

ANALYSIS OF PUBLIC PROCUREMENT CONTRACTS IN THE EU MEMBER STATES AND THEIR IMPLICATIONS

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Abstract *This article provides a brief analysis of public contracts and the value of contracts in EU Member States. Also, some e-procurement systems and the effects achieved since implementation are presented.*

1. CONCEPTUAL BOUNDARIES ON ADMINISTRATIVE CONTRACTS

The theory of administrative contracts came into being, for the first time in the legal literature of France and is a creation of the jurisprudence of the State Council. Jeze Gaston, founder of the classical conception through his writings showed that in order to ensure the realization of public services, public administration may enter various legal documents with different legal entities.

Here, the theory of administrative contracts appeared with the development of relationship between the government and private entrepreneurs pursuing the concession of public works or services. On this aspect, C. Rarincescu (1940), great writer interwar administrative law, administrative contracts defined as "those contracts between private and administration, concluded to the functioning and organization of the public service".

With the passage of time, administrative law has developed, and administrative contract is seen as "an instrument through which the state can influence the economy", as for example, public works contracts and create jobs require some investment, in turn causes higher standards of living (Sararu, 2009).

Therefore, in addition to being an instrument of government strategy, administrative contract is an item that exceeds the state imposing its traditional model on how to perform the tasks they are to perform and the organization public service is a legal obligation for public administration contracting partner, he and accepting another suggestion (that of private entrepreneurs).

The current doctrine were expressed mainly three views: one of acceptance of the theory of administrative contract with express reference to the concession of public services being considered by the administration of a particular administrative contract (Manda, 2007); the second is the in rejecting the theory of administrative contracts as it

considers that it is compatible with the division administrative acts and administrative management authority, and the last case is the acceptance of the theory of administrative contracts for all government contracts from being subject to public law. These theories arose from the existence of a court finding the need to resolve any disputes that may arise during the execution of contract, the competent court is the National Administrative Court.

2. TYPES OF CONTRACTS

The purpose of administrative contracts is an activity of public interest may cover the provision of a public service, achievement of public works, the enhancement of a good public or private property by the state or municipalities made public.

Classification of administrative contracts can be made according to several criteria: subjects, nature or object, methods etc.

When referring to the subjects, we distinguish two categories of contracts, namely:

- 1) The contract concluded between two government authorities;
- 2) The contract concluded between a person of public law and public private aiming design, financing, construction, rehabilitation, modernization, operation, maintenance, development and transfer of goods or public service.

We identify at least two broad categories from the object point of view: a) Contracts are concluded for the realization of public services for the enhancement of the public domain goods; b) Contracts are concluded for the achievement of other public services (education, health, public order, etc.)

Currently Romanian legislation regulates several types of administrative contracts such as: Public procurement contract, which can be: a) The works contract is to be execution and design works on activities such as insulation, finishing, plumbing, carpentry (Anexe no.1 GEO. No. 34/2006), etc. or design, execution or performance by any means, of a work corresponding to the need and objectives of the contracting authority; b) Supply Contract for the supply of one or more products based on purchase, including rates, hiring or leasing, with or without option to buy. This type of contract is the main supply of products and, as a secondary operation / installation work and commissioning them. c) The service contract is that public contract, other than works or supply contract, which is the provision of one or more services. The agreement's main provision of services and ancillary activities carried such as transport, maintenance and repair, financial services, telecommunications (Anexe no.1 GEO. No. 34/2006), etc.

Another type of contract in the Romanian legislation is the concession contract, which may be: a) public works concession contract shall in consideration of services rendered to the concession grantor to receive the right to exploit the work over a result or this right together with payment of predetermined amounts of money. b) service concession contract covers services as counterparty, concessionaire to receive from the grantor the right to exploit the service for a specified period or this right together with payment of predetermined amounts of money. c) Contract of public assets concession is a contract in writing by which the grantor submit over a given period concessionaire acting

at the risk and responsibility, the right and obligation to operate a public property in exchange for a fee.

