FIRST NATIONAL STUDY ON THE USE OF GREEN PUBLIC PROCUREMENT IN ROMANIA

June 2021
1st Phase: Public procurement of ecological paper
REASON WHY

THE NECESSITY OF A GREEN PUBLIC PROCUREMENT STUDY IN ROMANIA

Romania became a member of the European Union by signing the Treaty on the Functioning of the European Union. This Treaty, as well as other programmatic documents adopted during the pre-accession period, provide Romania’s commitments to implement and promote the principles of sustainable development. This goal is one of the 17 Sustainable Development Goals set by the UN, the 2030 Agenda for Sustainable Development and the 17 Sustainable Development Goals (SDGs) were adopted at the UN General Assembly in September 2015. The EU is committed to becoming a leader in the implementation of the 2030 Agenda and, implicitly, of the 17 Sustainable Development Goals.

Green public procurement is public procurement in which the award documentation uses ecological criteria at the level of the qualification requirements, the tender book, the contract award criteria or within the contract terms.

Insofar as there is no instrument for measuring the uptake of European objectives on green public procurement, AROLD – The Romanian Association for Local Sustainable Development, in partnership with the Law Firm ONV LAW, aims to measure through this study the uptake of green public procurement in Romania and to verify the way in which the public policy related to green public procurement has been implemented.

The study was launched in 2018 and will end in 2023, and it includes several categories of monitored green public procurement:

- Copy paper and graphic paper
- New indoor and outdoor furniture
- Furniture renovation/refurbishment services and end-of-life furniture collection and reuse services
- Food and catering services
- Transport vehicles
- Cleaning products and services
- Office IT equipment

WHY?

Green public procurement (GPP) is an important environmental policy instrument. Green public procurement (GPP) is of particular importance for environmental protection, which is already enshrined in OECD, UN, or European Commission strategy papers.

Public authorities annually purchase a tremendous number of products, services and works that have a huge range of environmental impacts throughout the life cycle of products. At European level, the amount spent annually by public authorities is 16% of GDP. In Romania, it reaches almost 19% of GDP!

For example, if all EU public authorities applied the green criteria for the purchase of lighting and office equipment such as the city of Turku in Finland (it reduced electricity consumption by 50%) CO2 emissions could be reduced by 15 million tonnes per year.

Reducing the impact on the environment can be achieved by purchasing products, works or services that have a green (ecological) component.

By choosing to purchase products, services or works featuring an ecological component, public authorities bring innumerable benefits, proven by scientific studies:
- reducing the CO2 footprint of purchased products, services and works (protecting the environment)
- reducing air and water pollution
- stimulating innovation and the market of ecological products/works
- providing an example to society
- promoting the circular economy
- contributing to the achievement of ecological policy objectives on climate change, energy efficiency,
- air quality, helping the state to save money in the medium and long term.

BACKGROUND

Currently (June 2021, the date of the publication of this material) in Romania, a number of 20,273 contracting authorities (city halls, county councils, ministries, companies and national companies, central and local public institutions, etc.) are registered in the SEAP (the electronic public procurement system).

Although at European level the criteria set for green procurement by the European Commission for 19 categories of products, services and works are only recommendations, there already are Member States that have established the obligation to apply green public procurement at national level, such as Italy, the Czech Republic, Norway while other 22 Member States annually apply National Green Procurement Action Plans with mandatory annual targets.

In Romania, applying green public procurement is mandatory only for 6 categories of products and services established by the Guidelines for Green Public Procurement of 2018 (Order No. 1068/1652/2018 of 4 October 2018 for the approval of the Guidelines for Green Public Procurement which covers the minimum requirements on environmental protection for certain groups of products and services required in the tender books).

These 6 categories are: copy and graphic paper, new indoor and outdoor furniture, furniture renovation/refurbishment services and end-of-life furniture collection and reuse services, food and catering services, transport vehicles, cleaning products and services, office IT equipment.

This study aims to analyse the uptake of mandatory green public procurement so far in Romania and to help inform the public opinion and encourage more authorities to implement European, sustainable principles for public procurement.

Not using green criteria in public procurement strategically will make it unlikely that Romania reaches the targets set by the European Union for 2050 for climate neutrality.
REGULATORY FRAMEWORK FOR GREEN PUBLIC PROCUREMENT IN EUROPE

Public procurement is governed by the Treaty on the Functioning of the European Union, the Public Procurement Directives and the national laws.

In addition to this legal framework, EU environmental law has a direct impact on procurement procedures in some cases (e.g., requires contracting authorities to consider vehicle emissions and energy consumption, environmental design requirements and energy efficiency of products and buildings in their procurement).

In line with the European Commission’s new strategic approach to public procurement, the Council of the European Union and the European Parliament adopted in 2014 directives aimed at simplifying and making public procurement procedures more flexible, replacing the old 2004 directives.

