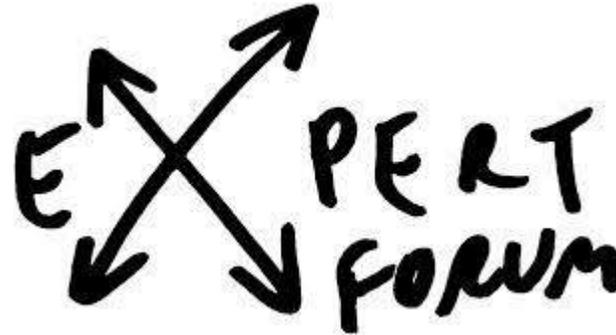


# Transparent Public Procurement Rating



## Romania

### Public Procurement Legislation Assessment

The Assessment of the Public Procurement Legislation of Romania was prepared by Expert Forum.

The Project – [Transparent Public Procurement Rating](#) – is implemented by the Institute for Development of Freedom of Information (IDFI) in partnership with a [network](#) of organizations and procurement specialists from more than 20 countries.



Project is Financially Supported by the Open Society Institute Budapest Foundation (OSI)

*The opinions expressed in this draft document belong to the Institute for Development of Freedom of Information (IDFI) and its partner organizations, and do not reflect the positions of Open Society Institute Budapest Foundation (OSI). Therefore, this organization is not responsible for the content of this report.*

2018

# Introduction

The TPPR Methodology is envisioned to be a universal methodology for assessing public procurement legislations (PPLs) with the ultimate goal of identifying the strengths and weaknesses of legal frameworks and their enforcement around the globe.

## Structure and Logic

The Methodology is composed of 64 indicators, each of which holds a similar degree of importance. A number of these indicators are further broken down into scoring components.

The Methodology covers all the major components of any public procurement system, from the nature of the legislation to the complaint review process, with focus on the transparency of public procurement systems.

The selection of indicators for the Methodology was largely based on international best practice, international standards and aspects of other existing methodologies in the sphere of public procurement, such as:

- EBRD Methodology and Standard
- GPA Standard (WTO)
- OECD Methodology and Principles
- EU Standard (**Directive 2014/24/EU**)
- Open Contracting Data Standard (OCDS)

Several indicators have been directly taken from one of the sources listed above as examples of best international practice. All of these indicators have been properly referenced.

During the indicator selection and elaboration process, an effort was made to ensure that the Methodology can be used to assess many different kinds of public procurement systems, but at the same time set high standards.

The indicators are separated into 5 groups (benchmark indicators) that represent the key characteristics (values) of a well-functioning, transparent and accountable public procurement system:

1. **Uniformity of the Legislative Framework** – 14 indicators
2. **Efficiency** – 10 indicators
3. **Transparency** – 18 indicators
4. **Accountability and Integrity** – 7 indicators
5. **Competitiveness and Impartiality** – 10 indicators

The methodology also includes 5 indicators that are used to assess legal components **that are not directly part** of the public procurement legislation but are crucial in terms of creating a transparent environment necessary for a proper functioning of any public procurement system. These indicators are grouped separately under '**Transparency Environment**'.

Indicators are also arranged according to the procurement process:

1. **Pre-tendering Phase** – procurement processes leading up to the publication of a notice of intended procurement.
2. **Tendering Phase** – procurement processes between publication of a notice of intended procurement and selection of a tender winner.
3. **Post-tendering Phase** – procurement processes after the selection of a tender winner.

These two arrangements allow for both process and value-based assessments of public procurement legislations.

## Limitations

Public procurement systems vary significantly by country. The TPR Methodology is intended to be applicable on a global scale, meaning that the indicators cannot be too specific and cannot cover all the possible variations and exceptions.

For the same reason, the TPPR Methodology can only be used to assess public procurement legislations on the national level, and it does not include indicators for any industry specific rules.

## About the Project

The Methodology has been developed within the framework of the project [Transparent Public Procurement Rating \(TPPR\) – Assessing Public Procurement Legislation and the Enforcement Process in the Eurasian Region](#).

The project was funded by Open Society Institute Budapest Foundation (OSI) and has been implemented by a Georgia-based civil society organization [Institute for Development of Freedom of Information \(IDFI\)](#) together with 5 partner organizations from each country in the Eurasian region covered by the project:

Armenia – [Freedom of Information Center of Armenia](#)

Azerbaijan – [Transparency International \(TI\)](#)

Belarus – [BIPART](#)

Moldova – [Expert-Grup](#)

Ukraine – [Transparency International \(TI\)](#)

In its initial stage, the TPPR project only covers the Eastern Partnership (EaP) Region; however, it plans to scale the methodology up to larger regions in the future.

## Scoring System

Each indicator included in the TPPR Methodology is granted equal weight and receives a maximum of 1 point. With a total of 64 indicators, public procurement legislations are rated on the scale of **0 to 64** (converted to percentages for easier understanding and visualization).

Indicators that are further broken down into scoring components are nevertheless worth 1 point. Each scoring component is evaluated separately.

The Methodology uses two ways to distribute points among scoring components of an indicator:

1. **'Scoring method'** is used when scoring components of an indicator overlap (meaning they do not add up as points) or have an unequal distribution of points.
2. **'Point distribution'** is used when each scoring component of an indicator is given an equal share of the overall point granted to that indicator.

This scoring system and the structure of the Methodology allow for the results to be presented in three ways:

1. **Country Overall Results and Rating** – country overall results on the scale of 0-64 are converted into and presented using percentages (0-100%). Countries are then ranked by their overall results.
2. **Results by Benchmark Indicators** – results for benchmark indicators are presented only through percentages, since benchmark indicators include an unequal number of indicators (and, therefore, unequal number of maximum points).
3. **Results by Procurement Process** – results for different phases of the procurement process are presented only through percentages, due to unequal number of indicators included in each phase.

Countries are also ranked and compared by their results for each benchmark indicator.

## Visualization

Visualizing the results of the assessment is crucial to the goal of the methodology. For this purpose, the overall points received by each country shall be shown graphically using the scale of 0-100%, divided into 4 quarters of a specific color:

- Low compliance with TPPR Standards – 0% to 25% (red)

- Average compliance with TPPR Standards – 26% to 50% (orange)
- Good compliance with TPPR Standards – 51% to 75% (yellow)
- Excellent compliance with TPPR Standards – 76% to 100% (green)

Visualizations will also include spider graphs depicting country results by benchmark indicators and the procurement process, and multi-colored bar graphs for comparing country results in these categories.

## Terminology

This methodology uses universally accepted procurement terminology as well as a few terms of its own design, in order to make key distinctions easier.

**Acceptance act** – A document signed by parties through which they agree on the terms by which a bargain is concluded.

**Bid** – Price offered by a tender participant during the bidding procedure.

**Bid Security** – A refundable amount of money paid by tender candidates validating their participation in a tender.

**Coordination** – Providing assistance to economic operators and procuring entities to engage in procuring activities.

**Day** – In the context of this methodology a day implies a calendar day.

**Economic Operator** – business or other organization which supplies goods, works or services.

**Legal entity of public law (LEPL) (Public Legal Entity)** – Organization created by the government or a government body, but separated from state management, and performing public authority independent of state control.

**Machine-readable** – A data format that can be processed (i.e. extract, transform and process) by a computer.

**Monitoring** – Data collection and analysis.

**State non-commercial legal entity** – A body governed by public law, having legal personality, not having an industrial or commercial character, and funded or managed, for the most part, by state entities.

**Non-competitive procedure (direct procurement)** – A type of public procurement procedure that does not involve prior publication of a notice of intended procurement.

**Notice of intended procurement** – A call for participation in an open tender issued by procuring entities.

**Open tender** – A type of tender, in which any economic operator can request participation.

**Post-tendering phase** – procurement processes after the selection of a tender winner.

**Pre-tendering phase** – procurement processes leading up to the publication of a notice of intended procurement.

**Procurement regulatory body** – a state body responsible for managing the public procurement system without necessarily incorporating lawmaking and law enforcement functions.