A third type of contract is the PPP contract. Public loan contract requires a contract generated by the state to obtain funding from creditors and natural or legal person undertakes to repay them with interest and other costs, within a specified period. Contract appointment of civil servants and the contract for the provision of medical services are other types of contracts. The grant contract is a contract between the management of an estate, for example Romanian Fund for Social Development, and representatives of entities such as rural communities, under which the Fund to the recipient or, where applicable, intermediary organizations, free of charge, money, called grants solely for the execution of approved projects (Chiriac, 2011).

3. FEATURES OF PUBLIC PROCUREMENT CONTRACTS IN THE EUROPEAN UNION MEMBER STATES

The European public procurement aims to apply the principles of transparency and cross-border competition to improve the functioning of public markets, promoting also a better use of public resources.

The European Union currently has a market large-scale procurement and current legislation regulates contracts worth about 447 billion Euros, while the total market for procurement of goods, works and services carried out by the public sector in the EU is estimated over 2 400 billion. There is also a European Commission proposal to increase the effectiveness of EU public procurement, by shifting them towards electronic procurement (e-procurement - Proposal for a Directive of the European Parliament and of the Council on public procurement). However the proposal provides for simplification provisions governing certain procedures and electronic instruments, for example dynamic purchasing systems, electronic auctions and electronic catalogs. It will also become mandatory use of e-CERTIS database. This is a guide showing documents and certificates that require companies bidding for public procurement contracts obtaining in the Member States of the European Union. It helps companies to identify the documents and certificates you need to submit the bid to obtain a contract to a European country and contracting authorities in European countries helped to determine which documents should require companies participating in the auction or what documents may accept from them. e-CERTIS is the result of a joint initiative, the European Commission provides and manages system and national editorial team ensures that the information is complete, accurate and current. It can be accessed from the website of the Directorate General for Internal Market of the European Commission and is available in 22 languages. This would increase legal clarity, especially across borders, about certificates and statements as may be required by Member States.

By using this area of e-procurement (e-procurement) is intended to reduce costs and streamline the entire process of procurement. In many Member States, the use of electronic procurement solution accounted for increasing economic efficiency of the public procurement process. For example, in Portugal, after the introduction of e-procurement, Portuguese hospitals have reduced their purchase contract prices by 18%.

Overall, the transition to e-procurement in Portugal generated savings estimated at about 650 million in the first year. Savings that this State has been through this measure amounts to 6% - 12% of total expenditure for procurement. Most of the savings was due to lower prices as a result of stronger competition (multiple offers on procedure), but were made to the cost savings and administrative.

Another successful example is the XchangeWales - Procurement Programme in Wales - which allowed savings of £ 58 million. Investment costs for setting up the program were recovered in a single year. XchangeWales program mainly aims modernization of public procurement by providing electronic procurement infrastructure, available for all public sector organizations in Wales. This infrastructure will help the buyer-supplier interface and offer easy access to a wide range of tools, procurement eliminating barriers faced some operators, particularly SMEs.

Also UGAP (Union des groupements d'achats publics) - the central purchasing body in France - expected gradual transition to e-Procurement reduced by 10% the administrative burden for buyers (e.g., by analyzing the tenders faster and access Easy to documents) and by 10% for legal services involved (as Procurement involve fewer legal controls). UGAP uses two tools to simplify public procurement, namely: on the one hand UGAP purchase products and services for public bodies, placing orders and making all necessary communications with suppliers. On the other hand UGAP provides a framework for public contracting buyers. By using this program public buyers are exempt from normal procedures and are considered to have fulfilled all obligations on advertising and competition, regardless of the contract amount. Also this program involves the use of modern tools such as e-auction, e-order and e-invoicing. System implementation cost was minimal compared to the benefits already achieved, but efforts were needed to train staff and update internal working methods.

