gaps/shortcomings	Specific recommendations
5.a)	Responsibilities for design, operation and maintenance of e-procurement systems as well as for related training, certification and monitoring tasks are not clearly and comprehensively defined and allocated, nor are questions of financing and ownership, in particular title to any software used	In application of broader policies on e-procurement, regulate questions of financing, ownership, design, operation, maintenance, training, certification and monitoring of e-procurement systems in a clear and transparent manner
5.b)	The current e-procurement system cannot generate all suitable data for monitoring public procurement, which hampers the work of the PPA in this respect	Ensure that the e-procurement system can easily provide the data necessary for monitoring various aspects of public procurement; until done, separately assign short term resources for generating a minimum of data for procurement monitoring, including small value contracts
5.c)	Conflicts of roles within and between public authorities are not given much attention, leading to overlaps and conflicting ambitions in e.g. supervision of public procurement	Review the responsibilities of central public institutions regarding their exercise of key public procurement functions, with a view to identify and mitigate possible conflicts of roles within and between them, in harmonisation with other measures for improving regulation, implementation and supervision of public procurement

3.2.3 Indicator 6. Procuring entities and their mandates are clearly defined

This indicator assesses: i) whether the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; ii) whether there are provisions for delegating authorities to procurement staff and other government officials to exercise responsibilities in the procurement process, and iii) whether a centralised procuring entity exists.

- **Findings**

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Main substantive gaps and recommendations for Indicator 6

No.	Substantive gaps / Red flags	Risk	Recommendations
6.1.	Contracting authorities are not required to have an adequately staffed and resourced unit in charge of public procurement	High	Require each and any contracting authority either to have an administrative unit dedicated to public procurement management, staffed with skilled professionals having public procurement as their main task, or, if not reasonable for lack of resources, to use the services of another authority with such a unit (this may include a central purchasing body) or those of another competent, external service provider
6.2.	Many contracting authorities delegate public procurement tasks to working groups in subordinate units, which raises the risks of undue splitting of needs into small value contracts, higher unit prices, higher administrative costs and greater risk of errors and omissions	High	Review the actual organisation and management of public procurement in a significant number of various contracting authorities and the effects on costs and outcomes, identify the scope for improvement by centralisation of procurement within the contracting authority, draft corresponding recommendations, and monitor their outcomes
6.3.	There is no policy on centralised procurement and no generally applicable regulation for the operation of such a body	Medium	Examine the scope in Moldova for obtaining the benefits potentially offered by the use of centralised procurement, evaluate the advantages and disadvantages of various approaches, adopt a policy on the subject and draft a corresponding model regulation for central purchasing bodies that fully reflects the opportunities offered by the PPL and gives any centralised purchasing body the means to meet the needs of its clients in a simple and efficient manner, in particular through use of framework agreements
6.4	There is no central purchasing body in place for covering the common procurement needs of e.g. ministries or municipalities	Medium	In application of the preceding recommendation, consider the creation of one or several central purchasing bodies (with the functions duly separated from the current roles of the PPA), for serving the common needs of various contracting authorities for various categories of items

Sub-indicator 6 (a) – Definition, responsibilities and formal powers of procuring entities

This sub-indicator examines how contracting authorities and their roles and responsibilities are defined and regulated.

The defining characteristics of contracting authorities are clearly indicated¹ in the legislation in line with the definitions set out in the applicable EU directive². The responsibilities and competencies of contracting authorities are clearly defined³, including their rights to delegate certain tasks to individual staff members or external service providers and to engage external experts in order to complement the skills of staff members as may be needed for particular contracts. Further definitions

¹ PPL, Art. 13

² Directive 2014/24/EU, Art. 2

³ PPL, Art. 14

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of the responsibilities and competencies of contracting authorities are set out in the rules for the working groups in charge of public procurement, as indicated below.

The contracting authority exercises its tasks through a working group¹, created for this purpose, composed by officials and specialists within the contracting authority with professional experience in the field of public procurement. Subject to following the required registration procedure separately for each procurement procedure of interest, civil society has the right to be present in any such working group but without a vote when decisions are taken. Depending on the object of the procurement, the contracting authority may create one or more working groups. Such working groups have to be constituted by a corresponding decision by the contracting authority. The detailed regulation regarding the activity of such working groups for public procurement was approved by Government decree no. 667 of May 27, 2016. The working groups are in charge of the whole procurement cycle for each individual contract, from the identification of needs through the preparation of tender documents, the evaluation of tenders and the award of contracts to the management of the contracts concluded as well as monitoring and reporting.

However, in practice, while the tasks of managing the public procurement procedure are performed by the chairman and secretary of the working group, these persons typically perform other activities according to their job description, and the tasks within the working group come in addition to those other, regular activities.

In addition, following the reform of the central public authorities in 2018, the specialized subdivisions of logistics and goods management were excluded from the model organisation chart and transmitted to the financial subdivisions. As a consequence, many contracting authorities have seen a reduction of qualified staff previously involved in public procurement, leading to difficulties for contracting authorities in conducting procurement procedures while, at the same time, the recent changes to the PPL and to secondary legislation as well as the implementation of the MTender system has created an even greater need for knowledgeable and experienced staff.

From the information obtained during meetings with contracting authorities, it is evident that e.g. major municipalities have set up specific structures for managing public procurement. However, the limited data available does allow getting a clear overview of the actual organisation of the public procurement function in the around 3000 contracting authorities.

In any contracting authority, in application of Government decree 667/2016, decision making authority is delegated to the working group in all stages of the procurement proceedings. The group takes decisions by simple majority vote, including on the award of contracts. Correspondingly, the head of each working group must have “first signature right” or delegated authority in order to sign the contract on behalf of the contracting authority as the client.

In line with the above, accountability for decisions lies with the working group members. This means that the contracting authority as such, in particular its head and senior management, may not necessarily be possible to hold to account if procurement is not carried out in accordance with applicable regulations, even when the reasons lie in failure by senior management to employ competent staff, provide them with adequate resources, training and guidance, and duly supervise their work.

¹ PPL, Art. 14

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In principle, the PPL gives the contracting authority the right to engage procurement service providers or a central purchasing authority for the purpose of preparing and administering public procurement procedures in the name and for the benefit of the contracting authority, according to the procedures provided by the PPL law. The procurement service provider would then be the one who must duly comply¹ with the provisions of the PPL on behalf of the contracting authority. However, there is no corresponding administrative mechanism in place at present, so this right cannot be exercised.

Sub-indicator 6 (b) – Centralised procurement body

This sub-indicator covers the existence, regulation and organisation of centralised procurement.

The PPL mentions² centralised purchasing, making reference to a centralised purchasing authority designated by the Government for the organisation and centralized conduct of public procurement procedures in order to meet the needs of similar goods, works or services of several contracting authorities. However, no further provisions on centralised purchasing are included in the PPL, not even those corresponding to what is found in the applicable EU directives. On the other hand, framework agreements are covered³ in detail, though concerning their award, reference is also made⁴ to a regulation approved by the Government, without further indications.

The practical use of framework agreements by individual contracting authorities and by any centralised purchasing body or bodies would nevertheless need to be further described and illustrated in guidance notes and training materials, as a continuation of the PPA's past efforts to this effect. The same applies to centralised procurement in general, where current practices do not match the potential of this approach.

At present, only two, very specialised contracting authorities carry out centralised purchasing:

- The Centre for Centralized Public Procurement in Health (CAPCS)
- The State Road Administration (ASD)

There is thus a lack of an institution, or several ones, that could place framework agreements in order to meet the needs for similar goods, works or services of several contracting authorities and thereby generate benefits in terms of lower administrative costs, better prices and more qualified handling of procurement. Efforts to develop sustainable procurement would also benefit from the presence of such a set-up.

Although the PPL foresees the use of centralised purchasing, with procedures to be carried out by electronic means and possible to combine with the use of framework agreements, their conduct is a challenge for contracting authorities at present. As an example, the regulation⁵ governing the work of the CAPCS does not mention the use of framework agreements. As a consequence, even if the PPL provides for framework agreements and regulates their use, the presumption of CAPCS management and staff is that the CAPCS is prohibited from using framework agreements, even if they would normally be the means of choice for carrying out the rights and obligations of the CAPCS.

¹ PPL, Art. 14 (5) - (7)

² PPL, Art. 13 (6)

³ PPL, Art. 61

⁴ Id., Art. 61 (3)

⁵ Government decree 1128/2016

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The centralisation of procurement within each contracting authority or, conversely, the distribution of procurement roles to its various operational units, does not appear to follow any particular pattern. In the case of municipalities, both approaches have been observed: as an example, in the capital city of Chişinău, several subordinate entities carry out procurement on their own, while procurement is largely centralised in the city of Bălţi. Generally speaking, the distribution of procurement tasks to several different entities within a contracting authority is likely to spread out scarce procurement competence quite thinly (thus, raising the risks of inadequate preparation, award and management of contracts and of errors and omissions in the procedures as well as of corresponding complaints), to multiply administrative costs, and to make it more difficult to reduce unit costs by aggregating demand and thereby getting better prices.

In addition, if not strictly done in only the particular cases meeting the full set of conditions set out in the legislation¹, there may also be a risk that procurement will be split among many small value contracts, thus carried out using less competitive procedures than would normally be required given the yearly values of the contracting authority's procurement of different items.

Apart from the major shortcoming mentioned, Government decree 1128/2016 clearly defines the legal status, funding, responsibilities and decision-making powers of the CAPCS and the accountability for the decisions that it makes in exercising its functions. However, these provisions have little relation to the characteristics of the demand and supply markets for the various health sector items that it has the obligation to procure. They therefore considerably limit the possibilities of the CAPCS to carry out procurement as a regular activity throughout the year and with the flexibility necessary to make timely adjustments to changes in the needs.

The State Road Administration is a state enterprise founded by the Ministry of Economy and Infrastructure, which is responsible for the efficient management of financial resources allocated from the Road Fund and external sources for rehabilitation, development, modernization and maintenance of the national public road network of the Republic of Moldova. This entity operates according to the norms contained in law no. 246/2017 on state and municipal enterprises. On the other hand, the normative framework does not describe clearly and in detail the status of the State Enterprise "State Road Administration" as a contracting authority that performs centralized procurement. In art. 8 of the road fund law no. 720/1996 it is only mentioned that the central administration in the field of road management is responsible for its administration and use according to the purposes of the fund. The Government annually approves a programme for the distribution of the means of the Road Fund to national public road projects. Only in the programme for 2019 there is an explicit provision regarding the State Road Administration, indicating that the functions of beneficiary for the works to be executed according to the annexes to the programme will be performed by this state enterprise, and this is then taken to be the legal basis for its procurement of the works contracts in question. It thus appears that the State Road Administration is authorised to ensure the management of the public procurement process necessary for the development of roads, with this procurement made according to the PPL, but this would merit further review and clarification in order to improve the necessary transparency and effectiveness of road sector investment.

- **Substantive gaps and their associated risks**

The situation of the procuring entities has several gaps.

¹ PPL, Art. 4 (20

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While the definition of “contracting authority” in the PPL may seem to be clear enough, it is insufficient for ensuring that all the public entities that actually carry out public procurement meet reasonable functional requirements in terms of adequate staffing, skills, and administrative resources for successful, efficient and transparent public procurement. At present, a large number of often small contracting authorities clearly fail to meet any such requirements, and the central authorities lack an overview of the characteristics of all existing contracting authorities.

In addition, their internal organisation and management approaches with respect to public procurement often do not fully reflect the needs for permanent employment of dedicated staff members with public procurement as their primary task, as well as for procurement authority to be suitably delegated to those best placed to exercise it while responsibility remains with senior management. At the same time, some large contracting authorities delegate procurement tasks to a number of subordinate units, further adding to the difficulty of managing and monitoring public procurement for efficiency, effectiveness and economy.

Both gaps are significant and failure to close them creates considerable risks of continued, sub-optimal performance of the public procurement system.

The potential for successful use of centralised procurement is little examined and little used, also not within larger contracting authorities, and there is no central purchasing body for the common needs of contracting authorities in general. The regulations for the few existing, specialised bodies, mainly the CAPCS, do not adequately allow operations to be carried out in a way that meets the needs of the clients and the characteristics of the market and makes full use of the methods and approaches foreseen in the PPL, in particular framework agreements. Apart from the urgent need to improve the performance of the CAPCS, the absence of any comprehensive analysis of the actual scope for centralised procurement means that it is difficult to assess the related risk, which is therefore set to ‘medium’.

- **Main recommendations**

Define the minimum characteristics in terms of staffing, skills and administrative resources that can reasonably be expected to be necessary in order for a contracting authority to reliably perform its duties under the law, analyse the actual characteristics of all entities now carrying out public procurement, and take corresponding steps to restructure them in order for all of them to meet the minimum requirements defined.

Similarly, ensure that the internal organisation of the contracting authorities reflects the need to have dedicated, competent, adequately resourced and properly managed staff in place for carrying out public procurement as their main duty.

Examine the scope for wider use of centralised procurement and regulate joint and centralised procurement in a way that fully reflects the opportunities offered by the PPL and gives any centralised purchasing body the means to meet the needs of its clients in a simple and efficient manner; draft corresponding documentation and launch a pilot operation.

Other gaps identified and the corresponding recommendations are set out in the table below.

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Specific gaps and corresponding recommendations for Indicator 6

No.	Specific gaps/shortcomings	Specific recommendations
6.a)	There is no clear overview of all the contracting authorities in the country	Create a complete, regularly updated register of contracting authorities
6.b)	The concept of 'working groups' composed by staff who may not have procurement as their primary professional duty, reduces the organisational focus on public procurement and dilutes the skills and responsibilities that should go with it	Require each and any contracting authority either to have an administrative unit dedicated to public procurement management, staffed with skilled professionals having public procurement as their main task, or, if not reasonable for lack of resources, to use the services of another authority with such a unit (this may include a central purchasing body) or those of another competent, external service provider
6.c)	Accountability for public procurement decisions lies with the working group members as individuals, rather than the contracting authority as such, as represented by its head and senior management	Review the legal and institutional aspects of the accountability framework with a view to ensure that the heads of authorities and their senior management can be held responsible in case of failures to abide by applicable regulations
6.d)	The distribution of public procurement tasks to several subordinate entities within a contracting authority appears to be not infrequent but creates risks of higher costs, lower levels of skills and experience of officials concerned, and an inappropriate split of the needs into small contracts not requiring full, competitive procedures	Review the actual organisation and management of public procurement in a significant number of various contracting authorities and the effects on costs and outcomes, identify the scope for improvement by centralisation of procurement within the contracting authority, draft corresponding recommendations, and monitor their outcomes
6.e)	The CAPCS regulation does not fully reflect the possibilities offered by the PPL and is not well matched to the particularities of the supply and demand markets	Revise the organisation and approaches of the CAPCS in line with good international practice, and amend its governing regulation accordingly; as an urgent, short term measure, confirm the right of the CAPCS to use framework agreements in the way foreseen by the PPL
6.f)	The role of the State Road Administration in terms of centralised purchasing is not abundantly clear	Review the rights and responsibilities of the ASD in terms of centralised procurement of works for the road sector, and amend applicable regulations for greater clarity, transparency and ease of implementation

3.2.4 Indicator 7. Public procurement is embedded in an effective information system

The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, to efficiently support the different stages of the public procurement process through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.

- **Findings**

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Main substantive gaps and recommendations for Indicator 7

No.	Substantive gaps / Red flags	Risk	Recommendations
7.1.	The current e-procurement system does not allow for easy publication of the full range of notices, documents and reports foreseen in the PPL in a format that allows search for and analysis of key information	High	Take steps to ensure that annual procurement plans as well as all other procurement notices, reports and other documents are published in the same place in ways that allows full, free and easy access to all the information contained
7.2.	Data on public procurement is only partly available and easily accessible through the e-procurement system and on the PPA website; in particular, data on small value contracts is largely missing and many documents are not machine readable	High	Expand the obligations to make information available and take measures to facilitate doing so, so as to ensure that data on important aspects of all public procurement becomes easily accessible
7.3.	There is an apparent lack of e-procurement skills for system use by contracting authorities and economic operators with limited resources	Medium	Develop e-procurement education and training in order to raise knowledge and skills in the medium and long term

Sub-indicator 7(a) – Publication of public procurement information supported by information technology

The objective of this sub-indicator is to determine:

- i) the existence and capacity of the procurement information system in the country
- ii) the accessibility of the information system
- iii) the coverage of the information system
- iv) whether the system provides one-stop-service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes

In principle, information on procurement is easily accessible by electronic means. The Public Procurement Agency is in charge¹ of maintaining the official website on public procurement of the Republic of Moldova: <https://tender.gov.md>, where much of the information published is available in a timely manner. The information is public, with open access. However, procurement plans are not centrally published and some key information, like award notices, is allowed to be published with considerable delay.

A system for e-procurement, including the publication of notices, the “State Register of Public Procurement” (usually referred to as “MTender”) was established by Government decree 986/2018 of 10 October 2018 (see also information given under sub-indicators 1 (j) and 7 (b)). Publication of notices in the system is free, while its use for carrying out public procurement procedures has been foreseen to be subject to fees charged by the private sector platforms providing the interfaces that contracting authorities and economic operators have to use for participating in the procedures, including e.g. the submission of tenders.

¹ PPL, Art. 10 (g)

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The MTender system is in principle intended to provide for the publication of procurement plans of different kinds as well as notices and other procurement information and for carrying out public procurement procedures. In practice, MTender is not fully functional, in that only the participation announcements, the participation documentation and the offers submitted can be published. The system does not have adequate possibility to generate documents related to the procedure, procurement contracts and award notices. Procurement plans cannot be published in the system, so the contracting authorities publish them on the web page of the institution. As MTender is not integrated with other databases, information on the decisions taken for resolving complaints appeals cannot be viewed directly (it is necessary to consult the ANSC website), data on contract execution and actual use of funds cannot be viewed, among other related shortcomings.

MTender allows for the tender documentation to be attached to the notice published and to be readily accessible for free download from MTender. Other information is also available on MTender and on the PPA website. Regulations and practices for other public procurement documents than the prescribed notices and reports are incomplete and partly contradictory, and some of the documents are not published. The PPL provides¹ that the contents of the public procurement file is regulated by Government decree. The corresponding one (no. 9/2008), although outdated, provides that the file should include, among other elements, the “minutes of tender opening”. Moreover, the Government decree on the approval of the technical concept of the MTender system (no. 705/2018, Chapter V) indicates the “minutes of tender opening” as one of the MTender system outputs. Likewise, the preparation of such minutes is also mentioned in the Government decree on the approval of the Regulation of the working group activity (no. 667/ 2016, point 21) as one of the obligations of the public procurement working group. However, none of these regulations are readily applicable in the context of electronic submission and corresponding opening of tenders. Nevertheless, in 2019 the PPA issued² a prescribed template (in the form of a Word document!) to be used for the minutes of tender opening.

Evaluation reports have to be prepared by the contracting authorities and sent to the PPA (PPL, Art. 69 (10)), using the template (labelled “award decision”³) prescribed for the purpose. However, they are not published *in extenso* or otherwise accessible. Award notices to be issued are prepared by the contracting authorities using the template (labelled “award notice”⁴) prescribed for the purpose; the PPA then uses their key elements as inputs for the section “Contracts awarded”, which also includes a number of filters that facilitate the search for specific contracts. The process is thus unnecessarily complicated, delaying publication, raising the risks of clerical errors and creating additional administrative costs for both the PPA and the contracting authorities.

Two kinds of award notices are also required to be issued. The first one, labelled “communication” (PPL, Art. 31), is intended to meet the obligation of the contracting authority to inform the winning tenderer and the other participants in the tender about the outcome of the evaluation within three days. However, no one else has to be informed at this stage; the PPL (Art. 30) only requires contracting authorities to prepare a brief, separate award notice to be submitted to the PPA no later than 30 days from the end of the evaluation procedure, using the template included in Annex 3 of the PPL. While in line with the

¹ PPL, Art. 45

² See <https://tender.gov.md/ro/content/proces-verbal-de-deschidere-ofertelor>

³ See <https://tender.gov.md/ro/content/model-decizie-de-atribuire;>

⁴ See <https://tender.gov.md/ro/content/anun%C8%9B-de-atribuire>

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minimum requirements of the EU's Public Procurement Directive¹, this approach nevertheless creates evident problems for others than the participating tenderers to lodge complaints about the award decision before the contract is signed (see also sub-indicators 1 (h) a) and d) and 13 (a) d)). On the other hand, the Directives then require the award notice to be published within five days², but the PPL has no corresponding deadline.

Details of the information, documentation etc. available and missing on MTender and elsewhere is found in the table here below.

Document	Legal reference	MTender	Other sources	Comments
Procurement plan	GD 1419/2016, Art. 13, 17, 18; Annex 1	No	Contracting authority web page (if any; not always the case!)	
Template:	http://www.legis.md/UserFiles/Image/an_1_1419.doc			
Prior information notice	PPL, Art. 28 GD 1419/2016, Art. 2	No	Public Procurement Bulletin (tender.gov.md)	The monetary thresholds are not the same in the PPL and the decree
Template:	https://tender.gov.md/ro/content/anun%C8%9B-de-inten%C8%9Bie			
Contract notice	PPL, Art. 29	Yes	No	
Template:	https://tender.gov.md/ro/content/anun%C8%9B-de-participare			
Tender documents	PPL, Art. 40; Ministry of Finance Orders 173, 174, 175, 176/2018	Yes	No	
Template:	https://tender.gov.md/ro/documente/modele-de-documente			
ESPD form	PPL, Art. 20; Ministry of Finance Order 177/2018	Yes	No	
Template:	https://tender.gov.md/ro/content/formularul-standard-al-documentului-unic-de-achizi%C8%9Bii-european			
Tenders received	PPL, Art. 44	Yes, partially	No	
Tender opening minutes	GD 9/2008, 667/2016, 705/2018	No	No	No explicit obligation in PPL, only referred to in GDs listed; not readily applicable to e-procurement

¹ Directive 2014/24/EU, Art. 50

² Directive 2014/24/EU, Art. 51.2

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Template	https://tender.gov.md/ro/content/proces-verbal-de-deschidere-ofertelor			
Evaluation reports (“award decisions”)	PPL, Art. 69 (10)	No	No	Sent to PPA; final results are published on PPA’s website and BAP based on reports per procedure (Art. 78) as well as contract award notices (Art.30).necessary for contract registration
Template; instructions:	https://tender.gov.md/ro/content/model-decizie-de-atribuire; https://tender.gov.md/ro/content/comunicat-privind-expedierea-agen%C8%9Biei-achizi%C8%9Bii-publice-deciziei-de-atribuire-contractului			
Award notices	PPL, Art. 30 and Annex 3.	No	Public Procurement Bulletin (tender.gov.md)	
Template:	https://tender.gov.md/ro/content/anun%C8%9B-de-atribuire			
Complaints; ANSC rulings	PPL, Art. 80-88	No (only their existence)	ANSC web page	
Guidance note, template: Submission on-line: Complaints: Decisions:	https://ansc.md/ro/content/depunere-contestatii https://ansc.md/ro/depunere contestatie https://ansc.md/ro/contestatii/2020 https://ansc.md/ro/content/decizii-2020			
Contracts	PPL, Art. 74	No	Only basic information (tender.gov.md)	
Templates:	See above under tender documents			
Contract amendments	PPL, Art. 76 (7)	No	Information published on tender.gov.md based on reports submitted	
Registration form:	https://tender.gov.md/ro/content/modele-de-documente-pentru-%C3%AEnregistrarea-acordurilor-adi%C8%9Bionale			
Invoices, payments	Law 181/2014, Art. 66, 117; Ministry of Finance Order 215/2015; Ministry of Finance Order 118/2017	No	No	E-invoicing required to be in place starting 1 July 2020
Provisions:	See above under tender documents			

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Contract execution reports	PPL, Art. 15; GD 667/2016, point 34	No	Contracting authority web page	No template issued
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While both the PPA website and MTender have filters and other search functions for identifying relevant information, not all documents posted are in a machine readable format and the facilities for automatic generation of forms and notices from data entered once are very limited. Each notice, tender document, ESPD form and the like has to be created manually outside the system and then uploaded by the contracting authority, and tenderers have to do the same when preparing and submitting their tenders. In addition, the platforms serving as interfaces between contracting authorities and tenderers, on the one hand, and the MTender system, on the other hand, have diverging rules and approaches. As a consequence, creating the necessary documentation and making it available in the system requires considerable administrative efforts by all concerned and the possibilities to search for and analyse relevant information are quite limited.