**Procuring entity** – A state budget and local government entity (including their respective LEPLs and state owned companies).

**Public procurement annual plan** – A document issued by procuring entities that contains information about all procurements planned within a fiscal year.

**Tender** – A type of public procurement procedure that involves bidding.

**Tender application** – An economic operator's official request to participate in a tender that includes all the documents requested by the procuring entity.

**Tender candidate** – An economic operator willing to participate in a tender.

**Tender commission** – A group of persons within a procuring entity responsible for conducting procurement (this function can also be performed by a single person).

**Tender documentation** – A collection of documents containing full information about the procurement, such as its subject-matter, technical requirements/specification, eligibility and evaluation criteria, draft contract conditions etc.

**Tender participant** – An economic operator that has been allowed to participate in a tender.

**Tendering phase** – procurement processes between publication of a notice of intended procurement and selection of a tender winner.

## TPPR Methodology Indicators

| <b>Transparency Environment</b> |   |              |   |
|---------------------------------|---|--------------|---|
| <b>#</b>                        | <b>Indicator</b>  | <b>Score</b> | <b>Relevant Article and Law (if applicable)</b>   |
| 1.                              | Business registry is publicly available. – [ <b>1 point</b> ]   | <b>1</b>     | Law 26/1990 , art 4 (1)   |
| 2.                              | Budgets of all public procuring entities are publicly available. – [ <b>1 point</b> ]                           | <b>1</b>     | Law 544/2001, art 5<br>Including centralized platform <a href="http://www.transparenta-bugetara.gov.ro/transparenta-bugetara/index.htm">http://www.transparenta-bugetara.gov.ro/transparenta-bugetara/index.htm</a> |
| 3.                              | Public officials are required by law to file asset declarations. – [ <b>1 point</b> ]                           | <b>1</b>     | Law 176/2010  |
| 4.                              | The country has adopted legal provisions ensuring the right to request public information. – [ <b>1 point</b> ] | <b>1</b>     | Law 544/2001  |
| 5.                              | Legislation includes provisions regulating whistleblower protection. – [ <b>1 point</b> ]                       | <b>1</b>     | Law 571/2004  |

## Indicators by Procurement Process

### General Characteristics of the Procurement System

| #  | Indicator   | Score | Relevant Article and Law (if applicable)  |
|----|---|-------|---|
| 1. | <p>Public Procurement Legislation (<b>PPL</b>), which may include primary and secondary legislation, lays out the basic principles and general framework of the procurement process, makes it operational and indicates how the law must be applied to specific circumstances. – [ <b>1 point</b> ]</p> <p style="text-align: center;"><i>Uniformity of the Legislative Framework</i></p> | 1     | <p>Main legislation</p> <p>Law no. 98 of 2016 on Public Procurement (“<b>Public Procurement Law</b>”)</p> <p>Law no. 99 of 2016 on Sectorial Procurement (“<b>Sectorial Law</b>”)</p> <p>Law no. 100 of 2016 on Works and Services Concessions (“<b>Concessions Law</b>”)</p> <p>Law no. 101 of 2016 on Remedies and Appeals Concerning the award of public procurement contracts, sectorial contracts and of works concession contracts and service concession contracts, and for the organization and functioning of the National Council for Solving Complaints (“<b>Remedies Law</b>”)</p> <p>Full list of relevant legislation:<br/> <a href="http://anap.gov.ro/web/category/legislatie/legislatie-primara/?future=false">http://anap.gov.ro/web/category/legislatie/legislatie-primara/?future=false</a></p> |

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| 2. | <p>PPL (including primary and secondary legislation) is available in a single and accessible place. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i></p>   | 1   | <p><a href="http://anap.gov.ro/web/category/legislatie/legislatie-national/?future=false">http://anap.gov.ro/web/category/legislatie/legislatie-national/?future=false</a> – website of procurement agency</p> <p><a href="http://legislatie.just.ro">http://legislatie.just.ro</a> – official legislation platform</p> |
| 3. | <p>PPL applies to all state budget and local government entities (including their respective Legal Entities of Public Law (LEPLs), state owned companies and non-commercial legal entities) and all exempted entities are clearly indicated. – [ 1 point ]</p> <p><b>Point Distribution</b></p> <ol style="list-style-type: none"> <li>a) All state budget entities – [ 0.2 ]</li> <li>b) Local government entities – [ 0.2 ]</li> <li>c) Legal Entities of Public Law (LEPL) – [ 0.2 ]</li> <li>d) State owned companies – [ 0.2 ]</li> <li>e) State non-commercial legal entities – [ 0.2 ]</li> </ol> <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i></p> | <p>Overall: 1</p> <p>Components:</p> <ol style="list-style-type: none"> <li>a) 0.2</li> <li>b) 0.2</li> <li>c) 0.2</li> <li>d) 0.2</li> <li>e) 0.2</li> </ol> | <p>Law 98/2016, art 4, art 31</p>   |

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| 4. | <p>The scope of coverage of PPL includes all sectors of the economy where competition is possible and exemptions are clearly listed in the PPL. – [ 1 point ]</p> <p><b>Point Distribution</b></p> <p>a) The scope of coverage of PPL includes all sectors of the economy where competition is possible. – [ 0.5 ]</p> <p>b) PPL clearly lists or refers to all exemptions. – [ 0.5 ]</p> <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i></p>  | <p>Overall: 1</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0.5</p> |  |
| 5. | <p>PPL determines a separate state body (procurement regulatory body) responsible for managing public procurement or assigns this function to a subordinate public body(ies). – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• PPL determines a separate state body responsible for managing public procurement which is authorized to have income in addition to state funding. – [ 1 ]</li> <li>• PPL determines a separate state body responsible for managing public procurement. – [ 0.75 ]</li> <li>• PPL assigns this function to a subordinated public body(ies). – [ 0.5 ]</li> <li>• There is no responsible state body. – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i></p> | 0.75   | Government Decision no. 634 of 28 July 2015 on the organization and functioning of the National Agency for Public Procurement, art 3 (1) |

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| 6. | <p>PPL stipulates that the procurement regulatory body is responsible for at least coordination and monitoring (i.e. data collection and analysis as opposed to regulation and control) of public procurement activities. – [ <b>1 point</b> ]</p> <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i></p>  | 1   | Government Decision no. 634 of 28 July 2015 on the organization and functioning of the National Agency for Public Procurement, art 3 (1)  |
| 7. | <p>Legislation provides for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system. PPL obligates the entity responsible for managing public procurement to use this mechanism on a regular basis. – [ <b>1 point</b> ]</p> <p><b>Point Distribution</b></p> <ul style="list-style-type: none"> <li>a) Legislation provides for a mechanism of consultation with the private sector. – [ <b>0.25</b> ]</li> <li>b) Legislation provides for a mechanism of consultation with the civil society sector. – [ <b>0.25</b> ]</li> <li>c) PPL obligates the entity responsible for managing public procurement to use this mechanism on a regular basis. – [ <b>0.5</b> ]</li> </ul> <p style="text-align: right;"><i>Accountability and Integrity</i></p> | <p>Overall: 0.5</p> <p>Components:</p> <ul style="list-style-type: none"> <li>a) 0.25</li> <li>b) 0.25</li> <li>c) 0</li> </ul> | <p>The consultation mechanisms are prescribed in law 52/2013, art 7. There are no specific regulations on public procurement</p> <p>In the drafting procedures for draft normative acts, the public administration authority has the obligation to publish an announcement regarding this action on its own site, to display it at its own premises, in a publicly accessible place, and to pass it on to the central or local media, as the case may be. The public administration authority will submit the draft normative acts to all persons who have submitted a request for receiving this information.</p> <p><a href="http://anap.gov.ro/web/category/transparenta-decizionala/proiecte-in-consultare/?future=false">http://anap.gov.ro/web/category/transparenta-decizionala/proiecte-in-consultare/?future=false</a></p> |
| 8. | <p>PPL stipulates that electronic means is the primary method of conducting public procurement and of communication between procuring entities and tender participants. – [ <b>1 point</b> ]</p> <p><b>Point Distribution</b></p>  | <p>Overall: 1</p> <p>Components:</p> <ul style="list-style-type: none"> <li>a) 0.5</li> </ul>                                   | <p>Law no. 98 of 2016 on Public Procurement (“Public Procurement Law”) – art 3</p> <p>The Electronic Public Procurement System, hereinafter referred to as "SEAP", designates the public utility computer system accessible via the Internet at a dedicated address used for the purpose of applying</p>  |

