

## Analysis report of procurement standards and procurement praxis in Romania

### Introduction

In Romania the first important steps with respect to public procurement sector started in 2006 with:

- Transposition the EU Directive 2004/18/CE on the coordination of procedures for the award of public works contracts, public supply and
- Transposition the EU Directive 2004/17/CE on the contracts and public service contracts and coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector,

through adoption the EMERGENCY ORDINANCE No. 34/2006 concerning the awarding of public contracts, public works concession contracts and services concession contracts.

Due to EU initiative, the Romanian Action Plan for Green Public Procurement was published in 2008 and covers 2008-2013. The document establishes specific targets for products and services categories which may be procured by public institutions, according to EU legislation. The main covered categories are: cleaning, buildings, lighting, food, furniture, IT, paper and buses.

The green initiatives are usual developed by environmental NGOs.

And usual green criteria are not present within bidding documents.

In Romania the main institution with Public Procurement is the National Authority for Regulating and Monitoring of Public Procurement (ANRMAP).

### Current national procurement legislation

- Emergency Ordinance no. 34/2006 concerning the awarding of public contracts, public works concession contracts and services concession contracts (as approved with amendments by Law no. 337/2006, with subsequent amendments, whereby the adjustments required by the new European provisions to be provided and the regulatory framework for public procurement to be further improved).
- Government Decision no. 925/2006 (updated) for approving of the application norms of the Government's Emergency Ordinance no. 34/2006 (updated) regarding the award of public procurement contracts works concession contracts and services concession contracts
- Government Decision no. 1660/2006 for approving of the application norms of the provisions referring to the award of procurement contracts by electronic means from the Government's Emergency Ordinance no. 34/2006
- Order no. 122/2009 for amending the Regulation regarding monitoring the way of awarding of public procurement contracts, public works concession contracts and services concession contracts, approved by the Order of President of National Authority for Regulating and Monitoring of Public Procurement no. 107/2009
- Order of President of National Authority for Regulating and Monitoring of Public Procurement no. 107/2009 for approval the Regulation regarding monitoring the way of awarding of public procurement contracts, public works concession contracts and services concession contracts
- Decision No 834 of 22 July 2009 amending and completing the Government Decision No 925/2006 for the approval of the rules of implementation of the provisions regarding the award of public procurement contracts of the Government Emergency Ordinance No 34/2006

regarding the award of the public procurement contracts, public works concession contracts and services concession contracts

- Emergency Ordinance 76/2010 amending and supplementing Government Emergency Ordinance no. 34/2006 concerning the award of public procurement contracts, public works concession contracts and services concession contracts
- Law no. 278/2010 regarding approval the Emergency Ordinance 76/2010 amending and supplementing Government Emergency Ordinance no. 34/2006 concerning the award of public procurement contracts, public works concession contracts and services concession contracts
- Order no. 314 / 2010 with respect to implementation the certificate for attending the auction with independent tender
- Law no. 279 /2011 amending and completing the Government's Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts works concession contracts and services concession contracts
- Order no. 509/2011 of President of National Authority for Regulating and Monitoring of Public Procurement with respect to establish the qualification and selection criteria
- Decision no. 801/2011 amending and completing the Government's Decision no. 525/2007 with respect to the organization and operating of National Authority for Regulating and Monitoring of Public Procurement
- Order no. 302/2011, of President of National Authority for Regulating and Monitoring of Public Procurement with respect to approval the templates for Minutes of meetings for opening the tenders and the Procedure's Report, referring to the award of public procurement contracts works concession contracts and services concession contracts
- Order no. 313/2011, of President of National Authority for Regulating and Monitoring of Public Procurement with respect to certain provisions' interpretation referring to the award of public procurement contracts, works concession contracts and services concession contracts
- Government's Emergency Ordinance no. 40 / 2011 regarding promotion of clean vehicles
- Order no. 509/2011 of President of National Authority for Regulating and Monitoring of Public Procurement, with respect to formulating criteria for qualification and selection
- Order no. 136/2012 of President of National Authority for Regulating and Monitoring of Public Procurement, with respect to notification for the procurement contracts
- Decision no. 219/2012 amending art. 93 from Government Decision no. 925/2006 for approving of the application norms of the Government's Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts works concession contracts and services concession contracts

### Current national / regional practice

Tenders for public procurement are:

- Open auction – any interested company has the right to submit its application
- Restricted tender – any company is entitled to submit its application but only selected applicants may submit the tender
- The competitive dialogue – the contracting authority have a dialogue with admitted candidates in order to identify one or more solutions for its problems, followed by final tender's submission
- Negotiation – contracting authority develops consultations with one or more from selected candidates and negotiates contractual clauses including price. Negotiations may be with or without a public announcement for invitation to tender.
- Ask for tender

The contracting authority is entitled to announce a competition in order to find the best solutions.