A contracting authority is allowed to upload documents to the system in either MS Word or Adobe PDF format (.docx or .pdf files, respectively) and even in some other format, e.g. for images, except for documents that have to be electronically signed, where only .pdf files can be used. The same applies to the case of tenders, where those elements that are required by the law to be electronically signed must be submitted as .pdf files. From a technical point of view, within the MTender system there are no restrictions that prevent uploading scanned documents (meaning that the contents are not searchable) and, in the absence of any clear policy or binding regulation, one platform (achizitie.md) allows this but the other one (e-liciatie.md) does not, considering that would not be in line with the intentions of the legislation. As a result, there are cases when there are many different kinds of documents and very difficult to analyse them in a coherent manner¹.

Responsibility for the management and operation of the PPA website is clearly assigned to the PPA itself, while those responsibilities are less clearly attributed in the case of MTender (cf. sub-indicators 1(j) above and 7(b) below).

Sub-indicator 7(b) – Use of e-procurement

This sub-indicator assesses:

- i) the extent to which e-procurement is currently used in the country's public sector,
- ii) the capacity of government officials to manage and use e-procurement systems, and/or
- iii) the existence of a country strategy to implement e-procurement.

E-procurement is widely used in Moldova at all levels of government. As illustrated by the system introduced in 2009, Government officials appear to have had the full, necessary capacity to properly plan, develop and manage e-procurement systems. However, this capacity was somewhat put in doubt by the apparent failure, in the case of MTender, to adopt and to implement e-procurement regulations and corresponding systems that match the requirements of the PPL and to effectively address any of the many issues raised in e.g. SIGMA's evaluation of the draft e-procurement concept

¹ See e.g. <https://mtender.gov.md/tenders/ocds-b3wdp1-MD-1589805196677?tab=contract-notice>

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that was subsequently retained for MTender without any significant amendments. Nevertheless, recent Government initiatives for enhancing e-procurement seem to indicate that adequate capacity and expertise for the purpose remains available

In the case of MTender, the very important issue of ownership does not seem to have been addressed in a clear, comprehensive and coherent manner, so the Government appears to lack adequate title to the essential software of the system. The matter would require renewed attention in the course of new initiatives for enhancing e-procurement.

The intended model of financing the system by user charges, with several private sector service providers involved, is not sufficiently formalised, has not been clearly reconciled with the corresponding costs of development and operation, and has not been demonstrated to constitute the economically most advantageous solution for the country as a whole. In particular, the distribution of roles and responsibilities for the development, introduction and management of the various elements of the system and, correspondingly, the basis for the allocation of costs and revenues, have not been explicit enough to encourage and enable clear work sharing between public and private sector participants and ensure the longer term competitiveness of the solutions adopted, and the limitations of the Moldovan supply market for developing and providing public procurement related systems and services on a commercial basis do not appear to have been fully considered.

Procurement staff in many contracting authorities are not able to reliably and efficiently use the e-procurement system. However, to an important extent, this may be the result of the inherent shortcomings of the system as much as of any possible lack of adequate skills. There is on-line guidance and documentation available for the use of the e-procurement system, covering mainly the mechanics of its operation. Despite the partly complicated and often time consuming steps involved, procurement staff may therefore well be able to 'hit the right buttons', so to speak, when using the system. However, the shortcomings mentioned under sub-indicator 1 (j) severely limit the possibility to carry out e-procurement in line with the requirements of the PPL.

The shortage of adequate skills in using the system and the occasional need for rapid, effective advice and support in case of problems during the use of the system could in principle be addressed by offering additional training opportunities as well as by ensuring immediate access to some kind of helpdesk for troubleshooting problems as and when they arise, both for contracting authorities and tenderers. However, no effective function for this purpose exists for the moment. Its creation would require particular attention due to the complications created by the system architecture: when a problem arises, it would not be immediately evident to the user if it originates in the platform used or in the central database or in the IT networks and who, consequently, would have the responsibility for fixing it. In such a situation, users should nevertheless be able to address themselves to a single contact point for resolving the issue at hand.

There is also a wider problem of lack of general procurement skills in many contracting authorities, especially the many smaller ones with limited possibilities to engage skilled and experienced public procurement specialists, and this negatively impacts the possibility to make best possible use of e-procurement. It would thus be important to properly dovetail any specific training on the use of the e-procurement system with more general training on public procurement principles, procedures and practices.

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Given the generalised use of MTender, it is evident that a large number of suppliers (including micro, small and medium-sized enterprises) do participate in e-procurement. However, it is not entirely clear if, to what extent and why enterprises may fail to participate in e-procurement, whether for reasons related to the e-procurement system and its use or because of lack of skills or other means within the company, or related to possible limitations in the country's IT networks, or for reasons related to other shortcomings in the public procurement policies and practices.

Sub-indicator 7(c) – Strategies to manage procurement data

This sub-indicator examines the collection, quality and use of public procurement data.

Some data on the procurement of goods, works and services is available and can be extracted from the PPA website and from the MTender system. However, this information is not complete (cf. sub-indicator 7(a), evaluation criterion (d) above) and is only collected for contracts that are awarded using MTender. In particular, few or no data is available on small value contracts, when MTender has not been used. These contracts appear to constitute a significant part of the total value of public procurement and an even higher share of the total number of contracts concluded. Contracting authorities are obliged to submit procurement reports on such contracts to the PPA but these reports are usually sent on paper (by mail), or sometimes transmitted as .pdf files but then not necessarily in a readable and convertible format, and the information they contain is not consolidated. It is also not clear to what extent the obligation to submit such reports is actually met; the PPA does not appear to keep any records of compliance.

In the particular case of centralised purchasing for the health sector, by amendment to the PPL on 11 March 2019, the CAPCS has been exempted from using the new electronic system (MTender) for the procurement of medicines and medical devices until January 1, 2021. Thus, data on the procurement in health sector carried out by the CAPCS can partly be found in the old e-procurement system (etender.gov.md). However, the availability of data is limited because of system features which do not allow external users to see and extract data and documents such as tender documents, ESPD forms, tenders submitted, evaluation reports, complaints and corresponding rulings, etc.

The PPA uses the data available for preparing its annual reports, which present various key aspects of the functioning of the public procurement system. The same data are also accessible to and used by e.g. the Court of Accounts, the Anti-corruption Agency and various NGOs for looking at trends, levels of participation, efficiency and economy of procurement and compliance with requirements. However, the incompleteness of the data (cf. above) means that it is difficult to draw valid conclusions and to have a solid basis for evidence based policy making as well as for identifying and pursuing possible cases of mismanagement, corruption or other prohibited practices. This applies in particular to small value procurement, where no data is readily accessible and not reflected in e.g. the PPA's annual reports.

The reliability of the information actually available may be fair enough, but no systematic audits have been made to verify this. The greater problem is certainly the simple lack of data on many transactions and the corresponding inconsistency of various types of information. Using the data at hand, analyses can be made but the problems mentioned above mean that the precision and validity of the observations and conclusions is difficult to determine and that the value of any feed-back into the development of the public procurement system remains limited for the time being.

- **Substantive gaps and their associated risks**

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The situation with respect to the use of information technology to support public procurement has several substantive gaps.

There is no practical possibility to publish and to consult annual procurement plans in a single, easily accessible place, which normally would be the one where other procurement notices are published, and the preparation, submission, publication and analysis of several other types of notices and reports is not easy, requiring several steps while failing to allow the information contained to be easily extracted and analysed. As a consequence, there is a considerable gap in the possibility to monitor public procurement and to generate data that would be needed as a basis for evidence based policy making. In particular, the lack of any obligation to use any feature of the e-procurement system when carrying out and reporting on small value procurement contributes to an almost complete lack of transparency of such procurement. The risks related to any failure to address these gaps remain high.

Regarding e-procurement, the main substantive gaps lie, among many others, in the failure of the existing system to allow all award procedures to be used as foreseen in the PPL, the limitation of the award criteria to price only, the absence of possibilities to verify conformity with selection criteria and technical requirements before an electronic auction is held, the lack of facilities for publishing all relevant information in the various steps in the procurement cycle, the failure to allow the confidentiality provisions in the PPL to be fully applied, and the high level of effort needed to use the system while at the same time complying with the requirements of the PPL.

A further gap is constituted by the weaknesses in the ability of some contracting authorities, especially the smaller ones, to make good use of possibilities offered by modern information technology. This gap is likely to disappear little by little as a function of the increasing penetration of IT systems in public administration but will require continued attention to building staff skills and experience. The risk related to this gap is therefore classified as 'medium'.

- **Main recommendations**

Take steps to ensure that annual procurement plans as well as all other procurement notices, reports and other documents are published in the same place in ways that allows full, free and easy access to all the information contained, and introduce at least minimum obligations to use the e-procurement system also for any case of small value procurement, such as for the publication of award notices and reports on such procurement.

In the context of revising the e-procurement functions and systems, staff of contracting authorities as well as economic operators will need to acquire a better knowledge and understanding not only of the functioning of the e-procurement system but also of the general, underlying principles, policies and practices of public procurement, perhaps through a comprehensive training campaign followed by longer term measures for maintenance and enhancement of public procurement skills.

Specific gaps and corresponding recommendations for Indicator 7

No.	Specific gaps/shortcomings	Specific recommendations
7.a)	Not all public procurement information is required to be widely and freely accessible	Require procurement plans and other key items of procurement information (to be further reviewed and agreed) to be published and kept accessible on a central website, that of the PPA or of the e-procurement system

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No.	Specific gaps/shortcomings	Specific recommendations
7.b)	Not all regulations on the preparation and publication of public procurement information are up to date, nor aligned with the use of electronic means for submission and publication	Revise outdated or incomplete regulations on notices and reports and their publication
7.c)	The publication process is often unduly complicated: contracting authorities have to prepare and submit reports which then have to be converted by the PPA into notices or other formats for publishing on its website	Devise functionalities for contracting authorities to use electronic means for preparing notices and reports and directly submitting them for publication; these functionalities should normally be available in the e-procurement platform.
7.d)	Certain notices etc. (such as procurement plans) are supposed to be published on a contracting authority's own website, but not all such authorities have one	Ensure that all such information becomes accessible on a central website, and take steps to ensure that each contracting authority also publishes the same information on a website of its own
7.e)	Much procurement information is not yet prepared and published in an easily readable and transmissible format, complicating the generation of data and the access to and analysis of it	Introduce document management functions and formats which are compatible with the e-procurement system and other administrative systems, in ways that allow data to be entered once and then reused, transmitted and extracted as needed

3.2.5 Indicator 8. The public procurement system has a strong capacity to develop and improve

This indicator focuses on the strategies and ability of the public procurement systems to develop and improve. Three aspects should be considered: i) whether strategies and programmes are in place to develop the capacity of procurement staff and other key actors involved in public procurement; ii) whether procurement is recognised as a profession in the country's public service; iii) whether systems have been established and are used to evaluate the outcomes of procurement operations and develop strategic plans to continuously improve the public procurement system.

- **Findings**

Main substantive gaps and recommendations for Indicator 8

No.	Substantive gaps / Red flags	Risk	Recommendations
8.1.	Public procurement duties of officials in contracting authorities are not reflected in any corresponding positions or career paths, and capacity building needs remain high	High	Recognise public procurement as a profession, with corresponding positions introduced in the official classification of professions, and ensure that corresponding training and other means for career development are developed

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No.	Substantive gaps / Red flags	Risk	Recommendations
8.2.	The ability of the public procurement system to develop and improve has significant gaps, since the absence of effective monitoring of many aspects of the workings of the public procurement system means that the evidence base for policy making is incomplete, weak and uncertain	High	Review the information needed for preparing and implementing strategies for the development of the public procurement system, identify the measures required for generating, collecting, compiling and analysing such information, and adapt monitoring systems and approaches accordingly; all of this harmonised with the measures taken to enhance e-procurement
8.3.	Work on replacing the 2016-2020 public procurement strategy upon its expiry has been running late	High	Finalise and adopt a new public procurement strategy for 2021-2025 without delay

Sub-indicator 8(a) – Training, advice and assistance

The purpose of this sub-indicator is to verify existence of permanent and relevant training programmes for new and existing staff in government procurement. See also the following sub-indicators: 8(b) Professionalisation of the procurement function; 10(a) Programmes to build capacity in the private sector; 11(a) Programmes to build the capacity of civil society; and 14(d) Integrity training programmes for the procurement workforce.

The PPA is obliged¹ to provide methodological assistance and consultations as well as to organise training in the field of public procurement. Based on its Annual Training Plan (published on the PPA website²), the PPA holds training seminars for contracting authorities, economic operators and PPA employees, both in the capital and in the province, so as to reach contracting authorities all over the country. In principle, they include a wide range of topics, as set out in further detail in the curriculum issued by the PPA in 2018³:

- Knowledge of the legislation applicable to public procurement I;
- Annual public procurement planning and its relation to the efficient management of public funds;
- Preparation of public procurement procedures so as to observe all applicable principles of public procurement;
- Routines for contract monitoring, particularly for preventing conflicts during the execution of the public procurement contract

However, most of them, in particular those held in the province for the local contracting authorities, only cover procurement procedures and documentation, presented in the form of a single, five hour workshop.

The Academy of Public Administration is carrying out yearly programmes⁴ for vocational training of civil servants. However, at present, these specifically cover public procurement only in a few cases.

¹ PPL, Art. 10 (d)

² See https://tender.gov.md/sites/default/files/document/attachments/program_de_instruire_2020_modificat.pdf

³ See https://tender.gov.md/sites/default/files/document/attachments/curricula_de_instruire.pdf.

⁴ See e.g. https://www.legis.md/cautare/getResults?doc_id=119903&lang=ro for 2020.

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Some public procurement related training is provided also by a few other public and private sector entities, but there is no consolidated information available on the contents, extent and outcomes of such training.

Corresponding to the limited scope and extent of the training provided and given the scarcity of resources available for the purpose, there is only limited evaluation of the training actually delivered and there is little development of new approaches. On the other hand, as a complement to the basic public procurement training and as required by the legislation¹, the PPA is preparing a system for certification of public procurement officials. However, no concrete measures to this effect have been taken yet.

A telephone line for methodological advice in the field of public procurement has been established by the PPA². There are now three lines in operation: for inquiries on how to use the functionalities of the new e-procurement system (MTender), for consultations on the application of public procurement legislation, and for information on the status of the documents under examination by the PPA.

Apart from the general considerations and objectives in the training curriculum mentioned, there is no broader capacity building strategy in place for the development of public procurement. No systematic needs analyses seem to have been carried out for determining gaps in knowledge and skills in public procurement as well as in the supply of corresponding training and capacity building. The possibility to use other entities than the PPA, such as institutions for higher education and professional development as well as training and consulting firms and individual experts for delivering public procurement training has not been examined in detail, and no measures have been taken to engage, supervise or accredit such other training providers.

In the absence of an overall strategy for capacity building in public procurement, training is organized by several institutions separately, according to their own training plans that are not correlated with each other. Among these one may mention, in addition to the PPA, the Academy of Public Administration, the ANSC and the platforms providing access to MTender for carrying out public procurement procedures, as well as some NGOs with expertise in public procurement.

Sub-indicator 8(b) – Recognition of procurement as a profession

The purpose of this sub-indicator is to determine whether procurement is recognised as a profession in the country's public service.

Procurement is not recognised as a specific function or profession and is not reflected in the official list³ of professions in Moldova. Procurement positions at different professional levels in public administration are not systematically defined and there are no generic job descriptions for public procurement officials with the requisite qualifications and competencies specified. There is only a general requirement⁴ for the contracting authorities to take a formal decision on the creation of working groups for public procurement and to appoint suitably competent staff ("officials and specialists with professional experience in the field of public procurement") to be members thereof.

¹ PPL, Art. 10 e)

² PPA Order no. 15 of 17 April 2018

³ See http://angajat.md/files/files/KL_prof%20Clasificator_19385A5ACBC143ED920652AAC3A0C050.pdf.

⁴ PPL, Art. 14

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Appointments, staff evaluation and promotion of public procurement officials follow the principles and rules applicable to public servants in general, as regulated in Law no. 158/2008 on the civil service and the status of the civil servant, the Regulation on filling vacant civil service positions by competition (annex no. 1 to Government decree no. 201/2009), the Regulation on the evaluation of the professional performance of the civil servant (annex no. 8 to Government decree no. 20/2009), and the Regulation on the continuous professional development of civil servants (annex no. 10 to Government decree no. 201/2009). At the same time, Law no. 270/2018 on the unitary salary system in the budget sector and Government decree no. 1231/2018 for the implementation of the provisions of Law no. 270/2018 regulate the evaluation of staff performance by management for the purpose of granting payment increases for good performance.

In practice, in the particular case of public procurement, since the chair, the secretary and other members of the public procurement working groups are normally employed to perform other duties in the first place, the evaluation of performance and the achievement of indicators is done on the basis of their first hand responsibilities, and those related to the management of public procurement are not given full attention.

Sub-indicator 8(c) – Monitoring performance to improve the system

This sub-indicator examines the extent to which the performance of the public procurement system is measured and measures are taken to improve it.

There is a system in place at national level for monitoring public procurement in the sense that the PPA has the obligation¹ to

- monitor the conformity of the public procurement procedures and analyse the public procurement system;
- elaborate quarterly and annual statistical analyses of public procurement; and
- issue annual reports based on the analysis of the economy, efficiency and effectiveness of the public procurement system.

In addition, the Court of Accounts is working on developing approaches and practices for performance audits in the field of public procurement. However, the value of the monitoring is limited, both because the underlying data is incomplete and partly unreliable, and because qualitative aspects (performance) are given only very little consideration.

The PPA has the obligation², using the information compiled as above, to elaborate, and to submit to the Ministry of Finance, proposals for modification and completion of the public procurement legislation. In turn, the Ministry is supposed to use these and other inputs for preparing the national public procurement strategy. However, the data quality issues mentioned above mean that the policy making cannot be fully evidence based unless and until those issues are resolved.

A strategic plan, including a results framework, is in place, as set out in Government decree 1332/2016 on the approval of the Strategy for the development of the public procurement system for the years 2016-2020 and of the Action Plan regarding its implementation. The implementation of this strategy is focussed on increasing the efficiency of the procurement system and reducing waste, fraud and corruption, thus

¹ PPL, Art. 10

² PPL, Art. 10 (a)

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increasing the confidence of citizens and businesses. The strategy is also a tool for implementing the commitments that result from Chapter 8, Public Procurement, of the Association Agreement between the EU and the Republic of Moldova for the successive alignment of Moldovan legislation with the provisions in the EU's public procurement directives.

A new, similar strategy for the next five years has to be adopted before the end of 2020, as required by the Association Agreement.

- **Substantive gaps and their associated risks**

Regarding the ability of the public procurement systems to develop and improve, there are several substantive gaps.

While the nominal curriculum for public procurement training issued by the PPA is very comprehensive, the actual delivery and the resources available for it are very modest. There is also no evidence of any other capacity building strategy, nor even of a clear and comprehensive knowledge of the apparent skill gaps in many contracting authorities and of the potential of other institutions than the PPA to deliver public procurement training.

In the absence of comprehensive, regular training for a significant number of civil servants, there is also little progress on the certification of procurement officials.

While the PPL requires members of the working groups for public procurement to be knowledgeable about the topic, there are no definitions of the knowledge and skills required and no requirements for any particular education or professional background. Possibly related to the absence of any defined public procurement structure in the organisational set-up of public authorities, there is also no recognition of public procurement as a function or profession.

These various gaps weigh heavily on the efficiency and integrity of public procurement, so the risks associated with them are high.

Also the ability of the public procurement system to develop and improve has a significant gap, in the absence of effective monitoring of many aspects of the workings of the public procurement system, in turn partly caused by the inadequacy of the e-procurement system and of other administrative systems for generating and making available data that would support analysis and policy formulation. The corresponding needs now insufficiently met through resource intensive, manual means. Unless these shortcomings are addressed, the risk is high that the public procurement system will not develop and improve as required, as illustrated also by the delays recently observed in finalising and adopting a new public procurement strategy for 2021-2025.

- **Main recommendations**

Determine the knowledge and skills normally needed for procurement officials at different levels to carry out their duties in a competent, transparent manner; transpose those into standard position descriptions with criteria for initial employment and promotion; analyse the actual skills and background of officials currently carrying out public procurement; make a corresponding training needs assessment; identify and analyse various alternative ways for delivery and quality control of such training, including the resources needed and available, as well as for possible certification of officials (or, alternatively, the contracting authorities themselves), and, on this basis, prepare and implement a capacity building strategy.

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Harmonise the capacity building strategy with related initiatives for the definition and recognition of public procurement as a function or profession in public administration as well as for the reorganisation of contracting authorities (cf. sub-indicator 6). A solid basis for this work could be created by using the supplementary MAPS module on professionalisation, once it becomes available.

Ensure that data on the functioning and performance of contracting authorities, including but not limited to public procurement, is systematically generated as closely as possible to any individual action taken and then made available for management and analysis purposes, both to decision makers within each authority and to any supervisory body, as well as to the business community and the general public and their organisations.

Some further recommendations and the gaps or shortcomings they are intended to address are presented in the table below.

Specific gaps and corresponding recommendations for Indicator 8

No.	Specific gaps/shortcomings	Specific recommendations
8.a)	The nominal scope of public procurement training offered by the PPA is not matched by actual training resources and activities: most training sessions are quite short, the focus is mainly on award procedures only, and contracting authorities in the province are not well served	In the short term, assign more PPA staff and external trainers to deliver more thorough training on a wider range of topics to a larger number of authorities, while revising the whole approach to public procurement training
8.b)	There is no broader public procurement capacity building strategy in place and the corresponding needs and opportunities are not well known	Review the actual capacities of contracting authorities and their staff, including a training needs assessment; make an inventory of existing and potential means for raising public procurement capacity and delivering training, as well as the needs and availability of resources for the purpose; set objectives to be reached, and prepare and implement a corresponding strategy
8.c)	Public procurement roles in contracting authorities are only defined as obligations of the working groups, and corresponding position descriptions have not been established; specific qualification requirements or criteria for engagement, evaluation and promotion of staff with respect to their public procurement duties are therefore missing	Identify and describe typical roles and responsibilities for staff working on public procurement, draft corresponding position descriptions and officialise the status of all such positions, define corresponding qualification requirements and criteria for engagement and promotion; and harmonise all this with corresponding measures for establishing dedicated procurement units in contracting authorities
8.d)	Members of the public procurement working groups are normally employed to perform other duties in the first place, so their engagement, performance evaluation and promotion has usually little connection with their public procurement tasks	Ensure that staff with public procurement tasks are specifically engaged, evaluated and promoted on the basis of those tasks in the first place

No.	Specific gaps/shortcomings	Specific recommendations
8.e)	Public procurement monitoring suffers from a lack of comprehensive and reliable data and puts very limited emphasis on outcomes and performance	Ensure that other measures to improve the generation and accessibility of data on the functioning of public institutions provide all information necessary for effective monitoring of all key aspects of public procurement, including outcomes and performance, both in the individual and the general case

3.3 Pillar III - Public Procurement Operations and Market Practices

This Pillar looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the implementing entity responsible for managing individual procurements (procuring entity). In addition, it looks at the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This Pillar focuses on how the procurement system in a country operates and performs in practice.

