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Analysis of the legal framework in Moldova



**State Procurement Agency
Republic of Moldova**

FINAL REPORT

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INTRODUCTION

Public procurement can be defined as the procurement of goods, works or services for one or several contracting authorities. Public procurement plays a key role as a tool to promote good governance: procurement procedures can ensure the efficient management of public finances, guarantees enhanced transparency in investment, goods and services, and promotes a fair competition among business entities. In addition, public procurement can be directed to foster public health, environmental protection, and sustainable development at large.

In international practices, sustainable procurement is defined as **the process by which public authorities procure goods, services and works with a reduced environmental impact throughout their life cycle** when compared to goods, services and works with the same primary function, which have a higher adverse environmental and social impact from cradle to grave.

The objectives underlying the implementation of sustainable public procurement consists in **identifying key opportunities and obstacles to improve environmental performance**, including implementation of energy efficient resources and technologies and business practices, as well as promoting public-private dialogue and business to business both nationally and internationally on the benefits of sustainable production, including the growing importance of environment free markets. In Moldova, a few studies have been conducted on sustainable public procurement.

This study aims to provide a comprehensive overview of the national and EU legal framework on public procurement and assess the possibility to **encourage contracting authorities to take into account environmental, economic and social aspects** in their public procurement, ensuring results related to sustainable development in terms of environmental protection and creation of new jobs, thus stimulating economic growth. The review shall consider the existing legal possibilities for implementing sustainable procurement in the national law on public procurement and the obstacles that may arise in the way of their implementation, to finally come up with proposals for a successful implementation of sustainable public procurement in the Republic Moldova.

RESEARCH METHODOLOGY

The review was based on the research methods by which the phenomena transposed into practice were analyzed, compared, studied and assessed through international and national law.

The **research method** was used in performing an overall review and description of the legal framework aimed at understanding the content of used regulatory acts. This method helped conducting an interpretation and explanation of international and national administrative and constitutional law for the scientific understanding of the mechanism of legislative action on the efficiency of implementation of sustainable procurement. However, considering the overall system of research principles used, a review of the regulatory acts was performed in order to provide an understanding of the relevant rules.

The **comparative method** was useful for finding identical or divergent rules in two or more acts. Comparing the features of legislative rules proved to be fruitful in the study of the phenomenon of implementing international law in the context of national law and for the harmonization of the latter with EU regulations. The comparative method also allowed defining various notions with common features, as well as norms that differ from one regulatory act to another.

The **logical method** was applied in the context of deduction from the previous principles and rules. This method allowed capturing the structure and the trends in the necessary relations between the various components of legal acts studied at both the national and the international level. Thus, the logical analysis of legal provisions and of constructive elements of acts that are important for public procurement and have an influence on the law in general was conducted.

The **sociological method** is a research direction with real benefits to knowledge of the juridical realities, which emerges from the analysis of laws. The legal sociological studies give a new perspective to the study of legal reality, as a social reality, checking how society influences and supports the legal framework and supports its influence. The sociological study of international and national standards highlights the fact that there are some rules among them that have a special legal nature and enforceability throughout the expanse of that field, just like among social phenomena.

A good knowledge requires an appropriate methodology, based on which an effective and efficient analysis of national and international legal framework should be performed, under which new procurement systems, but which also involve a favorable outcome, will be implemented.

CHAPTER I: International Acts

1. Directive no. 2004/17/EC and Directive no. 2014/24/EC

The national law on public procurement is to be harmonized with the European legal package comprising the Directive No. 2004/17/EC and Directive no. 2014/24/EC, according to which no provision should prevent the imposition or enforcement of measures necessary to protect public morality, public order and public safety, health, human and animal life or the preservation of plant life, especially for the purpose of sustainable development.

Directive no. 2004/17/CE **clarifies how the contracting entities may contribute to environmental protection and sustainable development**, while ensuring the possibility to get the best quality/price ratio for their contracts, while the latter, by art. 39 regulates the obligations relating to taxes, environmental protection, provisions related to labor protection and working conditions. However, **this Directive has not been transposed into national law of the Republic of Moldova so far.**

At the same time, Moldova has developed a **utility bill which will transpose Directive 2004/17/EC** of the European Parliament and of the Council of 31 March 2004 coordinating procedures for the award of contracts in the water, energy, transport and post services, and its adoption is expected for the years 2015-2016.

With reference to the Directive no. 2014/24/CE on public procurement, repealing the Directive 2004/18/EC, it should be noted that it was adopted in order to achieve a smart, sustainable and inclusive growth, designed to ensure the most efficient use of public funds.

2. Association Agreement between the European Union and the European Atomic Energy Community and its Member States

In developing a practice in sustainable public procurement, the Republic of Moldova **relied on the “public procurement for a better environment” principle** and showed its interest for its implementation in the national law through ratification of the Association Agreement between the European Union and the European Atomic Energy Community and its Member States, on the one hand and the Republic of Moldova, on the other hand. This step is considered to be important, as it allowed defining the key moments for conducting economic reforms, promoting creation of better jobs, reducing poverty, strengthening social cohesion, sustainable development and better life quality, as well as strengthening the objective of environment free economy.

It is relevant that Moldova is committed to strive for its policies to provide and encourage higher levels of environmental protection. In that context the Republic of Moldova has reconfirmed its commitment to strengthen the contribution of trade to achieve the goal of sustainable development in economic, social and environmental aspects of it.

The ratification of the Association Agreement is an opportunity for the Moldovan state to improve environmental, social and economic performance, including implementation of efficient energy resources and technologies in order to ensure that the principles and objectives in the society are met.

This **Association Agreement** regulates the public procurement in a separate section, Chapter 8 - Public Procurement, which provides for the gradual harmonization of national legislation with the *acquis communautaire* in the field of public procurement. Thus, this chapter applies to contracts with pre-defined values, and to mechanisms needed for the proper functioning of the public procurement system.

A relevant regulation on public procurement is provided by the indicative timeframe for the institutional reform, harmonization and market access (Annex XXIX-B), according to which the Republic of Moldova, as part of the Agreement, will conform to a set of standards and, within 9 months from the date of entry into force of the Agreement will submit information on the implementation of the provisions of Chapter 8. At the same time, a period of 3 years is provided for **harmonization and application of the basic elements of Directive 2004/18 /EC and Directive 2004/17 /EC**. The Association Agreement outlines the principles, terms and definitions set out in Directive 2004/17 / EC and Directive 2004/18 / EC, which promotes good practice and legislative organization for Moldova.

3. World Trade Organization Agreement on Government Procurement

Moldova submitted a formal request in November 2009 and renewed it in 2013 as an **offer to join the World Trade Organization Agreement on Government Procurement** and thus committed to adapt national legislation to the provisions of this Agreement.

The **Government Procurement Agreement** establishes the legal framework of rights and obligations of parties in terms of legislation, procedures and practices used in public procurement. The essence of this framework is the non-discriminatory treatment of all bidders by complying with both the national treatment and the most favored nation clause. The agreement also puts an emphasis on ensuring transparency of public procurement by each individual member. In its annexes, the Agreement provides for each of its members the government's entities empowered to conduct such operations, as well as the categories of goods and services falling under the incidence of the Agreement. Thus, for goods, the annex to the Agreement includes the list of exemptions from application of the Agreement according to data expressly provided by the Members. As regards procurement of services, the Agreement applies only to those categories of services, which are specified in the appendix for each member state.

This agreement has a broad application for the national law and the acts comprising it. Thus, the Agreement comes to **complete the existing requirements and regulate their application to procurement** of goods and services to be procured, so that they do not negatively impact or create any unnecessary obstacles to international trade. Concerning the **technical specifications**, the WTO Agreement provides that these will **focus on performance** rather than on other aspects, as well as that they will be based on relevant international standards that are close to them in terms of the content.

The WTO Agreement for Government Procurement clarifies the applicability of national provisions concerning the bidding procedures, so that the subsequent application of the national law does not contradict these provisions.