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|    | <p>a) PPL stipulates that electronic means is the primary method of conducting public procurement. – [ 0.5 ]</p> <p>b) PPL stipulates that electronic means is the primary method of communication between procuring entities and tender participants. – [ 0.5 ]</p> <p style="text-align: right;"><i>Efficiency</i></p> | b) 0.5 | <p>the award procedures electronically and for the purpose of publishing advertisements at national level;</p> <p>There are very few exceptions that do not have to pass through SEAP, but they are defined in the law</p>   |
| 9. | <p>PPL establishes a single official point of access (i.e. an online portal) for all procedures and information related to public procurement. – [ 1 point ]</p> <p style="text-align: right;"><i>Efficiency</i></p>   | 1      | <p>Law no. 98 of 2016 on Public Procurement (“Public Procurement Law”) – art 3</p> <p>The are some limited regulations that establish separated platforms for the procurement</p> <p><a href="https://www.e-licitatie.ro/Public/Common/Content.aspx?f=PublicHomePage">https://www.e-licitatie.ro/Public/Common/Content.aspx?f=PublicHomePage</a> – old procurement portal</p> <p><a href="https://sicap-prod.e-licitatie.ro/pub/participants">https://sicap-prod.e-licitatie.ro/pub/participants</a> - new main procurement portal</p> <p><a href="http://publicitatepublica.ro/index.php">http://publicitatepublica.ro/index.php</a> - media procurement - EU funds</p> <p><a href="https://achizitii.afir.info">https://achizitii.afir.info</a> – some procurement in agriculture</p> <p><a href="http://www.fonduri-ue.ro/anunturi-achiziti">http://www.fonduri-ue.ro/anunturi-achiziti</a> - some procurement on EU funds, mostly for private beneficiaries, not contracting authorities</p> |

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| 10. | <p>Legislation requires that software used for electronic procurement and related communication shall be non-discriminatory, free to use and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure. – [ 1 point ]</p> <p style="text-align: right;"><i>Competitiveness and Impartiality</i><br/><i>Source: EU Standard</i></p>   | 1   | <p>Art 64 (2) law 98/2016</p> <p>The instrument and devices used for electronic communication as well as their technical characteristics must be non-discriminatory, generally available, must ensure interoperability with general information technology products and communications and not restrict economic operators' access to the procedure award.</p>                        |
| 11. | <p>PPL ensures that tender candidates must be given equal treatment, without regard to nationality, residency or political affiliation: – [ 1 point ]</p> <p><b>Point Distribution</b></p> <ul style="list-style-type: none"> <li>a) PPL should not allow domestic preferences. – [ 1/5 ]</li> <li>b) Participation of any candidate or group of candidates is based on qualification. – [ 1/5 ]</li> <li>c) Ensures that registration if required does not constitute a barrier to participation in tenders. – [ 1/5 ]</li> <li>d) State owned companies are not given any preference. – [ 1/5 ]</li> <li>e) Time-periods, including any extension of the time-periods, shall be the same for all interested or participating candidates.– [ 1/5 ]</li> </ul> <p style="text-align: right;"><i>Competitiveness and Impartiality</i><br/><b>Source: GPA Standard</b></p> | <p>Overall: 1</p> <p>Components:</p> <ul style="list-style-type: none"> <li>a) 1/5</li> <li>b) 1/5</li> <li>c) 1/5</li> <li>d) 1/5</li> <li>e) 1/5</li> </ul> | <p>Art 2(2), law 98</p> <p>(2) The principles underlying the awarding of public procurement contracts and the organization of the contests are:</p> <ul style="list-style-type: none"> <li>a) non-discrimination;</li> <li>b) equal treatment;</li> <li>c) mutual recognition;</li> <li>d) transparency;</li> <li>e) proportionality;</li> <li>f) assuming responsibility.</li> </ul> |

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| 12. | <p>PPL stipulates that a procuring entity shall, consistent with its own reasonable needs, provide sufficient time (based on the GPA standard - Article XI) for candidates to prepare and submit tender application. – [ <b>1 point</b> ]</p> <p style="text-align: center;"><i>Competitiveness and Impartiality</i></p> | 0 | <p>Law 98/2016, art 113 (5)</p> <p>There is a six day deadline for less complex procurement, related to simplified procurement</p> <p>(5) According to par. (4) lit. a) and without prejudice to the provisions of paragraph (3), the minimum period between the date of submission of the notice of participation in the simplified procedure and the closing date for the submission of tenders shall be at least:</p> <p>a) 10 days, when the award of a public procurement contract for services or products is envisaged;</p> <p><b>b) 6 days if the award of a public procurement contract for products of reduced complexity is envisaged;</b></p> <p>c) 15 days if the award of a public works contract is envisaged.</p> |
| 13. | <p>PPL stipulates that each procuring entity has a staff member(s) responsible for conducting procurement activities. – [ <b>1 point</b> ]</p> <p style="text-align: center;"><i>Uniformity of the Legislative Framework</i></p>   | 1 | <p>Art 126, Government decision 395/2016</p> <p>The contracting authority has the obligation to designate, for the award of public procurement contracts / framework agreements, persons responsible for the evaluation of tenders and, where applicable, requests to participate, which are constituted in an evaluation committee.</p>  |

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|     |  |      | The contracting authority will appoint a person responsible for applying the award procedure within the internal procurement department.   |
| 14. | <p>PPL references sanctions for violations of the PPL. – [ <b>1 point</b> ]</p> <p style="text-align: right;"><i>Accountability and Integrity</i></p>  | 1    | 224-228, Law 98/2016   |
| 15. | <p>Legislation explicitly defines fraud and corruption / abuse of public office and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption. – [ <b>1 point</b> ]</p> <p style="text-align: right;"><i>Accountability and Integrity</i><br/><b>Source: OECD Methodology</b></p>  | 1    | <p>Art 58- 63 – conflicts of interests</p> <p>Art 164 – fraud is a reason for exclusion from the procedure</p> <p>Law 98/2016</p> <p>Other laws contain other specific rules on corruption, fraud and conflicts of interests</p> |
| 16. | <p>PPL ensures the right to review (complaints), for all interested parties, including general public, tender participants and potential suppliers. – [ <b>1 point</b> ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• PPL ensures the right to review, for general public, tender participants and potential suppliers. – [ <b>1</b> ]</li> <li>• PPL ensures the right to review, for tender participants and potential suppliers. – [ <b>0.75</b> ]</li> <li>• PPL ensures the right to review, for tender participants. – [ <b>0.25</b> ]</li> <li>• No one has the right to review. – [ <b>0</b> ]</li> </ul> | 0.25 | Art 8-9, law 101/2016 on remedies  |