Summary findings under Pillar III:

The analysis of the performance in practice of the procurement system faces methodological problems related mainly to the lack of comprehensive, reliable data. Nevertheless, the indications received during the assessment point to a room for improvement in a number of respects, while many of the conditions for this have to be met by measures of more general character.

Planning and preparation of public procurement is regulated in line with international practice but, apart from problems related to the lack of knowledge and skills in many contracting authorities, it is hampered by three important factors:

- budget and disbursement regulations which make it difficult to keep a level procurement workload during the year and to plan procurement in the medium and long term
- limited possibilities to alert the market to coming business opportunities because of the lack of a facility for centralised publication of procurement plans
- limited choice of procedures and award criteria, due to the limitations in the e-procurement system, and therefore limited possibilities to optimise the procurement approach

The diversity of award procedures set out in the PPL and applicable regulations would normally allow public procurement proceedings and practices to be adapted to the particular needs of the contracting authority and to the characteristics of the contract at hand in order to help ensure economy, efficiency and transparency. However, there is far less diversity in the actual practices: among the competitive procedures in the PPL, the open tender with price as the only award criterion dominates very strongly. A sufficient reason for this state of affairs would usually be a lack of knowledge and understanding of the advantages of the various other procedures and award criteria and of the way to use them. This reason may well be an important one also in Moldova, but the picture is unclear because of a second, sufficient reason: the mandatory e-procurement system simply does not make it possible to readily apply any other procedure or evaluation criterion.

Irrespective of the procurement approach taken, the preparation of tender documents, especially technical specification, and the evaluation of the conformity of the tenders received with the

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requirements stated appear to cause problems for many contracting authority. Also here, the examination of the tenders received faces technical limitations because of shortcomings in the way the e-procurement system works.

Contract management is regulated to some extent but in a way that in practice is both cumbersome and ineffective, with many contracts, particularly for works, suffering from delays and cost increases. Here, the reason may more clearly be a lack of attention and skills in many contracting authorities.

The procedural issues facing the contracting authorities are also reflected in the perceptions of the private sector. According to the results of the enterprise survey carried out, 63.4% (7 out of 11 respondents) state that procurement procedures and the conditions for participation do not encourage and facilitate their participation in public procurement.

Contracting authorities represent the demand side of public procurement and the procedures and practices they apply are intended to be a proxy for a competitive market. For the public procurement market to work properly, also the supply side needs to be competitive. Here, a number of structural issues, many linked to the small size of the economy, reduce the diversity of supply and thereby the level of participation and the intensity of competition, in addition to leaving less choice of goods, works and services and more limited capacity to deliver. An additional factor may be the inclination of some enterprises to compete based more on the strength of their privileged relations with certain decision makers than on the quality, price and conditions of the goods, works and services that they offer.

3.3.1 Indicator 9. Public procurement practices achieve stated objectives

The objective of this indicator is to collect empirical evidence on how procurement principles, rules and procedures formulated in the legal and policy framework are being implemented in practice. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government and achievement of horizontal policy objectives.

- **Findings**

Main substantive gaps and recommendations for Indicator 9

No.	Substantive gaps / Red flags	Risk	Recommendations
9.1.	Lack of reliable, easily accessible data regarding public procurement practices and the actual performance of the public procurement system, partly as a result of the limited possibilities to record and publish details of procurement transactions in a machine readable and transmissible format	High	Review the need and the possibilities for generating reliable data on procurement practices, to the extent necessary for effective and efficient management of the procurement process by the contracting authorities themselves and for satisfying supervisory authorities and the general public that funds used for public procurement are well spent, as well for creating an evidence base for policy making; all of this harmonised with other measures for enhancing e-procurement

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No.	Substantive gaps / Red flags	Risk	Recommendations
9.2.	Many contracting authorities lack the necessary information, skills and tools for well managing all steps in the public procurement cycle, in particular planning and preparation and contract implementation and evaluation	High	Based on more detailed and reliable data on actual practices, identify typical problems encountered and skill shortages as well as any deficiencies in the tools available and used, and use these insights for improving regulations and user documentation, adjusting training on offer, and creating opportunities for exchange of views and experience
9.3.	Numerous shortcomings of the e-procurement system limit or even prevent the use of appropriate approaches for tendering and evaluation	High	Ensure that not only formal requirements but also user skills and needs are duly considered when reforming the e-procurement system

Sub-indicator 9(a) – Planning

Sub-indicator 9(a) assesses whether a thorough needs analysis has been conducted, followed by market research, to inform the development of optimal procurement strategies (in particular for major procurement). It evaluates whether the desired results have been defined and if this entailed economic and/or environmental or social impacts aligned with national policy objectives.

In order to meet the needs of goods, works and services, the contracting authority is obliged¹ to plan public procurement contracts to be concluded, respecting the principles of ensuring competition, efficiency, transparency, equal treatment, non-discrimination and non-division. In this process, the contracting authority has to go through several stages:

- 1) Identification of the needs for goods, works and services;
- 2) Identification of the corresponding financial resources needed and available; and
- 3) Calculation of the estimated value of the contract.

As a complement, it is necessary for the contracting authority to have a clear understanding of what is or may become available from prospective tenderers, in order for the requirements and the budget to be reasonably possible to meet in adequate competition between suitably qualified economic operators. For this purpose, an Order of the Ministry of Finance for the approval of the Instruction on the manner, conditions and procedures for organising and conducting market consultations in order to prepare the public procurement² was finally published on 28 August 2020. There is thus official guidance available for this purpose, broadly aligned with EU practice.

On the other hand, monitoring by the PPA confirms that contracting authorities often make mistakes during planning and preparation and that, as a result, the outputs often prove to be deficient. In case of identification of deviations from the legislation and violation of public procurement principles, the PPA is required to draw up monitoring reports and to inform the contracting authorities of the findings and the remedial solutions proposed. According to the PPA annual report for 2019, 1634 reports were made based on the monitoring of individual procurement procedures. However, not each individual monitoring activity ends with a monitoring report, and it is not known how many procedures were monitored in total.

¹ Government decree 1419/2016 on the approval of the Regulation on the planning of public procurement contracts

² https://www.legis.md/cautare/getResults?doc_id=122888&lang=ro

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Nevertheless, the reports confirm weaknesses not only in the preparation and planning and but also in the execution and follow-up of public procurement contracts.

At the launching stage, 26% of the procedures monitored contained violations of the law, while only 4% had violations at the awarding stage. Regarding the compliance with the PPA's findings and proposed remedies, in 35% of the cases (575 procedures), the violations were remedied by the contracting authorities concerned; in 12% (190 procedures) they were partially remedied, but in 53% of the cases (869 procedures) the authority did not apply the remedies proposed by PPA. In fact, the monitoring reports are by way of recommendation only and there seems to be no legal instruments or other means in place for obliging the contracting authorities to follow the recommendations and for sanctioning those that do not.

Finally, contracting authorities have only a very limited possibility to apply any proactive identification of optimal procurement strategies, if efforts to this effect are made at all, in that the obligation to use MTender, together with the current limitations of the system, makes it next to impossible to apply other award criteria than price and to make full use of the diversity of approaches and procedures foreseen by the PPL.

The requirements and expected results of the contracts should be clearly defined in the tender documents issued. The PPL and the Government decrees regulating the use of the different procurement procedures as well as the corresponding standard documentation issued by the Ministry of Finance includes detailed indications for the presentation of the requirements and the preparation and presentation of the technical specifications. However, while the contents of the technical specifications are sufficiently regulated at the legal level, in practice the contracting authorities are not sufficiently trained for the correct application of these legal regulations.

The various contract models to be used are included in the tender documents, which should follow the models in the standard documentation issued¹ by Order of the Ministry of Finance. On the other hand, as observed by the PPA, although the model contract provide several tools to insure the contracting authority against bad fulfilment of the obligations of the tenderer, the contracting authorities very often omit the completion of important headings, which often causes problems in the implementation of the contracts.

The forms of contract largely correspond to international practice but would merit revision and updating, also to ensure that there is enough flexibility to adapt them to the particular needs that may arise for large or complex contracts.

The provisions² for setting the award criteria give room, in principle, for using sustainability criteria as a means for ensuring value for money and addressing environmental objectives, and guidance for sustainable procurement has been issued³ by the PPA. However, no such practices have been developed among the bulk of the contracting authorities. The obligation to use price as the primary award criterion in the mandatory use of the e-procurement system means that contracting authorities can introduce sustainability aspects only when defining the requirements and setting the specifications to be met when preparing the tender documents, and this is very rarely done, if at all,

¹ Available at <https://tender.gov.md/ro/content/acte-ministeriale-%C8%99i-departamentale>

² PPL, Art. 26

³ Available at <https://tender.gov.md/ro/content/ghid-privind-achizi%C8%9Biile-publice-durabile>

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in the frequent absence of even quite basic understanding of the concept and skills for its application in practice. Legal provisions¹ on the use of life cycle costing have also not been complemented by any secondary legislation or other guidance and are little used, if at all, as reported by the PPA.

See further the points made on sub-indicator 3(a) above.

Sub-indicator 9(b) – Selection and contracting

This sub-indicator focuses on the objective of achieving value for money through appropriate determination of procurement methods and approaches, competition, transparency and fairness in selecting suppliers, including the quality of procurement documents, and process efficiency.

The PPL offers several possibilities to carry out multi-stage procedures in order to ensure that only qualified and eligible participants are included in the competitive process:

- restricted tender;
- competitive dialogue;
- negotiated procedures (with publication of a contract notice).

However, contracting authorities rarely use these multi-stage procurement procedures due to their perceived complexity and the lack of the knowledge and skills necessary for successfully using these procedures. In turn, this reflects a lack of specific guidance and training that would be needed to improve the awareness and understanding of the advantages of these procedures and to raise the skills for using them.

The standard documents for the major types of procurement object (goods, works, services) and procedure would normally cover the needs in the bulk of the cases encountered in practice, if used correctly. However, as reported by the PPA, contracting authorities sometimes have difficulties in completing the award documentation or otherwise fail to make full use of them.

As evidenced e.g. by the ANSC rulings on complaints against tender documentation and award decisions, the selection procedure is not always carried out effectively and transparently. It thus happens that the tender documents published by the contracting authority are drawn up incorrectly, contain biased, incomplete or vague technical specifications, exaggerated qualification requirements and other selection criteria or, on the contrary, much too weak requirements compared to the importance or complexity of the contract to be concluded. Consequently, contracts are concluded with tenderers that "meet" the requirements, though not necessarily on a fair and transparent basis.

The PPL and the corresponding secondary legislation put a wide range of procurement methods at the disposal of the contracting authorities. However, in practice, contracting authorities rarely use any other competitive procedure than open tender. A sufficient reason for this is certainly that the use of the e-procurement system is mandatory, but the system is not designed to allow easy handling of other procedures. There is anecdotal evidence that, for lack of foresight or to avoid the obligation to use competitive procedures, contracting authorities sometimes divide the procurement needs into several small contracts below the thresholds. However, the lack of data, especially on small value contracts, means that the frequency of such practices is difficult to determine.

¹ PPL, Art. 27

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During the MAPS assessment, 69 contract files were randomly selected from among those submitted to the PPA by contracting authorities in accordance with the legislation, and were examined in some detail. The procurement approaches used were as follows:

Procurement procedure	Period 2017 – 2018	Period 2018 – 2019
Open tender	10	11
Request for quotation	10	10
Negotiation without publication	8	10
Framework agreement	5	5

The e-procurement system (MTender) can only be used for open tenders and requests for quotations, and the estimated contract value is the only parameter used for determining which one to use. For this reason, the procurement files do not include any particular justification of the choice between the two procedures.

On the other hand, the use of the negotiated procedure without negotiation requires due justification. In almost all the cases examined, this was either the need to complement previously procured items by others from the same supplier, or the existence of only one supplier; in one case was the procedure used following two unsuccessful competitive tenders, and there was only one other case without any explicit justification.

The procedures for submitting, receiving and opening tenders are clearly described in the PPL, in Government decree 667/2016 on the activities of the working groups for public procurement and in the various standard documents prescribed. The decree also includes detailed modalities for the participation of representatives of economic operators and civil society in the various steps of the process. However, it is not clearly described in the legislation how this process should take place when the procurement procedure is carried out by electronic means, and the e-procurement system used has no particular facility available for the purpose.

Only the members of the working group can participate in the evaluation of the offers, as set out in Government decree 667/2016, point 32, which states that the working group examines the tenders in confidence and does not disclose the information regarding the examination, evaluation and comparison of the tenders of the bidders or persons not officially involved in these procedures or in determining the winning tender. Confidentiality during the tender evaluation and award process is thus clearly required in the applicable regulations. On the other hand, tenderers have no possibility in practice to ensure that certain commercially sensitive elements of the tenders are kept confidential. The tenders submitted are not encrypted and the e-procurement system does not have any other means to ensure the kind of confidentiality mentioned, at least not after the end of the award procedure when all tenders received are made public in full. It is thus not in line with the PPL nor with the applicable EU directive¹.

Appropriate techniques to ensure best value for money are provided² for but most often not applied. Not infrequently, the situation occurs when items are procured at the lowest price, to the detriment of quality. The lack of possibilities to use any other award criterion than price in the mandatory e-procurement

¹ Directive 2014/24/EU, Art. 21

² PPL, Art. 26 and 27

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system is by itself a sufficient reason for this state of affairs, as is the frequent lack of knowledge and skills on the part of the contracting authority to apply other award criteria than the lowest price.

The PPL has ample provisions¹ regulating the announcement of award decisions and the publication of award notices and the e-procurement system has a facility for publishing such notices. Also the PPA publishes corresponding information on its website. However, the e-procurement system does not allow the dates of the award decision, the publication of the award notice, the signature of the contract and the publication of the contract signature notice to be recorded in such a way that the observation of the time limits can be verified, nor whether the required notices have been published at all. As a consequence, the actual, average time for the different steps in the procurement process is not possible to determine for the moment, other than after examining a sufficiently large sample of tender files (to the extent available) and manually extracting the data.

In the case of the 69 contract files reviewed, the time limits for announcing the award decision were duly observed. All other publication requirements were also met.

Apart from what may be implied by the requirements and the specifications in the tender documents, as reflected in the tenders submitted, the standard contract clauses do not include any sustainability considerations. The 69 contracts reviewed also did not include any sustainability clauses.

The standard contract clauses provide for sanctions in case of failure by the contractor to meet the contractual obligations. However, in practice,

- the specifications are not always drawn up in a way that makes it easy to determine if they are met by the items delivered or not
- the contracting authorities may lack staff, skills and equipment needed for verifying the conformity of the items delivered with the specifications in the contract
- the contracting authorities may otherwise fail to duly verify the conformity of the items
- irrespective of the provisions in the contract, the legal mechanisms for enforcing performance are considered to be cumbersome, time consuming, inefficient and ineffective so, even in duly evidenced cases, contracting authorities rarely apply the contractual clauses on sanctions

The standard contracts do not contain any incentives for exceeding the minimum required performance levels.

Almost all the 69 contracts examined had only vague provisions for ensuring proper execution. Although works contracts tended to have slightly more detailed quality requirements than the others, only one contract had clear and detailed provisions regarding performance, quality, and contract management obligations.

For the contracts examined, the time taken for the procedures varied considerably, as follows. Note that no time calculations could be made in seven cases, for lack of corresponding indications.

Procurement procedure	Minimum and maximum number of days	Most frequent duration	Average duration
Open tender	27 – 120 days	27 – 39 days (52%)	46 days
Request for quotation	17 – 60 days	17 – 38 days (85%)	31 days

¹ PPL, Art. 30-32

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Negotiation without publication	1 – 58 days	1 – 14 days (64%)	14 days
Framework agreement	5 – 53 days	5 – 14 days (57%)	22 days

The lack of readily available data makes it difficult to determine to what extent the selection and award process is carried out effectively, efficiently and in a transparent way. Available evidence points to a clear scope for improvement, by e.g. aligning the e-procurement system with what the PPL foresees and by raising the knowledge and skills of public procurement officials.

Data from the PPA's annual report for 2019 indicate that the average number of tenders submitted per procedure was 4.07 for procedures conducted through MTender (for open tenders, the figure was 4.62; for requests for quotations 3.73), and an average of 4.75 tenders were received in procedures carried out by the CAPCS through the old e-procurement system. These figures considerably exceed those recorded for the open tenders and requests for quotations in the 69 contract files examined, where the average number of tenders was 2.8.

No clear explanation for this significant discrepancy has been found. Similarly, the percentage of cancelled procurement procedures reported by the PPA for 2019 was 18.83% (1.56% for lack of three qualified offers, 1.29% for absence of any offers submitted, and 15.02% for "various reasons" invoked by the contracting authority but without further specification). An average of around four tenders per procedure would be relatively favourable in comparison with other countries in the region, where an average of 2.8 would be more typical. However, such overall averages usually hide considerable differences between sectors and regions as well as between goods, works and services and different contract values. To some extent, such differences often reflect the industry structure of the country, but they also may hide instances of collusion or corruption. For these various reasons it would be useful to further analyse the data and the reasons behind the figures and, in the future, to ensure that corresponding data is properly recorded and compiled, so that the situation can be thoroughly assessed and appropriate measures be taken. The same applies to cancelled procedures, where it is not clear from the figures available if they represent instances of inadequate planning and preparation, weak supply markets, budgetary changes and constraints, corrupt practices, or other reasons.

Sub-indicator 9(c) – Contract management in practice

This sub-indicator assesses the extent to which goods, works or services, including consulting services procured, are delivered according to the contract agreement in terms of time, quality, cost and other conditions stated in the contract, for the efficient and effective delivery of public services.

Information on the timely implementation of contracts, on inspection, quality control, works supervision and final acceptance, and on examination, handling and payment of invoices is not systematically collected, nor otherwise possible to extract in other ways than by examination of a large sample of individual cases, to the extent (in practice, extremely limited) that the corresponding documentation can be made available.

As reported by the Ministry of Internal Affairs, 90% of contracts for goods and services are executed on time, while 90% of works contracts exceed the contractual time limits by 1/3, on an average. Also some 90% of works contracts are amended in ways that increase the contract value. There are many causes behind the weaknesses in the management of contracts: inadequate planning and preparation, unclear

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or otherwise deficient contractual requirements, insufficient monitoring and enforcement of contractual performance and, underlying these problems, a lack in many contracting authorities of suitably knowledgeable, skilled and experienced public procurement staff.

The review of 69 procedures and contracts filed at the PPA indicates that only few contracts had delays in their execution; more so for requests for quotations than for open tenders, though the numbers are so small that no firm conclusions can be drawn. On the other hand, quality control measures and acceptance proceedings were successfully carried out and documented only for slightly more than half the contracts; data were missing for the others. Invoices were mostly paid on time, as indicated by the percentages here below:

Procurement procedure	2017 – 2018	2018 - 2019	Total
Open tender	80%	100%	90%
Request for quotation	80%	80%	80%
Negotiation without publication	100%	90%	95%
Framework agreement	100%	80%	90%

The PPA only accepts changes to the contract that have been made during the term of the contract. There are cases when the contracting authorities want to make changes to the already expired contracts. These changes are rejected. Amendments are published in the same way as for the original contracts.

In the 69 cases examined in some detail, almost all of the contract amendments made were for price increases, as follows:

Procurement procedure	2017 - 2018		2018 - 2019	
	Changes in % of total number of contracts	Average increase in contract value	Changes in % of total number of contracts	Average increase in contract value
Open tender	10 %	15 %	9 %	12 %
Request for quotation	10 %	18 %	20 %	14 %
Negotiation without publication	-	-	-	-
Framework agreement	-	-	-	-

The PPA structure contains a Directorate for Statistics, Reporting and Electronic Procurement. Centralised reports¹ on activity in the field of public procurement are prepared quarterly, containing generalised data by country. The capacity of the Directorate mentioned is limited and, due to the lack of an automated system equipped with a module for extracting and analysing statistical data, many statistical indicators cannot be calculated or have to be prepared manually.

The legislation in the field of public procurement offers the possibility² to the representatives of the civil society to participate in the activity of the working groups for public procurement. However, the PPA does not have any data on the actual involvement of civil society representatives in the activity of public procurement working groups, nor has such information been found elsewhere.

¹ See <https://tender.gov.md/ro/documente/rapoarte-de-activitate>

² Government decree 667/2016 for the approval of the Regulation on the activity of the working group for procurement, item 5

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At different stages of the public procurement procedure, the contracting authority is obliged to complete forms specially developed for the purpose of documenting what has been done and creating an audit trail. These model forms can be found on the PPA website¹. However, contracting authorities not infrequently make mistakes in completing the data on the procurement procedure, mainly due to a lack of knowledge in the field of public procurement and the large workload.

Many of these records are not published or otherwise accessible, although they form part of the procurement file that each contracting authority has to prepare for each procedure and keep available for audit purposes. Management, reporting and monitoring would be likely be made easier if these tasks are integrated in the authority's administrative systems and procedures and if these are properly used.

- **Substantive gaps and their associated risks**

A fundamental, substantive gap regarding public procurement practices and the actual performance of the public procurement system is constituted by the lack of reliable, easily accessible data, in turn a result of the limited possibilities to record and publish details of procurement transactions in a machine readable and transmissible format and of the shortage of procurement management tools. This gap is not only a matter of concern for regulatory and supervisory authorities managing and monitoring public procurement in general, but also for individual contracting authorities, who need a clear overview of their own performance in order to plan, carry out and evaluate their public procurement activities. The risks of not closing this gap are high, given its consequences on procurement performance.

In the planning and preparation phase, gaps exist with respect to the possibilities to determine what the supply market can reasonably be expected to offer (although guidance on market consultations has been made available, contracting authorities still lack skills and experience in this respect), to optimise procurement approaches (unduly narrow range of procedures and award criteria available to choose from), and to inform and alert prospective tenderers about business opportunities (procurement plans cannot be widely published). A related shortcoming exists in the difficulty of many contracting authorities to draft requirements, specifications and selection and award criteria that invite effective competition and give value for money in meeting the actual needs (lack of skills and experience or resources of procurement officials).

In the evaluation, award and contracting phase, the major gap is created by the failure of the e-procurement system to incorporate other procedures and award criteria than open tender and price to be used, and to allow the qualifications of tenderers and the conformity of their tenders to be evaluated before an electronic auction is launched.

In the contract management phase, available evidence indicates gaps in the attention and skills of contracting authorities and in the level of transparency, particularly with respect to quality control and acceptance of items delivered and other means for ensuring that items are delivered as required in the contract and that this is duly recorded.

Risks associated with this lack of skills and tools for all phases of the procurement cycle are high.

