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**European Public
Procurement Landscape**
The case of Romania.




The size of Romania's public procurement domain is not strictly identified; however, the **European Commission estimates that EU countries spend about 14% of GDP (Gross Domestic Product) per year for public procurement¹.**

The National Strategy for Public Procurement 2015 – 2020² made it clear that it is necessary to create an integrated legal framework, so as to replace the overregulation and frequent legislative modifications. In order to respond to this necessity, the objectives set under the national strategy were:

- 1. Development of Public Policies.**
- 2. Establishment of a clear and definitive legal framework.**
- 3. Operational support and help – desk.**
- 4. Establishment of correction and appeal measures within the legal framework.**
- 5. Monitoring, supervising and controlling the public procurement procedures.**
- 6. Raising the professional and training degree for the personnel of the public procurement sector.**





The implementation of the national strategy started in 2016 when the EU procurement directives (Directive 2014/23/EU, 2014/24/EU and 2014/25/EU) were transposed in the national public procurement legislation, within the following Laws:

Law n° 98/2016 on Public Procurement³;

Law n° 99/2016 on Utilities Procurement⁴;

Law n° 100/2016 on Work Concession Contracts and Services Concession Contracts⁵.

Additionally, the Law 101/2016 for corrections and appeal measures⁶ completed the legal framework for public procurement. The EU directive on defence procurement (Directive 2009/81/EC) was transposed by the Emergency Government Ordinance no. 114/2011⁷ in December 2011.



According to the European Commission analysis for Romania⁸: *"The public procurement legislation provides a clear legal basis also for implementing PreCommercial Procurement (PCP) and Public Procurement of Innovative solutions (PPI) although without explicit official definitions for PCP or PPI. The Romanian public procurement legal framework provides a legal definition for innovation but not for innovation procurement. It also provides a legal definition for R&D in the defence sector and identifies R&D via the CPV codes for non-defence procurers."*

3. Law no. 98/2016 on public procurement, ANAP, updated in 2020;

4. Law no. 99/2016 on utilities procurement, ANAP, updated in 2020;

5. Law no. 100/2016 on work concession contracts and services concession contracts, ANAP, updated 2020;

6. Law 101/2016 for corrections and contestation measures, ANAP, updated in 2020;

7. Emergency Government Ordinance no. 114/2011, ANAP, updated in 2020;

8. The strategic use of innovation procurement in the digital economy, Country Fact Sheet, EC, January 2019.





In order to better understand and identify the public buyers' level of awareness and experience on innovation procurement, various relevant documents, reports, articles and strategies of the public procurement domain were reviewed and 6 interviews were also conducted on this topic, with relevant key factors, such as: a regional development agency, two public hospitals, one ministry representative and two private company representatives, which could be potential suppliers of innovative products and services.



According to article 3, section aa of the Law 98/2016, innovation is defined as *"the implementation of a new or significantly enhanced product, service or process, including but not limited to processes of production or construction, a new method of placing on the market or a new method of organisation in business practice, organisation of workplace or external relations among others to help address social challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth"*.

9. Statistical report 01.01.2020 - 31.03.2020 on the procedures for awarding procurement contracts public or sectoral procurement initiated in the electronic public procurement system by publishing an announcement / simplified participation notice / invitation of participation, ANAP, 2020;

The common and main conclusion was that public buyers are not aware of what PCP or PPI means, despite the fact that most of them declared that they are knowledgeable about the innovation procurement. The Statistical report 01.01.2020 - 31.03.2020⁹ regarding the awarding procedures of the public or sectoral procurement contracts initiated in the electronic public procurement system by publishing an announcement / simplified participation notice / invitation of participation made by the NPPA (National Public Procurement Authority) reveals a **very low level for the procedures that could be innovation procurements**. Only 13 competitive procedures with negotiation from a total of 2,073 procedures were implemented in the first three months of 2020, indicating that

in the absence of stimulating measures the public procurers are reluctant to think differently.





Despite the fact that the established legislation includes procedures which could ensure innovation procurements (Competitive solutions competition, Competitive dialogue Partnership for innovation, Negotiation without publication, Competitive negotiations), these are rarely used by public authorities.