In Romania since 2006 has been the publication of tenders in SEAP (Electronic Procurement System), trying thus saving public money and increase transparency in the procurement process. SEAP is an integrated IT infrastructure that provides public institutions in Romania can purchase products, goods and services by means of computer aided manufacture and operators the opportunity to bid for electronic auctions. Thus this system has the following main objectives: simplification of tender suppliers, use of efficient and standardized work procedures, reducing costs by reducing the purchase price, providing public information about procurement processes and providing a framework High security and reliability for the activities of management of public funds.

The implementation of electronic purchasing solutions inevitably involve initial costs, but practice shows that they can be recovered in a relatively short period of time. Furthermore, existing systems shows that they are a powerful means to promote the participation of SMEs, including across borders, as SMEs are finding it easier to find tender and respond to these electronic means only in a traditional environment in which to use paper documents.

The economic significance of public procurement in the EU is an important one, this year totaling nearly 3.5% of regional GDP. In public procurement, current Community rules provide for the use of six types of procedures: open, restricted procedure, accelerated restricted procedure, competitive dialogue, negotiated procedure

and an accelerated procedure. The competitive dialogue procedure can only be used when not indicated any other procedure or when it may not achieve the results desired. The open procedure is most commonly used in public procurement, it totaled 73% of all tenders published in the Official Journal of the European Union. Restricted procedures and the negotiations are used for 9% of all offers, one of the countries most frequently uses the United Kingdom (for this country, the open "covers" only 50% of public procurement, well below the average EU). Smaller countries such as Cyprus, Liechtenstein, Malta and Iceland, using almost exclusively the open. The value of public contracts achieve on average in the EU, 400,000 euro, but nearly 9 out of 10 contracts is estimated below the median (which is 3 million).

In 2012, the European Union, the bulk procurement (by value) was achieved by open procedure, the competitive dialogue procedure applying only a small number of cases.

Public contracts and differs according to the procedure used for each value. The open procedure is used predominantly for low-value contracts, while the competitive dialogue procedure is used for higher value contracts. The cost of procurement in the EU is estimated at 1.4% of total purchases, representing 5.3 billion euro (in 2009). Among the EU member states are major differences in cost-effectiveness.

For example, in Germany and Norway, procurement costs amount to 4% of the total value of public procurement in the EU, while in the UK and Italy less than 1%. In this context, we should mention that the procurement cost value is not entirely due to EU rules, but national legislation. Competition in public procurement is significant, estimating that at EU level, each receives on average 5.4 open offers. Spain and Germany are the most competitive markets in the area, with an average of 8 per tender offers open public procurement.

Table no. 1 The cost of procurement in the Member States of the European Union (thousands euro)

Country	Procurement cost
Belgium	28,9
Bulgaria	4,7
Czech Republic	8,5
Denmark	43,7
Germany	47,0
Estonia	7,5
Ireland	36,3
Greece	33,5
Spain	33,5
France	21,6
Italy	48,5
Cyprus	30,7
Latvia	6,8
Lithuania	5,3
Luxembourg	30,1
Hungary	7,3
Malta	12,7
Netherlands	40,1
Austria	38,5

Poland	5,1
Portugal	31,0
Romania	5,1
Slovenia	11,4
Slovakia	8,0
Finland	31,1
Sweden	45,5
Great Britain	52,7

Source: www.ec.europa.eu/internal_market/publicprocurement/cost-effectiveness

From the data analysis we can see that a higher level of acquisition costs are recorded in countries with a higher degree of development, such as Britain and Germany because in these states, the process of public procurement, it puts a lot of offers. Note that the lowest cost is recorded in the new EU member states such as Romania and Bulgaria, because in those countries there is a competition as big.

According to data published in the latest European Commission report on public procurement - Annual Public Procurement Implementation Review, 2012 - total value of bids for procurement auctions amounted in 2010 to 447 billion (representing 3.7 % of EU GDP). Estimates of the Member States, however, are different from those of the European Commission, they indicate a slightly lower value of about 340 billion euro. These estimates can be explained by the fact that there are differences between reported intention and acquisitions effectively performed, but due to time differences between the two types of statistical evidence.