Several of the shortcomings mentioned above are related to issues with the current e-procurement system, and failure to enhance the system is therefore also associated with high risks.

¹ See <https://tender.gov.md/ro/documente/modele-de-documente>

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- **Main recommendations**

Improve the generation of public procurement data and the means for making them accessible, as also recommended elsewhere.

Publish procurement plans in an easily accessible form on the same central website as procurement notices, with suitable facilities for cross-referencing and searches.

Ensure that the full range of procedures and award criteria foreseen in the PPL are suitably implemented in the e-procurement system, as also recommended elsewhere.

Create opportunities for practical training and exchange of experience in needs analysis, market consultations, drafting of specifications and of selection and award criteria and their application in the evaluation and award process, and contract management; all harmonised with related measures for updating of regulations and standard documentation and for capacity building in general.

Mandate public access to information that allows contract execution to be monitored and compared with corresponding elements of procurement plans, budgets and expenditures.

Numerous other shortcomings in public procurement practice, and corresponding recommendations, are indicated below.

Specific gaps and corresponding recommendations for Indicator 9

No.	Specific gaps/shortcomings	Specific recommendations
9.a)	Available reports confirm weaknesses in planning and preparation and that these are often reflected in problems in later stages of the procurement cycle	Raise contracting authorities' awareness of the importance of proper preparation and planning, and complement any training offered with practical examples for raising the skills in this respect
9.b)	Guidance for planning and preparation of public procurement is incomplete	Review the pertinence, clarity and comprehensiveness of existing guidance materials and complement and update them accordingly
9.c)	The scope for optimising public procurement approaches by using the most appropriate procedures, tools and selection and award criteria from among those allowed by the PPL is severely limited by shortcomings in the e-procurement system	Ensure that the e-procurement system can be used for all procedures, tools, and selection and award criteria foreseen in the PPL
9.d)	An apparent lack of knowledge, skills and experience in many contracting authorities leads to fairly frequent errors and omissions in the preparation and use of tender documents, including in the form of vague, incomplete, excessively prescriptive or biased requirements and specifications and mismatches between requirements and selection and award criteria	Examine current practices, identify typical shortcomings in the work of the contracting authorities and adjust monitoring, advice, guidance materials and training accordingly

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No.	Specific gaps/shortcomings	Specific recommendations
9.e)	Not all clauses in all contract models prescribed may be appropriate in all individual cases	Revise the forms of contracts and the instructions for their use in ways that allow some flexibility in clearly defined circumstances and conditions, in ways that secure a proper balance between the rights and obligations of both parties
9.f)	Errors and omissions occur in the use of the existing contract models	Issue additional guidance specifically addressing observed inaccuracies in the use of the contract models, and add corresponding automatic checks when using electronic means for contract preparation
9.g)	The current e-procurement system does not allow other award criteria than price to be readily used, very much complicating the use of sustainability criteria	Ensure that the e-procurement system allows easy use of all award criteria foreseen in the PPL, and provide corresponding advice and training for contracting authorities
9.h)	There is little knowledge of other competitive procedures than open tendering and even less understanding of their advantages and of the principles for selecting the most appropriate one, and low skills in using them	Reinforce training on the selection and use of other procurement procedures than open tendering, and monitor their application
9.i)	It is not possible for economic operators to use their right to demand that certain commercially sensitive elements of their tenders remain confidential, since the tenders are published in full on the e-procurement system once the evaluation has finished	Ensure that the e-procurement system is able to cater for cases when certain elements of tenders submitted should be kept confidential in application of corresponding legislation
9.j)	The absence of any possibility to use other award criteria than price in the e-procurement system means that contracting authorities cannot fully use appropriate techniques for ensuring best value for money and also lack current experience of their proper application	Ensure that the e-procurement system allows easy use of all award criteria foreseen in the PPL, and provide corresponding advice and training for contracting authorities
9.k)	The full observation of the time limits in the PPL cannot be monitored, since the e-procurement system does not allow all relevant dates to be recorded	Ensure that the e-procurement system allows easy recording of all relevant dates in the procurement process, so that the observation of all applicable time limits can be easily monitored
9.l)	The enforcement of the contractual obligations of both parties to the contracts is made difficult by weak skills in contract management, weak sanctions, time consuming court proceedings with uncertain outcomes, and a virtual absence of alternative means for dispute resolution	Review the conditions of contract for clearly stated, equitable distribution of rights and obligations between the parties; ensure that provisions for enforcement of contractual obligations are clear and easy to apply; and add standard provisions for alternative means for dispute resolution in parallel with the development of a corresponding legal and institutional framework

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No.	Specific gaps/shortcomings	Specific recommendations
9.m)	The reasons behind the relatively frequent cancellation of procedures are not entirely clear, and existing data is not enough for identifying appropriate measures for improving the situation	Analyse a significant number of cancellations, identify underlying problems, and prepare and implement corresponding measures
9.n)	Anecdotal evidence points to a range of apparent problems with contract management, including weak skills of contracting authorities and failure to properly apply prescribed procedures, and delays, cost increases and frequent contract amendments (mainly in works contracts), some of this in turn reflecting bad preparation and inadequate or unclear contractual requirements; however, data on actual practices is incomplete	Analyse a significant number of contracts in order to identify and categorise typical errors and omissions as well as strengths and weaknesses in policies and practices and underlying problems of management, skills, tools and approaches, prepare and implement corresponding measures for improving the situation, and monitor the outcomes in the context of the general monitoring of public procurement performance
9.o)	Strict legal requirements for the involvement of civil society in public procurement working groups are enacted but their application (the actual form and level of such involvement and the sanctioning of any failure to comply) is not known; also, the current possibilities and limitations for civil service involvement may not be appropriate for serving the intended purposes	Make a short term case study about the actual involvement of civil society in public procurement working groups and its advantages and disadvantages, and use this information for reforming the forms and contents of civil society involvement in public procurement (not necessarily in the working groups, which in any case are recommended to be replaced); then require corresponding information to be recorded, incorporated and made publicly available in procurement reports
9.p)	Data on contract execution and contracting authority performance are not systematically prepared and submitted by contracting authorities in a form and with contents that facilitate compilation and analysis by the PPA and other interested parties	Revise the form and contents of performance reporting (contract execution and its outcomes) in ways that limit the administrative burden while making data easy to compile, transmit, publish and analyse (e.g. by automatic generation from existing project management files, using machine readable forms, integration with other administrative systems and procedures, etc.); enhance the monitoring of this reporting in order to help ensure its adequacy and relevance; and analyse it with a view to improve public procurement policies, procedures and practices

3.3.2 Indicator 10. The public procurement market is fully functional

The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors, such as the general economic climate, policies to support the private sector and a good business environment, strong financial institutions, the attractiveness of the public system as a good, reliable client, the kind of goods or services being demanded, etc.

- **Findings**

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Main substantive gaps and recommendations for Indicator 10

No.	Substantive gaps / Red flags	Risk	Recommendations
10.1.	The opportunities for policy dialogue at the level of specific sectors of the economy, from the perspective of enhancing the benefits from and for public procurement, are limited and have only been little used	High	Continue the public-private sector dialogue at the level of the various authorities concerned, with focus on making its importance and advantages more clear, and correspondingly adapt its form and contents for greater pertinence, effectiveness and efficiency
10.2.	Perceptions of unfair competition, both for objective reasons (shortcomings in the e-procurement system) and based on unproven presumptions, may discourage well qualified and competitive firms from participating in public procurement	High	Examine in further detail the reasons why economic operators would or would not participate in public procurement, including for perceived reasons of unfair competition, corruption or otherwise inadequate practices, and prepare and implement policies and action plans with concrete measures for mitigating any barriers identified

Sub-indicator 10(a) – Dialogue and partnerships between public and private sector

This sub-indicator reviews whether there are forums for dialogue between the government and the private sector.

The Law on transparency in the decision-making process no. 239 of 13 November 2008 establishes rules for ensuring transparency in the decision-making process within the central and local public administration authorities, other public authorities, regulating, in this respect, their relations with stakeholders. It is a framework law, and the procedures for consulting citizens, associations and other stakeholders are established by the Government, Parliament and the President of the Republic of Moldova. At Government level (also applicable to central and local public authorities), there is a Regulation on public consultation procedures with civil society in the decision-making process, approved by Government decree no. 967/2016. Regarding Parliament, the legal framework in the field includes the Regulation of the Parliament, adopted by Law no. 797/1996, with the Concept regarding the cooperation between the Parliament and the civil society approved by Parliament Decision no. 373/2005, as well as a series of internal acts within the Parliament.

The civil society associations consulted during the MAPS assessment mention that, at the level of the Government and implicitly of the central public authorities, the process of public consultations is largely (cf. sub-indicator 11(a)) carried out according to the law. Draft normative acts in the field of public procurement have to be published on a website¹ set up for the purpose. Any interested person can submit recommendations within the term indicated by the author, but which cannot be less than 10 working days. Likewise, public authorities can send the draft normative act directly (by e-mail, other means) to non-governmental organisations, specialists, experts, other interested parties, for consultation. Lately, the Ministry of Finance (which is the direct author of draft normative acts in the field of public procurement) is reported to have shown greater openness to the public and often use this tool. For example, several recent draft normative acts (draft Government decree for the approval of the Regulation on public procurement using the negotiation procedure, draft Order on the approval of the standard form of the Single European Procurement Document, draft Government Decision for the approval of the

¹ <http://www.particip.gov.md/>

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Regulation on public works procurement) have been directly consulted with non-governmental organisations that constantly monitor public procurement and development studies in this field. These consultations were not only formal, but the Ministry of Finance took into account several recommendations submitted by civil society for the improvement of draft normative acts.

In addition, the Economic Council under the Prime Minister was established by the Government Decision of the Republic of Moldova no. 631/2011, as an advisory body and a platform for discussions between the Government, business, experts, donors and other stakeholders. Within the Council, seven permanent thematic working groups and two temporary (ad-hoc) working groups were set up. At present, the Economic Council under the Prime Minister has 118 members, of which 56 business associations, eight representatives of the research community, 11 representatives of international organisations active in the field of business reforms and 43 representatives of authorities and public institutions.

Nevertheless, the private sector survey carried out indicates that, in response to the question if the Government consults them on public procurement matters, 9.1% answered 'always', 36.4% 'most of the time', 36.4% 'rarely' and 18.2% 'not at all'. There would thus seem to be room for further improvement.

NGOs consulted during the MAPS assessment have indicated that the greatest problems regarding the transparency of the decision-making process have been identified with respect to Parliament. For the most part, Parliament only publishes a draft law on its website, often without the accompanying documents. Parliamentary committees either do not organize public consultations for draft laws (including in the field of public procurement) or, when they do, organize them selectively and sometimes badly. If public consultations are held, parliamentary committees often ignore the recommendations of the parties consulted and do not inform them of the results of the public consultations.

In the particular case of the relations between public institutions, especially the Government, on the one hand, and the business community of the other, regular contacts as well as formal and informal consultations are organised by business associations such as the Chamber of Commerce and Industry and the Employers' Federation, as well as by their member organisations and other industry associations and chambers.

On the other hand, there has been a rather weak response to private sector suggestions for constructive dialogue in certain sectors where economic operators now see problems in the way that public procurement policies, procedures and practices are applied, with little consideration of the particularities of the sector. Among those cases one may mention telecommunications and medical services and equipment as well as medicines. Such dialogue would have the potential to lead to improvement of range and quality of supply and of value for money, in ways that would benefit both the domestic industry and the contracting authorities and the citizens they serve. Similar advantages could also be expected from enhanced dialogue with the private sector in the context of centralised procurement and the use of framework agreements, where there are now considerable gaps in the use of such approaches.

The PPA has included information and training for economic operators in its training curriculum, but the volume of such training actually provided is not large, reflecting a very weak demand from economic operators. In addition, both the PPA and the e-procurement platforms interfacing with contracting authorities and economic operators offer information and training in the mechanics of using the e-procurement system. There are no other public programmes for supporting private sector participation in public procurement. As a complement, to compensate for the relative weakness of the official

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Government programmes, NGOs (e.g. IDIS) and the business organisations, such as the Chamber of Commerce and Industry, organise information and training sessions on public procurement for their members, though not on a regular, permanent basis, and occasionally give advice in particular cases.

Sub-indicator 10(b) – Private sector’s organisation and access to the public procurement market

This sub-indicator looks at the capacity within the private sector to respond to public procurement in the country.

The private sector is relatively well organised and active but its structure and capacity reflects the small size and limited resources of the country: in many sectors, the supply side is rather thin and in others there is only one or a few enterprises, if any. Parts of the economy are also closely linked, directly or indirectly, to public sector interests, and vice versa. As a consequence, there are strong perceptions of fraud and corruption, as evidenced in e.g. Transparency International’s Corruption Perception Index (rank 120 out of 180 countries), and related presumptions that enterprises may be tempted to muddle through by engaging in the same illicit behaviour as others while being better than them in avoiding getting caught.

As a result of such perceptions of unfair competition based on corrupt behaviour, some well run companies may hesitate to participate in public procurement. On the other hand, in the private sector survey carried out, “only” 9.1% of the respondents stated that they had offered a bribe to get a procurement contract.

In application of the corresponding requirements in the EU Directives, the PPL includes several provisions intended to facilitate SME participation in public procurement, such as provisions on division into lots and on preliminary market consultations. Also in line with EU policies, there are no provisions for local preference or for other preferential treatment of SMEs or other categories of prospective tenderers. Some systemic constraints have the effect of limiting private sector access to the public procurement market.

First among these is the perceived complexity of the regulations and the level of administrative efforts needed in order to fully comply with the multitude of formal requirements applicable to the competitive procedures. As a consequence, many enterprises, especially SMEs, do not find it worth the effort to participate in public procurement; their scarce resources can often be better used elsewhere and many simply do not have staff with the necessary knowledge and skills. The notional simplicity of the e-procurement system is thus not fully effective in practice.

It is also difficult for enterprises with limited resources to monitor and identify the business opportunities that arise, especially when annual procurement plans are not published centrally. In addition, the use of price as the dominant award criterion discourages participation by firms with novel solutions giving better value for money if their possible advantages in terms of quality, performance and life cycle costs cannot help them win the contract.

Finally, when electronic auctions are held without prior examination of the conformity of the tenders and of the qualifications of the tenderers, there is a considerable, unquantifiable risk of participation by unqualified enterprises offering items not meeting requirements and specifications but nevertheless (precisely for those reasons) with quite low prices. They are therefore likely to come out as the best placed ones in the auction and, having received what may seem to be a favourable price, contracting authorities may be tempted to disregard indications of low quality and lack of qualifications, if at all these aspects are duly examined.

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It may then happen that a contract is concluded but that the company becomes unable to deliver, or delivers items which do not match the specifications. If the items are still urgently needed, as would often be the case, there may be a temptation to nevertheless accept them, possibly against some additional favour to those in charge, but to the detriment of those who should ultimately receive the benefits of the goods, works or services procured.

All this creates a climate of unfair competition which by itself discourages participation by well run enterprises and encourages further fraud and corruption, in addition to reducing the value for money of the public funds spent.

Sub-indicator 10(c) – Key sectors and sector strategies

This sub-indicator reviews to what extent the Government examines the country's supply market from a public procurement point of view.

There is little evidence of any analysis by the Government of the Moldovan supply market from the point of view of public procurement and of any efforts to proactively develop the competitiveness of enterprises in sectors of importance to public procurement.

- **Substantive gaps and their associated risks**

Despite a comprehensive legal framework for public consultations and increasing efforts by the authorities, particularly the Government, to follow prescribed procedures, there still seems to be room for improvement in the ways consultations are held and their outcomes are put to good use in the later stages of the legislative process. Also, the opportunities for policy dialogue at the level of specific sectors of the economy from the perspective of enhancing the benefits from and for public procurement, have only been little used. Enhanced consultations should be expected to improve mutual understanding and trust between the supply and the demand side of public procurement, leading to higher participation and greater competition, and thereby to better procurement outcomes. Although difficult to quantify, the potential benefits

The complexity of the procurement procedures creates problems for many SMEs and the lack of effective limits to participation by potentially unqualified tenderers in electronic auctions creates a risk of discouraging well run companies from participating. Perceptions of unfair competition stemming from presumptions of other companies' corrupt behaviour are likely to have similar effects. However, comprehensive and reliable data on this subject is not available, and the corresponding risk has therefore been set to 'medium'.

- **Main recommendations**

Carry out a systematic analysis of the importance of key sectors of the economy for public procurement, as well as vice versa, and develop the opportunities for dialogue between the authorities and the private sector on procurement policies and practices, by sector.

Ensure that the e-procurement system is brought in line with the PPL, with the evaluation of tenderers' qualifications and of the conformity of their tenders preceding any electronic auctions, if held at all, and bring all other means to bear for eliminating fraud and corruption in public procurement.

Some more specific recommendations, set against the shortcomings identified, are presented below.

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Specific gaps and corresponding recommendations for Indicator 10

No.	Specific gaps/shortcomings	Specific recommendations
10.a)	There is room for improvement in the ways public consultations are held and their outcomes are put to good use	Monitor compliance with provisions in the legislation on public consultations and seek ways to improve its effectiveness.
10.b)	Although firm evidence is lacking, there may still be significant misconceptions about public procurement among economic operators and the general public	Survey the knowledge and understanding of public procurement policies and practices and the attitudes towards them among economic operators and the general public, and take corresponding steps to raise awareness and acceptance of public procurement principles
10.c)	The high administrative complexity of the public procurement procedures, as often perceived by the business community, and the limited possibilities to compete on quality and performance create disincentives for many enterprises	Raise contracting authorities' skills in preparing and carrying out procurement with greater focus on value for money, using simple and practical approaches tailored to the supply market in question, and ensure that the e-procurement system can properly allow the use of other award criteria than price whenever appropriate for improving value for money
10.d)	Contrary to the provisions of the PPL, tenderers' qualifications and the conformity of the tenders are only verified after the electronic auction (when held), and only for the winning tenderer; this allows unqualified tenderers to participate and to do so with tenders not meeting all requirements, which constitutes unfair competition that strongly discourages the otherwise most suitable and competitive enterprises from participating	Revise the workings of the e-procurement system in order to comply with the sequence of evaluation steps prescribed by the PPL, so that only fully qualified tenderers having submitted fully compliant tenders are invited to an electronic auction, if held (which may not necessarily be suitable, depending on the nature of the contract and the market situation)
10.e)	It is not clear to what extent the importance of the public procurement market and its significance for economic development are recognised by the Government and reflected in economic policy	Analyse the Moldovan supply market from the point of view of public procurement and take measures to proactively develop the competitiveness of enterprises in sectors of importance to public procurement

3.4 Pillar IV - Accountability, Integrity and Transparency of the Public Procurement System

Pillar IV includes four indicators that are considered necessary for a system to operate with integrity, that has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and that has appropriate measures in place to address the potential for corruption in the system. It also covers important aspects of the procurement system, which include stakeholders, including civil society, as part of the control system. This Pillar takes aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.

Summary findings under Pillar IV:

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The legal and institutional framework contains a number of features intended to secure integrity in public procurement as well as in public administration in general. Laws and regulations are in place to promote public consultations, enable civil society participation, provide access to information, handle complaints by tenderers and other parties concerned in a competent and timely manner, facilitate internal and external audit, prevent and identify cases of fraud, corruption and other prohibited practices, and sanction those breaching the rules. Corresponding institutions are in place, with staff and other resources engaged for the purpose.

Nevertheless, various observations and analyses made (e.g. by the Court of Accounts and Transparency International) indicate that there are gaps in the implementation of many of the laws and regulations mentioned, and the insignificant number of successful prosecutions of fraud and corruption points to weaknesses in the ability of the legal system to effectively sanction those at fault.

3.4.1 Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Civil society, in acting as a safeguard against inefficient and ineffective use of public resources, can help to make public procurement more competitive and fair, improving contract performance and securing results. Governments are increasingly empowering the public to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: i) disclosure of information and ii) direct engagement of civil society through participation, monitoring and oversight.

- **Findings**

Main substantive gaps and recommendations for Indicator 11

No.	Substantive gaps / Red flags	Risk	Recommendations
11.1.	Limited availability of detailed and reliable data allowing civil society and the competent authorities themselves to analyse public procurement	Medium	Improve the generation of public procurement data and the possibilities to access it in a way that allows also civil society to effectively monitor all stages of the public procurement cycle; all of this harmonised with the measures taken to enhance e-procurement
11.2.	Weak support to civil society in terms of access to information, opportunities for dialogue, and possibilities to participate in training	Medium	Include civil society organisations, along with contracting authorities and economic operators, in any information and training programmes offered, and consider offering specific training for them

Sub-indicator 11(a) – An enabling environment for public consultation and monitoring

This indicator assesses the following:

- whether a transparent and consultative process is followed when changes are formulated to the public procurement system,
- whether programmes are in place to build the capacity of civil society organisations to support participatory public procurement, and
- whether effective feedback and redress mechanisms are in place for matters related to public

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procurement.

There is a legal framework in place which stipulates that changes in legal/policy framework (including in public procurement one) should be transparent and consultative. The main legal documents are Law no. 239-XVI from 13 November 2008 and Government decree no. 967 from 09 August 2016. However, not all legal drafts and policy proposals have been subject to public consultations in full accordance with legal framework mentioned and many amendments have been approved without consultations (e.g. amendment to exempt procurement of medicines from the obligation to be implemented in MTender).

The currently existing support to CSOs in procurement area mostly stems from foreign donors. There are no legal or policy documents that would envision systematic support from the public sector for CSOs in the area of public procurement. However, the PPA could possibly include such activities in its training schedule by simply allowing or inviting CSOs to participate in existing events, if no separate ones are set up specifically for CSOs.

The Government partially takes into account the feedback from CSOs. According to the Ministry of Finance, in 2018 it took into account around 50% of all proposals from CSOs. The CSOs concerned are of the opinion that even critical requirements are not always taken into account (e.g., the proposal of CSOs to include small value contracts in the e-procurement system (MTender) was ignored).

Sub-indicator 11(b) – Adequate and timely access to information by the public

This sub-indicator covers the right of the public to access information. Complementary aspects have been highlighted in the following sub-indicators:

- The laws, regulations, and policies governing public procurement are published and easily accessible to the public at no cost (sub-indicator 1(a));
- All stakeholders have adequate and timely access to information in each phase of the public procurement process related to specific procurements (in accordance with legal provisions protecting specific sensitive information) and access to other information that is relevant to promote competition and transparency (sub-indicator 7(a));
- Free access to this information is preferably provided through a centralised online portal and open data standards (sub-indicator 7(a)).

The legal framework on public procurement is accessible free of charge. It stipulates that some important documents on procurement should be published by the contracting authority (procurements plans, minutes of tender evaluation, and reports on contract implementation). However, not all documents that should be open are published in full by the contracting authorities and they are not all readily accessible from a single, national point of access. At the same time, some documents such as tenders submitted are available in MTender, but the existing legal framework has not been adjusted to specify and regulate this kind of disclosure in full compliance with the PPL and the applicable EU Directives.

Also, even when formally in compliance with the law, some of the information that is now published is no longer timely enough to serve all underlying purposes, given e.g. the delay allowed for publishing contract award notices.

Sub-indicator 11(c) – Direct engagement of civil society

This sub-indicator assesses the extent to which (i) the laws, regulations, and policies enable the

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participation of citizens in terms of consultation, observation, and monitoring and (ii) whether the government promotes and creates opportunities for public consultation and monitoring of public contracting.