The contracting authority is entitled to procure directly products, services or work when the value for that procurement is under equivalent in lei of 15000 Euros (without VAT) based on a supporting document.

European Project "Buy Smart+".

Visit [www.buy-smart.info](http://www.buy-smart.info) for more information.

Any contracting authority is entitled to use the procurement procedures using electronic proposal submission service (SEAP).

Private procurers must comply with the same rules as public ones when the funds arise from public or special European funds.

## Recognised barriers

- Most of Parliament's outputs with respect to environment aspects have been only Government's initiatives among which 30% are only EU Directives' transposition
- The EU Directives' transposition is on average 1.5 years delayed ( pre-infringement procedures)
- 25% from Environment Commission from Deputies' Chamber voted against environment experts' opinion

Source: [www.votulverde.ro](http://www.votulverde.ro) period covered 2010-2011

### Conclusion:

- Environment issues are not always supported due to unknown reasons.
- Lack of enough communication inside and outside political groups
- Lack of enough communication and collaboration between government institutions: National Authority for Regulating and Monitoring of Public Procurement (ANRMAP), National Authority for Energy Regulation (ANRE), local authorities
- Lack of knowledge regarding possible existing green criteria in order to be included within bidding documents
- Bidding documents usual not include criteria as : energy efficiency, reduced environment impact but include the cheapest price
- Bidding documents usual not include requests for certain energy labels, eco labels, other labels
- Energy labelling (even the legislation is in force) is not always obeyed according with the EU regulations. Penalties are symbolically.

## Opportunities

- The new energy efficiency EU Directive with a closer monitoring
- Projects like "support activities", dissemination, communication, training
- Strong links between government institution due to special measures

## Relevant sources of information

- [www.achizitiiverzi.ro](http://www.achizitiiverzi.ro)
- [www.achizitiiecologice.ro](http://www.achizitiiecologice.ro)
- [www.topten.info.ro](http://www.topten.info.ro)
- [www.votulverde.ro](http://www.votulverde.ro)
- [www.anrmap.ro](http://www.anrmap.ro)
- [www.anre.ro](http://www.anre.ro)
- [www.mmediu.ro](http://www.mmediu.ro)
- [www.anfp.gov.ro](http://www.anfp.gov.ro)
- [http://mmediu.ro/protectia\\_mediului/eticheta\\_ecologica/eticheta\\_ecologica.htm](http://mmediu.ro/protectia_mediului/eticheta_ecologica/eticheta_ecologica.htm)
- <http://www.newenergylabel.com/ro/background>

## Analysis report of procurement standards and procurement praxis in France

### Introduction

Public contracts represent approximately 10% of France's GDP (source: Ministry of Finance). Since 2006, the Procurement Contract Code has stipulated that sustainable development must be taken into account when defining requirements. Since the Grenelle de l'Environnement (French round table on the environment), in particular, specific requirements have been defined, encouraging energy efficiency in contracts (building, green electricity, vehicles, office equipment, public lighting). Many contracts are now moving in this direction but there are still many obstacles to overcome.

### Current national procurement legislation

France has committed to reducing its energy consumption and greenhouse gas emissions by 20%, and to developing by 23% its renewable energy by 2020 (decision n° 406/2009/CE European parliament and council 23rd april 2009 : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0136:0148:FR:PDF>).

These commitments appeared in the Grenelle de l'environnement (2007) which defined objectives for energy and also public contracts.

In this way, the State ordered, in 2011, 50,000 electric vehicles in order to obtain economies of scale as quickly as possible.

One of the 268 commitments contained in the Grenelle is the recommendation that the notion of responsible government procurement is developed and leads to an overhaul of the public contract system.

In this way, planning law no. 2009-967, dated 3 August 2009, relating to implementation of the Grenelle de l'environnement, stipulates in article 5-1 that "public contract law must take into account the objective of reducing energy consumption (...) by authorising the contracting authority to use an energy performance contract notably in the form of a complete package (...).

The Energy Performance Contract is expressly defined by article 1.j of European Parliament directive 2006/32 as "a contractual arrangement between the beneficiary and the supplier (normally an energy efficiency service company) relating to a measure aimed at improving energy efficiency, according to which investments in this measure are granted in order to achieve a level of improvement in energy efficiency which is contractually defined".

In this way, since article 5 of the Grenelle I law stipulates that the State is setting an objective of reducing the energy consumption of existing buildings by at least 38% by 2020, the Energy Performance Contract constitutes an instrument by which contracting authorities can fulfil the aforementioned objectives.

As such, decree no. 2011-1000, dated 26 August 2011, explicitly introduces the Energy Performance Contract in the procurement contract code (by extending the notion of performance). Indeed, article 73-II of the procurement contract code now states that if a maintenance, operating or execution contract includes execution of work falling under law no.85.704, dated 12 July 1985, the contractor can only be associated with the design for carrying out energy performance commitments in one or more existing buildings or for technical reasons.