Both public authorities and suppliers are reluctant to use the market consultation tool stipulated by the legislation **because it is relatively new and the public procurers seem to prefer the already established principles**

which is established in the legislation, because this is a new tool in the legislation and faces the reticence of the public authorities, too carefully for not disregard the principles of the public acquisitions established in the legislation.

Furthermore, in accordance with the Monitoring indicators for the estimation of the efficiency for public procurement acquisitions in 2018, made by the NPPA (National Public Procurement Agency¹⁾) there is also a **reticence for using "the most advantage offer" selection criteria which are not really understood by the public authorities** because for a long period in the previous procurement legislation the recommended selection criterion was "the lowest price" and for the "most advantage offer" criterion the public procurers have the obligation to justify the selection criteria very clear, otherwise corrections or rejections of the documentation was applied.



"As the same in the other years, for the contracts which were concluded in 2018, in the context of the relevant public procurement procedures, the contracting authorities / entities used the lowest price criterion for awarding the contracts in the largest proportion, respectively 85.22%". Although documents are provided by ANAP on how you can build the selection criteria, there are not used at the full potential by public authorities.



Innovation procurement is not regularly foreseen/included in the medium/long term strategies at the level of the public authorities, and there isn't a dedicated budget for this type of procurement.

Most innovation procurement occur in research projects funded from various public sources but never from the main institutional budget. The most popular funding sources for projects are the structural funds, H2020, the Research and Development National Programs, EEA and the Norwegian funding mechanism.

Even if the legal framework for public procurement from 2016, included a first mention of the topic of innovation procurement, this topic is not developed yet, either a stand-alone policy or as a strategic part of other policies.

A national action plan or any policy in public procurement that encourages innovation has not been established yet.

The innovation procurement is a procedure used just in a few public entities like ONAC (National Office for Centralized Procurement), ministries and other large public central public authorities.



The innovation procurement procedures are implemented in three steps, in most of which a lot of expertise and time is needed and not many public procurers have the knowledge and skills to use this type of procedure.

Monitoring indicators of 2018 public procurement procedures show that the average time an innovation procurement procedure takes is significantly higher than all the other types of procedures.

Procedure type	Preparing	Implementing	Total days	Procedures number
Open bid	15	103	118	3623
Accelerated open bid	6	39	45	52
Short bid	9	113	122	11
Competitive negotiation	29	171	200	16
Competitive dialogue	34	440	474	1
Simplified procedure	13	77	90	14874

11. National Authority for Public Acquisitions (ANAP).

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1. Innovation procurement **is not developed yet;**
 2. Innovation procurement **is not a stand-alone policy or a strategic part of other policy;**
 3. There is a **lack of awareness and/or experience of the public buyers** about the PCP/PPI terms;
 4. Innovation procurement **is not defined and detailed in the national legal framework;**
 5. **Public procurers** are reluctant to use market consultation approach and any complex criterion.
 6. **Choosing the safest and known way**, by using the "the lowest price" selection criteria instead "the most advantageous offer" selection criteria;
 7. A **very low number** of innovation procedures;
 8. The long duration of the innovation procedures is discouraging;
 9. **Lack of national action plan;**
 10. **Lack of policies** in public procurement that encourages innovation;
 11. **Training** of the public procurement employees **is needed and wanted.**
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The case of Romania.



This analysis is based on PRONTO partners' expertise and previous experience, the review of relevant documents (laws, guidelines, presentations, articles, studies, etc.) and interviews with key actors trying to cover all aspects of public procurement, namely representatives of:

• **The 'demand' side**, i.e. individual public entities (e.g. public hospitals, research institutions, universities, technical centres, regional development agencies, municipalities, etc.), central/regional purchasing bodies (e.g. ministries, regional development agencies, etc.).

• **The 'supply' side**, i.e. private companies potential suppliers of innovative solutions.

• **The 'support' side**, i.e. policy makers (e.g. ministries), national/regional entities supporting public entities, experts/advisors, etc.



Interviews conducted.

Country	Demand	Supply	Support	Total
Romania	1 Regional Development Agency 2 Public Hospitals	2	1 Ministry	6

Important note: The aim of PRONTO is not to perform an exhaustive and thorough analysis of the national PPI landscape but rather to collect the insights on the challenges for the design and implementation of PPI procedures to properly adjust the upcoming PRONTO services and address the actual support needs of the public buyers. Therefore, the foreseen number of interviews was not envisioned to be large.



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