The existing legal framework allows the representatives of CSOs to take part at public procurement procedures as members of working groups established within the contracting authorities. The existing legal framework allows representatives of CSOs to take part as members of working groups mostly in the following phases of procurement:

- tender opening (observation)
- evaluation and contract award (observation)

There are several CSOs involved in procurement process through consultation, observation and monitoring in systemic manner. The active involvement of local CSOs is constrained by lack of technical knowledge and by dependence on foreign assistance.

In individual procurement cases, according to the legislation¹ in the field, the contracting authority is obliged to include in the composition of the working group the representatives of the civil society, if they submit an application at least two days before the date of opening the tenders. However, these representatives do not always participate in or get to know details about the planning stage of the procedures in which they participate in the working group, and usually attend only at the opening and evaluation of tenders. Often, they are no longer invited to discussions on the management and completion of the contract in order to be able to learn, in detail, how the economic operator has fulfilled its contractual obligations (particularly important in the case of procurement of works). In addition, the legal provisions² do not seem to fully reflect the particularities of e-procurement, and the functioning of the current system does not seem to fully cater for the right to civil society participation.

CSOs consulted during the MAPS assessment report that there are also cases when contracting authorities unreasonably refuse the presence of CSOs within the working group, thus violating the applicable legal provisions, but there appears to be no authority competent to sanction them for such violations.

- **Substantive gaps and their associated risks**

The most important gap in the environment for public consultation and monitoring lies in the limited availability of detailed and reliable data that would allow civil society and the competent authorities themselves to take measures to analyse the way public procurement is carried out and the outcomes of it and thereby to determine ways for improving the economy, efficiency and effectiveness of public procurement proceedings.

A secondary gap is constituted by the weak support offered to civil society organisations in terms of access to information and opportunities for participation.

Both gaps would likely be at least partly filled by other measures to widen the dialogue between the various stakeholders involved in public procurement and to enhance the generation and publication of public procurement data. Consequently, the risks associated with these gaps have been set to 'medium'.

¹ E.g. PPL, Art. 14 (5)-(8)

² PPL, Art. 14,

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- **Main recommendations**

Improve the generation of public procurement data and the possibilities to access it in a way that helps effectively monitor all stages of the public procurement cycle.

Include civil society organisations, along with contracting authorities and economic operators, in the information and training programmes offered by the PPA and other institutions.

Some further recommendations are found below, with the gaps they are intended to close.

Specific gaps and corresponding recommendations for Indicator 11

No.	Specific gaps/shortcomings	Specific recommendations
11.a)	Full and effective public consultations have not always been carried out for new public procurement regulations	Strictly observe existing legal obligations for public consultations, in addition to a wider, proactive dialogue with the private sector and the general public
11.b)	The numerous, detailed provisions in the PPL for civil society participation in public procurement, particularly in the working groups, are not always easy to apply and may not be suitable for serving the broader purposes of such participation	In consultations between the parties concerned, develop simple and practical approaches for civil society engagement in public procurement, e.g. through improved, timely access to information, and adjust the regulatory framework accordingly
11.c)	The rules for civil society participation in the working groups for public procurement and the actual functioning of the current e-procurement system do not seem to fully match	In application of the preceding recommendation, examine and revise the rules for civil society engagement in terms which make them readily applicable also in any e-procurement system, and ensure that any future developments in e-procurement incorporate functions matching the legal provisions in question

3.4.2 Indicator 12. The country has effective control and audit systems

The objective of this indicator is to determine the quality, reliability and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For the purpose of this indicator, “effectiveness” means the expediency and thoroughness of the implementation of auditors’ recommendations. The assessors should rely, in addition to their own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available.

- **Findings**

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Main substantive gaps and recommendations for Indicator 12

No.	Substantive gaps / Red flags	Risk	Recommendations
12.1.	There is no evidence of a harmonised, overarching approach to the need to ensure, in an effective and efficient manner, that rules and regulations for supervision and audits are properly applied	High	Set broad, overarching objectives for ensuring, in an effective and efficient manner, that rules and regulations for supervision and audits are properly applied; examine how current institutions meet (or not) these objectives; and take steps to revise and harmonise the legal and institutional framework in ways that best meet the overarching objectives, closing any current gaps and unnecessary overlaps and optimising the distribution of roles, responsibilities and resources
12.2.	Internal audit is not yet fully introduced and even less effective in all contracting authorities	High	Intensify the development of internal audit through increased training, advice and exchange of experience, if necessary by seeking additional, external expertise and resources, and carefully monitor the implementation process and its outcomes

Sub-indicator 12(a) – Legal framework, organisation and procedures of the control system

This sub-indicator assesses

- i) whether the country's laws and regulations provide for a comprehensive control framework,
- ii) whether the institutions, policies and procedures as defined in the law are in place and operational, and
- iii) whether the existing control framework adequately covers public procurement operations.

There is no comprehensive, harmonised legal framework for the control system. Each legal body is governed by separate legislation, with gaps and overlaps, of which some may appear obvious while others are not immediately recognisable.

The main body for external audit in the public sector is the Court of Accounts. As the Supreme Audit Institution of the Republic of Moldova, it exercises its mandate in accordance with Law no. 260 of 7 December 2017 on the organisation and functioning of the Court of Accounts. This law clearly stipulates the attributions of the Court of Accounts that it exercises according to the powers given to it. The Court of Accounts performs three types of external public audit (financial, compliance, performance). All public (budgetary) entities, and programmes and projects managed by one or more of such entities, including the sale, privatization or concession of assets and the revenues obtained from them, may be subject to external public audit. The Court of Accounts performs the external public audit based on its annual and multiannual programme of audit activities on which it decides independently. Law no. 229/2010, significantly amended in 2018 by law no. 234/2018, establishes general rules and principles for organizing public internal financial control, which includes a) internal managerial control and b) internal audit. The objects of the internal managerial control are all the systems, processes and activities within the field of responsibility of the public entity. The internal audit ensures evaluation at least once every three years of the high risk processes in the following fields: a) financial accounting; b) public procurement; c) asset management; d) information technologies. The public entity organizes the internal audit through the following forms: a) internal audit performed by the subdivision established in the structure of the public

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entity; b) internal audit by association; c) internal audit based on contract. The law describes the rights and obligations of persons conducting internal audit. They have the responsibility to supervise (including) the procurement process, to report to management on the compliance, effectiveness and efficiency of procurement operations. In order to adequately inform and avoid duplication of activities, the internal audit subdivisions collaborate with the Court of Accounts and submit to it: a) a copy of the Annual Plan of the internal audit activity; b) copy of the Annual Report of the internal audit activity.

Although the Republic of Moldova has an ambitious legal framework regarding public internal financial control, the reality is different. An issue for the effectiveness of the internal audit with regard to procurement processes is the limited knowledge and capacity of the internal auditors to adequately review procurement procedures as well. Despite the obligation of strengthening the internal audit procedures within public procurement processes, established in different public policies (for example priority no. 2 established within the Anti-corruption Plan in Public Procurement for the period 2018 - 2020), during 2019 there were no trainings for the internal audit units within the public authorities. At the local level it is even worse, many local authorities have not even employed any such staff members yet.

Public procurement has been and remains the focus of the Court of Accounts. The internal management control system in its entirety, especially the public procurement component, is evaluated in each mandatory financial audit (consolidated financial statements of nine ministries and three Government Reports on the execution of state budget, the state social insurance budget and the compulsory health insurance funds), as well as in compliance or performance audits planned separately in the field of procurement.

As set out in the Court of Accounts' Audit Strategy for 2019-2021 (approved by its Decision no. 4 of 18 February 2019), the focus of compliance audits will be on public procurement, subsidies, regular exercise by public authorities of delegated responsibilities, compliance of public services to citizens with applicable requirements, local public authorities, etc.

In accordance with law no. 260/2017, until May 1, the Court of Accounts presents the annual activity report, which is heard in the plenary session of the Parliament. At the same time, the Court of Accounts presents to the Parliament in plenary session (until September 15) the annual report on the administration and use of public financial resources and public patrimony, which analyses and generalizes the conclusions of all audit missions performed during a year. In addition, the respective reports shall be published in the Official Gazette of the Republic of Moldova within 15 days from the date of approval by the Court of Accounts and shall be submitted to the President of the Republic of Moldova and the Government. The reports are also published on Parliament's website.

Starting with the new parliamentary term, a new commission was set up in Parliament - the Public Finance Control Commission. This commission has the role of ensuring the legal framework regarding the external public audit, ensuring the organisation and functioning of the supreme audit institution, examination and hearing of the annual and audit reports of the Court of Accounts and of the audited entities, other important competencies. The work of the committee is a form of parliamentary oversight to hold the Government and other public authorities accountable for their actions and to ensure that they implement policies in accordance with the laws and the budget adopted by Parliament. The Commission sets up a schedule for the examination of the Court of Auditors' reports, the most recent schedule includes 12 hearings of the Court of Auditors' reports between February and April this year.

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As a result of the hearings, the Public Finance Control Commission draws up a report, which includes the basic findings and recommendations addressed to the public authorities, informing the committee of the measures taken.

The national legal framework does not include clear provisions and procedures regarding the exercise of parliamentary oversight, monitoring the fulfilment of recommendations by public authorities and the occurrence of responsibilities for their non-execution. The Regulation of the Parliament, adopted by law no. 797/1996, contains general provisions regarding the parliamentary control.

The draft Code of Parliamentary Rules and Procedures (registered in November 2018 in Parliament), which seeks to replace Parliament's current Rules of Procedure, contains regulations on conducting supervisory hearings based on the reports of the Court of Auditors. The Code also contains a separate chapter on specialised parliamentary oversight, which expressly states that Parliament, through its standing committees, exercises specialized parliamentary oversight in the areas of competence by monitoring the implementation by public authorities of the Court of Auditors' recommendations. The draft Code was examined in first reading in the sitting of the Parliament of 22 November 2018, but it was not subsequently brought to the public for discussion and it is not known how this legislative initiative will develop.

Sub-indicator 12(b) – Co-ordination of controls and audits of public procurement

This sub-indicator assesses whether internal controls, internal audits and external audits are well defined, co-ordinated, sufficiently resourced and integrated to ensure the consistent application of procurement laws, regulations and policies and the monitoring of performance of the public procurement system, and that they are conducted with sufficient frequency.

There is a comprehensive manual on public internal financial control, prepared by the Ministry of Finance with support from the Dutch authorities and issued in December 2015, available on the Ministry's website¹. However, despite the ample regulation of internal audit, practices lag very much behind, already because of the lack of skilled staff and the related fact that many authorities have not even managed to engage any internal auditors. As a consequence, rather few internal audits are carried out for the moment.

During its audits of public procurement, the Court of Accounts is guided by the International Auditing Standards of INTOSAI as well as by the Court of Accounts' Financial Audit Manual (adopted by its Decision no. 101 of 21 December 2018). Its updated version provides guidance on auditing the significant components of public procurement, such as the specifics of the procurement cycle and related transactions (p. 46), sample selection (p. 79), clarification and error aggregation (p. 84), and red flags and indicators of possible fraud (p. 148).

The Court of Accounts' Guide On Compliance Audit (approved for testing by its Decision no. 55 of 20 September 2019) contains practical examples (pp. 10, 12) of possible approaches applicable in a compliance audit of the public procurement process or a stage thereof.

The Court of Accounts' Performance Audit Manual (approved by its Decision no. 54 of 5 December 2016) is based on the practical examples (pp. 34, 44, 107, etc.) applicable in an audit mission that is meant to evaluate the public procurement procedure.

¹ See https://mf.gov.md/sites/default/files/documente%20relevante/m_audit_intern.pdf

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The Court of Accounts reviews the internal management control system in the field of public procurement, assesses risks and plans audit actions according to the situation in all financial audits, compliance audits and in specialized missions of compliance and performance audit. As a result, aspects related to public procurement are verified in approx. 90% of its public external audit missions. The vast majority of the corresponding audit reports present findings on public procurement. Sometimes this information is amplified in a Letter to Management, which is sent to the head of the public authority concerned, without publication.

The audit findings can be studied by accessing the reports published¹ on the website of the Court of Accounts. From 2005 to 2018, the Court of Accounts conducted regularity and performance audits and issued corresponding reports. Since 2018, the Court of Accounts has performed three distinct types of audits (financial, compliance, performance). For 2020, the Court of Accounts has planned several compliance audits of public procurement (Ministry of Defence; Ministry of Justice, including penitentiaries; Ministry of Internal Affairs, etc.).

However, the share of performance audits is still very low and the most recent one on public procurement conducted by the Court of Accounts dates from October 2015². This situation would seem to require further attention to the capacity of the Court of Accounts and its staff to carry out public procurement audits, especially those which – as appropriate – focus on the performance of the contracting authority and whether and to what extent any procurement carried out meets the actual, underlying needs and provides value for money.

According to the activity report³ of the Court of Accounts, in 2019, 54 decisions were drawn up regarding the examination of the results of the audit missions and 1118 requirements and recommendations were submitted, with an execution / implementation term that varied from 3 to 12 months. The audited entities take measures for their implementation and regularly inform the Court about this. Out of the 469 recommendations with a deadline until the second - fourth quarter of 2020, about 30.5% of them were executed. In the case of recommendations submitted directly to the central public authorities, the degree of execution was around 56.8%.

Sub-indicator 12(c) – Enforcement and follow-up on findings and recommendations

The purpose of this indicator is to review the extent to which internal and external audit recommendations are implemented within a reasonable time.

Audited entities and other institutions referred to in the auditor's report are obliged⁴, within the term established by the Court of Accounts, to report on the implementation of the recommendations in the auditor's report or on the reasons why they were not implemented. The Court of Accounts establishes concrete reporting deadlines for the implementation of the recommendations submitted depending on the complexity of the measures to be taken for their implementation.

The Court of Accounts shall monitor the implementation of the recommendations through (1) the procedure provided by the internal regulations, (2) within the mandatory annual audits, but also (3) during the follow-up missions planned separately in the annual program of the audit activity.

¹ See <http://www.ccrm.md/hotariri-si-rapoarte-1-95>.

² See <http://ccrm.md/hotariri-si-rapoarte-1-95?idh=767>

³ Available at <http://www.ccrm.md/storage/upload/reports/postari/184/pdf/d1bade4c31667c5bdd3f5d2543f3a5da.pdf>

⁴ Law no. 260/2017, Art. 37

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Through its reports, the Court provides recommendations that are likely to make a significant contribution to addressing the weaknesses or issues identified by the audit, the implementation of which is mandatory. During 2018, 1681 requirements and recommendations were submitted, the deadline for their implementation, depending on their complexity, ranging from 1 to 12 months from the date of publication of the Decisions of the Court of Accounts in the Official Gazette of the Republic of Moldova.

The audited entities are legally obliged to take measures for their implementation and to periodical informing the Court about this. However, although the term of execution of 1395 requirements and recommendations (83%) expired in the II-IV quarters of 2019, only about 32% of the total for 2019 were reported to have been implemented by 31 March 2020.

Sub-indicator 12 (d) – Qualification and training to conduct procurement audits

The objective of this indicator is to confirm that there is a system in place to ensure that auditors working on procurement audits are adequate to the task.

Apart from the training in general financial management, including auditing, provided at institutions of higher education, the Court of Accounts has on-the-job training for newly engaged auditors and for the professional development of regular, based on its own manuals (see sub-indicator 12(b) (b) above). This training is organised and delivered by the Vocational Training Directorate within the General Directorate for Methodology, Planning and Reporting.

In 2018, six training sessions were conducted (for a total of 71 hours) in the field of public procurement, including in terms of transparency of the procurement process, and attended by 92 employees of the Court of Accounts (82% of total employees with audit responsibilities). In 2019, 100 employees were trained (89% of total employees with audit responsibilities) in five training sessions (for a total of 34 hours). During the professional training phase of the certification process of public auditors, special attention is paid to familiarizing employees with audit responsibilities with the rigors and the existing national regulatory framework in the field of public procurement.

On the other hand, there is no corresponding programme for internal auditors within the contracting authorities.

The Court of Accounts has well established criteria and procedures for the selection, engagement and management of auditors, and applies them as a matter of routine in its regular operations.

Corresponding criteria for internal auditors also exist, but their application by contracting authorities is quite limited, in the absence of established practices and, frequently, of adequate resources for their engagement and management.

- **Substantive gaps and their associated risks**

The various institutions involved in audit and control suffer from a lack of a harmonised, overarching approach for audit and control; as a result, there are gaps and overlaps in their roles, responsibilities and activities and the requirements and criteria applied in their work are not uniform across the board, so contracting authorities may face repeated checks of the same actions as well as diverging or even contradictory expectations and obligations.

Despite its great potential for improving public procurement, internal audit still remains very underdeveloped and has a long way to go. Policies and procedures as well as guidance and training

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materials are available but internal audit is not yet widely practised by knowledgeable and skilled practitioners.

Closing both gaps has the potential to greatly improve efficiency, economy and integrity in public procurement and not closing them is therefore associated with high risks.

- **Main recommendations**

Review the approach to audit and control with a view to simplify the approaches and the institutional set-up, clarify roles and responsibilities and reassign them in a way that eliminates gaps and overlaps.

Harmonise the criteria and requirements applied in audit and control, so that contracting authorities can clearly know what is expected from them.

Intensify the efforts to roll out internal audit and make it effective, in harmony with measures taken to concentrate public procurement responsibilities to a smaller number of adequately staffed and resourced contracting authorities.

Specific gaps and corresponding recommendations for Indicator 12

No.	Specific gaps/shortcomings	Specific recommendations
12.a)	The Court of Accounts has room for further development of procurement audits, with relatively greater emphasis on outcomes and performance	Refocus the approach of the Court of Accounts when auditing public procurement towards outcomes and performance of procurement operations relative to their original objectives, the approaches taken and the resources used; by revising rules and procedures, (re-)training and (re-)allocating staff accordingly and adding staff and other resources as may be necessary for the purpose, and improving corresponding monitoring and reporting
12.b)	The findings and recommendations of the Court of Accounts are not fully applied in a timely and transparent manner	Revise rules and procedures for monitoring the implementation of the recommendations of the Court of Accounts, adequately sanctioning any failure to abide by them; and clarify and strengthen the parliamentary oversight in order to help more effectively address systemic shortcomings
12.c)	Existing arrangements for training and capacity building for internal auditors do not match the needs	Review the possibilities for improving and expanding academic training for future and current internal auditors and for complementing it by on-the-job training and other means for professional development, and incorporate corresponding measures in the broader measures for intensifying the development of internal audit

3.4.3 Indicator 13. Procurement appeals mechanisms are effective and efficient

Pillar I covers aspects of the appeals mechanism as it pertains to the legal framework, including creation and coverage. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

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- Findings

Main substantive gaps and recommendations for Indicator 13

No.	Substantive gaps / Red flags	Risk	Recommendations
13.1.	Possibilities to search for and analyse ANSC decisions from a number of points of view are very limited, so the case law that they establish is not easily accessible	High	Publish the decisions of the review body in a structured, searchable format and create a database of past decisions, in order to raise transparency and support consistency of decision making by the ANSC
13.2.	There is no mechanism in place to ensure that the interpretation and application of the PPL becomes harmonised across the policy making, advisory and supervisory institutions dealing with public procurement, including the ANSC, so contracting authorities and economic operators may face different or even contradictory expectations and requirements	High	Institutionalise regular consultations between the policy making, advisory and supervisory institutions dealing with public procurement, including the ANSC, with a view to harmonise the interpretation and application of the public procurement law, in a way that adequately respects the specific mandates of the institutions concerned and recognises their independence

Sub-indicator 13(a) – Process for challenges and appeals

This sub-indicator looks at the process that is defined for dealing with challenges or appeals and sets out some specific conditions that provide for fairness and due process.

The National Agency for the Settlement of Complaints (ANSC) is the specialised review body in charge¹ of the first review of complaints against public procurement related decisions and actions or inactions of contracting authorities during preparation and award of public contracts; there is no requirement to first lodge a formal complaint with the contracting authority.

It is not limited with respect to the evidence it can use as the basis for rendering its decisions. Each party must prove what it claims, and in the event that further evidence is not accessible from open sources, the ANSC's decision is made only on the basis of the evidence submitted by the parties. In fact, the Administrative Code, Art. 22, provides that the competent public authorities and courts shall *ex officio* examine the facts independently, that they themselves determine the type and volume of research needed, and that they are not bound by or limited to neither the submissions by the parties nor their requests for evidence.

A decision by which the ANSC annuls, in whole or in part, the contested act is binding² on the contracting authority and, in general, its decisions are binding on the parties. As a result, any public procurement contract concluded in non-compliance with the decision of the ANSC is struck by absolute nullity. Nevertheless, the decisions of the ANSC can be challenged in court. This happens only in fairly rare cases³:

¹ PPL, Art. 80

² PPL, Art. 86

³ See ANSC's annual report for 2019, p. 53; https://www.ansc.md/sites/default/files/document/attachments/raport_2019.pdf

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five appeals against 200 ANSC decisions in 2017, 17 out of 726 in 2018 and 21 out of 805 in 2019. None of ANSC's decisions were struck down by the courts in 2017 and 2018 and only two in 2019.

Complaints have to be lodged¹ no more than five or ten days (depending on the estimated value of the contract) after the complainant learned about the decision or other action against which the complaint is made.

The ANSC has to resolve the complaint on its merits within 20 working days from the date of receipt of the complaint. In duly justified cases, the time limit for resolving the complaint may be extended once by 10 days. However, the ANSC shall first rule on whether the complaint is receivable² and, if not, it shall state so within ten days, and the substantive examination of the case shall not proceed.

As required by the Remedies directives of the EU, Art. 32 of the PPL includes an obligation to observe a stand-still period of 11 or six days, depending on the contract value, until the contract can be signed. This time period is calculated from the date when the participating tenderers, including the winning one, are informed about the outcome of the evaluation. The intention is to allow complaints to be made against the award decision before the conclusion of the contract makes any remedies difficult or onerous to apply. However, this intention is not always possible to meet in certain specific cases (see also sub-indicators 1 (h) a) and 7 (a) d).

First, the stand-still period remains optional³ when the contract has been concluded following a negotiated procedure without publication of a notice or when only one tender has been received in a competitive procedure. This means that other, prospective tenderers or any other party with legal standing to lodge a complaint effectively become denied the possibility to lodge a complaint against the choice of procedure (including the failure to use a competitive procedure) as well as against the award decision before the contract is concluded. On the other hand, the rules in the Remedies Directives concerning contract ineffectiveness are well transposed⁴ in the PPL.

Second, in principle⁵, also any other interested parties have the right to lodge complaints. However, in practice, they are not allowed to do so against the award decision, not only because they do not have access to any timely information about it, as discussed above, but also because the ANSC limits the right to do so to the participants in the tender, to the exclusion of anyone else.

Sub-indicator 13(b) – Independence and capacity of the appeals body

This sub-indicator assesses the degree of autonomy that the appeals body has from the rest of the system, to ensure that its decisions are free from interference or conflict of interest.

No fee is currently charged for lodging complaints. A recent, draft Government decree is understood to propose to amend the PPL by introducing a fee for lodging complaints, proportionate to the estimated value of the contract but with floor and ceiling amounts and to be reimbursed in case the complaint is accepted. The stated, underlying reason would be the allegedly high frequency of frivolous complaints against the CAPCS when procuring medical products and the resulting delays and complications in the

¹ PPL, Art. 83

² PPL, Art. 86 (1)

³ PPL, Art. 32 (3)

⁴ PPL, Art. 88

⁵ PPL, Art. 82

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process, and the presumption that a fee would be appropriate for resolving the problem. However, this draft decree has not yet been published.