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|     | <i>Uniformity of the Legislative Framework</i>   |  |   |
| 17. | <p>PPL ensures the right to review throughout the procurement process. – [ <b>1 point</b> ]</p> <p><b>Point Distribution</b></p> <p>a) Complaints can be filed at any time during the procurement process up until the signing of the contract. – [ <b>1/3</b> ]</p> <p>b) A procurement contract cannot be awarded with a pending complaint. – [ <b>1/3</b> ]</p> <p>c) A reasonable amount of time should be left between publication of the contract award decision and the signing of the contract, in order to give any stakeholder the opportunity to challenge the award decision. – [ <b>1/3</b> ]</p> <p style="text-align: center;"><i>Uniformity of the Legislative Framework</i></p> | <p>Overall: 1</p> <p>Components:</p> <p>a) 1/3</p> <p>b) 1/3</p> <p>c) 1/3</p> | Art 8, Art 58, Law 101  |
| 18. | <p>PPL ensures the existence of an independent (from parties involved in a procurement dispute) review body with the authority to review complaints and grant remedies. – [ <b>1 point</b> ]</p> <p><b>Point Distribution</b></p> <p>a) PPL ensures the existence of an independent review body. – [ <b>0.7</b> ]</p> <p>b) The review body includes civil society members. – [ <b>0.3</b> ]</p> <p style="text-align: center;"><i>Uniformity of the Legislative Framework</i></p>   | <p>Overall: 0.7</p> <p>Components:</p> <p>a) 0.7</p> <p>b) 0</p>               | Law 101/2016 – The National Council for Solving Complaints + courts |

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| 19. | <p>PPL ensures electronic, machine-readable and free of charge access to submitted complaints, either the full text or key information contained in these documents. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p>                                 | 0 | <p>The complaints are not published as such, but on the website of the complaint organism you can only see the list of complaints and how as initiated them</p>   |
| 20. | <p>PPL ensures electronic, machine-readable and free of charge access to dispute resolutions (of the independent review body), either the full text or key information contained in these documents. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p> | 1 | <p>Law 101/2016<br/>Art 27</p> <p>8. The reasoned decision shall be notified in writing to the parties within three days of its pronouncement.<br/>Magazines (1)</p> <p>9. The decision shall be published within 5 days of the publication on the Council's website in the Official Bulletin, without reference to the identification data of the parties, of the personal data and of the information which the economic operator specifies in its offer as confidential according to the provisions of art. 19 para. (1), classified or protected by an intellectual property right.</p> <p>(10) The decisions by which the Council orders the taking of remedial measures shall be submitted electronically, weekly, to ANAP.</p> |

|                            |   |   | (11) The decision shall be published by the contracting authority in the SEAP within 5 days from the date of receipt, without reference to the information the economic operator states in its tender as confidential, classified or protected by an intellectual property right. The provisions of art. 76 of Law no. 287/2009 on the Civil Code, republished, as amended, shall be applied accordingly. |
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| <b>Pre-tendering Phase</b> |   |   |   |
| #                          | Indicator   | Score   | Relevant Article and Law (if applicable)  |
| 1.                         | <p>PPL obligates procuring entities to publish as early as possible in each fiscal year a notice regarding their future procurement plans - "public procurement annual plan". The annual plan must include at least: – [ <b>1 point</b> ]</p> <p><b>Point Distribution</b></p> <ul style="list-style-type: none"> <li>a) Subject-matters (CPV- or other similar classificatory system) of planned procurements. – [ <b>0.25</b> ]</li> <li>b) Planned dates (a range of week/month/quarter) of publication of the notices of intended procurement. – [ <b>0.25</b> ]</li> <li>c) Estimated value of procurements. – [ <b>0.25</b> ]</li> <li>d) Source of funding. – [ <b>0.25</b> ]</li> </ul> <p style="text-align: right;"><i>Efficiency</i></p> | <p>Overall: 1</p> <p>Components:</p> <ul style="list-style-type: none"> <li>a) 0.25</li> <li>b) 0.25</li> <li>c) 0.25</li> <li>d) 0.25</li> </ul> | <p>Decision 395/2016, art 2 + art 12</p> <p>(b) develop and, where appropriate, update, on the basis of the needs communicated by the other departments of the contracting authority, the annual procurement program and, where appropriate, the annual procurement strategy;</p>   |

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| 2. | <p>PPL ensures electronic, machine-readable and free of charge access to public procurement annual plans of all procuring entities or key information included in these documents. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p> | 1 | <p>Decision 395/2016, art 12</p> <p>(6) The contracting authority has the obligation to publish in the SEAP, on a quarterly basis, extracts from the annual program of public procurement, as well as any amendments thereto, within 5 working days, extracts referring to:</p> <p>a) contracts / framework agreements for products and / or services whose estimated value is greater than or equal to the thresholds stipulated in art. 7 par. (1) of the Law;</p> <p>b) works contracts / framework agreements whose estimated value is greater than or equal to the thresholds stipulated in art. 7 par. (5) of the Law.</p> |
| 3. | <p>Legislation stipulates that the planning of procurement and estimation of associated expenditures are part of the state budget formulation process in a fiscal year. – [ 1 point ]</p> <p style="text-align: right;"><i>Efficiency</i></p> <p style="text-align: right;"><b>Source: OECD Methodology</b></p>   | 1 | <p>Decision 395/2016, art 12</p> <p>(4) After approving its own budget, the contracting authority has the obligation to update its annual procurement program according to the approved funds.</p>   |
| 4. | <p>PPL stipulates that procurement process should not normally be initiated until the appropriate financial resources have been identified. – [1 point]</p> <p style="text-align: right;"><i>Accountability and Integrity</i></p>   | 1 | <p>Decision 395/2016, art 12</p>   |

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| 5. | <p>PPL defines the composition, powers, responsibilities and decision-making procedures of the body (tender commission or a person) responsible for conducting tender within the procuring entity. – <b>[ 1 point ]</b></p> <p style="text-align: center;"><i>Uniformity of the Legislative Framework</i></p>   | 1   | Art 126-131, Decision 395/2016   |
| 6. | <p>Minimum monetary thresholds exist for different types of procurement. – <b>[ 1 point ]</b></p> <p style="text-align: center;"><i>Efficiency</i></p>  | 1   | Art 7, art 19 + other several articles on specific types of procurement<br>Law 98/2016   |
| 7. | <p>PPL stipulates that open tender is the default procedure for any public procurement, and all exceptions are clearly listed by the PPL. – <b>[ 1 point ]</b></p> <p><b>Point Distribution</b></p> <p>a) Open tender is the default procedure for any public procurement. – <b>[ 0.5 ]</b></p> <p>b) All exceptions are clearly listed by the PPL. – <b>[ 0.5 ]</b></p> <p style="text-align: center;"><i>Competitiveness and Impartiality</i></p> | <p>Overall:1</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0.5</p> | There are several procedures, adapted for the needs of the contracting authority. There is no specific article stating that is the standard procedure, but this is the practice. |
| 8. | <p>PPL stipulates that justification for using a non-competitive procedure must be made public by the procuring entity. – <b>[ 1 point ]</b></p> <p style="text-align: center;"><i>Accountability and Integrity</i></p>   | 1   | Art 216 (2)f / Law 98/2016   |

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| 9. | <p>PPL stipulates that provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against foreign suppliers or protects domestic suppliers, a procuring entity may use non-competitive procedure (direct procurement) when: – [ 1 point ]</p> <ul style="list-style-type: none"> <li>a) Where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist.</li> <li>b) For additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; or would cause significant inconvenience or substantial duplication of costs for the procuring entity.</li> <li>c) Insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering.</li> <li>d) Where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development.</li> <li>e) For purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers. – [ 1 ]</li> </ul> <p><b>Scoring Method</b></p> | 0.5 | <p>I would draw a difference between direct and noncompetitive procedures, at least in the Ro legislation. Direct procurement is under certain thresholds and you need no motivation, while non-competitive (for example, procedure without negotiation – art 104/law 98/2016) can be done in certain conditions.</p> <p>Therefore, I would not with 0.5, as I will also include the threshold criteria</p> |
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|                        | In case of any additional exceptions – [ 0.5 ]<br><br><i>Uniformity of the Legislative Framework</i><br><b>Source: GPA Standard</b>  |   |  |
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| <b>Tendering Phase</b> |  |   |  |
| #                      | Indicator  | Score   | Relevant Article and Law (if applicable)   |
| 1.                     | <p>PPL stipulates that the notice of intended procurement / tender documentation must include at least: – [ 1 point ]</p> <p><b>Point Distribution</b></p> <p>a) Name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any. – [ 1/8 ]</p> <p>b) A description of the procurement, including the nature and the quantity of the goods or services (including construction) to be procured or, where the quantity is not known, the estimated quantity. – [ 1/8 ]</p> <p>c) CPV codes (or other classificatory system of a similar nature). – [ 1/8 ]</p> <p>d) Estimated value of the goods or services to be procured. – [ 1/8 ]</p> <p>e) The time-frame for delivery of goods or services or the duration of the contract. – [ 1/8 ]</p> <p>f) The procurement method that will be used. – [ 1/8 ]</p> | <p>Overall:1</p> <p>Components:</p> <p>a) 1/8</p> <p>b) ) 1/8</p> <p>c) ) 1/8</p> <p>d) ) 1/8</p> <p>e) ) 1/8</p> <p>f) ) 1/8</p> <p>g) ) 1/8</p> | <p>For simplified procedure (but also applicable for open procurement/licitatie deschisa)</p> <p>Art 101 / Decision 395/2016</p> <p>(a) the name, address, telephone and fax number, e-mail address of the contracting authority;</p> <p>(b) the type of contract and, where applicable, whether a framework agreement is to be concluded;</p> <p>c) the name of the products / services / works to be supplied / rendered / executed and the CPV code / codes;</p> <p>d) estimated value;</p> |