It results from the above that **the Agreement aims to establish a multilateral framework of balanced rights and obligations in public procurement contracts**, for the purpose of **liberalization and expansion of international trade**. The member states must ensure that participation of a public agency as a bidder in a public procurement contract award procedure will not result in denaturation of competition for private bidders. The conditions applicable to bidders and products from signatory third countries are those defined by the Agreement. Therefore, the contracting authorities that comply with the directives and apply them to business entities signing this agreement must equally comply with the regulatory provisions. These coordinating provisions should also guarantee to business entities conditions for participation in public procurement procedures that are equally favorable as those reserved for entities from the third countries that signed the Agreement.

4. ILO Convention no. 155 on occupational safety and health and the working environment, 1981

Convention no. 155 on occupational safety and health and the working environment **was ratified by Parliament's Resolution no. 755-XIV of 24.12.1999 28.04.2001**. This Convention is one of the international labor standards with the widest application for all branches of economic activity, for all workers and covers all risks in the workplace. It sets the general action requirements at the national and enterprise levels. The latter includes the responsibilities of employers to provide safe and health risk free job, to the extent of applicable reasonableness.

In the Republic of Moldova, a **specialized central public authority body was established in 1999 - the Labor Inspection** - with the main goal to monitor the employers' compliance with the legal obligations in the labor sector. Later, to ensure harmonization of national law with the provisions of the Convention no. 155, **a proper inspection system was created in 2013, i.e. the State Labor Inspectorate**, to ensure application of law related to occupational safety and health. This body focuses on achievement of objectives by exercise of the state control of compliance of the legal framework for labor regulations and by taking actions aimed to prevent and combat illegalities in this area.

The provisions of the Convention **aim to promote occupational health and safety**, from establishing reasonable working hours to reducing exposure to a hazardous job. A decent job must be safe, underlining the fact that our state has implemented this principle in line with the international standards and the national standards defined by the Constitution. In this context, it should be noted that the United Nations established in 1919 a specialized agency dealing with work related problems at the international level, called International Labor Office. Thus, the ILO continues to be in the forefront of protection and activism in protection of occupational safety and health.

The Convention on occupational safety and health and the working environment presents a general overview of the main concepts and principles of occupational health and safety in accordance with international labor standards and includes objectives, rationale and methodology for prevention of accidents and diseases at

work. This document also comprises a general description of the importance of prevention of accidents and diseases at work and the best way to prevent and promote occupational health and safety.

The Republic of Moldova as a signatory to the Convention **undertakes to comply with and implement some national policy principles**, so that they can then define, implement and periodically review a coherent national policy on safety, hygiene and working environment. By implementing such policy, our state aims to achieve the major objective stipulated in the mentioned Convention and to ensure control over the application of laws and regulations related to safety, hygiene and working environment through an effective system of inspection. At the same time, as a Member, it undertakes the responsibility for adopting some provisions relevant to national conditions and practice, aimed at ensuring the necessary coordination between the various expressly empowered authorities and various bodies.

5. ILO Convention no. 182 on the Worst Forms of Child Labor

ILO Convention no. 182 on the Worst Forms of Child Labor and Immediate Action for the Elimination thereof provides a number of European and international standards on the protection of young people at work, because the problem of child and youth protection was a subject of concern to the International Labor Office and this document comes to reinforce the current regulation of legislative provisions regarding the protection of children and youth at work. Thus, the principle according to **which any member state, including the Republic of Moldova**, with the ratification of the Convention in question **must take immediate and effective measures to secure the urgent prohibition and elimination of the worst forms of child labor** is provided. Also, all Members shall establish or designate appropriate mechanisms to monitor the application of the provisions giving effect to this Convention. In turn, Moldova, like other Member States, **undertakes to develop and implement programs of action to immediately eliminate the worst forms of child labor**. In this context, it is also noted that our state aims to effectively implement international standards that contain consolidated provisions and that present evolving regulations in developing effective collaboration.

European and international labor standards enshrine the following rules for the youth labor, including child labor: minimum age for admission to employment or work shall not be less than the age at which compulsory schooling under national law is completed. For some occupations determined by law, considered dangerous or unhealthy, the minimum age of employment must be over 18 years. Employers are required to employ children and young people in light works. They must ensure work conditions adjusted to their age. In this spirit, the following work should be prohibited to them: work in special conditions; work at night; overtime work, except in cases of force majeure or unforeseeable circumstances. Working time should be reduced relative to normal working time set for adult workers. The working time also includes the time spent for training a young person under a theoretical/practical training with the consent (and at) the employer.

It is also noted that Member States must ensure that young people are protected against the risks to their safety, health and development, risks arising from lack of experience, absence of awareness of existing risks or the insufficient maturity of young people. Before starting work and when there are any significant changes in working conditions, the employers are tasked to conduct an assessment of potential risks to the safety and health of children and young people at work. If the assessment shows a risk to safety, physical or mental health or to development of the young people, the employer must ensure, through specialized free and adequate services, the health supervision of children and youth.

6. Collective Agreement no. 8 on Elimination of the Worst Forms of Child Labor

The phenomenon of child victimization through various jobs in different aspects favored the ratification of the Collective Agreement no. 8 concerning the elimination of the worst forms of child labor, as it comes to share the concepts of child and labor in any form. Thus, this Convention organizes the regulatory framework where the signatory parties undertake to address this issue in various research studies and constructive research, as well as to take the necessary measures to combat this phenomenon. **The collective agreement no. 8 contains a broad provision on the measures to be taken and the objectives** to be achieved for the purpose of developing a proper environment for child growth and development. In this respect, it should be noted that this document, ratified by our country, presents the overall conditions for streamlining and mainstreaming some new and useful provisions in the national law, providing that within one month from the entry into force of the Agreement, the Republic of Moldova, like other signatories, commits to create permanent expert advisory boards on child labor.

In Moldova, the Ministry of Labor, Social Protection and Family has the mission to ensure fulfillment of constitutional prerogatives of the Government on development, promotion and implementation of state policy in the areas concerned, with the final objective to ensure a decent standard of living of the population, peace and social security.

During the recent years, the **Government of Moldova expressed its commitment to combat the child labor and to eliminate its worst forms. By ratifying the Convention** referred to above, our country committed to take the measures required to fight child labor at the national level, through legal reforms and allocation of resources. The Convention to eliminate the worst forms of child labor is a support for the legal framework of the Republic of Moldova, for the purpose of raising the level of policy and institutional framework optimization.

To ensure effective implementation of some activities to combat child labor in Moldova, several groups of specialists were trained to achieve and strengthen the following: providing psycho-social, educational, professional counseling and facilitating their occupational and social integration.

CHAPTER II: Constitution of the Republic of Moldova

Moldova has a good regulatory framework, which largely ensures implementation of regulatory acts on sustainable procurement. The supreme law of the society and the state, which is the Constitution of the Republic of Moldova, was adopted by Parliament on 29 July 1994 and **entered into force on 12 August 1994**. This document **guarantees the basic human rights and freedoms**. According to Article 43, any person has the right to work, to free choice of employment, to fair and favorable conditions of work and labor protection. Thus, the right to work primarily requires free choice of employment, the freedom to work is fundamental to the individual, including the society and the state, because only labor can create value and job placements in legal trade, transforms it in commodities, under the rules of the market.

At the same time, Articles 47, 49, 50 and 51 of the Constitution regulate the right to health and social protection, protection of family and of orphaned children, protection of mothers, protection of children and young people, including protection of persons with disabilities, which ensures implementation of appropriate social factor for sustainable public procurement. By means of Article 126, the state must ensure the restoration and protection of the environment and maintenance of ecological balance. Another principle

governed by the same article is to increase the number of jobs and create conditions for improved quality of life. According to the Constitution, Moldova's economy is socially oriented.