Table no. 2 Differences between the estimates of the European Commission and the Member States, the value of public procurement (billion)

Country	Reports of the Member States	European Commission estimates	The value of European projects
Belgium	4.85	10.96	2,06
Bulgaria	1.24	2.30	6,67
Czech Republic	6.57	8.07	26,53
Denmark	8.59	10.28	0,05
Germany	16.69	32.85	25,48
Estonia	0.76	1.51	3,4
Ireland	7.64	3.65	0,075
Greece	2.46	5.47	20,21
Spain	29.55	34.06	34,65
France	53.03	66.71	13,44
Italy	30.77	53.12	27,95
Cyprus	0.43	0.90	0,061
Latvia	1.52	2.06	4,53
Lithuania	1.35	1.33	6,77
Luxembourg	0.35	0.61	0,005
Hungary	3.95	5.52	24,92
Malta	0.36	0.26	0,0084
Netherlands	20.34	10.92	1,66
Austria	6.20	6.59	1,2
Poland	22.21	30.90	67,18

Portugal	3.57	7.08	21,41
Romania	6.09	7.60	19,21
Slovenia	0	1.63	4,10
Slovakia	3.41	7.62	11,49
Finland	5.61	8.25	1,59
Sweden	22.36	16.88	1,62
Great Britain	80.55	109.88	9,89
Total EU 27	340.43	447.03	≈ 422

Source: *Anual Public Procurement Implementation Review*, 2012 and www.ec.europa.eu

The data analyzed in this table we can see that there are some differences between the estimates of the Member States and the Commission. For example, in countries such as Poland, Germany, Italy and Spain, although larger amounts are allocated European project and European level recorded a large number of offers, which is clear from the Commission's estimates, we see that nationally only half of which are affected. Referring to Romania we find that competition is not as high as in other countries, which shows the number of bids that have been submitted. However we can say that Romania manages to make about three-quarters of the projects submitted.

As regards the UK, the situation changes because although the amount allocated for the financing of European projects is considerably lower compared to other states, we can see that the process is efficient public procurement which is apparent from the large number of offers made but also and the large number of projects completed, the difference between the estimates of the Commission and national reports Realtor small. We can say that the value of public procurement projects undertaken in the UK to constitute about a quarter of the total value of public procurement in the European Union.

The great importance to the public procurement sector in the EU is reflected in the data presented above. I believe that effective procedures can be improved so as to contribute to better outcomes and economically. This can be achieved by modernizing public procurement legislation and thus represents an important step for economic efficiency. At the European level are trying modernizing public procurement legislation through a proposal for a Directive of the European Parliament and of the Council on public procurement, aiming thereby increasing the efficiency of public spending to ensure the best results in terms of value. Also desired simplification and flexibility of existing rules on public procurement, facilitating the use of public procurement by contracting authorities in support of common societal goals, such as environmental protection, energy and resource efficiency, promoting innovation and providing the best conditions possible to provide high quality social services.

4. CONCLUSIONS

The correct efficient and effective application EU procurement rules across the EU remains a constant challenge. Thus the EU is trying to review and modernize the regulatory framework for public procurement contracts awarded to increase flexibility and allow them to better use in support of other policies. Public procurement is one of the

marketing tools to be used to improve the business environment and must ensure the most efficient use of public funds.

Although in Romania since 2006 is an electronic procurement seeking to save money and increase transparency in public procurement, it had the same result as other similar systems in Europe. Thus, the introduction of e-procurement Portugal have made savings of around EUR 650 million, in Wales by introducing e-procurement program XchangeWales have made savings of £ 58 million and in France led to implementing the UGAP 10% reduction in administrative burden for buyers.

So the European Union put a modernization and revision of public procurement regulations, trying thus to promote quality and innovation in this field. Also by the same measure is intended to reduce unnecessary bureaucracy and encourage the use of best value in terms of economic, rather than the use of the criterion of the lowest price in order to more intelligent and efficient procurement. Among other goals, a major role is played by the need for a higher degree of professionalism, increase the participation of SMEs, including social enterprises, combating favoritism, fraud and corruption, and promoting European cross-border contracts in public procurement.

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