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|    | <p>g) The address (where applicable) and any final date for the submission of requests for participation in the procurement. – [ <b>1/8</b> ]</p> <p>h) A list and brief description of any conditions (eligibility criteria) for participation of candidates, including any requirements for specific documents or certifications to be provided by candidates in connection therewith. – [ <b>1/8</b> ]</p> <p style="text-align: center;"><i>Competitiveness and Impartiality</i><br/><b>Source: GPA Standard</b></p> | h) ) 1/8                  | <p>(e) the quantity of products to be supplied, if applicable;</p> <p>f) source of financing;</p> <p>g) deadline for receipt of tenders;</p> <p>h) address at which tenders are submitted;</p> <p>(i) the language (s) in which tenders must be drawn up;</p> <p>j) the time period during which the bidder must maintain its valid offer;</p> <p>k) the award criterion of the public procurement / framework agreement.</p> <p>Also see</p> <p>ANAP published s standard list of info that are contained - <a href="http://anap.gov.ro/web/modele-fda/">http://anap.gov.ro/web/modele-fda/</a></p> |
| 2. | PPL stipulates that the notice of intended procurement / tender documentation must include: – [ <b>1 point</b> ]   | Overall: 1<br>Components: | Art 101 / Decision 395/2016  |

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|    | <p><b>Point Distribution</b></p> <ul style="list-style-type: none"> <li>a) Payment conditions – [ 0.2 ]</li> <li>b) Information about bid security (if required) – [ 0.2 ]</li> <li>c) Source of funding – [ 0.2 ]</li> <li>d) Payment information for multi-year contracts – [ 0.2 ]</li> <li>e) Draft of contract – [ 0.2 ]</li> </ul> <p style="text-align: right;"><i>Competitiveness and Impartiality</i></p>   | <ul style="list-style-type: none"> <li>a) 0.2</li> <li>b) 0.2</li> <li>c) 0.2</li> <li>d) 0.2</li> <li>e) 0.2</li> </ul>      | <p>Some of these info are not specified in the law, but can be found in the procurement portal</p> <p>ANAP published s standard list of info that are contained - <a href="http://anap.gov.ro/web/modele-fda/">http://anap.gov.ro/web/modele-fda/</a></p>  |
| 3. | <p>PPL defines all eligibility criteria for participation in tender that must include at least: – [ 1 point ]</p> <p><b>Point Distribution</b></p> <ul style="list-style-type: none"> <li>a) Capabilities with the respect to personnel, equipment, and construction or manufacturing facilities. – [ 1/3 ]</li> <li>b) Financial position. – [ 1/3 ]</li> <li>c) Grounds of restriction for participation. – [ 1/3 ]</li> </ul> <p style="text-align: right;"><i>Competitiveness and Impartiality</i><br/><b>Source: EBRD Methodology</b></p> | <p>Overall: 1</p> <p>Components:</p> <ul style="list-style-type: none"> <li>a) 1/3</li> <li>b) 1/3</li> <li>c) 1/3</li> </ul> | <p>Art 54, law 98 + art 162, 163 – exclusion reasons</p> <p>(1) The contracting authority is not entitled to require economic operators participating in the award procedure to adopt or form a certain legal form for the submission of a tender or a request to participate.</p> <p>Magazines (1)</p> <p>(2) The contracting authority has the right to request jointly participants in the award procedure whose tender has been awarded the winning bid to adopt or form a certain legal form, provided that this has been stipulated in the notice of participation and the awarding documentation and to the extent that such a change is necessary for the proper execution of the public procurement contract.</p> |

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|    |  |  | <p>3. The contracting authority has the right to determine, where necessary and justified for objective reasons, by the awarding documentation, how economic operators are to meet the requirements of economic and financial capacity and technical and professional capacity in the case of joint ownership to the award procedure, in compliance with the principle of proportionality.</p> <p>(4) The contracting authority has the right to establish through the tender documentation certain specific conditions for the execution of the public procurement / framework agreement if the economic operators participate in the award procedure differently from those applicable to the individual tenderers, justified by objective reasons and respecting the principle of proportionality.</p> <p>(5) The methodological norms for the application of the present law lay down standard provisions or requirements regarding the modalities of fulfillment by economic operators who participate jointly in the procedure for awarding the requirements regarding the economic and financial capacity and the technical and professional capacity.</p> |
| 4. | <p>PPL stipulates that procuring entities may seek consultations for the purpose of planning procurement (drafting of tender documentation) from independent experts or market participants. In such cases, these experts or market participants may not take part or benefit from tenders they helped plan unless it can be</p> | <p>Overall: 1</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0.5</p> | <p>Art 139, Law 98</p> <p>1. Before the award procedure is initiated, the contracting authority shall have the right to organize market consultations to prepare the procurement, by reference to the subject-matter of the public procurement contract, and to inform economic operators of the</p>  |

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| <p>demonstrated that there is no conflict of interest (as defined by the national legislation). – [ 1 point ]</p> <p><b>Point Distribution</b></p> <p>a) PPL stipulates that procuring entities may seek consultations for the purpose of planning procurement from independent experts or market participants. – [ 0.5 ]</p> <p>b) PPL prohibits these experts or market participants from taking part or benefiting from tenders they helped plan, unless it can be demonstrated that there is no conflict of interest (as defined by the national legislation). – [ 0.5 ]</p> <p style="text-align: right;"><i>Efficiency</i><br/><b>Source: EU Standard</b></p> | <p>procurement plans and the requirements in the a view of them by making this known through the SEAP and by any other means.</p> <p>(2) Within the consultations provided in paragraph (1), the contracting authority has the right to invite independent experts, public authorities or economic operators, including their representative organizations.</p> <p>(3) The contracting authority has the right to use or implement the opinions, suggestions or recommendations received during the consultations provided in paragraph (1) to prepare the procurement and to organize and conduct the award procedure, provided that the use or implementation of such views, suggestions or recommendations does not distort competition and / or violate the principles of non-discrimination and transparency.</p> <p>Magazines (1)</p> <p>(4) The modalities, conditions and procedure for organizing and carrying out the consultations provided in paragraph (1) shall be established by the methodological norms for the application of the present law.</p> <p>Article 140. -</p> <p>(1) Where a candidate / tenderer or an entity having links to a candidate / tenderer has given opinions, suggestions or recommendations to the contracting authority in connection with the preparation of the award procedure, in the consultations</p> |
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|    |   |   | provided for in Art. 139 or in any other way, including as part of consultancy services, or otherwise participated in the preparation of the award procedure, the contracting authority shall take all necessary measures to ensure that the tenderer's participation in the award procedure is not likely to distort competition.           |
| 5. | <p>PPL ensures electronic, machine-readable and free of charge access to notices of intended procurement (including tender documentation), either the full text or key information contained in these documents. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p> | 1 | <p>Article 142. - The contracting authority has the obligation to ensure the transparency of the procedure for the award of public procurement contracts / framework agreements by publishing, in accordance with the provisions of this law, notices of intent, notices of participation and notices of award.</p> <p>Decision 395/2016</p> |
| 6. | <p>PPL ensures electronic, machine-readable and free of charge access to tender documentation amendments, either the full text or key information contained in these documents. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> </ul>  | 1 | <p>Article 142. - The contracting authority has the obligation to ensure the transparency of the procedure for the award of public procurement contracts / framework agreements by publishing, in accordance with the provisions of this law, notices of intent, notices of participation and notices of award.</p> <p>Decision 395/2016</p> |