Article 53 of the procurement contract code allows, in addition, the contracting authority to allocate the contract notably based on "performance in terms of protecting the environment".

In line with this, on 16 December 2011, the French state announced new measures for improving energy efficiency, including:

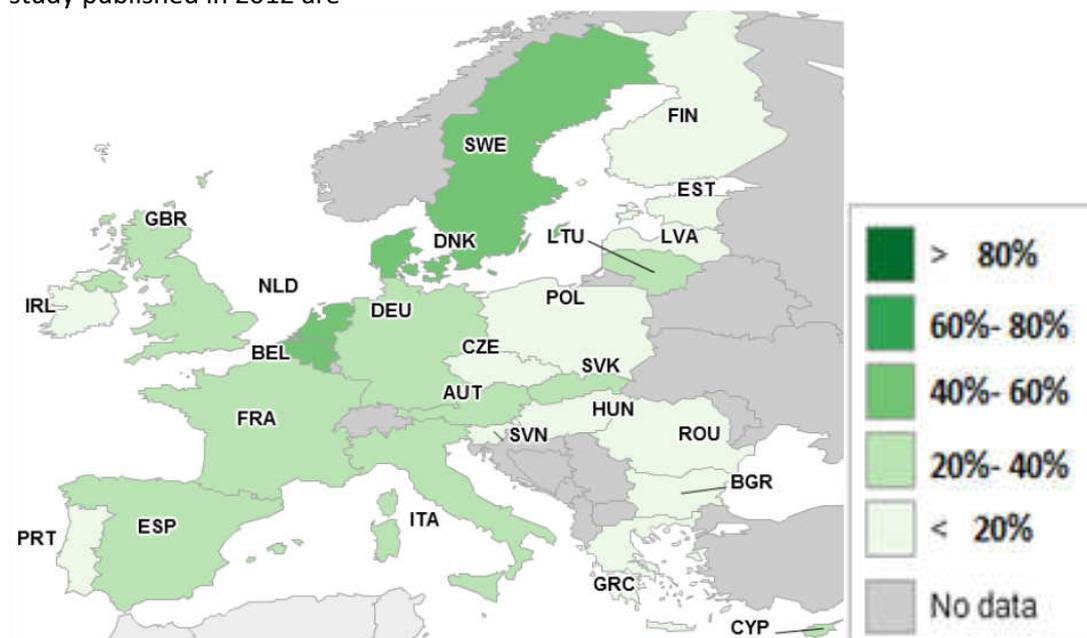
- Ensuring that more emphasis is placed on energy efficiency in public contracts
  - o Consolidating networks of buyers and extending to regions not yet covered (from January 2012)
  - o Announced launch of an “energy performance purchase plan” (June 2012)
- Speeding up renovation of public lighting (in particular for districts of less than 2,000 inhabitants) (February 2012)
- Developing sustainable mobility solutions (in particular for small authorities) (March 2012)

### Current national / regional practice

In France, all public players (local authorities, public services, hospitals) are obliged to observe the procurement contract code. The number of buyers in France is estimated at around 300,000 i.e. approximately 30,000 for the Rhône-Alpes region alone, for example. Purchases are very often fragmented within local authorities, in particular, each department buying products that it requires, a legal department (in the largest authorities) checking the conformity of the contracts.

The legality of contracts is verified in France by the departments of the Prefecture past a certain threshold (>€ 230,000). Below this threshold, transmission of contracts is not compulsory. All contracts are nevertheless subject to inspection by the regional courts of accounts.

The knowledge of real share of GPP in Europe is already weak but according to EU the results in its study published in 2012 are