Such fees are currently charged in some EU countries and, if the amounts are reasonable, would not contradict the applicable provisions of the EU Directives. In other countries there are no such fees, in particular where it is considered that access to justice should be free. Experience from these same countries seems to indicate that a fee is neither necessary nor sufficient for the purpose, and that other means can be taken for reducing or eliminating frivolous complaints and, in general, for preventing complaints from unduly delaying or complicating the procurement process. Such other means do not appear to have been much examined, however, but would merit further consideration.

Apart from the provisions of the PPL on the submission and review of complaints and the status and work of the ANSC, the activities of the latter are further defined in Parliament's decision 271/2016 on the establishment, organisation and functioning of the ANSC.

However, the right or duty of the ANSC to examine or not to examine also other aspects of a public procurement process than those explicitly covered by the complaint received, and to take or not to take measures for addressing any other errors or omissions or illegal decisions than those complained against, is not clearly set out in the applicable regulations. While the ANSC initially appears to have had the ambition to carry out a general *ex officio* review of the whole process in each case, a subsequent court decision had the effect of limiting its role strictly to that of a complaints review body only, without any further supervisory role or authority.

Possibly as a consequence of the same court ruling, Law 169¹ of 26 July 2018 deleted, with effect from 1 October 2018, the previous provision in the PPL (Art. 80 (4)) requiring the ANSC to report to the PPA any other violation of the PPL than that which was subject of the complaint. However, Parliament's decision 271/2016 on the set-up and the workings of the ANSC does not seem to have been revised accordingly. On the other hand, a recent draft Government decree seems to have the intention to clarify the situation by proposing to amend the end of Art. 84 (1) of the PPL to read "The [ANSC] is competent to resolve complaints regarding the public procurement procedures according to the regulation of its organisation and functioning, *within the limits of the claims made in the complaint*". In any case, one of the obvious effects of the existing and proposed limits to the ANSC's rights and duties is that any other violations of the PPL than those covered in a specific complaint are now less likely than at the beginning to be identified, reported and sanctioned.

In practice, the only remaining *ex officio* obligation of the ANSC's members and staff individually (or, possibly, the ANSC itself as an institution) appears to be that of any public servant to submit a report to the National Anticorruption Centre (or, as may be applicable, other law enforcement bodies) about any case of possible corruption. This being said, many, if not all, deviations from or clear violations of the provisions of the PPL could potentially be the result of some form of corrupt behaviour, and should therefore be duly reported if and when detected.

This situation, on the other hand, raises the additional, practical question of how clear cases of possible corruption could - or, even less, should - be distinguished from (other) deviations from the provisions in the PPL; the underlying principles seem to require that they should all be reported, and those reports

¹ <http://lex.justice.md/md/376886%20/>

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should be acted on, to the extent that the ANSC would not be entitled to meting out at least a limited range of sanctions itself, among the other remedies at its disposal. This situation remains to be clarified, with due attention to possible implications for resources and staffing of the ANSC and other authorities concerned.

There is no automatic suspension of public procurement proceedings when a complaint is lodged. However, in duly justified cases and for the prevention of an imminent damage, at the request of the interested party, until the resolution of the merits of the case, the ANSC has the right¹ to issue a decision within three days, to suspend the public procurement procedure. Similarly, the contracting authority does not have the right to conclude the public procurement contract until the final decision by the ANSC. In practice, few or no public procurement procedures have been suspended until recently, as the *ex officio* suspension of the conclusion of the procurement contract serves the same purpose. Nevertheless, the ANSC has started making more use of this legal provision and decided to suspend some procedures, as per the decisions² published on its web page.

So far, the ANSC has always delivered its decisions within the legal time frame. However, there are cases when procurement proceedings are nevertheless delayed (because a contract cannot be signed until the complaint has been resolved) because of frivolous complaints which not only may cause delays but also block scarce administrative resources. They are not specifically identified as such and it is therefore challenging to calculate and demonstrate their occurrence and effects. In the data from the ANSC report for 2019 it could nevertheless be assumed that some of the complaints that remained without examination could represent frivolous complaints. Thus, out of the total of 805 complaints in 2019, in the case of 600 (75%), the ANSC examined the substance, while out the other 205 complaints, 49% were submitted too late, 14% were not within the competence of the ANSC, 10% were non-compliant, 10% remained without object, and 17% were returned without being examined.

The PPL states³ that the decisions of the ANSC are binding on the parties. However, the Contravention Code does not include any corresponding provisions and no sanctions are established for failure to abide by the ANSC's decisions.

Parliament decision 271/2016 sets the number of ANSC staff positions to 30, remunerated according to the applicable legislation (Law on civil service). However, in 2019, these staff positions were only filled to 63.3 % (19 staff members, on an average). Among other possible reasons, this reflects the fact that reviewing and resolving complaints is a fairly narrow area, where it is necessary to accumulate knowledge and skills in the field of law and public procurement, concessions, utilities. This is said to be a major difficulty in recruiting competent staff, since such specialists are not available on the labour market in sufficient numbers to cover demand.

On the other hand, the current performance of the ANSC seems to indicate that, despite not having been able to fill all staff positions allowed, it is adequately resourced and staffed to fulfil its functions. This being said, its internal organisation and ways of working may merit review. In particular, there is no evidence that the ANSC is using any kind of case management system that would help it ensure that complaints are recorded and dealt with in ways that are fully transparent and raises the ANSC's administrative efficiency,

¹ PPL, Art. 85 (14)

² See <https://ansc.md/ro/content/decizii-suspendate>

³ PPL, Art. 86 (11)

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also allowing the ANSC itself to have easy access to relevant, past decisions and thereby better ensure the consistency of its rulings, as well as giving any external interested party effective access to past rulings. In fact, a contracting authority may consider a certain approach or an economic operator may envisage making a complaint, and only full access to a searchable data base of past ANSC rulings would give appropriate guidance for those seeking to apply the applicable case law set by the ANSC. Doing so would then likely give the benefit of reducing the number of potential violations as well as the number of not well founded complaints.

In face of the rising number of complaints, including frivolous ones, further measures could be envisaged with a view to quickly and reliably identify, examine and reject frivolous complaints.

The ANSC can use external expertise if needed, but this possibility in principle is facing practical limitations because of the difficulty in a small country like Moldova to find external experts who are both competent in the subject at hand and free from conflicts of interest.

Sub-indicator 13(c) – Decisions of the appeals body

This sub-indicator examines the decisions of the review body and what happens once they have been taken.

In order to resolve the complaint, the ANSC has the right¹ to request clarifications from the parties, to seek evidence and to request any other data or documents insofar as they are relevant in relation to the object of the complaint.

The ANSC must² be unbiased in its decisions. A survey conducted by the ANSC itself in the second half of 2019 indicates that 73% of responding economic operators consider the decisions of the ANSC to be “credible” and that 93% of the respondents consider that the procedure for examining complaints is duly carried out *inter partes*, in compliance with the principles of legality, speed and the right to defence. No separate, independent survey on the topic has been carried out during the MAPS assessment.

The remedies available are set out in the legislation³. After examining the contested action or decision from the point of view of its legality and validity, the ANSC may annul it in part or in whole or oblige the contracting authority to issue an decision, or order any other measure necessary to remedy the actions affecting the procedure. The ANSC does not have the right⁴ to award the contract to another tenderer.

All decisions of the ANSC are published⁵ on its website in the form of PDF files, within the time limits set by the legislation. A separate overview of the complaints made is also published⁶ by the ANSC . In both cases, filters allow certain categories of complaints and decisions to be identified. In parallel, information on any complaints made is published in the e-procurement system⁷, but only for each individual procedure.

The possibilities to search decisions according to various criteria are thus rather limited. It is therefore difficult for both contracting authorities and economic operators to get a clear overview and

¹ PPL, Art. 85 (1)

² PPL (Art. 80 (12)

³ PPL, Art. 86 (3)

⁴ PPL, Art. 86 (7)

⁵ <https://ansc.md/ro/decizii>

⁶ See <https://ansc.md/ro/contestatii/2020>

⁷ www.mtender.gov.md

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understanding of the case law established by the ANSC decisions and to try to determine, by reference to earlier decisions, the possible outcome in case a complaint is envisaged to be made. In the absence of such a searchable database of past decisions, it is also difficult to examine, and even for the ANSC itself to ensure, the consistency of the rulings of the ANSC.

The ANSC has started addressing some elements of this issue by publishing its 'unified practices' based on the most frequent complaints and the ways the ANSC has resolved them. While only three have been published¹ so far and they do not diminish the need for a searchable data base of past decisions, it is nevertheless a useful initiative for raising awareness and creating greater predictability about the reasons for complaints, the way they would be addressed, and thus how to prevent them from being made in the first place.

The lack of easy, comprehensive access to a significant number of past ANSC decisions in a number of typical cases (frequently encountered subjects of complaints) also means that it is difficult to compare the ANSC's interpretation of the provisions of the PPL with that of other advisory and supervisory bodies. This creates the risk for both contracting authorities and economic operators that they may face conflicting expectations and requirements from, e.g., the PPA, the CNA, the Court of Accounts, and the ANSC itself. There is currently no mechanism in place for harmonising the interpretation of the PPL among these institutions.

- **Substantive gaps and their associated risks**

Despite the efforts of the ANSC to ensure transparency, a substantive gap remains, in that there are rather limited possibilities to search for and analyse decisions from a number of points of view; as a result, it is difficult both to ensure (by the ANSC itself) and to verify (by external observers) the consistency of the rulings made and to get a clear view and understanding of the case law that they establish. The absence of such a searchable data base and of a case management system that would help generate contents for the data base and facilitate the work of the ANSC is therefore a gap that is associated with high risks if not closed.

Even if not explicitly required in the MAPS methodology, a second source of concern exists in that there is a risk that the interpretation and application of the PPL is not well harmonised across the policy making, advisory and supervisory institutions dealing with public procurement, including the ANSC, so that contracting authorities and economic operators may face different or even contradictory expectations and requirements. This, in turn, creates uncertainty and constitutes a drain on scarce staff resources, with both leading to higher costs for both monitoring and for ensuring and demonstrating compliance, and may lead to risk avoidance by contracting authorities and their staff (often with negative effects on value for money) and less interest of economic operators to participate in public procurement (thus reducing competition and, again, value for money). For these reasons the associated risk is set to 'high'.

- **Main recommendations**

Develop and introduce a fully searchable data base of decisions for both external and internal access, in the latter case possibly integrated with case management and document management systems.

¹ <https://ansc.md/ro/advanced-page-type/practica-unitara>

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Set up a framework for regular consultations between the authorities concerned about the interpretation and application of the PPL and, consequently, how advice should be given, complaints would be addressed, and requirements and criteria would be applied in audit and control.

Further recommendations for addressing specific shortcomings are listed here below.

Specific gaps and corresponding recommendations for Indicator 13

No.	Specific gaps/shortcomings	Specific recommendations
13.a)	The question of possibly charging a fee for complaints has been raised but has not been comprehensively addressed	In consultation among all authorities concerned as well as with the business community and civil society, review the arguments made for introducing a fee and the practical consequences of doing so, identify and examine the actual reasons behind the problems intended to be addressed by a fee as well as alternative means for resolving them, and agree on and implement a solution
13.b)	Civil servants, including ANSC members and staff, have a general obligation to report possible acts of corruption, and any violation of the PPL may be the result of such acts, but there is no clear right or duty of the ANSC itself to meet this obligation (or not) by reviewing (<i>ex officio</i>) the whole procurement process where a complaint has been made	In consultation among all authorities concerned as well as with the business community and civil society, review the question of <i>ex officio</i> review of public procurement processes subject to complaints, examine the possible solutions with their advantages and disadvantages, and agree on and implement a solution
13.c)	The number of frivolous complaints is thought to be rising, creating fears of increasing delays in public procurement proceedings and case overload at the ANSC	Monitor the frequency, nature and underlying reasons of frivolous complaints and consider which measures may need to be taken in case they increase to the point of endangering the ANSC to do its work on time and with the required quality.
13.d)	Unnecessary delays to the procurement process may be caused by possibilities to repeatedly lodge complaints while proceedings are suspended, as well as by frivolous complaints	Review and revise the rules for when complaints may be made on what aspects of the public procurement process; analyse the incidence of frivolous complaints and seek better ways to quickly and reliably identify, examine and reject them
13.e)	The ANSC does not appear to have a well functioning case management system including, in particular, a comprehensive, searchable data base of past decisions that is also freely accessible	Review and revise the ANSC's internal procedures and put a corresponding case management system in place, including a publicly accessible data base of past decisions
13.f)	No data is available for evaluating the risk of conflicting interpretation of the PPL by various advisory and supervisory bodies dealing with public procurement, including the ANSC	Review and compare the decisions and recommendations of the various advisory and supervisory bodies dealing with public procurement, including the ANSC; identify the nature and extent of any discrepancies; and, to the extent that such discrepancies are found, set up a consultation mechanism for harmonising the interpretation and application of the PPL's provisions among the bodies concerned

3.4.4 Indicator 14. The country has ethics and anti-corruption measures in place

This indicator assesses i) the nature and scope of anti-corruption provisions in the procurement system and ii) how they are implemented and managed in practice. This indicator also assesses whether the system strengthens openness and balances the interests of stakeholders and whether the private sector and civil society support the creation of a public procurement market known for its integrity.

- **Findings**

Main substantive gaps and recommendations for Indicator 14

No.	Substantive gaps / Red flags	Risk	Recommendations
14.1.	Low effectiveness of anti-corruption measures: procedures are in place but not systematically applied and initial findings do not always lead to further investigation and even less convictions and sanctions	High	With external, unbiased expert assistance, review the actual functioning and outcomes of all measures in place for preventing, identifying and sanctioning fraud and corruption; identify shortcomings and their underlying reasons; revise the legal and institutional framework accordingly; and monitor the effects and the outcomes of the new approaches taken
14.2.	Lack of systematic review, analysis and follow-up of information in the form of declarations of absence of conflicts of interest and of assets held	High	Raise the level of transparency of the review of declarations of conflicts of interest and of assets as well as of the measures taken; monitor the work of the supervisory body in charge and ensure that possible breaches become investigated and, when applicable, duly sanctioned

Sub-indicator 14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties

This indicator assesses the existence of legal provisions that define fraudulent, corrupt and other prohibited practices and set out the responsibilities and sanctions for government employees, individuals or firms indulging in such practices.

Definitions of fraud, corruption and other prohibited practices in public procurement are found in the legislation. The PPL refers¹ to bribery as the situation in which the economic operator proposes or agrees to propose, directly or indirectly, to any person with responsibility position or to any employee of the contracting authority a favour in any form, offer of employment or any other service as a reward for certain actions, decisions or application of a public procurement procedure to his advantage. Without giving strict definitions, references to prohibited practices can be found also in other articles, e.g. in the definition² of a non-compliant offer. However, the provisions are general and not harmonised with other applicable legislation in force and there are no effective means for monitoring their application and sanctioning any breaches.

Definitions of fraud, corruption and other prohibited practices, applicable to public procurement, can also be found in a number of other normative acts adopted from 2016 onwards. These include the

¹ PPL, Art. 42 (1)

² PPL, Art. 1

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National Strategy for Integrity and Anti-corruption (SANI) for the years 2017-2020 and its action plan¹, which regulates the aspects of integrity in the public / private sector and define the general notions of corruption, corruption manifestations and other corrupt facts. Other applicable laws include law no. 82/2017 on integrity, law no. 133/2016 regarding the declaration of assets and personal interests, and law no. 122/2018 regarding integrity warnings.

The PPL sets out a number of cases² when tenderers or tenders are rejected or contracts nullified as a result of corruption. Corresponding provisions are found in several Government decrees³ regulating procurement practices. Further provisions regarding ethical and integrity behaviour, facts considered illegal and corrupt, obligations of contracting authorities to act and report such cases, but also other aspects are detailed in most of the standard documentation in public procurement.

The PPL stipulates⁴ the obligation of the contracting authority to take all necessary measures to avoid situations that may cause a conflict of interest to arise during the application of the procedure for awarding the public procurement contract. To this end, those engaged in the evaluation must sign⁵ a declaration of confidentiality and impartiality and refrain⁶ from participating if there is a situation of conflict of interest. There is also a corresponding obligation⁷ to exclude a tenderer who is in a situation of conflict of interest. However, according to information provided by the National Anticorruption Centre, many conflicts of interest remain undeclared and are not being addressed.

Further regulations applicable to conflicts of interest in public administration in general are found in the law of integrity no. 82/2017, the law regarding the declaration of wealth and personal interests no. 133/2016 and the law regarding the National Integrity Authority no. 132/2016. However, there is an unresolved overlap of competence between the latter authority and the PPA with respect to the measures to be taken if a case of conflict of interest is detected.

In law no. 82/2017 on integrity, law no. 133/2016 regarding the declaration of wealth and personal interests and law no. 132/2016 regarding the National Integrity Authority, there are explicit restrictions and limitations in connection with the termination of the mandate, employment or service relationships of officials in case they move to the private sector. The purpose is to prevent former public servants from obtaining benefits due to the previously held function and to information obtained in the exercise of that function.

Sub-indicator 14(b) – Provisions on prohibited practices in procurement documents

This sub-indicator assesses the extent to which the law and the regulations compel procuring agencies to include references on fraud, corruption and other prohibited practices, conflict of interest and unethical behaviour, as defined in the law in the procurement and contract documents.

The legal framework does not specify the obligation to insert in the procurement documents and the procurement contract the provisions regarding the prohibited practices, nor are there any instructions in

¹ Adopted by Parliament Decision no. 56/2017

² As in Art. 19 (10)-(12), 42 (1) and (4), 69 (6) and 71 (1)

³ Government decrees 826/2012, 766/213, 668/2016, 669/2016, 987/2018

⁴ PPL, Art. 79 (1)

⁵ PPL, Art. 79 (5)

⁶ PPL, Art. 79 (6)

⁷ PPL, Art. 19 (3)

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this regard. Nevertheless, references in this regard are found in some standard documentation, though with certain overlaps, e.g. an obligation of the economic operator to include a "Declaration on ethical conduct and non-involvement in fraudulent and corrupt practices" in the tender and the requirement to indicate in Part III of the ESPC whether the tenderer falls under any of the criteria for exclusion. In fact, this latter requirement together with provisions in other legislation could well imply that the "Declaration" mentioned may not bring any clear benefits, while its use creates additional administrative burdens. On the other hand, the requirement for declarations on ethical conduct and non-involvement in fraudulent and corruption practices as part of the tenders and for the ESPD does not apply to all public procurement.

The legal framework does not provide an obligation to insert statements regarding fraud, corruption and other prohibited practices in the procurement contracts, and none have been found in the 69 contracts received from the PPA and analysed as part of the MAPS assessment.

Sub-indicator 14(c) – Effective sanctions and enforcement systems

This indicator concerns the enforcement of the law and the ability to demonstrate this by actions taken.

The PPA, the contracting authority and the economic operator are required¹ to immediately report to the competent bodies each case of corruption or attempted corruption committed by the economic operator or the representative of the contracting authority. A similar requirement is found in the secondary legislation². However, it is not abundantly clear how this requirement should be met in practice.

In addition, the general rules for reporting illegal practices, corruption acts and the like apply. They are provided in law no. 82/2017 on integrity, law no. 122/2018 on integrity warnings, law no. 1104/2002 on the National Anticorruption Centre, law no. 122/2003 containing the Code of criminal procedure, but also other normative acts, such as law no. 2/2016 on the prosecutor's office, law no.320/2012 regarding the activity of the police and the status of the policeman, law no. 133/2016 regarding the declaration of wealth and personal interests, and law no. 132/2016 regarding the National Integrity Authority, as well as in some other normative acts.

Statistics regarding the number of reports of fraud, corruption and other prohibited practices in public procurement are not found, neither in the annual activity reports of the PPA nor in the annual activity reports of the National Anticorruption Centre. As implied by the latter reports and as stated by the CNA, a major problem, including in the field of public procurement, is the non-reporting of corruption cases and related to corruption by those who know about such cases. This is largely due to corruption, lack of independence in these bodies, lack of confidence in the CNA, lack of confidence in the justice of the Republic of Moldova, but also the fear that the denunciation will occur adverse consequences for the person or company making such a report, as illustrated by the results of the Impact Assessment Study of the National Integrity and Anticorruption Strategy - Moldova 2019³, elaborated by the Centre for Social Studies and Marketing "CBS-Research" at the request of the United Nations Development Programme.

As mentioned in sub-indicator 14 (a), evaluation criterion (b), there are several legal provisions in PPL and in subordinate normative acts according to which the economic operator is excluded from the public procurement procedures. Either the tender is rejected or the procedure is annulled in cases with acts of

¹ PPL (Art. 42 (3))

² E.g. Government decree no. 667/2016, point 21

³ See https://www.undp.org/content/dam/moldova/docs/Studiu_CBS_CNA_final%20clean_ROM.pdf.

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corruption or the existence of definitive judgments of the courts. The PPL provides¹ for exclusion of the tenderer if convicted, by final decision of a court, for corruption and fraud in the last five years. However, the PPL does not expressly exclude the bidder in the case of acts of corruption committed directly in the procurement procedure that takes place. According to the law, rejection of the tender and cancellation of the contract award procedure take place only after the acts of corruption become confirmed by a final decision of the court. In this case, these rules are ineffective, since the lawsuits may take a long time, even years, before such a final decision is reached. As a result, the contracting authority will have no reason to reject the tender or cancel the procedure which takes place in a much shorter time than the judicial process. At the same time, the legal framework does not provide for measures to suspend the procurement procedure or the tenderer in case of corruption.

As a complement to the above, a system has been introduced for creating a list of economic operators prohibited from participating in public procurement procedures. The contracting authority has then the obligation to exclude from the procedure any tenderer or candidate who is included in the list². In addition, the economic operator registered in the list or one that has at least one founder who is or was the founder of another economic operator registered in the list is not entitled³ to participate in any public procurement procedures and the contracting authority must not award any public procurement contracts to it. Correspondingly, the contracting authority has to check the list before the start of the evaluation⁴. It should be noted that the current e-procurement system does not allow this rule to be applied, in that the qualifications and the grounds for exclusion of tenderers are not verified before an electronic auction is held.

The list is drawn up, updated and maintained in electronic form by the Public Procurement Agency⁵, which also takes the decision to list or de-list an economic operator, based on requests from a contracting authority or the ANSC or on its own initiative. An economic operator can be put on the list for up to three years in each case. Further details on the use of the list are regulated by Government decree 1418/2016,

The grounds for inclusion on the list⁶ partly overlap with the compulsory grounds for exclusion in the PPL⁷. On the other hand, the grounds for inclusion on the list also include failure by the economic operator to abide by its contractual obligations or delivery of goods, works or services of a lower quality than specified in the contract or the tender documents, in particular when this has led to the termination of the contract.