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|    | <ul style="list-style-type: none"> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p>   |   |  |
| 7. | <p>PPL ensures electronic, machine-readable and free of charge access to tender candidate applications (all documents needed for the request to participate in a tender), either the full text or key information contained in these documents. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p> | 1 | <p>Decision 395/2016, art 142</p> <p>Art 150, law 98</p>             |
| 8. | <p>PPL ensures electronic, machine-readable and free of charge access to information about the bids offered by tender participant. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> </ul>  | 0 | They are not published; the contracting authority has access to them |

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|     | <ul style="list-style-type: none"> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p>  |   |  |
| 9.  | <p>PPL ensures electronic, machine-readable and free of charge access to decisions of the tender commission, either the full text or key information contained in these documents. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p> | 1 | <p>Art 145, Law 98/2016</p> <p>(1) The contracting authority has the obligation to send for publication an awarding notice within 30 days from the date of:</p> <p>a) the conclusion of the public procurement / framework agreement following the finalization of the award procedure;</p> <p>b) finalizing a contest of solutions by establishing the winning competitor;</p> <p>c) the award of a public procurement contract through a dynamic purchasing system;</p> <p>d) Closing a dynamic purchasing system.</p> |
| 10. | <p>Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterizes the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favoring or eliminating certain undertakings or certain products. – [ 1 point ]</p> <p style="text-align: right;"><i>Competitiveness and Impartiality</i><br/><b>Source: EU Standard</b></p>   | 1 | <p>Art 156, law 98</p> <p>Except where justified by the subject-matter of the contract, the technical specifications do not specify a particular manufacturer, origin or procedure which characterizes the goods or services provided by a particular economic operator and does not refer to trade marks, patents, types , to a specific origin or production, which</p>  |

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|     |  |  | would have the effect of favoring or eliminating certain economic operators or products.  |
| 11. | <p>PPL stipulates that procuring entities may require tender candidates to confirm the validity of their bid with a bid security that is refunded once the procedure is completed. – [ 1 point ]</p> <p style="text-align: right;"><i>Efficiency</i></p>   | 1  | <p>Art 35, Decision 395/2016</p> <p>(1) The participation guarantee is an instrument related to the presentation of the offer, which aims at protecting the contracting authority against the risk of inappropriate conduct of the bidder throughout his / her involvement in the award procedure.</p> <p>(2) The contracting authority has the right to ask the tenderers to set up the guarantee of participation.</p>  |
| 12. | <p>Legislation explicitly defines conflict of interest and includes mechanisms for its prevention: – [ 1 point ]</p> <p><b>Point Distribution</b></p> <p>a) The concept of conflicts of interest covers at least any situation where staff members of the procuring entity or of a procurement service provider acting on behalf of the procuring entity who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure, have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure. – [ 1/3 ]</p> | <p>Overall: 1</p> <p>Components:</p> <p>a) 1/3</p> <p>b) 1/3</p> <p>c) 1/3</p> | <p>Art 59-63, Law 98</p> <p>For the purposes of this law, a conflict of interest means any situation where members of the staff of the contracting authority or of a purchasing service provider acting on behalf of the contracting authority who are involved in the conduct of the award procedure or which may influence the outcome thereof, directly or indirectly, a financial, economic, or other personal interest which could be perceived as an element that compromises their impartiality or independence in the context of the award procedure.</p> |

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|     | <p>b) PPL stipulates that persons responsible for procurement decision-making in procuring entities must declare in writing any conflict of interest with tender participants. – [ 1/3 ]</p> <p>c) The legislative framework prohibits the participation of active public officials and former public officials for a reasonable period of time after leaving office in public procurement procedures in ways that benefit them, their relatives, and business or political associates financially or otherwise. – [ 1/3 ]</p> <p style="text-align: right;"><i>Accountability and Integrity</i><br/> <b>Source for a): EU Standard</b><br/> <b>Source for b): OECD Methodology</b></p> |  |  |
| 13. | <p>PPL stipulates that award decisions must be made solely on the basis of evaluation criteria that have been precisely specified in advance in the tender documentation. – [ 1 point ]</p> <p style="text-align: right;"><i>Competitiveness and Impartiality</i></p>   | 1  | Art 127, Decision 395/2016   |
| 14. | <p>PPL stipulates that upon modification of any criteria and requirements set out in tender documentation prior to the completion of tender application submission period, a procuring entity shall transmit in writing all such modifications: – [ 1 point ]</p> <p><b>Point Distribution</b></p> <p>a) To all tender candidates; and – [ 0.5 ]</p>  | <p>Overall: 1</p> <p>Components:</p> <p>a) 1</p> <p>b) 1</p> | <p>Art. 59, Decision 395/2016</p> <p>Art 153, law 98</p> <p>(1) Where, after the publication of a notice, certain changes occur in relation to the information already contained therein, the contracting authority has the obligation to send for publication a erroneous advertisement to the original notice, which must be</p> |

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|  | <p>b) Give additional adequate time (either by extending or restarting the time) to allow such candidates to modify and re-submit amended tender application. – [ 0.5 ]</p> <p style="text-align: center;"><i>Competitiveness and Impartiality</i></p> | <p>published no later than 3 working days before the date set for submission of tenders or requests to participate.</p> <p>(2) Under art. 153 of the Law, the contracting authority has the obligation to extend the deadline for submission of tenders if the modifications provided for in para. (1) lead to adjustments / additions to technical specifications that require additional time for the reaction of potential bidders, except for substantial changes leading to the cancellation of the award procedure because:</p> <p>a) affect so much the elements describing the context of the public procurement that have the effect of changing the main indicators that characterize the outcome of the contract to be awarded, which affects the level of competition or changes the profile market to which it is addressed;</p> <p>b) lead to substantial changes in the qualification and selection criteria in order to increase their level or to introduce new ones, which leads to a restriction of the competition or the favoring of certain economic operators.</p> <p>(3) In the situation stipulated in paragraph (1), the contracting authority is under an obligation to review the IAEA for the award procedure of the public procurement / framework agreement in question.</p> |
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| 15. | <p>PPL stipulates that procuring entities shall inform each tender participant of the decision reached about the winner of the tender, including failure to do so, as soon as it is made, but no later than the end of the following working day. – [ <b>1 point</b> ]</p> <p style="text-align: right;"><i>Transparency</i></p>  | 1  | <p>Art 215 / 1 / law 98</p> <p>The term is up to three days from the decision</p>  |
| 16. | <p>PPL ensures that on request from the tender participant the procuring entity shall as quickly as possible inform: – [ <b>1 point</b> ]</p> <p><b>Point Distribution</b></p> <p>a) Any unsuccessful tender candidate of the reasons for the rejection of its request to participate (if such approval is required). – [ <b>0.5</b> ] ***</p> <p>b) Any unsuccessful tender participant of the reasons for the rejection of its bid. – [ <b>0.5</b> ]</p> <p>*** If a) is not applicable, b) equals [ <b>1 point</b> ].</p> <p style="text-align: right;"><i>Transparency</i><br/><b>Source: EU Standard</b></p> | <p>Overall: 1</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0.5</p> | <p>Art 125, law 98</p> <p>The contracting authority shall inform each candidate / tenderer of the decisions taken regarding the outcome of the selection, the outcome of the procedure, ie the award / conclusion of the public procurement / framework agreement or the admission to a dynamic purchasing system, including the reasons for is the basis for any decision not to award a contract, not to conclude a framework agreement, not to implement a dynamic purchasing system or to resume the award procedure as soon as possible but not later than 3 days from the issuing of the respective decisions.</p> |
| 17. | <p>PPL stipulates that in cases when evaluation criteria include both price and quality, the winner shall be chosen using a cost-effectiveness approach, such as: – [ <b>1 point</b> ]</p> <p><b>Point Distribution</b></p> <p>a) Life-cycle cost – [ <b>1/3</b> ]</p>  | <p>Overall: 1</p> <p>Components:</p> <p>a) 1/3</p> <p>b) 1/3</p> | <p>Art 187, law 98</p> <p>For the purposes of paragraph (3) lit. (c) and (d), the best value for money shall be determined on the basis of assessment factors including qualitative, environmental and / or social aspects related to</p>  |