Therefore **the regulations of the supreme law of the state can ensure the implementation of sustainable procurement**, expressly providing for specific requirements related to the sustainable development from the social, economic and environmental standpoints.

CHAPTER III: Law on the state budget for 2014 no. 339 of 23.12.2013

The **law on the budget system and the budget process was developed to strengthen and streamline the use of public funds and to provide a comprehensive regulation of the budget system** and improve procedures for the preparation, approval and administration of budgets of all levels, since it contains provisions on public investment. At the same time, the law is developed in order to specify the revenue and expenditure of the state budget, as a result of examining the execution of the state budget in 2013.

The state budget law provides under article 2 a number of specific regulations concerning the allocations approved in the budget of some central public authorities. Thus, the budget of the Ministry of Agriculture and Food Industry provides for allocations to be used for stimulation, crediting, and consolidation of investments for various spheres.

Article 5 also provides for Ministry of Economy's budget allocations to strengthen and monitor the Energy Efficiency Fund and to support investors in training of staff (employees) in creation of new jobs. These allocations are used according to a regulation approved by the Government.

It should be noted that the **national legislation on the budgetary system does not provide for the financial resources specifically allocated to sustainable public procurement**, which is an impediment to the development and implementation of the field, because this aspect is omitted and no actual distribution in this area is made. Article 18 stipulates that the Ministry of Finance is authorized to take certain actions related directly to this area in order to obtain allocations and achieve compliance with the laws in force on allocation of the state budget.

Management of financial resources is a current concept of our society, especially given that in recent years, the financial management system has undergone an intense process of reform. Management of public funds is the ability to plan, assign, coordinate and check the income and the expenditures assigned under management. For many participants in the budget process, control of financial resources is a priority activity. Thus, given these goals it is necessary to provide a training course for those in charge, in order to ensure a fair management of financial resources.

As a result of the above, it appears that **the budget system of the Republic of Moldova is a year-based system, and the state plans its financial resources (revenues and expenses) based on a relatively short period of time (a budget year)**. Thus, it should be noted that **the annual budget may be a considerable obstacle to the implementation of sustainable procurement**, particularly for complex procurement, requiring multiannual breakdown of financial resources.

In this regard, **Moldova should revise its budgetary system for the purpose of multi-annual budgeting**, thus creating opportunities for implementation of sustainable procurement.

CHAPTER IV: Law no. 96-XVI of April 13, 2007 on Public Procurement

Public procurement is the activity of purchasing goods, services and works with the use of public funds by or on behalf of public authorities. Procurement efficiency is a fundamental element for the success of a market economy, helping to achieve long term economic growth, create job, and stimulate business development and the emergence of a competitive market culture focused on business effectiveness and a positive value of money in terms of government spending. A sustainable procurement process must be operated efficiently and the purchasing authority must respect certain distinct principles: awareness of procurement target, the external factors that impact the future procurement operations, ensuring an efficient, fair and transparent procurement to facilitate competition between operators.

Development of laws and policies on public procurement, in accordance with the commitments to the EU, is an area of fundamental interest for the efficient functioning of the market economy in Moldova, its international trade relations, the overall economic growth, combating of corruption, efficient use of public funds, and promotion of international trade, as a key element for the potential integration of Moldova into the EU.

2003 & 2007 Action Plans

Planning regarding the public procurement system in Moldova started with a reform plan in 2003, continuing with **procurement law in 2007**, followed by an **Action Plan** for two years **which expired in late 2009**.

In 2003, the Government of Moldova adopted an Action Plan focused **on increasing the transparency and economic efficiency of public procurement** with emphasis on broad participation of economic operators in the tendering process, the development of competition between operators, elimination of corruption in the process, development and improvement of the law on public procurement. **The Action Plan had two main objectives**, namely the development, approval and submission **of legal documents** necessary to improve and simplify the procurement mechanism and the **training of civil servants** responsible for implementing procurement.

Moldova's Public Procurement Agency

Procurement law and policy is handled by the state as a **feature of budgetary discipline**, based on the principles of administrative law rather than as an aspect of economic and competition policy. The operational policy responsibility is delegated to a Public Procurement Agency, established by Government Decision no. 747 of November 24, 2009 on the approval of the Regulations of organization, operation, structure and staff of the Public Procurement Agency.

These regulations contain provisions on organization and functioning of the Public Procurement Agency, which has the status of legal person and is the specialized administrative authority subordinated to the Ministry of Finance. Article 8 of the Law establishes **the Public Procurement Agency as a specialized administrative authority which operates under the Ministry of Finance**, with functions related to regulation, monitoring, control and coordination of public procurement. **Public Procurement Agency is an independent functional unit, and is the only authority exercising control over public procurement in Moldova.**

Coordination, monitoring, evaluation and control of how the contracting authorities follow the procedures of public procurement and award of public contracts are part of the Agency's core tasks related to public procurement and are expressly provided for in Article 9 of the Law no. 96-XVI of 13 April 2007 on public procurement. In this context, it should be noted that **the Public Procurement Agency gives contracting authorities methodological assistance** and consultation on public procurement.

Initially there were three agencies of this kind: the National Public Procurement Agency, replaced by the Agency for Material Reserves, Public Procurement and Humanitarian Aid, which in turn was replaced by the Public Procurement Agency. The responsibility delegated by the Government to the Public Procurement Agency is a functional one, focused on supervision of individual procurement rather than as a policy factor leading to increased efficiency of economy by increased production and reduced costs in general. Also, responsibility for harmonizing public procurement legislation lies with the Ministry of Finance in collaboration with the Public Procurement Agency.

2007 revision of the Law on Public Procurement

The law on public procurement was revised significantly in 2007 as a response to a number of problems arising after application of the Law no. 1166-XIII of 30.04.1997, and was also completed by a number of legal acts derived in the form of Government decisions. While the law on public procurement was generally developed **in line with the EU Directive on the public sector**, a number of **additional specific concepts** are to be incorporated into it.

In Moldova, the rules and procedures for awarding public contracts, the rights and obligations of the parties participating in public procurement and the types of procurement are regulated by the Law no. 96-XVI of 13 April 2007 on public procurement and the regulations subordinated to it.

The purpose of European regulations has been transposed into Moldovan law on public procurement and targets promotion of competition between economic operators, guaranteeing equal treatment and non-discrimination of economic operators, transparency and public procurement process and ensuring efficient use of public funds by applying procedures of award by the contracting authorities.

Referring to the Law on Public Procurement no. 96 of 2007, it should be noted that it defines the principles for regulating public procurement relations, clearly defines the types of public procurement, the **rules and procedures for awarding public procurement contracts** and the ways of solving disputes, focusing on the rights and obligations of the parties participating in public procurement procedures.

This law contains specific procedures relating to **requirements of participation of disadvantaged persons in procurement procedures**. Thus, Article 5 paragraph 2 of the Law provides that the Government reserves the right to participate in procedures for the award of public contracts at a rate not exceeding 20 percent of the volume of procurement, to the Society for the Blind, the Disabled Persons Society, Association of the Deaf People, Production and Occupational Therapy Workshop under the Psychiatric Hospital, prisons and other disadvantaged persons or preferential terms of participation in such procedures within employment programs can be established in the manner provided for by the law. The state is the one that guarantees and ensures the right of disadvantaged people to participate and implement procurement, which is actually a testament of national law adjustment to international standards. This issue has been highlighted both through the social factor contributing to development of sustainable procurement and in terms of respect for the rights guaranteed by the Constitution.

Article 6 provides for the principles of efficient use of public funds and risk minimization, transparency in public procurement, ensuring of competition and prevention of unfair competition, equal treatment, and

protection of the environment and promotion of sustainable development through public procurement, including protection of health, protection of human life, flora and fauna. Thus, the existing principles of regulation of public procurement relations build the legal framework governing implementation of sustainable public procurement.

Based on the principles covered by the Law on Public Procurement, it appears that they do not expressly provide for the principle of sustainable development, but the existing principles can ensure respect for this principle.