The key purpose of the revised public procurement directives is to facilitate and ensure a wider inclusion of common social objectives in the tender process. The public procurement directives have brought new possibilities related to the implementation of environmental and social considerations in the public procurement process, such as the possibility for contracting authorities to specify production processes and methods, the expansion of environmental management systems, greater trust in eco-labels, new provisions on life-cycle cost, the ability to reject tenders or subcontractors that do not comply with environmental and social obligations. However, there are some strict elements that an eco-procurement should comply with: the environmental specifications required in the tender procedures must be correlated with the subject of the contract, regardless if they are included in the selection criteria, in the award criteria or in the contract performance terms.

Ever since 2006, the European Commission has recommended that at least 50% of all public procurement be green. To achieve this goal, it was recommended that Member States adopt an important tool for the implementation of GPP, which consists in adopting a National Action Plan for GPP, including mandatory annual targets for green public procurement. Romania does not have such a plan adopted.

In the last 5 years, the European Commission has issued several strategic documents on GPP:

- in 2017, the Communication on transforming public procurement to make it work in and for Europe, stating that key priorities include ensuring wider adoption of innovation, green and social procurement and the professionalism of public purchasers, and
- in 2019, the Reflection Paper - Towards a Sustainable Europe by 2030, stating that the way to achieve this goal is “to make the circular economy the backbone of the EU industrial strategy, enabling circularity in new areas and sectors, empowering consumers to make informed choices and enhancing efforts by the public sector through sustainable public procurement”.

The European Green Pact reaffirms European public policy to promote and strengthen GPP, specifying that public authorities, including the EU institutions, should set an example and ensure that their procurement is environmentally friendly. In addition, the Commission will propose additional laws and guidelines on green public procurement. To support the EU’s green transition, EU trade policy will further facilitate trade and investment in green goods and services and promote green public procurement.
The law on green public procurement stipulates that within 6 months of its adoption, a guide with the minimum criteria on environmental protection for groups of products and services, as well as standard tender books and the national green public procurement plan with mandatory targets will be published. These mandatory targets were to be set as a percentage of the annual value of public procurement by the contracting authority for the supply of products, the provision of services or the execution of works for which environmental criteria have been developed by the European Commission.

The national green public procurement plan has not yet been adopted, although Romania undertook to implement it since 2016. The national action plan for green public procurement also had to include certain forms, such as the award report form for the procurement of green products/services/works and the green public procurement monitoring report form. Until the date of publication of this study, none of these documents - the GPP Form and the GPP Monitoring Report – are to be found in SEAP. Although mandatory green public procurement targets for contracting authorities have been circulating in the public space since 2013–2014, with an increase from year to year, the National Green Public Procurement Plan has not yet been adopted, and SEAP does not have dedicated sections for the implementation and monitoring of green public procurement.

One of the main obligations established by the Law on Green Procurement, namely the publication of the guidelines with the minimum criteria on environmental protection for groups of products and services was fulfilled by adopting Order No. 1068/1652/2018 of 4 October 2018 for the approval of the Guidelines for Green Public Procurement only for the 6 groups of products and services mentioned, although there are other categories that have a major impact on the environment, such as: textiles, street lighting, constructions, etc.

Although the Order is mandatory, the figures show that more than 2 years after its adoption, its provisions are far too little known and for certain categories of products, such as paper, more than 70% of the authorities do not apply it. The percentage shows that the adoption of the Order is only a small step and, for this environmental policy to be effective, sustained actions are needed in order to raise awareness of the importance of the role of green public procurement.

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How does this plan work?

Each state sets a mandatory annual GPP target - so that a percentage of the public procurement carried out by each public authority in a year be represented by green public procurement.
Currently, there is no official and easy tool for monitoring and measuring the uptake of green public procurement in Romania. Verification and analysis of the implementation status of green public procurement in Romania is a very useful tool to get a clear picture of the GPP status in Romania, to set mandatory green public procurement targets which are achievable according to the specifics of the country, to explain certain factors that prevent large-scale implementation.

The study will monitor all public procurements for the 6 categories of products and services in the Guidelines for Green Procurement, will seek to identify the causes of non-application and verify what causes the low degree of implementation.

The study will make recommendations for improving the use of GPP.

The study also aims to raise awareness among the authorities and the private sector about the importance of GPP.

In the first phase of the study, we monitored the public procurement of copy paper and graphic paper, from 13.11.2018 to 15.05.2021.

In the following period, we will publish data on the purchase of vehicles in Romania.

The study was initiated in 2018 within Sustainable Romania Project and it will end in 2023.

The intermediary phases of the study will be published as the study progresses.

OBJECTIVES & TARGET ACHIEVEMENTS

The study is based on a qualitative research based on case studies, analysis of legislation, literature and studies published in GPP and a quantitative research, that is, the analysis of data resulting from the verification of all award documentations published in SEAP starting with 13.11.2018, the date of the entry into force of the GPP Guidelines in Romania, for the procurement of the 6 categories of products and services provided in the Order, namely:

- Copy paper and graphic paper
- New indoor and outdoor furniture, furniture renovation/refurbishment services and end-of-life furniture collection and reuse services
- Food and catering services
- Transport vehicles
- Cleaning products and services
- Office IT equipment

The study started with the monitoring of public procurement of paper. To monitor the public procurement of graphic paper and copy paper, we used the documentary analysis of a sample of award documents as research method, i.e., the verification of all award documents published in SEAP between 13.11.2018 - 15.05.2021.