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|  | <p>b) Best price-quality ratio – [ 1/3 ]<br/> c) Environmental and/or social costs – [ 1/3 ]</p> <p style="text-align: right;"><i>Efficiency</i><br/> <b>Source: EU Standard</b></p> | <p>c) 1/3</p> | <p>the subject matter of the public procurement / framework agreement.</p> <p>(5) The assessment factors provided in paragraph (4) may, inter alia:</p> <p>(a) quality, including technical advantages, aesthetic and functional features, accessibility, design concept for all users, social, environmental and innovative features and marketing and its conditions;</p> <p>(b) the organization, qualification and experience of the staff assigned to the performance of the contract, where the quality of the designated staff can have a significant impact on the quality of performance of the contract;</p> <p>(c) after-sales service, technical assistance and delivery conditions, such as the date of delivery, the delivery process and the delivery or completion period.</p> <p>(6) For the purposes of paragraph (3) lit. c) the award criterion, the best value for money, usually includes a price or cost element; where the contracting authority initiates a fixed budget procedure where the price or cost item is a fixed price or cost, the assessment factors only refer to qualitative aspects of the products, services or works that are the subject of the acquisition.</p> <p>(7) For the purposes of paragraph (3) lit. b), the lowest cost is determined on the basis of profitability considerations, using factors such as life cycle costing.</p> |
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## Post-tendering Phase

| #  | Indicator   | Score   | Relevant Article and Law (if applicable)   |
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| 1. | <p>PPL stipulates that upon successful conclusion of tender (upon choosing and announcing of the winner) the following information must be made public as soon as it is available: – [ 1 point ]</p> <p><b>Point Distribution</b></p> <ul style="list-style-type: none"> <li>a) Name, type, identification number, address, telephone, fax number (where applicable), email and internet address of the procuring entity and, where different, of the service from which additional information may be obtained. – [ 0.1 ]</li> <li>b) Subject of procurement. – [ 0.1 ]</li> <li>c) CPV codes (or other classificatory system of similar nature). – [ 0.1 ]</li> <li>d) Description of the procurement: nature, extent, quantity or value of goods, works and services. Where the contract is divided into lots, this information shall be provided for each lot. – [ 0.1 ]</li> <li>e) Type of award procedure; in the case of negotiated procedure without prior publication, justification. – [ 0.1 ]</li> <li>f) Date of the signing of contract(s) or of framework agreement(s). – [ 0.1 ]</li> <li>g) Duration of the contract. – [ 0.1 ]</li> <li>h) Number of bids and their respective amounts received. – [ 0.1 ]</li> </ul> | <p>Overall: 0.8</p> <p>Components:</p> <ul style="list-style-type: none"> <li>a) 0.1</li> <li>b) 0.1</li> <li>c) 0.1</li> <li>d) 0.1</li> <li>e) 0.1</li> <li>f) 0.1</li> <li>g) 0</li> <li>h) 0 (just the number)</li> <li>i) 0.1</li> </ul> | <p>Art 147, Decision 395/2016</p> <p>The public procurement dossier must include documents drawn up / received by the contracting authority in the award procedure, such as, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>a) contracting strategy;</li> <li>b) the notice of intention and the proof of its submission for publication, if applicable;</li> <li>c) the participation announcement and the proof of its submission for publication;</li> <li>d) erase, if applicable;</li> <li>e) the awarding documentation;</li> <li>f) contest documentation, if applicable;</li> </ul> |

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|  | <p>i) Name, address, telephone, fax number (where applicable), email address and internet address of the successful tender participant(s) including: information whether the contract was awarded to a group of economic operators (joint venture, consortium or other) (where applicable). – [ 0.1 ]</p> <p>j) Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number (where applicable) and email address of the service from which this information may be obtained. – [ 0.1 ]</p> <p style="text-align: right;"><i>Transparency</i><br/><b>Source: EU Standard</b></p> | <p>j) 0.1</p> | <p>g) the decision / order / order of appointment of the evaluation commission and, as the case may be, of the co-opted experts;</p> <p>h) statements of confidentiality and impartiality;</p> <p>i) the minutes of the opening of the bids, if any;</p> <p>j) the tender forms submitted in the award procedure;</p> <p>(k) DUEA and qualification documents when requested;</p> <p>l) requests for clarifications as well as clarifications sent / received by the contracting authority;</p> <p>m) interim report on the selection of candidates, if any;</p> <p>n) the minutes of evaluation, negotiation, dialogue, as appropriate;</p> <p>o) the report of the award procedure and the annexes thereto;</p> <p>p) evidence of communications on the outcome of the procedure;</p> <p>q) the public procurement contract / framework agreement, signed, and, if necessary, the additional acts;</p> <p>(r) where applicable, contracts awarded under a framework agreement;</p> |
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|    |   |  | <p>s) the award notice and the proof of its submission for publication;<br/>and, if appropriate, the appeals made in the award procedure, together with the reasoned decisions issued by the National Council for Solving Complaints;</p> <p>t) judgments of the courts on the award procedure;</p> <p>(t) the finding document containing information on the fulfillment of the contractual obligations by the contractor;</p> <p>u) where appropriate, the decision to cancel the award procedure.</p>   |
| 2. | <p>PPL stipulates that the information on subcontractors must be made public upon successful conclusion of tender (upon choosing and announcing of the winner). – [ <b>1 point</b> ]</p> <p><b>Point Distribution</b></p> <p>a) Procurement contracts include information on what proportion of the contract can be subcontracted to third parties. – [ <b>0.5</b> ]</p> <p>b) Information on subcontractor/s (if any): name, address, ID, contact information, is made public as soon as this information is available. – [ <b>0.5</b> ]</p> <p style="text-align: right;"><i>Transparency</i></p> | <p>Overall: 1</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0.5</p> | <p>Article 150, Decision 395/2016</p> <p>(1) In applying the provisions of art. 218 of the Law, the contracting authority has the obligation to establish binding contractual clauses concerning the assignment of receivables in favor of the subcontractors related to the part / s of the contract that they are fulfilling.</p> <p>(2) In order to determine the amount of the claim, the tenderer has the obligation to include in his tender the name of the subcontractors and their contact details, the part / s of the contract to be fulfilled by them, the value to which the respective party / parties , as well as the subcontractors' agreement on these issues.</p> |

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| 3. | <p>PPL ensures electronic, machine-readable and free of charge access to procurement contracts, either the full text or key information contained in these documents. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p> | 0 | <p>The contracts are not open as such. They can be requested through FOIA. As part of the procurement process is included in the contract, we can consider that it's just partly published</p> |
| 4. | <p>PPL ensures electronic, machine-readable and free of charge access to contract amendments, either the full text or key information contained in these documents. – [ 1 point ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p>   | 0 | <p>The contract and amendments are not published, but can be obtained freely from contracting authority</p>  |