With regard to public procurement procedures, it should be mentioned that at present the most common procedure applied are public (open) bidding and requests for bids. According to Article 33 of this Law, the public procurement contract may also be awarded through limited bidding, framework agreement, competitive dialogue, negotiated procedure, single-source procurement, dynamic systems of procurement, e-tendering and procurement for plans to build social housing.

At the same time, the provisions of articles 31 and 66 are also of particular importance, containing rules that favor initiation of implementation of sustainable public procurement which would be a base for sustainable economic, social and environmental growth.

Thus, under article 31, which expressly provides the conditions relating to taxes, environmental and safety aspects, the Contracting authorities may indicate in the specifications the bodies from which bidders are to obtain information on the obligations relating to taxes, environmental protection, the provisions relating to employment protection and working conditions in Moldova, to be applied to work performed or services rendered during the period of contract performance.

As previously mentioned, Article 66 of this Law is of a paramount importance in implementing sustainable procurement, as it expressly provides for the facilities in public procurement contract award. Thus, the entities whose objective is to encourage on the job training, employment of the unemployed, youth and people with integration difficulties, reduction of unemployment, training of unemployed and of the youth, environmental protection, improvement of employment and job security, rural development and training of farmers, as well as protection/support of small and medium enterprises, will have advantage in award of public procurement contract.

Referring to these principles it should also be noted that the Law no. 96 also defines a number of principles for public procurement contract award in its article 65. Thus, a public procurement contract may be awarded in the context of law enforcement, the rule of law, morality, as well as professional ethics, which makes award action clearly effective for some socially important areas. At the same time, the award of a contract may be based on the principle of selecting the best-value-for-money, since in this case the principle of efficient use of public funds is also ensured. The enforcement of the principle according to which award of a contract aims to protect environment and support social programs in program execution is also of paramount importance. In this case, it should be noted that priority in contract award should be granted to sustainable procurement aimed at complying with the legal rules according to which the negative impact on the environment should be avoided. At the same time, contracting should be implemented based on assessment of all effects, benefits and negative results. A sustainable procurement can only be achieved in the context in which a favorable and efficient legal framework is prepared.

The right to appeal, provided for in article 71, has a particular role to play. It is thus provided that any business entity which considers that in procurement procedures, the contracting authority, by the issued decision or the procurement procedure applied in violation of the law, injured its right recognized by law, in the result of which it incurred or may incur damage, has the right to appeal the decision or procedure applied by the contracting authority as provided by law. These provisions state expressly the conditions underlying this right and the actual possibility to appeal in the stated cases. Hence, the Law on public procurement gives

participants in procurement an exclusive and logical right in terms of possible or further participation in a public procurement procedure. At the same time, this right also has legal coverage in the event an operator is not satisfied with the decision issued by the Public Procurement Agency, and thus is entitled to bring an action in a competent administrative court, which provides the business entity with the environment required to explore its possibilities.

The regulated area is surely a specific one, leaving space for interpretation or completion of the mentioned provisions and of the stipulated regulations, in order to clearly and precisely present the legal framework in our state. It follows from these considerations that the legislation in force contains prerequisites for developing national policy framework and requires some measurement of the progress through ecological indicators, in order to allow access to finance for green investments, to reform environmentally harmful subsidies and make the environmentally harmful products subject to taxation.

A procurement system designed to operate properly in accordance with EU standards is important for Moldova, having a number of benefits: benefits of trade, price-quality ratio, avoiding corruption, investment flow, and economic growth.

It should be noted that the general level of approximation of the law of our country is acceptable, both in terms of harmonization already achieved and in terms of the capacity to develop the Law on public procurement of 2007, for the purpose of obtaining a higher level of harmonization. The law on public procurement can be identified as being based on the EU model, somewhat in an acceptable condition, which still requires stronger harmonization with EU directives and regulations for capitalization of the contained provisions.

Legislation harmonization in Moldova

In the context of the harmonization of policies and legislation on Public Procurement of the Republic of Moldova, it is important to reiterate that the **harmonization of legislation is a complex medium and long term process**, which involves the correct alignment of policies/transposition of relevant laws, update of some laws, as appropriate, establishment (through new organizations or otherwise) of necessary institutional structures, credible and verifiable conducting and implementation of their objectives and execution. Thus, the simple European-style drafting of laws for Moldova (normally called “transposition” of laws) is a much narrower concept that does not achieve the desired benefits for Moldova or implementation of commitments in harmonizing legislation in any particular field.

The level of harmonization, to date, is reasonable and provides a stable base for continued harmonization with the elimination of identified deficiencies.

As a conclusion, it should be noted that the Law no. 96-XVI of 13 April 2007 on public procurement is feasible to achieve environmental performance, social development, economic development and good governance, but at the moment there is a lack of focus on sustainable development, with the price as the basic criterion in awarding contracts under this law. Compared with the laws of other countries, Moldovan legislation, namely the Law no. 96-XVI of 13 April 2007 on public procurement does not expressly provide any articles on sustainable procurement, which should be proposed in the future.

So, to implement sustainable procurement in Moldova and to overcome the insufficient development in this field, **the Law on Public Procurement should contain clear regulations obliging all public authorities to comply with the targets** they should achieve in terms of sustainable public procurement. At the same time, the Law on Public Procurement should contain criteria that can be incorporated into a procedure for procurement of goods, works and / or services in order to reduce environmental impact.

Currently **Moldovan legislation does not expressly provide for a sustainable public procurement practice**, although business entities may participate in Sustainable Procurement under general existing legislation, to the extent that contracting authorities may decide to include measurable objectives, specific to sustainable procurement.

CHAPTER V: A draft new law on public procurement harmonized with the Directive 18/2004 / EC and 66/2007 / EC

New draft law on Public Procurement

While the Law on Public Procurement no. 96 of 13.04.2007 has been prepared generally in accordance with Directive 2004/18 / EC, a number of more specific concepts are also to be included, i.e. prerogatives of Directive 2004/17 / EC, which have not been transposed into the mentioned Law, but the Ministry of Finance has proposed to develop a new draft law to this effect at the end of 2014 - beginning of 2015 on the award of sector public procurement contracts. Although Directive 18/2004 / EEC was repealed in February this year, its provisions, and numerous additions have been set in a new Directive - Directive 24/2014 / EC, and in this context, Moldova is expected to implement its provisions into national law by harmonization with the European legal framework and its adaptation to current national context.

Thus, to complete and adjust the national law, **the Government developed and approved a new draft law on public procurement**. This draft law relies on harmonization of the national law to *acquis communautaire* in line with **Moldova's commitments to the European Union, by signing bilateral agreements** (Association Agreement RM - EU).

The draft law establishes a more complex and applicable structure of the Law on public procurement, completed with additional chapters, which will allow simpler targeting in terms of delimitation of procurement procedures and the mechanisms for conducting procurement procedures.

Furthermore, this draft law will regulate the establishment of the Agency for Solving Complaints, a new body of public administration, which will contribute to the exclusion of the conflict of interest that may arise in the work of the Public Procurement Agency, the latter being responsible for recording public procurement results on the one hand and for settlement of disputes in this area on the other hand.

Also, **new procedures will be included, such as competition of solutions**, as an independent procedure, **where competitors may receive awards and/or participation bonuses. Modalities for application of criteria for awarding public contracts have also been revised**. Now the contracting authorities can choose individually either by the best price or the best value-for-money criterion. In addition, **the term for submission of bids was extended**. The entities will now have enough time to prepare and submit bids under public procurement procedures, so the deadline for submission of bids for public procurement of goods, services and works will be at least 20 calendar days from the date of publication notice in the Public Procurement Bulletin and at least 52 days from date of submission of the participation notice for publication in the Official Journal of the European Union. The new rules favor the implementation of sustainable procurement by providing new opportunities for economic operators, by increasing the term for the submission of bids, which encourages the implementation of the contract award criteria specific to sustainable procurement.