- One of the main obstacles to considering sustainable development in contracts is the concern of many buyers that they will disadvantage **small local companies** which would not be able to meet social or environmental requirements. Indeed, the low number of points awarded for environmental performance means that technical and above financial criteria remain the main criteria for buyers' final choices. It is rare for local authorities to select a tender because it has the best sustainable development criterion. There is therefore still a significant discrepancy between what is sought in terms of sustainable development during the consultation process and the reality of the contract finally signed with the company selected.
- One of the requirements in terms of responsible public contracts ("green procurement") is taking into account the life cycle of products and the **overall cost**, well above the acquisition cost alone. Some buyers are now well aware of the ecological and economic benefit of such reasoning which still remains, however, very rare. In the best of cases, when overall cost is discussed, it is essentially only operating costs which are taken into account.
- Beyond statutory requirements (since 2006, for example, the French procurement contract code stipulates that sustainable development must be taken into account when defining requirements) few actually take into account **sustainable development**. Moreover, we do not possess objective information about the current situation, owing to the very large number of buyers and contracts placed every year and also because monitoring is not yet part of the culture of most public players, throughout Europe.
- When a contract takes into account sustainable development it tends to incorporate it in the **tender selection** criteria and not necessarily in the technical obligations laid down in the specifications. In other words, most tenders still do not incorporate sustainable development since, ultimately, the amount of points allocated to it is small and it is more advisable for a supplier to perform well in terms of price or technical performance if he wants to have a chance of being selected.
- Where environmental clauses exist in specifications, they often remain quite tentative or **very variable according to the buyers**. Some do not hesitate to use eco-labels whilst others prefer somewhat weaker requirements, fearing an unsuccessful contract (whereas, in reality, they could be a lot more demanding).
- The development of contracts which take into account social or environmental aspects is accompanied by rigorous questioning of buyers regarding checking and monitoring of contracts placed. The question of **guarantees** and the increasing technical complexity of the environmental approach notably clashes with the mainly legal culture of buyers who lack elements of understanding on the subject.
- The question of **carbon** (and more generally greenhouse gases) has largely entered into the process of preparing and drawing up contracts. For many local officials or elected representatives, the requirement for reducing the impact of greenhouse gas emissions has become a powerful ally in terms of implicit support for local businesses. Authorities take advantage of the opportunity to put forward the carbon argument in order to favour local business, however very few actually check whether or not these local companies have less impact on the environment.
- The requirement for almost systematically considering CO<sub>2</sub> notably in contracts, has clearly raised the question of the connection between the environmental criteria required, for example, and the object of the contract. The reference to France's international commitments in terms of combating greenhouse gas emissions (Kyoto 1997), European Directives and notably the objective of 3 x 20, the French constitution and the environment charter, required in the procurement contract code, judged insufficient and outdated by some legal experts, finally local commitments through the Agenda 21 action plans or Regional Energy Climate Plans are some of the many justifications for **extending the notion of connection to the object of the contract**.

## Recognised barriers

- Lack of technical knowledge in terms of the environment or integration
- Insufficiency of obligations and checks
- Lack of political and/or technical commitment and of environmental culture
- Fear of additional cost, force of habit
- Need for support, absence of in-house advice
- Inadequacy of the tender
- Complexity of some contracts

## Opportunities

Recommendations for strengthening “sustainable procurement”:

- Training of departments and elected representatives
- Increasing checks and strengthening objectives and obligations
- Strong and regular support for certain innovative projects
- Promoting and recognising (award) the most advanced projects
- Running energy efficiency pilot projects

## Relevant sources of information

**Circular relating to the exemplary nature of the State with regard to sustainable development in operating its departments and public institutions** signed on 3 December 2008 by the Prime Minister  
[http://www.achatsresponsables.com/UserFiles/File/circulaire\\_031208.pdf](http://www.achatsresponsables.com/UserFiles/File/circulaire_031208.pdf)

**The national action plan (NAP) for sustainable public procurement**  
<http://www.achatsresponsables.com/UserFiles/File/PNAAPD.pdf>

**Market research group guides** <http://www.economie.gouv.fr/daj/liste-des-guides-gem#DD>

**Sustainable public contract regional network guide**  
[http://www.ddrhonealpesraee.org/commande\\_publicque.php](http://www.ddrhonealpesraee.org/commande_publicque.php)

**Responsible labels guides**  
[http://www.achatsresponsables.com/UserFiles/File/guide\\_labels\\_1109.pdf](http://www.achatsresponsables.com/UserFiles/File/guide_labels_1109.pdf)

**European Union guide**  
[http://www.achatsresponsables.com/UserFiles/File/acheter\\_vert\\_ce.pdf](http://www.achatsresponsables.com/UserFiles/File/acheter_vert_ce.pdf)

**Training toolkit on European Union sustainable procurement contracts**  
[http://ec.europa.eu/environment/gpp/toolkit\\_en.htm](http://ec.europa.eu/environment/gpp/toolkit_en.htm)

**Manual on ICLEI sustainable public procurement within the scope of the Procura + campaign**  
[http://www.achatsresponsables.com/UserFiles/File/ICL\\_0706\\_Manuel\\_franz.pdf](http://www.achatsresponsables.com/UserFiles/File/ICL_0706_Manuel_franz.pdf)

## List of Internet site resources

European Project “Buy Smart+”.

Visit [www.buy-smart.info](http://www.buy-smart.info) for more information.

<http://www.achatsresponsables.com/UserFiles/File/Liste%20sites%20ressources%20RGO%2002-08%20V2.doc>

**Useful resources for implementing responsible approaches and sustainable public procurement, document produced by MEEDDM (Ministry of Ecology, Energy, Sustainable Development and Sea)**  
<http://www.ecoresponsabilite.ecologie.gouv.fr/IMG/Outils.doc>