This last point is in line with the EU's Public Sector Directive⁸. However, the PPL does not contain any corresponding provision, so it is not possible for a contracting authority to "exclude from participation in a procurement procedure any economic operator [...] where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions", except by requesting the tenderer to be put on the list of economic operators prohibited from participating in public procurement procedures and

¹ PPL, Art. 19 (1), (2)

² PPL, Art. 19 (3) i)

³ Government decree 1418/2016 (20)

⁴ PPL, Art. 25 (2)

⁵ PPL, Art. 25

⁶ Government decree 1418/2016, item 14

⁷ PPL, Art. 19

⁸ Directive 2014/24/EU, Art. 57 4. (g)

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waiting for this request to be approved. However, this cannot necessarily be done within reasonable time during an on-going evaluation process. There are also no other means for a contracting authority to easily access information about past instances of bad performance by a particular tenderer. In principle, the compulsory contract execution reports could probably meet this need but the brief information now published is not adequate for the purpose.

A contracting authority can make a request to the PPA for such listing up to 60 days after the appearance of any relevant grounds. The PPA has issued detailed instructions¹ for this purpose. The PPA then has to examine the alleged grounds and take a decision within 15 days and update the list on its website². The decision by the PPA can be challenged in court.

The PPA also has the right to delete an economic operator from the list. However, there are no specific provisions in the applicable regulations for how this would be done, on what basis and at what time. As a result, the use of the list is a blunt instrument that is difficult to use effectively and efficiently and provides little value in addition to the existing grounds for exclusion.

There is no segregated data available on convictions of fraud and corruption related to public procurement. Only reports with general statistical data from the activity of public anti-corruption authorities and courts are presented to the public. Consequently, it is difficult to identify and compile data regarding the companies or individuals who were investigated and found guilty of fraud and corruption in procurement; the number of companies or individuals who were prohibited from participating in public procurement (other than in the case of blacklisting according to Art. 25 of the PPL; see above); the number of civil servants investigated or convicted for fraud and corruption in public procurement; or the number of companies that have admitted to engaging in unethical practices, including offering any kind of bribes to obtain public procurement contracts.

Sub-indicator 14(d) – Anti-corruption framework and integrity training

This sub-indicator attempts to verify whether an anti-corruption framework is in effect, and if so, its extent and nature and any other special measures in place, such as integrity training programmes that can help prevent and/or detect fraud and corruption specifically associated with public procurement.

In the Republic of Moldova there are three main institutions in charge of prevention of corruption and fight against it: the National Anticorruption Centre (CNA), the Anticorruption Prosecutor's Office and the National Integrity Authority (ANI).

The CNA is a body specialized in preventing and combating corruption, acts related to corruption and acts of corruption, which operates according to the provisions of law no.1104/2002 regarding the CNA and other normative acts. The CNA is a unitary body, centralized and hierarchical, consisting of central apparatus and territorial subdivisions (North, Centre, South). In accordance with the Decision of the Parliament no. 34/2016, its staffing is limited to 359 full time positions.

Pursuant to the new law no. 3/2016 regarding the prosecutor's office, the prosecutor's office system includes the General Prosecutor's Office, specialized prosecutor offices and territorial prosecutor offices.

¹ See https://tender.gov.md/sites/default/files/instructiuni_lista_de_interdictie_2.docx

² See <https://tender.gov.md/ro/lista-de-interdictie>

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The Anticorruption Prosecutor's Office is a specialized prosecutor's office, headed by a chief prosecutor, assimilated to the Deputy Prosecutor General and specialised in the fight against corruption offenses and acts related to corruption. It may have territorial offices or representations in the territory. .

The National Integrity Authority is responsible for the control of the declarations of wealth and personal interests, as well as the control of the compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations. The control is carried out by ANI in accordance with the provisions of law no. 132/2016 regarding the ANI, law no. 133/2016 regarding the declaration of wealth and personal interests and law no. 82/2017 on integrity.

In the arsenal of the CNA there are a number of tools used to identify corruption risks, including in public procurement. In this regard, the CNA carries out the following measures¹:

- anti-corruption education;
- anticorruption expertise of normative acts;
- assessment of institutional integrity;
- testing professional integrity;
- strategic and operational analysis of corruption;
- monitoring and evaluation of anti-corruption policies.

However, there is no mechanism in place specific to public procurement. Nevertheless, in the process of elaborating its analytical products, the CNA found the following problems in the field of public procurement:

a. Defective planning of public procurement

- In most cases, the contracting authorities did not plan public procurement efficiently, with initial formal plans and frequent changes being noted.
- The contracting authorities do not publish on the web pages the provisional / annual procurement plan, within 15 days from its approval or within 5 days from the modification.

b. Shortcomings in the preparation of the award documentation

- Providing incomplete information regarding requirements, criteria and rules offers possibilities of interpretation regarding the object of the contract and the selection of the interested offer.
- The inclusion in the documentation of the awarding of specific requirements, benefits some participants in relation to the other bidders.

c. Deficiencies in awarding contracts

- Determining the least advantageous offer considering only the lowest price (example of poor quality food in educational institutions).
- Undervaluation of the bidders according to the qualification requirements (the personal, technical, professional, economic-financial capacity of the bidders). Examples of cases when newly created companies, with 1-2 employees, are selected for the start of complex works (tens of millions of lei).

d. Insufficient control in the process of contract execution

¹ CNA 2019 Activity Report, https://cna.md/public/files/Raport_CNA_2019_ro_engl.pdf

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- Negligent attitude of the representatives of the contracting authority towards the quality of the execution of the contract (Ex: Receiving the acquisition object over the established time limits, with delays of up to 6 months).
- Not checking the quality of the products received.
- Non involvement the specialists in the field to receive goods, works and services (Ex: construction works, IT equipment, etc.).
- Failure to take actions to sanction economic operators.

e. Protecting the illegal actions of the actors involved in public procurement

- Prevention by the heads of subdivisions of the National Agency for Food Safety and the General Directorate of Youth and Sport Education of the Chisinau Municipal Council regarding the initiation of controls at the economic agents and educational institutions.
- The lack of evidence of the controls carried out by the National Agency for Food Safety and the National Agency for Public Health creates favourable conditions for committing abuses and acts of corruption among employees, which can also generate poor quality food products.

f. Public money allocated for non-functional information systems

- The information systems in the possession of 11 central public authorities and subordinated institutions were worth about 749 million lei. Of these, 13 information systems are non-functional, amounting to 28 million lei.

g. Increasing the value of the basic contracts, including over 15%

- In case of the designation as the winners of the offers with the lowest prices, agreements are often admitted to increase the value of the initial contract.
- The increases are allowed both within the legal threshold of up to 15% and above, and in some of these cases, abnormally low tenders were found, which represented up to 85% of the value of the works calculated by the contracted authority in the established way.

h. Not publishing data regarding inclusion in the debarment list

- The Public Procurement Agency does not permanently ensure the publication of new operators included in the Prohibition List (the example of a company that, despite the existence of a final court decision to be included in the list, was not included in the Prohibition list, and the respective company continues to win. public procurement contracts in the amount of 1.2 million lei).

i. Initiation of civil proceedings for the purpose of delaying inclusion in the Prohibition list. Omission of the term for requesting the prohibition.

- The request by the authorities to include the economic operators in the ban list, with the exceeding of the 45 days term, generates the rejection of the request by the PPA.
- The economic operators initiate court proceedings to delay the inclusion in the interdiction list, and in some cases, these processes last for even 3 years (the public procurement monitored in this sense has a value of 35.5 million lei).

j. The uneven application of the legislation by the judges regarding the decisions of inclusion in the interdiction list

- In 2 similar cases, the same judge took two diametrically opposed decisions.

k. The interdiction list only works for legal entities

- Identified several cases when the founders abandon their companies included in the Prohibition List and intervene in the process of public procurement with new companies, managed through other persons, including their relatives (Example: in 2017 a company in the field of public food is included in the List of interdiction, and its representatives found another company with which it wins 450 public procurement contracts between March 2017 - October 2019, in a total value of over 100 million lei).

The CNA ensures the monitoring and evaluation of the implementation process of the main instrument of public policies in the field of integrity, the National Strategy for Integrity and Anti-corruption for the years 2017-2020 and its action plan, adopted by Parliament Decision no.56/2017. During 2019, two Monitoring and Evaluation Reports of the National Integrity and Anticorruption Strategy were prepared: the report for 2018 and the report for the first semester of 2019¹. The reports make a quantitative and qualitative analysis of the progress of the actions and identify the deficiencies and the challenges encountered by the implementing entities. Regarding public procurement, the National Strategy for Integrity and Anti-corruption provides for the approval and implementation of the sectoral anti-corruption plan in the field of public procurement. This plan was approved by Government decree no. 370/2018. It includes 21 actions to be taken by the responsible institutions in the period 2018-2020.

The anti-corruption authorities publish annual activity reports on the web, in which statistical data on legal proceedings and corruption convictions are calculated. In 2019, 640 criminal cases were started by the criminal prosecution officers from the CNA, of them 546 were corruption offenses and related to them, and of these criminal cases only 253 were finalized (46%), the rest of the criminal cases were terminated for various reasons. According to Strategic Analysis of the CNA regarding the sentences adopted by the courts in 2019 on criminal cases for corruption and corruption related facts and the profile of the subject of corruption offenses, 88% of the decisions taken by the courts on corruption files and those related to corruption are condemnation, and 12% of them are sentences of acquittal. The prison with real execution was applied in 13% of cases, and the average term was 2 years and 5 months. In most cases courts applied criminal fines, with an average value of 86,235 lei per case.

However, it is hardly possible to reliably identify the cases specific to public procurement included in the global figures above.

There are no special measures designed to detect and prevent corruption in public procurement. The same legal instruments are used for all areas when it comes to corruption. It should be noted that Art. 327 of the Contravention Code provides for sanctions in case of violation of obligations related to public procurement. However, the Code is not up to date in this respect and there is no body clearly responsible for examining such contraventions.

In the PPA's annual report for 2019 there is no mention about conducting special trainings regarding integrity for public procurement specialists from the contracting authorities. The CNA conducts thematic trainings at the request of the public authorities. In this regard, in 2019 a request was received from the PPA regarding the topics meant to strengthen the climate of integrity within public entities, and as a result the CNA conducted two trainings attended by 18 PPA staff members.

¹ Monitoring report on the implementation of SANI sem. I 2019, https://cna.md/public/files/Raport_SNIA_sem_I_2019_final.pdf

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Sub-indicator 14(e) – Stakeholder support to strengthen integrity in procurement

This indicator assesses the strength of the public and the private sector in maintaining a sound procurement environment. This may be made manifest in the existence of respected and credible civil society groups that have a procurement focus within their agendas and/or actively provide oversight and exercise social control.

In the Republic of Moldova there are civil society organisations that have strengthened their capacities in recent years, enjoying credibility in front of citizens, public authorities and international donors. Performing social audits and controls are some of the basic functions of civil society organisations.

Some of these organisations also specialised in public procurement. The area of activity of these organisations in the field of procurement includes: elaboration of analyses and studies; formulating proposals for improving public policies and developing public procurement policies; assessing the public's perceptions of the transparency, efficiency and integrity of the public procurement system; monitoring the activity of public institutions responsible for public procurement; monitoring public procurement by contracting authorities; training of actors in public procurement procedures and other subjects (contracting authorities, economic agents, civil society, etc.); developing guides for the subjects involved in the procurement procedures and challenging them; guiding and strengthening the capabilities of local civil society organisations to monitor public procurement, etc.

Among the civil society organisations that permanently approach the subject of public procurement are, at national level the Institute for Development and Social Initiatives (IDIS) "Viitorul", the Association for Efficient and Responsible Governance (AGER), Transparency International Moldova, Promo-Lex, Expert-grup, the Public Association "Positive Initiative", while at the local level one may note the Lex XXI Human Rights Association, ADR "Habitat" Public Association and others.

The procedure¹ for including the representatives of the civil society in the composition of the public procurement working groups is a bureaucratic one and does not allow the participation in the procurement process of any citizen, who de facto and de jure is a member of the civil society. The civil society representatives cannot constitute more than 1/3 of the working group. In the absence of explicit provisions allowing the use of electronic means of communication, many of them find it difficult to use classic tools (official letters) for sending requests to participate, communicating with other members of the working group, and obtaining information quickly in order to attend the meetings of particular interest

As monitors of public procurement procedures, either through participation in working groups or through monitoring of purchases included in the MTender electronic system, civil society representatives often played a vital role in detecting illegal actions, publicising them and reporting to the authorities in charge.

One of the tools available for CSOs monitoring public procurement is to request the PPA to include a company in the Prohibition List for reasons of corruption or procurement fraud.

Actions to monitor procurement at national and local level by civil society do not always result in stopping procurement or holding those responsible to account, as the civil society is neither a control or a law enforcement body. However, in some cases, as a result of the application of public pressure, some contracting authorities take such observations into account. A recent example is procurement in the context of the COVID-19 pandemic monitored by several active NGOs (IDIS, AGER, Positive Initiative, etc.).

¹ PPL, Art. 14

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Thus, the civil society is reported to have identified several acquisitions that are not appropriate in the current emergency situation (cars, carpets, haunts, photo-video services, etc.) and reported them to the authorities. Although a decision has not yet been made to order the suspension of some acquisitions of the type mentioned, some authorities have on their own initiative cancelled the procedures initiated.

Business in the country is just taking the first steps towards implementing integrity standards within companies. The notion of compliance is new to the private sector, and one cannot yet speak of a culture and ethical behaviour in business and directly in public procurement. A recent study¹ shows that 80.8% of the companies do not elaborate an action programme with special anti-corruption rules and procedures; 76.5% of companies do not have procedures for preventing and sanctioning bribes; 66.1% of economic agents do not have procedures for preventing conflicts of interest; and 83.4% of the companies do not organize any training courses for employees or managers regarding the fight against corruption

At the moment, the internal integrity measures are largely limited to the adoption of codes of ethics in companies. According to the results of the Study of the impact assessment of the National Strategy for Integrity and Anticorruption - Moldova 2019², most of the economic agents (79%) stated that there is a Code of ethics in the organisation where they operate.

A similar situation also reigns in the business associations, many of which are poorly developed and have low capacities, including in the aspect of elaborating and implementing internal compliance measures.

Sub-indicator 14(f) – Secure mechanisms for reporting prohibited practices or unethical behaviour

This sub-indicator assesses the following: i) whether the country provides, through its legislation and institutional set-up, a system for reporting fraudulent, corrupt or other prohibited practices or unethical behaviour; and ii) whether such legislation and systems provide for confidentiality and the protection of whistle-blowers.

According to the Regulation on the functioning of the system of anti-corruption telephone lines, approved by law no. 252/2013, these are found at three levels: a) the national anti-corruption line; b) specialized anti-corruption lines; c) lines for information in individual institutions. The three levels of anti-corruption telephone lines are intended to work concurrently and to complement each other within public entities at central and local level in order to receive information regarding corrupt acts, to enable examining the information received and taking the necessary measures, including the presentation of the respective information to the competent body.

In law no. 122/2018 on integrity warnings it is provided that the disclosure of illegal practices may be internal (communicated to the employer), external (communicated to the supervisory authorities) and public. The disclosure of the illegal practice is made in writing, through the electronic online disclosure system or to the anti-corruption telephone lines of the employers or of the supervisory authorities³. The identity of the employee who discloses illegal practices is not disclosed and is not communicated to persons suspected of such practices⁴.

¹ "Combating corruption in Moldova: what can the business do?", 2017, <http://viitorul.org/files/library/Raport%20Coruptie%20Biz%20rom.pdf>

² "CBS-Research", 2019, https://www.undp.org/content/dam/moldova/docs/Studiu_CBS_CNA_final%20clean_ROM.pdf

³ Law no. 122/2018, Art.7

⁴ Law no. 122/2018, Art.8

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Most of the central authorities have established anti-corruption telephone lines (there is no assessment of the functionality of these telephone lines), but many local authorities are lagging behind in this respect, with the exception of second-level territorial administrative units, municipalities and big cities.

Law no. 122/2018 on integrity warnings came into force on 17 October 2018. It regulates the disclosures of illegal practices within public and private entities, the procedure for examining these disclosures, the rights of integrity warnings and the protection measures of the their obligations of employers, the powers of the authorities responsible for examining such disclosures and the protection of whistle blowers. In order to detail some aspects, the Regulation regarding the procedures for internal examination and reporting of the disclosures of illegal practices has recently been approved¹.

However, there is still little evidence available about the effectiveness of these whistle blower protections.

The regulatory framework regarding integrity warnings and information disclosure is a new one, recently implemented, and the Regulation on procedures for internal examination and reporting of disclosures of illegal practices entered into force in January 2020. In this context, there is no information on developments regarding the disclosure of information, so there is no clarity about the existence of a functional system in this regard. Further disclosure of corruption acts and its history is included in the annual statistics of the notifications and cases investigated by the CNA, the Anticorruption Prosecutor's Office and the ANI.

Sub-indicator 14(g) – Codes of conduct/codes of ethics and financial disclosure rules

This sub-indicator examines the presence and use of codes of conduct and other measures to ensure integrity in public procurement.

Law no. 158/2008 on the civil service and the statute of the civil servant stipulates the obligation of the civil servant to respect the rules of professional conduct. The civil servant bears disciplinary, civil, contraventional and criminal liability for the violation of these norms of conduct. There is also a special law, no. 25/2008, on the Code of conduct of the civil servant, which is mandatory for all civil servants.

Most of the central authorities have elaborated and approved, by internal order, Codes of Conduct for its officials. Such Codes of Conduct have also been approved by some local public authorities. Those public entities that elaborated and approved the Codes of Conduct, largely reproduced the provisions of the Code of conduct of the civil servant, adopted by law no. 25/2008. However, there is no data regarding the share of public entities, including contracting authorities, that have such a code of conduct in place. Although the State Chancellery has the power to monitor the application of law no. 158/2008, neither the State Chancellery nor any other public authority monitors the application of the Code of conduct of the civil servant. As a result, data on this aspect is missing.

One of the chapters of the Code of Conduct refers to the liability that arises for a civil servant in case of violation of the rules of conduct. This liability can be of several forms, including contraventional and criminal. The contraventional facts and the acts that constitute offenses are expressly established in the Contravention Code no. 218/2008 and the Criminal Code no. 985/2002.

All officials have the obligation to continuously improve their skills and professional training, and each public authority has the obligation to ensure the organisation of a systematic and planned process of

¹ Government decree no. 23/2020

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continuous professional development of the civil servant, as set out in law no. 158/2008 on the civil service and the status of the civil servant and the Regulation¹ on the continuous professional development of the civil servants. Also, at national level, a corresponding training programme has been elaborated².

Aspects of integrity and rules of conduct are part of the training programs organized for civil servants. For example, the Professional Development Plans of civil servants under the command of the state³, elaborated and published by the Academy of Public Administration, includes courses such as ethics and integrity; internal public financial control; public procurement, etc.

The latest Report of the State Chancellery on the civil service and the status of the civil servant presents information from 2018⁴. According to this report, the share of trained civil servants continued to decrease in 2018, compared to the previous years, with about 46.6% being trained out of the total number of civil servants (62.7% were trained in 2017). However, according to the Impact Assessment Study of the National Strategy for Integrity and Anti-corruption - Moldova 2019, in the last years of activity, only about 56% of the respondents participated in some trainings on ethics and integrity norms

Conflicts of interests are sanctioned according to the provisions of law no. 133/2016 regarding the declaration of wealth and personal interests. Statements of assets and other useful information are systematically submitted, but there is no evidence that the institution responsible for monitoring (the National Integrity Agency, ANI⁵) takes the necessary measures, not even in cases reported by CSOs or the press, when these declarations are incomplete or erroneous or how evident conflicts of interest are mitigated or sanctioned.

- **Substantive gaps and their associated risks**

The main substantive gap with respect to anti-corruption measures in the public procurement system is the low effectiveness of the implementation of the various existing legal provisions. A number of procedures are in place for preventing, detecting and sanctioning cases of fraud and corruption but they are not systematically applied and the initial findings of the various supervisory bodies involved are not always leading to further investigation and prosecution and even less to convictions. As a consequence, the incentives not to engage in fraud and corruption remain weak. When they happen, such cases may cause great cost and damage to the contracting authority and to the citizens which should be served by the procurement that it carries out. Unless duly addressed, this gap thus carries high risk.

In turn, this reflects gaps and overlaps in the institutional framework; e.g., the National Anti-corruption Centre, the National Integrity Authority and the Anti-corruption Prosecutor's Office have related and partly overlapping roles and responsibilities but there is little effective co-operation between them.

In parallel, the legal framework has a number of gaps or inconsistencies: with respect to public procurement, e.g., several laws and decrees create a general obligation for contracting authorities and

¹ Government decree no. 201/2009, Annex 10

² Programme of training of civil servants for the years 2016-2020, approved by Government decree no. 970/2016

³ Professional development plan 2nd semester 2019, <http://aap.gov.md/files/ddp/planuri/19/s2/cs/plan.PDF>

⁴ Report of the State Chancellery 2018,

https://cancelaria.gov.md/sites/default/files/document/attachments/raport_anual_funcie_publica_2018.pdf

⁵ See www.ani.md and <http://ani.md/ro/node/9>

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other parties involved to report allegations of fraud, corruption and other prohibited practices, but there are no clear and comprehensive provisions about how to do this, so the obligation is not effective.

There is also a lack of systematic review, analysis and follow-up of information duly collected in the form of declarations of absence of conflicts of interest (as required from e.g. public procurement working group members) and of assets held (as required from all officials in the public sector). The immediate consequence of this gap is that many cases of conflict of interest and of ownership or control of tenderers by procurement officials or managers go undetected or are not sanctioned, and the corresponding risk must be assessed as high.

In addition, the normative framework in the field of public procurement does not regulate some aspects regarding integrity. There is no obligation to insert rules on fraud, corruption and other prohibited practices in procurement contracts. The legal framework does not provide for measures to suspend the procurement procedure or the tenderer in case of corruption and does not expressly exclude the bidder in the case of acts of corruption committed directly in the procurement procedure that takes place. There is an apparent overlap of competences and competition of rules in the event of an unresolved conflict of interest and the measures to be taken in such cases.

The regulatory framework regarding integrity warnings and information disclosure is a new one, recently implemented, and there is no clarity about the existence of a functional system in this regard. Until the new regulations, the non-reporting of corruption cases, including in the field of public procurement, is still a major problem, which may have its causes in the citizens' fear of and distrust in the investigative and judicial bodies of the Republic of Moldova.

The National Anticorruption Centre carries out thorough analyses, having at its disposal a series of tools provided by law to identify corruption risks, including in public procurement. However, the results of this analytical work are not necessarily observed in the direct fight against corruption and fraud in public procurement.

The annual activity reports of the competent anti-corruption institutions do not include statistics on the number of complaints of cases of fraud, corruption and other prohibited practices in public procurement, public entities and subjects involved in investigations and criminal cases related to public procurement, including the results of criminal proceedings on such cases.

Economic operators in the country and their business associations are just taking the first steps towards implementing integrity standards within companies.

- **Main recommendations**

Include provisions on corruption, fraud and other prohibited practices in public procurement contracts.

Regulate more clearly the situations and procedures for the suspension and exclusion of tenderers in cases of corruption.

Review and coordinate the rules now conferring the same powers on the Public Procurement Agency and the National Integrity Authority for the examination and settlement of cases of conflicts of interest.

Oblige senior management in all authorities to ensure the disclosure of illegalities in public procurement as well as the security of whistle-blowers and their protection from possible abuses and revenge; among

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other means, by creating secure channels for communicating disclosures that ensure the confidentiality of the personal data of the whistle-blower, drawing up and maintaining the Register of disclosures of illegal practices and warnings of integrity, and approving and applying procedures for examining and reporting disclosures of illegal practices.