Although **Law no. 96 enacts public procurement as part of the national legal system, it interacts with other laws**. Mostly, they complement each other and do not create situations of double standards or inconsistency

between them. Nevertheless, there are some shortcomings that need to be addressed in order not to create conflicts between the law and the draft law comes to clarify and monitor the results.

The draft new law on public procurement brings Moldova closer to *acquis communautaire* in line with Moldova's commitments with the European Union by signature of bilateral agreements, but its implementation requires comprehensive preparation by both the parties participating in procurement and the competent bodies.

The draft law promotes efficient, ethical, sustainable products among state institutions, which can create a market for organic products in our state, if all the requirements meet the European standards. At the same time, producers of organic and bio products would be more encouraged to certify their products, and this would help achieve the targets recommended by the European Commission on environment friendly public procurement.

Thus, the review of changes contained in the draft Law reveals that article 6 was amended by excluding let. i), which provided for advantages for entities residing in Moldova. Two new principles were included in the same article, related to proportionality and mutual recognition. Further, Article 8 with regulations of the Public Procurement Agency retains the form and content, which indicates that this body will continue to act as a specialized administrative authority under the Ministry of Finance. Article 9 on the basic tasks of the Public Procurement Agency keeps intact the functions, but amends the provisions listed in subparagraph a) by the task of implementing regulations on public procurement, which is not welcome in so far as the Public Procurement Agency is the main institution that monitors public procurement. Amendments have also been made to Article 17 on the criteria for qualification and selection of business entities, since Article 16 of the Law itself exposes a whole list of criteria, which limits the right of entities to participate in procurement procedures.

Articles 22 & 23

It is important to note that the **draft law establishes two new articles** (Articles 22, 23), **demonstrating quality assurance standards, when implementing sustainable procurement**, which should be linked to quality assurance systems based on the relevant European standards and environmental management standards, which also must meet certain standards of environmental protection.

A separate article is dedicated to criteria for awarding public procurement contracts. Thus, it is expressly provided that notwithstanding the legislative or administrative provisions, the most economically advantageous bid or the lowest price are the only criteria for awarding the public procurement contract. In turn, the economically most advantageous bid is the bid declared a winner based on certain rating factors. For this purpose, a favorable environment for implementation of sustainable procurement and application of principles making this implementation possible is created.

Article 44 on public procurement procedures

Article 44 on public procurement procedures comes with a change deemed effective and **excludes the following from the primary public procurement procedures:** the framework agreement, single source selection, dynamic procurement systems, electronic bidding, including them in the category of special arrangements for award only in expressly provided cases, supporting the idea that open bidding is the basic procedure for the award of the public procurement contract. Other procurement procedures may be used only as expressly set by the law.

However, it is to be noted that any procedure is welcome in implementation of sustainable procurement, in so far as it increases the optimum growth both in space and in time. In turn, any sustainable procurement, implemented with the aim of creating a framework with the development of society as a priority, is accepted to be implemented by the most favorable method.

A special chapter entitled Conducting public procurement procedure was established under the draft law, containing provisions starting with the conditions of submission of the bid, followed by specifications on bid opening, the bid validity period, modification and withdrawal of the bid and bid security. These provisions are followed by specifications on the review, evaluation and comparison of bids, provisions related to abnormally low bid, cancelation of the bidding procedure, regulations to be defined and specified at the same time with implementation of the legal framework. **This practice tends to have sustainable procurement in its primary focus**, in order to avoid any social, economic, environmental impact and to encourage getting a satisfactory result from the execution of a procedure.

Article 68 on the award of public procurement contracts

Article 68 sets out principles for the award of the public procurement contract about the same as in Article 65 of Law no. 96. Thus, it refers to the rule of law, morality, professional ethics, selection of best value, and the principle of environmental protection and social programs support programs in the execution of the contract.

Article 77 on the Claim Resolution Agency status

An article with an unusual provision is Article 77, which establishes the Claim Resolution Agency as an administrative authority under the Ministry of Finance, separate from the Public Procurement Agency, which settles the claims submitted under procedures for award of public procurement contracts. Thus, similarly to Public Procurement Agency, the Claim Resolution Agency has its own assets, its own account, stamp with the State Emblem of the Republic of Moldova and its name in the official language. The Agency will operate under a Regulation of organization and operation that is approved by the Government, but in terms of its decisions, the Claim Resolution Agency will be independent.

Article 78 on the “Right to appeal”

Article 78 maintains its equivalence at the level of general regulations, under the same title as in Article 71 of Law no. 96 “Right to appeal”. At the same time, **Article 78 gives the entities the wider possibility to challenge any act issued by the contracting authority**, the acts or omissions that produce or may produce legal effects in relation to the procurement process. Thus, the provision concerning the object of the appeal is excluded from the article.

It is important to note that, through the developed amendments and regulations, the **draft new law aims to promote efficient and effective approach to national legislation**, by providing new opportunities established in order to promote the economic, social and environmental development and **strengthen an institutional network promoting sustainable development**. Thus, a legal framework has been developed in line with the EU laws, highlighting the main objectives to be achieved.

This draft law creates an environment that makes reference to the fact that sustainable public procurement can be an encouragement for the greening of products and services subject to public procurement.

CHAPTER VI: Other Regulations

1. Labor Code

The Labor Code of the Republic of Moldova was adopted in order to regulate all individual and collective labor relations, the arrangements for control of enforcement of regulations in the field of employment and the labor jurisdiction. Thus, this law comes to establish clear principles and make a delimitation between various effects of its enforcement. In this regard, it is noted that Article 5 expressly provides basic principles of regulation of labor relations and other relations directly related to them. What is worth mentioning is that **the principles laid down here stemmed from the international law**, as well as the Constitution of the Republic of Moldova. The principles related directly to public procurement and how to implement it include the following: **freedom of work**, which offers the participants in procurement the possibility to fall within this principle. It also regulates prohibition of forced (compulsory) work and discrimination at work. It also provides for the principle of **protection against unemployment and employment support**, given its important role assigned to the area concerned. In turn, the principles concerning the right of every employee to ensure fair working conditions, including **working conditions that meet health and safety at work requirements** and the right to rest, including the regulation of working time and the equality of rights and possibilities of employees.

Article 6 stresses the importance of the freedom of work, guaranteed by the Constitution of the Republic of Moldova, as the main proof of respect for rights arising out and assigned to procurement procedures.

Article 222 lays down the main directions of the state policies in the field of safety and health at work, including priority of life, physical integrity and health of employees, issue and application of regulations on occupational safety and health, coordination of activities in security and occupational health, environmental protection, surveillance and state control over the observance of laws on health and safety at work, supporting public control over observance of the rights and interests of employees in health and safety at work. Also, a special role is assigned to international cooperation in the field of safety and health at work, since Moldova, by its intention to join the international standards, tends to adopt these provisions in the light of the importance assigned to participants in the procurement procedures.

2. Law 186-XVI of 10.07.2008 on safety and health at work

Safety and health is one of the important policy areas of the Republic of Moldova by joining the international rules on Employment and Social Affairs. The ultimate goal of work safety and health at work is to protect life, integrity and health of employees against the risk of injury and occupational disease that may occur in the workplace and create working conditions that ensure physical, mental and social comfort.

Ministry of Labor, Social Protection and Family is the central body of public administration responsible for designing, promoting and ensuring implementation of state policy in the field of safety and health at work.

Thus, Article 2 sets out the regulatory area of the mentioned law and states that it regulates legal relations concerning the establishment of measures to ensure the safety and health of workers at work and establishes the general principles concerning the prevention of occupational risks, the protection of workers at work, elimination of risk and injury factors, consultation, balanced participation, training of workers and their representatives, as well as general guidelines on the application of these principles.