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| 5. | <p>PPL ensures electronic, machine-readable and free of charge access to contract performance information (acceptance act and milestone reports), either the full text or key information included in these documents. – [ <b>1 point</b> ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ <b>1</b> ]</li> <li>• Electronic, machine-readable, not free of charge – [ <b>0.75</b> ]</li> <li>• Electronic, non-machine-readable – [ <b>0.5</b> ]</li> <li>• Only on paper – [ <b>0.25</b> ]</li> <li>• None – [ <b>0</b> ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p> | 0 | The information is not published, but can be obtained freely from contracting authority.  |
| 6. | <p>PPL ensures electronic, machine-readable and free of charge access to payment receipts, either the full text or key information contained in these documents. – [ <b>1 point</b> ]</p> <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ <b>1</b> ]</li> <li>• Electronic, machine-readable, not free of charge – [ <b>0.75</b> ]</li> <li>• Electronic, non-machine-readable – [ <b>0.5</b> ]</li> <li>• Only on paper – [ <b>0.25</b> ]</li> <li>• None – [ <b>0</b> ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p>   | 0 | The information is not published, but can be obtained freely from contracting authority. Some institutions publish on their website the state of payments for certain contracts |

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| <p>7.</p> | <p>PPL clearly defines the procedures for inspection and quality control procedures: – [ 1 point ]</p> <p><b>Point Distribution</b></p> <p>a) Quality control (QC) procedures for goods, works and services are well defined in the draft contracts/documents or in the regulations. – [ 0.5 ]</p> <p>b) Inspection of civil works is carried out by independent engineering firms or qualified government supervisors and inspectors. – [ 0.5 ]</p> <p style="text-align: right;"><i>Efficiency</i></p> <p style="text-align: right;"><b>Source: OECD Methodology</b></p> | <p>Overall: 1</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0.5</p> | <p>Art. 158. – Law 98/2016</p> <p>1. The contracting authority shall have the right to require economic operators to provide a test report issued by a conformity assessment body or a certificate issued by such a body as evidence of the conformity of the products, the subject of the acquisition with the requirements or criteria set out in the technical specifications, assessment factors or conditions of performance of the contract.</p> <p>(2) In the case provided for in paragraph (1) where the contracting authority requests the submission of certificates issued by a conformity assessment body, it shall also accept equivalent certificates issued by other conformity assessment bodies.</p> <p>(3) For the purposes of paragraph (1) and (2), a conformity assessment body is a body performing conformity assessment activities, including calibration, testing, certification and inspection, accredited in accordance with the provisions of Regulation (EC) No. Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) 339/93.</p> |
| <p>8.</p> | <p>PPL ensures electronic, machine-readable and free of charge access to any inspection and quality control reports, either the full text or key information contained in these documents. – [ 1 point ]</p>   | <p>0</p>   |   |

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|    | <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• Electronic, machine-readable, free of charge – [ 1 ]</li> <li>• Electronic, machine-readable, not free of charge – [ 0.75 ]</li> <li>• Electronic, non-machine-readable – [ 0.5 ]</li> <li>• Only on paper – [ 0.25 ]</li> <li>• None – [ 0 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p> |   |   |
| 9. | <p>Procedures for acceptance of final products and processing of final payments are clearly defined by the PPL or contract law and are incorporated as standard clauses in contracts. – [ 1 point ]</p> <p style="text-align: right;"><i>Efficiency</i></p> <p style="text-align: right;"><b>Source: OECD Methodology</b></p>  | 1 | <p>Art 166/decision</p> <p>(1) The contracting authority has the obligation to issue concluding documents containing information regarding the fulfillment or, as the case may be, the non-fulfillment of the contractual obligations by the associated contractor / contractor and, if applicable, any damages, as follows:</p> <p>(a) for supply contracts awarded by an award procedure: within 14 days of the date of completion of the delivery of the products subject to that subsequent contract / contract and, in addition, within 14 days of the expiry of the technical guarantee period of the products concerned;</p> <p>(b) for service contracts awarded by a tendering procedure other than design services contracts: within 14 days of the date of completion of the provision of the services covered by that subsequent contract / contract;</p> |

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|  |  | <p>(c) for design service contracts awarded by an award procedure: within 14 days from the date of completion of the provision of the services subject to that subsequent contract / contract and, in addition, within 14 days of the completion of the process, verbal reception on completion of the planned works;</p> <p>d) for works supervision / works supervision contracts within 14 days from the date of issue of the final supervision report / expiry of the warranty period for the work in question;</p> <p>e) for works contracts awarded by an award procedure: within 14 days from the date of conclusion of the minutes of reception at the end of the works and, in addition, within 14 days from the date of finalization of the final acceptance report of the works, drawn up at the end of the warranty period of the works in question.</p> <p>(2) In the situation stipulated in art. 144 par. (1) the issuing document shall be issued within 14 days from the date when the public procurement / framework agreement should have been concluded if the tenderer had not refused to sign it or from the date when it was canceled if there is a signed contract.</p> <p>(3) The contracting authority has the following obligations:</p> <p>a) to issue a copy of the document found to the contractor;</p> <p style="padding-left: 40px;">c) keep a copy of the public procurement dossier.</p> <p>(5) The finding documents issued by the contracting authority for non-fulfillment of contractual obligations by the associated</p> |
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|     |  |     | <p>contractor / contractor and, if applicable, for any damages, shall be published in the SEAP, within 60 days from the date of issue, but not earlier the date of the expiration of the deadline / resolution of the complaints, if they were filed.</p> <p>05/12/2016 - the paragraph was amended by Decision 866/2016</p> <p>18/06/2018 - the paragraph was amended by Decision 419/2018</p> <p>(51) The contracting authority has the obligation to update in the SEAP information regarding the document referred to in paragraph (5) within 5 days of becoming aware that the factual basis for the issuance of that statement must be modified for objective reasons.</p> |
| 10. | <p>PPL defines specific procedures for modifying contracts. – [ <b>1 point</b> ]</p> <p><i>Uniformity of the Legislative Framework</i></p>                             | 1   | Art 221, law 98  |
| 11. | <p>PPL stipulates that procurement contract must include dispute resolution procedures. – [ <b>1 point</b> ]</p> <p><i>Uniformity of the Legislative Framework</i></p> | 0   |  |
| 12. | <p>PPL stipulates that all procurement related documentation must be maintained: – [ <b>1 point</b> ]</p>  | 0.5 | <p>Art 127, Law 98/2016</p> <p>2) The procurement dossier shall be retained by the contracting authority for as long as the public procurement contract / framework</p>  |

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|            | <p><b>Scoring Method</b></p> <ul style="list-style-type: none"> <li>• In electronic form for a period of at least 10 years. – [ 1 ]</li> <li>• In paper form for a period of at least 3 years. – [ 0.5 ]</li> </ul> <p style="text-align: right;"><i>Transparency</i></p>   | <p>For at least 5 years</p>   | <p>agreement produces legal effects but not less than 5 years from the date of termination of the contract.</p> <p>3. If the award procedure is canceled, the file shall be kept for at least 5 years from the date of cancellation of the procedure.</p> |
| <p>13.</p> | <p>PPL stipulates that public procurement operations must be subject to internal and external audit conducted by qualified specialists. – [ 1 point ]</p> <p><b>Point Distribution</b></p> <ul style="list-style-type: none"> <li>a) PPL stipulates that public procurement operations must be subject to internal audit conducted by qualified specialists. – [ 0.5 ]</li> <li>b) PPL stipulates that public procurement operations must be subject to external audit conducted by qualified specialists. – [ 0.5 ]</li> </ul> <p style="text-align: right;"><i>Accountability and Integrity</i></p> | <p>Overall: 1</p> <p>Components:</p> <ul style="list-style-type: none"> <li>a) 0.5</li> <li>b) 0.5</li> </ul> | <p>Art 3(3) , Dcision 634/2015</p> <p>Legea nr. 672/2002 privind auditul public intern &gt; law on public internal audit. Institutions have internal audit departments that check the procurement procedures.</p>   |