Specific gaps and corresponding recommendations for Indicator 14

No.	Specific gaps/shortcomings	Specific recommendations
14.a)	Provisions on fraud, corruption and other prohibited practices appear in tender documents, but with some overlaps and gaps and without any clear legal basis	Review the possible need to incorporate provisions on fraud, corruption and other prohibited practices in tender documents, in ways that close gaps and avoid overlaps; if needed, amend the legislation accordingly, as well as any applicable secondary legislation, standard forms and instructions for their use by economic operators and contracting authorities alike
14.b)	There are clear, general requirements for reporting cases of corruption or attempted corruption, but not for how this obligation should be met in practice, e.g. by systematic review of documents or by any other means; in addition, the requirements do not appear to be fully harmonised across all laws and regulations concerned	Review the requirements for reporting cases of corruption or attempted corruption, harmonise them across all applicable laws and regulations, and ensure that they are as clear and simple as possible and that there is adequate correspondence between monitoring and reporting obligations
14.c)	Data on cases of fraud, corruption and other prohibited practices in public procurement are incomplete and unreliable, because of deficiencies in monitoring and reporting and partly overlapping roles and responsibilities of various authorities	Examine the gaps and overlaps in regulations, institutions, practices and outcomes regarding monitoring and reporting of fraud, corruption and other prohibited practices in public procurement, as well as the underlying reasons; harmonise regulations, approaches and roles in ways that allow the situation in public procurement to become clearly identified and addressed; and monitor implementation of the measures taken
14.d)	The rules for applying grounds for exclusion and for debarment of delinquent tenderers are not effective, partly because the e-procurement system does not match the applicable legal provisions	Examine the qualifications of tenderers and whether they meet any grounds for exclusion, including debarment, at the beginning of the tender evaluation process, before any electronic auction or the like is held
14.e)	Past failures to meet contractual obligations are among the grounds for including economic operators on the list of those prohibited from participating in public procurement; however, this is not among the grounds for exclusion set out in the PPL and there are no efficient means for contracting authorities to learn about such cases	Amend the PPL to include provisions matching those of Directive 2014/24/EU, Art. 57 4. (g); ensure that the contract execution reports contain corresponding information and that these reports are duly published; give guidance to the contracting authorities about the new provisions mentioned and their use; and monitor their application and the outcomes

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No.	Specific gaps/shortcomings	Specific recommendations
14.f)	With revised grounds for exclusion and a working system for publishing and using contract execution reports, the lists of economic operators prohibited from participating in public procurement may no longer be needed	Review the system for prohibiting economic operators from participating in public procurement, and revise or abolish it as found appropriate
14.g)	Integrity related training for public procurement is little developed	Expand the offer of training on integrity related topics for public procurement specialists
14.h)	Civil society, including business organisations, has still rather limited activities in monitoring public procurement and promoting integrity, and there is no strong enabling environment for giving them a meaningful role	Review the potential roles of various interested parties, in particular civil society, in monitoring public procurement, determine how this could be done in a comprehensive and transparent manner, and put in place corresponding mechanisms for participation and information sharing
14.i)	While legal provisions exist for disclosing and reporting cases of fraud and corruption as well as for whistle-blower protection, some practical means for the purpose (telephone hotlines and the like) are not yet in place in all authorities concerned and the practical effects of the legal provisions are not yet fully clear	Ensure that legal provisions and practical arrangements match up, and that reports and their follow-up are monitored and the outcomes published
14.j)	The actual use of the various codes of conduct officially prescribed is not monitored and no corresponding data is available	Monitor the use of codes of conduct and the means put in place to ensure that the obligations they include are met, review the possible need for improvements to their form, contents or application; and make corresponding changes to the applicable policies and practices
14.k)	Training on ethics and integrity, among other forms of professional development, is not provided to all civil servants, and there are no specific training programs on integrity in public procurement	In the context of broader measures for improving the arrangements for professional development of civil servants, in response to the actual needs identified, develop curricula for training on ethics and integrity and integrate them into any new capacity building programmes that may be put into place, covering also the particular aspects of public procurement
14.l)	There is no clear evidence available about the extent to which declarations of wealth and personal interests are made, whether and how they are examined, and how possible conflicts of interest are mitigated, in particular those with relevance to public procurement	Review the actual practices of how declarations of assets and interest are prepared, submitted and reviewed, how cases of missing, incomplete or false declarations are identified and sanctioned, how conflicts of interest are mitigated and how the proper functioning of the declaration system is monitored and enforced; and revise the legal and institutional set-up as may be needed to address the deficiencies found

4 Consolidated Recommendations

The following sections sum up the various recommendations made for improving public procurement in Moldova, with particular focus on the areas where major gaps and shortcomings have been identified. In order to be successful, these recommendations will need to be addressed in a clear, coordinated, well-resourced and carefully implemented manner. To this end, there is an urgent need for a unified, widely shared and formally adopted vision of public procurement reform in Moldova, in order to ensure national ownership and sustainability of the reform process, with clear definition of roles and responsibilities among the respective stakeholders, and clear and measurable objectives for the short, medium and long term.

This vision is likely to be formulated and detailed in the next, national public procurement strategy, with its associated action plans, that is due to be prepared and adopted no later than by the end of 2020. It would thus reflect the strong government commitment to continued reforms in the context of the Association Agreement with the EU. Some suggested elements of such a national reform strategy are presented below in Chapter 5 Draft action plan.

On the basis of the findings of the MAPS assessment, it is possible to identify the most important issues at hand and to formulate corresponding recommendations at the country level, as set out below. These overarching recommendations indicate the suggested, main priorities for action in the short and medium term.

The most urgent and important action is clearly the revision of the e-procurement system, which would also have strong beneficial effects for carrying out the other recommendations. These are complementary and should therefore be carried out in parallel; by their nature, they require a longer term approach, even if each of them also has the potential for some “quick wins”, particularly concerning functions that a better e-procurement system should enable as soon as it becomes operational. One example of this would be that overarching recommendations II. and III. would facilitate the use of framework agreements, allowing rapid improvement of centralised procurement in health, which would then also benefit from measures under recommendations IV., V. and VI. in the longer term.

The subsequent, more detailed and specific recommendations are organised by pillar. They closely reflect the observed shortcomings in the actual situation, set against the requirements in the various indicators and assessment criteria. This may create certain apparent overlaps which, however, would evidently be eliminated in the final, national strategy for public procurement reform.

4.1 Overarching MAPS recommendations for Moldova

- I. Ensure that the PPL, the utilities law, the law on works concessions and services concessions, the law on PPPs and the regulation of procurement by SOEs are fully harmonised, in particular regarding the coverage of the respective procuring entities (e.g., commercial SOEs should rather not be covered), the award procedures to be used, and the handling of complaints, so that it is fully clear which rules apply to which procuring entities for which contracts, and that these rules are as coherent as possible.

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- II. Prepare and issue secondary legislation, standard documents, procedural guidelines and training materials that are up to date and fully reflect the provisions of the PPL, revise them without delay as may be necessary to reflect changes in the legislation or in the public procurement market, and make sure that they can be accessed from and used in the e-procurement system.
- III. Take all and any steps necessary to make sure that the e-procurement system matches what the public procurement law requires or allows, that it provides procedural support for all steps and procedures in the public procurement cycle, that it ensures the greatest possible transparency of all procurement transactions, irrespective of contract value, and that its functionalities maximise administrative efficiency.
- IV. Adjust administrative procedures and budget regulations as required to make it possible for public procurement planning, execution and evaluation to be carried out in a longer term perspective, while retaining flexibility to adapt to changing needs and allowing continuity of operations over the year and across fiscal years.
- V. In order to maximise economy, efficiency and transparency, ensure that all public procurement be carried out by contracting authorities that have fully competent, professional staff, working in an administrative department set up for the purpose and having appropriate tools, systems and administrative routines and resources at their disposal.
- VI. To strengthen the knowledge, skills and experience of public procurement staff and recognise their competence, define the skill sets required and the position descriptions to be used when engaging and managing officials with public procurement as their profession.
- VII. Systematically generate, store, collect and disseminate public procurement data, ensuring its availability through the e-procurement system, as needed for evidence based policy making at national level and in individual contracting authorities and for allowing civil society, research and education institutions and the general public full and free access to a complete and clear picture of how authorities spend public funds and with what effect.
- VIII. Roll out internal audit to all contracting authorities, including public procurement as one of the main fields to be addressed; focus both internal audit and external audit more strongly on the performance of the authority; and ensure that findings and recommendations are effectively acted on.
- IX. Review and harmonise the approaches and scope of work of regulatory and supervisory authorities involved, directly or indirectly, in public procurement, so as to close gaps and avoid conflicts of roles and unnecessary overlaps and to ensure that any contracting authority or economic operator is treated in a fair and predictable manner, based on the merits of the case at hand.

4.2 Pillar I: Legislative and Regulatory Framework

1. **Continue amending the primary procurement legislation** in line with the timetable and the requirements in the Association Agreement, and **update and revise corresponding secondary legislation** accordingly, repealing any outdated or unnecessary decrees

2. **Ensure that** the implementing regulations and the corresponding functionalities of **the e-procurement system fully match the requirements of the public procurement law**; in particular, the sequencing of the evaluation steps and the full range of procedures and award criteria
3. **Simplify the form and contents of the standard documentation**, and leave some flexibility to contracting authorities to adapt certain details to the particular needs in the individual case
4. **Require all public procurement documentation**, from procurement plans to ex-post evaluations of contracts implemented, **to be published and freely accessible on or through a central website**, using machine readable document formats
5. **Review and categorise all enterprises owned by the State or regional or local governments and their subordinate entities** in order to clarify the applicability of the public procurement law, the utilities law or the regulation on procurement by SOEs, and ensure that procurement by such enterprises not covered by these legal instruments is managed in accordance with general, good practices for the governance of public enterprises

4.3 Pillar II: Institutional Framework and Management Capacity

1. **Align the time horizon and the approach for high level procurement planning** with that for the medium term budgetary framework, and adjust budget and disbursement regulations to **allow procurement to proceed in a regular fashion throughout the year** and across fiscal years
2. **Review the priorities and means of the Public Procurement Authority** and revise its duties, financing, staffing, operations and organisational structure accordingly
3. **Address the lack of skills and resources in many small contracting authorities**, by broad capacity building measures as well as by reducing their numbers and by consolidating procurement within each of them
4. **Replace the “working groups” for public procurement** by a requirement for all contracting authorities either to have an administrative unit dedicated to public procurement management, staffed with skilled professionals having public procurement as their main task, or to use the services of another authority with such a unit or of another, suitably competent external service provider
5. **Examine the scope in Moldova for** obtaining the benefits potentially offered by the **use of centralised procurement**, evaluate the advantages and disadvantages of various approaches, consider the creation of one or several central purchasing bodies, draft a corresponding model regulation and guidance materials for central purchasing bodies that fully reflects the opportunities offered by the PPL, and launch a pilot operation for central government entities or municipalities
6. **Recognise public procurement as a profession**, with corresponding positions introduced in the official classification of professions, together with commensurate approaches for engagement, management, training (possibly complemented by certification), evaluation and promotion of public procurement officials

7. **Review the information needs** for preparing and implementing strategies for the development of the public procurement system as well as for managing procurement in individual contracting authorities and for individual contracts, **identify the measures required for generating, collecting, compiling, analysing and publishing such information**, and adapt monitoring systems and approaches accordingly

4.4 Pillar III: Procurement Operations and Market Practices

1. **Collect more detailed and reliable data on actual procurement practices** in contracting authorities, identify typical problems encountered and skill shortages, as well as any deficiencies in the tools available and used (in particular, in the e-procurement system and in standard documentation), and use these insights for improving regulations and user documentation, adjusting training on offer for both contracting authorities and economic operators, and creating opportunities for exchange of views and experience
2. **Examine in further detail the reasons why economic operators would or would not participate in public procurement**, including for perceived reasons of unfair competition, corruption or otherwise inadequate practices, and prepare and implement policies for mitigating any barriers identified
3. **Raise contracting authorities' skills in preparing and carrying out procurement**, with greater focus on value for money and sustainability, by using simple and practical approaches matching the underlying needs and objectives and tailored to fit the supply market in question
4. **Analyse the Moldovan supply market** from the point of view of public procurement and take measures to proactively develop the competitiveness of enterprises in sectors of importance to public procurement

4.5 Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System

1. **Improve the generation of public procurement data** and the possibilities to access it in a way that allows also civil society to effectively monitor all stages of the public procurement cycle, and offer corresponding training
2. **Strictly observe existing legal obligations for public consultations**, in addition to a wider, proactive dialogue with the private sector and the general public, including effective measures for civil society participation as foreseen in the law
3. **Ensure that objectives and regulations for supervision and audits are harmonised**, properly applied, and effective, closing any current gaps and unnecessary overlaps and optimising the distribution of roles, responsibilities and resources between the authorities concerned
4. **Intensify the development of internal audit** through increased training, advice and exchange of experience, if necessary by seeking additional, external expertise and resources, and carefully monitor the implementation process and its outcomes

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5. **Refocus the approach for auditing public procurement towards the outcomes and the performance** of public procurement operations, set in clear relation to their original objectives, the approaches taken and the resources used
6. **Revise rules and procedures for monitoring the implementation of the recommendations** of the Court of Accounts and sanctioning any failure to abide by them; and clarify and strengthen the parliamentary oversight in order to help more effectively address systemic shortcomings
7. **Publish the decisions of the review body** in a structured, searchable format and create a database of past decisions, in order to raise transparency and support consistency of decision making by the ANSC
8. **Institutionalise regular consultations between the policy making, advisory and supervisory institutions** dealing with public procurement, including the ANSC, with a view to harmonise the interpretation and application of the public procurement law, in a way that adequately respects the specific mandates of the institutions concerned and recognises their independence
9. **Review** the actual functioning and outcomes of **all measures in place for preventing, identifying and sanctioning fraud and corruption**, including but not limited to public procurement; identify shortcomings and their underlying reasons; revise the legal and institutional framework accordingly; and monitor the effects and the outcomes of the new approaches taken
10. **Raise the level of transparency of the review of declarations of conflicts of interest and of assets** as well as of the measures taken, and ensure that possible breaches of the principles and regulations become investigated and, when applicable, duly sanctioned
11. **Review the system for prohibiting economic operators from participating** in public procurement and revise or abolish it as found appropriate, while at the same time improving the ways for determining and recording cases of failures of suppliers, contractors and service providers to meet contractual obligations and for making this information available to other contracting authorities

5 Strategic Planning

On the following pages, the consolidated recommendations set out in Chapter 4 of the assessment report have been restructured in the form of tables with suggested headings for defining and describing their implementation: timing, parties responsible, specific actions, priorities, conditions for success, and expected results. In its present version, this action plan template is only intended as a reference framework for the high level discussions and decisions that will be needed for agreeing on the next steps, formally adopting a plan for public procurement reform, mobilising the necessary resources, and implementing the reforms. As revised and finalised, it may then also be used for high level monitoring of progress and outcomes. Evidently, both the format and contents may have to be adjusted in order to align it with any applicable, formal requirements under the Association Agreement with the EU.

Pillar I: Legislative and regulatory framework						
Recommendation	Timing	Responsible	Specific measures	Priority	Key conditions	Expected results
Continue amending the primary procurement legislation in line with the timetable and the requirements in the Association Agreement, and update and revise corresponding secondary legislation accordingly, repealing any outdated or unnecessary decrees						
Ensure that the implementing regulations and the corresponding functionalities of the e-procurement system fully match the requirements of the public procurement law; in particular, the sequencing of the evaluation steps and the full range of procedures and award criteria						
Simplify the form and contents of the standard documentation, and leave some flexibility to contracting authorities to adapt certain details to the particular needs in the individual case						

Pillar I: Legislative and regulatory framework						
Recommendation	Timing	Responsible	Specific measures	Priority	Key conditions	Expected results
Require all public procurement documentation, from procurement plans to ex-post evaluations of contracts implemented, to be published and freely accessible on or through a central website, using machine readable document formats						
Review and categorise all enterprises owned by the State or regional or local governments and their subordinate entities in order to clarify the applicability of the public procurement law, the utilities law or the regulation on procurement by SOEs, and ensure that procurement by such enterprises not covered by these legal instruments is managed in accordance with general, good practices for the governance of public enterprises						

Pillar II: Institutional framework and management capacity						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Align the time horizon and the approach for high level procurement planning with that for the medium term budgetary framework, and adjust budget and disbursement regulations to allow procurement to proceed in a regular fashion throughout the year and across fiscal years						
Review the priorities and means of the Public Procurement Authority and revise its duties, financing, staffing, operations and organisational structure accordingly						
Replace the “working groups” for public procurement by a requirement for all contracting authorities either to have an administrative unit dedicated to public procurement management, staffed with skilled professionals having public procurement as their main task, or to use the services of another authority with such a unit or of another, suitably competent external service provider						
Examine the scope in Moldova for obtaining the benefits potentially offered by the use of centralised procurement , evaluate the advantages and disadvantages of various approaches, consider the creation of one or several central purchasing bodies, draft a corresponding model regulation and guidance materials for central purchasing bodies that fully reflects the opportunities offered by the PPL, and launch a pilot operation for central government entities or municipalities						

Pillar II: Institutional framework and management capacity						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Recognise public procurement as a profession , with corresponding positions introduced in the official classification of professions, together with commensurate approaches for engagement, management, training (possibly complemented by certification), evaluation and promotion of public procurement officials						
Review the information needs for preparing and implementing strategies for the development of the public procurement system as well as for managing procurement in individual contracting authorities and for individual contracts, identify the measures required for generating, collecting, compiling, analysing and publishing such information , and adapt monitoring systems and approaches accordingly						

Pillar III: Procurement operations and market practices						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Collect more detailed and reliable data on actual procurement practices in contracting authorities, identify typical problems encountered and skill shortages, as well as any deficiencies in the tools available and used (in particular, in the e-procurement system and in standard documentation), and use these insights for improving regulations and user documentation, adjusting training on offer for both contracting authorities and economic operators, and creating opportunities for exchange of views and experience						
Examine in further detail the reasons why economic operators would or would not participate in public procurement , including for perceived reasons of unfair competition, corruption or otherwise inadequate practices, and prepare and implement policies for mitigating any barriers identified						
Raise contracting authorities' skills in preparing and carrying out procurement , with greater focus on value for money and sustainability, by using simple and practical approaches matching the underlying needs and objectives and tailored to fit the supply market in question						
Analyse the Moldovan supply market from the point of view of public procurement and take measures to proactively develop the competitiveness of enterprises in sectors of importance to public procurement						

Pillar IV: Accountability, integrity and transparency of the public procurement system						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Improve the generation of public procurement data and the possibilities to access it in a way that allows also civil society to effectively monitor all stages of the public procurement cycle, and offer corresponding training						
Strictly observe existing legal obligations for public consultations , in addition to a wider, proactive dialogue with the private sector and the general public, including effective measures for civil society participation as foreseen in the law						
Ensure that objectives and regulations for supervision and audits are harmonised , properly applied, and effective, closing any current gaps and unnecessary overlaps and optimising the distribution of roles, responsibilities and resources between the authorities concerned						
Intensify the development of internal audit through increased training, advice and exchange of experience, if necessary by seeking additional, external expertise and resources, and carefully monitor the implementation process and its outcomes						
Refocus the approach for auditing public procurement towards the outcomes and the performance of public procurement operations, set in clear relation to their original objectives, the approaches taken and the resources used						

Pillar IV: Accountability, integrity and transparency of the public procurement system						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Revise rules and procedures for monitoring the implementation of the recommendations of the Court of Accounts and sanctioning any failure to abide by them; and clarify and strengthen the parliamentary oversight in order to help more effectively address systemic shortcomings						
Publish the decisions of the review body in a structured, searchable format and create a database of past decisions, in order to raise transparency and support consistency of decision making by the ANSC						
Institutionalise regular consultations between the policy making, advisory and supervisory institutions dealing with public procurement, including the ANSC, with a view to harmonise the interpretation and application of the public procurement law, in a way that adequately respects the specific mandates of the institutions concerned and recognises their independence						
Review the actual functioning and outcomes of all measures in place for preventing, identifying and sanctioning fraud and corruption , including but not limited to public procurement; identify shortcomings and their underlying reasons; revise the legal and institutional framework accordingly; and monitor the effects and the outcomes of the new approaches taken						
Raise the level of transparency of the review of declarations of conflicts of interest and of assets as well as of the measures taken, and ensure that possible breaches of the principles and regulations become investigated and, when applicable, duly sanctioned						

Pillar IV: Accountability, integrity and transparency of the public procurement system						
Recommendation	Timing	Responsible	Specific measures	Priority	Conditions	Expected results
Review the system for prohibiting economic operators from participating in public procurement and revise or abolish it as found appropriate, while at the same time improving the ways for determining and recording cases of failures of suppliers, contractors and service providers to meet contractual obligations and for making this information available to other contracting authorities						

6 Validation

Validation of the findings and recommendations of the MAPS report has taken place in several steps, so as to ensure that the description of the situation and the gaps is clear, comprehensive and correct and that the recommendations are well founded and supported by the stakeholders involved. As indicated in the concept note, the assessment team had planned to hold several validation meetings in the course of the preparation of the draft report, in particular for verifying that the description of the situation and the gaps was complete and correct and that the underlying reasons behind the gaps were well understood.

Unfortunately, the restrictions stemming from the measures taken to mitigate the impact from the COVID-19 pandemic meant that these meetings could not be held as intended. Instead, key stakeholders were consulted by correspondence and by 'phone when the first draft of the body of the assessment report was being finalised. The stakeholders involved are presented in greater detail in Annex 3 (see Volume II). They have generally been very supportive of the assessment and the recommendations that have been made based on their inputs, and will therefore be expected to actively support the implementation of the measures to be taken for implementing these recommendations.

The complete drafts were also formally reviewed in two steps by the Ministry of Finance, represented by the PPA.

After addressing the comments and suggestions thus received, the draft final report was circulated to all major stakeholders for their final review. Their corresponding inputs were duly incorporated into the initial final draft of the report, with the intention to discuss the findings and recommendations with the Government and to agree on priorities, responsibilities and specific measures, as the next step in the drafting of the new public procurement strategy and action plan for 2021-2025. However, these discussions were postponed; among other reasons, because of the deteriorating pandemic situation and the upcoming presidential elections.

Comments made by the World Bank's MAPS Global Team late October 2020 were reflected in a further revisions of the final draft in November and early December 2020. Additional comments were solicited from the MAPS Technical Advisory Group (TAG) by the MAPS Secretariat late January 2021. Received early March 2021, they were duly considered in the preparation of a new version of the final report, submitted on 19 March 2021.

Validation steps and timeline:

Validation step	Timing	Comments
Validation meetings on site with Government entities and other stakeholders concerned		Cancelled as a result of the COVID-19 pandemic
Consultations on initial drafts with Government entities and other stakeholders concerned, by correspondence and telephone	April-June 2020	In lieu of validation meetings on site
Review of first full draft by Ministry of Finance	- 4 June 2020	MoF represented by the PPA
Review of draft final report by Ministry of Finance	- 8 August 2020	MoF represented by the PPA

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Validation step	Timing	Comments
Review of draft final report by all major stakeholders	- 18 September 2020	Circulated by the PPA to the private sector, NGOs, public sector, development banks and international community (response from EBRD received on 22 October 2020)
First review by MAPS Global Team	- 23 October 2020	
Review by TAG, second review by MAPS Global Team	- 2 March 2021	