It is noted that **the state policy on health and safety at work is developed and reviewed in consultation with employers and trade unions, taking into account international regulatory developments in this field** and the technical progress. This fact of fully ensuring the rights and professional interests favors the environment required for participation in public procurement. In this respect, national promotion of sustainable procurement through international support to its implementation is established as a need for socio-economic development of the state.

3. Law no. 86 of 29.05.2014 on Environmental Impact Assessment

The purpose of the Law on Environmental Impact Assessment is **setting a legal framework for the mechanism of assessing the environmental impact of certain public and private projects** or certain types of planned activities, to ensure prevention or minimization, at initial stages, of the negative impact on environment and health. At the same time, this law covers the procedures and methods applied in the environmental impact assessment of certain public and private projects or certain types of planned activities that may have a significant impact on the environment in Moldova and other countries.

Article 3 expressly provides the **principles of environmental impact assessment**, as follows: the principle of preventive action, the principle of fairness and completeness of the information, the principle of transparency and accessibility, participatory principle, the precautionary principle, the "polluter pays" principle. By these principles, **Moldova tends to align its national framework to the international one**, as, if we refer to sustainable procurement area, it should be noted that it will rely on ensuring compliance with these principles. These will be followed by implementation of principles, in order for the environmental factor not no be affected negatively. At the same time, article 3 develops the concept of each principle separately and refers to the application-effect relation, by expressing the value of applicability of these principles.

Article 4 regulates **the scope of the environmental impact assessment**, which must emphasize, describe and assess in an appropriate manner, in each case, the direct and indirect effects of planned activity on people, fauna and flora; soil, subsoil, water, air, climate and the landscape, material assets and cultural heritage, including the interaction of those factors and their long-term and cumulative consequences.

4. Government Decision no. 891 of 24.07.2008 on training & support

To ensure compliance with a number of national principles, Government Decision no. 891 of 24.07.2008 on training and support, in the process of public procurement for the Society for the Blind, the Disabled People Society, Association of the Deaf, Production and occupational therapy workshop under the Psychiatric Hospital, prisons and other disadvantaged persons was adopted, **containing provisions relating to the assignment to categories of disadvantaged persons**, in order to participate in public procurement procedures. Thus, section 3 provides that public supply contracts are awarded according to the decision referred to above, following open (public) competition only for goods made or produced by specialized companies and institutions.

Subsequently, Section 4 provides that in the open (public) bidding procedures, **the contracting authorities shall ensure availability and fair competition of enterprises and institutions** concerned and shall assign, in the event of participation of specialized companies and institutions, public supply contracts, at 20 percent of the needs set in open (public) bidding, ensuring transparency and efficiency of the results of open (public) biddings with participation of specialized enterprises and institutions; shall sign procurement contracts

concluded after open (public) bidding, and ensure their execution according to contract terms and legislation, in line with the requirements of quality, the price established in the contract and the approved standards.

In this regard, it should be noted that **the decision establishes implementation of the principle of sustainable procurement**, to the extent allowed by compliance and guarantee of the other general principles and taking into account the socio-economic factor. The state is the one that guarantees and ensures the right of disadvantaged people to participate and implement procurement, which is actually a testament of national law adjustment to international standards. This issue has been highlighted both through the social factor contributing to development of sustainable procurement and in terms of respect for the rights guaranteed by the Constitution.

5. Innovation Strategy of RM 2013-2020. Innovation for Competitiveness

To ensure the **implementation of the Government Program "European Integration: Freedom, Democracy, Welfare" 2013-2014** and the **Government Action Plan for the years 2012-2015**, the Government of Moldova approved the Innovation Strategy for the period 2013-2020.

The strategy focuses on three specific objectives of the Program for Government Activity:

- 1) Technological development of enterprises, including small and medium enterprises (SMEs),
- 2) Development of support infrastructure for innovation activities and
- 3) Ensuring the conditions for building a knowledge-based economy.

The innovation policies defined in the Strategy will contribute to the materialization of the new paradigm of economic development defined in the **National Development Strategy "Moldova 2020"**. This paradigm is based on **attracting investments, developing export industries, building the knowledge-based society**, including by strengthening **research and development, innovation and technology transfer** aimed at efficiency and competitiveness. The strategy also supports implementation of thematic strategies, the impact of which depends on the innovative capabilities of firms and society as a whole and adopts a modern vision, according to which "innovations are technologies and practices which are new for a given society. They may not be unusual in absolute terms, but they may be new to the company or market level. "

The strategy provides for rules on legislative and regulatory framework applicable to the innovative activity, which is poorly supported by the current legal and regulatory framework. In this respect, the main legislation governing the innovation process is the Code on Science and Innovation adopted by the Law of the Republic of Moldova no. 259-XV of July 15, 2004.

The legal framework focuses on generating knowledge and scientific results, rather than on their economic and social assimilation. In this respect, relevant legislation was established **to facilitate attracting investment**, creating competitive industry sectors based on advanced and innovative modern technologies, carrying out activities in line with the development opportunities specific to the region, including more efficient use of public property and creating new jobs. However, this Law addresses innovations in terms of scientific research, but less in terms of transferring the results of this process in the economy.

The legal framework does not provide tax instruments that would encourage the innovations in a targeted manner. In order to create innovative infrastructure, in **2007 amendments were made to the Tax Code and Customs Code, granting significant tax, customs and tariff incentives**. However, the incentives provided by

the law did not bring the expected benefits as the main state authorities had conflicting views on how these benefits should be granted and used, the applicants for benefits did not guarantee their transparent use and there was no strategic coordination of policies. In 2012 these incentives were cancelled.

This Strategy introduces a section on the results of innovative activity, so after the implemented actions, it was established that our state's economy was becoming more integrated into the global economy and this involved comparing the results of innovative activity in Moldova with those in other countries. The **Global Innovation Index 2012 (IGI 2012)** is one of the latest and most comprehensive sources which **includes Moldova and allows international comparison of the results of innovation**. Thus, the results of innovation activity in IGI 2012 are assessed based on two categories of indicators of knowledge and technological results - including issues related to knowledge generation, the impact and their diffusion, the creative products - including intangible creative products, creative goods and services and creativity online.

The Innovation Strategy of the Republic of Moldova for the period 2013-2020 provides a number of opportunities for the development of innovations, since it tends to achieve its goals by **implementing activities that will increase income, lead to rapid expansion of the use of information and communication technologies**, existence of an important Moldovan scientific Diaspora, existence of a liberalized bilateral and multilateral commercial framework, strong commitment of Moldova on the vector of European integration, support from donors.

An integral and important part of the strategy is the vision of the strategy, as according to it, by 2020 the economic development of our society will be based on a national innovation system composed of competent and innovative companies connected in innovative partnerships with universities and domestic and foreign research centers. The economic impact of the innovation system will be reflected by more new jobs, higher incomes and more competitive exports, while the social impact - by helping to overcome the critical problems faced by the Republic of Moldova, including poverty, vulnerability to weather conditions, lack of own energy resources, poor health of the population, degradation of rural areas and environmental issues.

It should be noted that a specific objective of the Innovation Strategy is the need to take measures stimulating consumption demand for innovation products by both the society and the state, by using incentive tools in public procurement. In this respect the Government's intention to promote the purchase of products and innovative services is clear, but tools for this situation have not been developed and this objective has remained at the level of the strategy, without being implemented in the practice of public procurement.

6. Law no. 115 of 09.06.2005 on organic food production

Of particular importance for the implementation of sustainable procurement in Moldova is **organic food production**, comprising the obtaining, storage and processing of food products without the use of synthetic chemicals in accordance with the organic production rules laid down in Law no 115 of 09.06.2005 on organic food production and national and international standards in the field, certified as provided.

In this context, it is to be noted that **the general principles of organic food production are specifically regulated in Article 3 of the Law**. Thus, achieving a balanced, sustainable and diversified agro-ecosystem to ensure protection of natural resources, consumer health and life, not allowing any application of polluting technologies, application of modern technologies, both for crop production as well as livestock breeding, development of mechanisms for space location of organic agriculture ensuring a balanced and sustainable agro-ecosystem are the general principles of organic food production.

It should be pointed here that **the sustainability of procurement will be achieved not only through the implementation of sustainable procurement, but also by other development opportunities** such as contributing to environmental protection and expansion of the market with environmentally friendly products and services, such as organic foods.

Referring to organic foods, these **must be labeled according to article 6 of the Law no. 115 of 09.06.2005 on organic food production**. The organic foods are labeled in accordance with the provisions laid down by the legislation in force, the label or accompanying documents (for bulk products) contain the requirements of paragraph 1 of this Article, with the national brand "**Organic Farming - Republic of Moldova**".

In this context, referring to organic food labeling, it is provided that the labels will include the national brand "Organic Farming - Republic of Moldova", indicating that the product complies with the organic production rules. This national brand is used for the purpose of labeling, presentation and promotion of organic food and only applies to food products that were subject to inspection and certification procedures throughout the production cycle by inspection and certification bodies authorized under accreditation granted by the national accreditation body. The right to use the national brand "Organic Farming - Republic of Moldova" for products, labels and packaging of organic food belongs to entities that produce, process, import, export and / or sell organic foods, registered by the competent authority.

In this regard, it is noteworthy that the label is the basic element of a product, its purpose is to guarantee the consumer's access to complete information on the content and composition of products to protect the consumer's health and interests. **Although Moldova has a satisfactory legal framework regarding labeling, companies neglect the law, thus creating irregularities in labeling of products** and not fully benefitting from the positive aspects of environmental labeling and economic development opportunities provided by this tool.

Another problem that **slows growth sustainability is also the lack of courage of companies to launch business related to organic products**, although the Ministry of Agriculture and Food Industry continuously promotes these products. In this respect, there is a lack of the initiative of the companies.

7. Government Decision no. 1078 of 22.09.2008 approving the Technical regulation "Organic food production and labeling of organic foods"

In the same context we should mention **Government Decision no. 1078 of 22.09.2008 on approval of the Technical Regulation "Organic food production and labeling of organic products"**, which in section 7 provides specific principles underlying organic farming, preserving and improving the flora, fauna and natural soil fertility, its stability and diversity to prevent and combat soil compaction and erosion, as well as plant nutrition exclusively through the soil ecosystem; minimizing the use of non-renewable resources and off-farm feedstock; recycling of waste and by-products of crops and livestock through their use as raw materials in the plant and animal production.

In conclusion, the principles listed above have a direct impact on environment protection and given that environmental aspect is an essential aspect of sustainable public procurement, it can be argued with certainty that it is crucial for increasing sustainability in Moldova.

8. Law no. 142 of 02.07.2010 on energy efficiency

Energy efficiency is defined as the ratio of the result, consisting of performance, service, goods or energy, and the energy used for this purpose, directly promoting implementation of sustainable procurement. **The public authority responsible for energy efficiency is the Energy Efficiency Agency.**

In this regard, with reference to the existing national legal framework, the presence of the **Law no. 142 of 02.07.2010 on energy efficiency** should be mentioned, This law established the legal framework necessary for **implementation of the European Directive 2006/32 /EC** of the European Parliament and of the Council of 5 April 2006 on energy efficiency and energy services to final consumers, the Government Decision no. 833 of 10.11.2011 on the National Program for Energy Efficiency 2011-2020 and Government Decision no. 102 of 05.02.2013 on the Energy Strategy of the Republic of Moldova until 2030.

In accordance with Article 5 of the Law on energy efficiency, the basic principles of energy efficiency include **promoting private initiative and development of energy service companies** which contribute to optimizing energy systems operation, on the basis of energy performance contracts, and providing information on energy efficiency activities, including public information regarding the initiation, conduct, benefits and costs of projects to significantly reduce energy intensity and environmental impact.

Another regulation is provided in Article 15, which expressly **provides the programs and action plans for improving energy efficiency**, such as: the use of more efficient energy technologies and production that reduce energy intensity and environmental impact; implementation of the state energy strategy, technical regulations and national standards to increase the efficiency of energy consumption and fuel; motivation of investors to invest in the implementation of projects to improve energy efficiency; creation of specialized capabilities in energy efficiency; assessment of the impact of the use of energy sources on the environment.

9. National Program for Energy Efficiency 2011-2020

Regarding the **National Program for Energy Efficiency 2011-2020**, approved by Government Decision no. 833 of 10.11.2011, it is mentioned that the program aims to reduce dependence on imported energy resources and energy sector impacts on climate change.

Chapter IV regulates the global objectives for Moldova on primary energy consumption efficiency increase by 20% by 2020; increasing the share of renewable energy in the total energy mix from 6% in 2010 to 20% in 2020; increasing the share of biofuels to at least 10% of all fuels used in 2020; and reducing by 2020, by at least 25%, the emissions of greenhouse gases compared to the base year 1990.

Chapter VI of the same Government Decision stipulates the measures to be taken to improve energy efficiency, including a special importance for the implementation of sustainable procurement of energy labeling of energy-related products and eco-design. It should be mentioned that the National Communication Strategy on energy efficiency, attached to the National Energy Efficiency Program 2011-2020, which aims to strengthen the efforts and establish an institutional cooperation in order to promote energy efficient consumption and use of renewable energy sources designed to improve living standards, energy intensity and the environment.

10. Energy Strategy of the Republic of Moldova until 2030

The Energy Strategy of the Republic of Moldova until 2030, approved by Government Decision no. 102 of 05.02.2013 **is of particular importance for increasing sustainability of the Republic of Moldova.**

This strategy relies on the results of international reviews, tracing important directions for development of the world's energy sector in 2013-2030. Under this Strategy, until 2020 **the international development of the energy sector will follow a series of guidelines of highest priority, among which creation and strengthening of the institutional framework for new energy markets.** Thus, by 2020, it is expected that the greatest majority of the world's countries will agree on a form for limiting CO2 emissions from the power plants in these countries. The EU is certainly at the forefront of this development and the Republic of Moldova is to take action regarding these future limits on CO2 emissions.

Chapter IV of Government decision no. 102 of 05.02.2013 on the Energy Strategy of the Republic of Moldova until 2030 sets out the objectives of this Strategy, including the related measures. With reference to the **objectives of the strategy, creation of a platform for generating electricity and heat through retrofitting, efficient district heating and advanced marketing** can be mentioned. Therefore, the installed **capacity of the Republic of Moldova to generate electricity is the premise for creating a generation platform that will significantly contribute to economic growth and social welfare** in the country and consumption balance in the Energy Community, conditional on the actual integration of Moldovan market in the regional market. This capacity is not limited to generation assets, most of which require specific restoration, refurbishment, including decommissioning and replacement. Proper attention will be paid to location, network integration, and the environment, the urban frame, attracting qualified personnel for operation and maintenance, the specific scientific achievements and tradition of this sector in Moldova.

Another, not less important objective, is **improving energy efficiency and enhancing use of renewable energy** sources. Besides the **low level of energy resources and high dependence on imports, low energy efficiency** and high energy intensity are the reasons why energy efficiency is considered as one of the main objectives of the Strategy. As for developing the use of renewable energy, **improving energy efficiency has an exceptional status compared with other specific objectives**, contributing both to the security of energy supply as well as to combating of climate change. **The trends in energy intensity show a three-fold reduction in five years (1997-2002)**, whereas in 2007 the intensity was reduced by half in comparison with 2001. This means that these relatively **positive changes in energy efficiency indicators have been largely provided by the development of the economy of Moldova in 2002-2007.**

A number of events related to this area should be mentioned here, namely: **the European Sustainable Energy Week (EUSEW), organized in Moldova from 23 June 2014 to 29 June 2014**, the festival of eco technologies and eco products, culminating with a live music concert powered by solar energy, organized by the **EU-UNDP project "Energy and Biomass"**, forum dedicated to biofuel production and use of biomass energy in Moldova, organized by Energy and Biomass Project in partnership with the Agency for Energy Efficiency on 18 July 2014, Energel summer camp that teaches kids how to produce energy from natural sources and how to efficiently consume it, etc. **Moldova is 95% dependent on imported energy and alternative sources of renewable energy**, bio-energy is a sustainable alternative for Moldova, which showed a good start.

In conclusion, **the legal framework for energy efficiency in Moldova is very good** for implementing sustainable procurement. However, the Government must **take concrete steps to implement sustainable procurement** so that objectives and strategies outlined in the legal framework do not remain only at the level of strategy, due to be implemented in all areas of environmentally, economically and socially sustainable procurement.

CHAPTER VII: *Bottlenecks and Recommendations*

As a country in transition, Moldova does not have express provisions on sustainable procurement. Thus, **a new chapter should be included in the Law on Public Procurement**, to cover sustainable public procurement governing rules and their application for implementation of sustainable public procurement.

Impediments to the implementation of sustainable procurement

Although the Moldovan laws are feasible for implementation of sustainable procurement, there are a number of impediments, including:

- Budget deficit, poverty and lack of financial resources including the insufficient level of readiness of the national economy;
- Lack of qualified staff in sustainable procurement, responsible for implementing and developing this area;
- Unsatisfactory level of organic certification, marking and labeling;
- Lack of a legal framework focused on greening of the economy, as at the national level it is recommended to draw attention to the development of national policy framework that will facilitate the implementation and organization of sustainable public procurement;
- Lack of statistical analysis, which does not allow evaluation and comparison of the effects of implementing sustainable procurement and the level at which it develops;
- Inexistence of regulations on the management of public procurement contracts. Therefore, there is a risk that sustainable procurement will not be implemented or will be implemented improperly, because of the lack of regulations in this regard;
- There are no standard specifications for the procurement of common goods and there are no specifications related to sustainable and / or organic procurement;
- Although there were some attempts in Moldova to implement eco-labeling in production of organic foods, the area of eco services remains virtually unexplored;
- Although the Law on Public Procurement includes environmental and social considerations as principles for awarding public procurement contracts, the lowest price gets priority in evaluating bids, while efficiency of public procurement is interpreted in terms of low price, overlooking the cost/benefit principle;
- Non-involvement of contracting authorities in development of sustainable public procurement. Given that contracting authorities are not trained enough to develop the criteria for the award of contracts and preparation of technical specifications, implementation of sustainable procurement becomes problematic. For this purpose **it is necessary to conduct training seminars** that will acquaint beneficiaries with the **methods of developing sustainable procurement criteria** that can turn this weakness into an advantage, to the extent that they will be trained from the start, so as to consider environmental, social and economic impact aspects in development of technical specifications and criteria, including being able to appreciate the life cycle of procurement and identify the benefits of sustainable procurement in relation to traditional procurement based on the lowest price criterion.

Recommended measures for the promotion of sustainable procurement

Implementation of sustainable procurement requires a **number of measures to promote and encourage the establishment of sustainable procurement:**

- At the national level it is recommended to draw attention to the development of national policy frameworks in this regard, to develop technical specifications taking into account sustainable and environment friendly procurement, so that the contracting authorities may use them, and as a result for sustainable procurement to be implemented successfully;
- Progress should be measured by ecological indicators as tools to manage the impact of implementing environmentally sustainable procurement and to provide access to finance for green investments;
- Subsidies' reform should be implemented to mitigate the effects harmful to the environment, and to implement energy conservation projects that are national priority by working with international financial institutions that finance energy efficiency programs;
- Environmentally harmful products should be subject to taxes;
- Implementation of sustainable procurement requires development of a project for drafting/development of guidelines on how to implement sustainable procurement and the development of a strategy and an action plan for achieving the goal of implementing sustainable public procurement, in order to increase sustainability in Moldova;
- Achieving the concept of sustainable procurement requires a new section in the Law on Public Procurement, which will include: information on sustainable public procurement, the requirements to be included in the specifications, the incentives. The regulatory framework should be extended, to cover eco-labeling;
- Using Public Procurement Agency website to inform the public about the benefits of sustainable procurement, including consideration of existing entities to intervene with proposals to amend the legal framework in this field;
- Introducing advanced environmental technologies in public and private sector to facilitate the implementation of sustainable procurement.

CONCLUSION

The existing national law is feasible for the sustainable development of the state the Republic of Moldova and implementation of Sustainable Public Procurement. **The Republic of Moldova is ready to develop a more competitive economy with low CO2 emissions, for environmental protection, for the development of new technologies and methods of organic production, for introduction of new smart and efficient grids, for enhancing the business environment with the EU support.**

Much of the national legislation transposes the principles of sustainable public procurement, starting with the state supreme law (the Constitution) and ending with departmental documents.

Thus, **the laws are focused to a greater or less extent on the three pillars of sustainable procurement: the environmental, economic and social aspects.** It can be mentioned here that the right to a safe environment, the right to work, health, decent living, social security is enshrined in the Constitution, and the state priorities

in terms of energy efficiency, green marking implementation, promotion of free competition along with actions to harmonize national legislation with the best EU and international practice, create a reasonable platform for implementing sustainable procurement.

At the same time, lack of information and guidance on sustainable procurement, including specific actions to be implemented in the strategic development plans of public authorities are the main causes of delay in transposition of sustainable development strategies adopted by the Government.

In these circumstances, it can be concluded **that the existing regulatory framework in Moldova favors the implementation of sustainable public procurement and the Government should take concrete actions to raise awareness** of both the civil society, the business environment, as well as public authorities on the one hand and to monitor the authorities on the other hand, so that the latter implement sustainable development strategies and take concrete actions in this regard, thus contributing to the implementation of sustainable procurement and strengthening of the economic capacity of the state, reducing the negative environmental impact and improving the social wellbeing of the population.

REGULATORY FRAMEWORK AND MATERIALS USED FOR THE REVIEW

1. The Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating procedures for the award of contracts in the water, energy, transport and postal services
2. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement
3. Association Agreement between the European Union and the European Atomic Energy Community and its Member States, on the one hand and the Republic of Moldova, on the other hand
4. World Trade Organization Agreement on Government Procurement
5. ILO Convention no. 155 on occupational safety and health and the working environment, Geneva 1981 (Law no. 755-XIV of 24.12.1999)
6. ILO Convention no. 182 on the Worst Forms of Child Labor and Immediate Action for the Elimination Thereof (Law no. 849-XV of 14.02.2002)
7. The collective agreement no. 8 concerning the elimination of the worst forms of child labor
8. The Constitution of the Republic of Moldova dated 29.07.1994
9. Law on the state budget for 2014 no. 339 of 23.12.2013
10. Law on the public procurement no. 96-XVI of 13.04.2007
11. Labor Code no. 154 of 28.03.2003
12. Law 186-XVI of 10.07.2008 on safety and health at work
13. Law no. 86 of 29.05.2014 on Environmental Impact Assessment
14. Government Decision no. 891 of 24.07.2008 on training and support, in the process of public procurement, the Society for the Blind, the Disabled Society, Association of the Deaf, Production and occupational therapy workshop under the Psychiatric Hospital, prisons and other disadvantaged persons
15. Innovation Strategy of RM 2013-2020. Innovation for Competitiveness
16. Law no. 115 of 09.06.2005 on organic food production. Government Decision no. 1078 of 22.09.2008 approving the Technical regulation „Organic food production and labeling of organic foods”
17. Law no. 142 of 02.07.2010 on energy efficiency
18. Government Decision 833 of 10.11.2011 on the National Energy Efficiency Program 2011-2020
19. Government Decision no. 102 of 05.02.2013 on the Energy Strategy of the Republic of Moldova until 2030
20. Draft law to amend/complete the Law on public procurement no. 96-XVI of 13.04.2007
21. Draft Law on awarding sectoral public procurement contracts