In order to avoid subjectivism in determining whether a tender is green or not, objective criteria were used, as follows:

- the object of the tenders - the copy paper and the graphic paper
- we verified the compliance with the green criteria established by Order 1068/1652/2018 in the tender books: namely, (1) the paper must be manufactured from recovered paper fibres, recycled paper or based on unprocessed fibres, in proportion of 75% - 100% and (2) the paper is elementary chlorine free - ECF.

Although the GPP Guidelines are mandatory since November 2018 for all contracting authorities, they are used in an alarmingly low percentage.

Only 21% of contracting authorities comply with the Green Paper Procurement Order.

For example, out of the total procedures for awarding public procurement contracts for paper between 13.11.2018 - 15.05.2021, only approximately 20% of the contracting authorities complied with the Order.

The only contracting authority that makes a difference is ONAC - the National Office for Centralised Procurement, which procures on behalf of several authorities (several thousand) and applies the Order.

METHODOLOGY

HOW DID WE CONDUCT THIS STUDY?

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1st PHASE CONCLUSIONS
WHAT DID WE FIND OUT?

The monitored period was between 13.11.2018 (the date of entry into force of the Green Procurement Guidelines) and 15.05.2021. The total number of award procedures (open tender and simplified tender) published in the SEAP during this period covering copy paper and graphic paper was 202. The cancelled award procedures and the public procurements carried out through direct purchase (with an estimated value below the threshold of RON 135,060 net of VAT) were not taken into account as they are not actual award procedures and they do not have a public award documentation that can be verified.

Following the analysis, the results indicate that in the analysed period of 30 months, there was an average of approximately 6.73 public procurement procedures initiated each month. Out of the total number of public procurement procedures (202), 79% of the tenders did not comply with the requirements of Order 1068/1652/2018. 7% of the 202 award procedures partially complied with the GPP Guidelines (using only a technical criterion out of the two mandatory and cumulative criteria). Only 14% of all public procurement procedures fully complied with the requirements of the Guidelines. (Fig. 1)

The total value of analysed procedures is RON 136,276,260.3. It should be mentioned that in the analysed period, specifically in 2019, the National Office for Centralised Procurement purchased copy paper for several authorities. The procedure complied with all the requirements of Order No. 1068/1652/2018, and the value of purchased products is extremely high: RON 85,288,098.78, representing approximately 62.5% of the total value of the analysed public procurement procedures.

For this reason, although the number of procedures that did not comply with the requirements of Order 1068/1652/2018 was significantly higher than the number of those that fully or partially complied with the requirements, the chart for values looks different, as can be seen in Fig. 2 below.
In 2018, more precisely from the publication of Order 1068/1652/2018 (13.11.2018) and until 31.12.2018, a number of 12 procedures were identified, out of which only 1 procedure complied with the provisions of Order 1068/1652/2018, while the other 11 did not, and there was no procedure that partially complied with the Order. As a percentage, 92% of the procedures did not comply with the provisions and only 8% complied, according to Fig. 3 below.

The value of procedures from the analysed period related to 2018 (13.11.2018-31.12.2018) is RON 2,900,604.94, of which 94% related to the procedures that did not comply with the requirements of the Order and 6% for those that met the requirements (Fig. 4).
In 2019, a number of 97 procedures were identified, of which 80% did not comply with the requirements of Order 1068/1652/2018. 4% of the 97 award procedures partially complied with the GPP Guidelines (using only one technical criterion out of the two mandatory and cumulative criteria). Only 16% of all public procurement procedures fully complied with the requirements of the Guidelines (Fig. 5).

The value of the procedures in 2019 is RON 116,024,047.90, of which 76% related to procedures that did not comply with the requirements of the Order, 23% related to procedures that met the requirements of the Order and 1% for those which partially complied with the requirements (Fig. 6).
In 2020, a number of 57 procedures were identified, of which 79% did not comply with the requirements of Order 1068/1652/2018. 10% of the 57 award procedures partially complied with the GPP Guidelines (using only one technical criterion out of the two mandatory and cumulative criteria). Only 11% of all public procurement procedures fully complied with the requirements of the Guidelines (Fig. 7).

The value of the procedures for 2020 is RON 10,867,271.89, of which 72% related to procedures that did not comply with the requirements of the Order, 21% related to procedures that met the requirements of the Order and 7% for those which partially complied with the requirements (Fig. 8).
In 2021, namely during the period 01.01.2021 - 15.05.2021, a number of 36 procedures were identified, of which 72% did not comply with the requirements of Order 1068/1652/2018. 8% of the 36 award procedures partially complied with the GPP Guidelines (using only one technical criterion out of the two mandatory and cumulative criteria). Only 20% of all public procurement procedures fully complied with the requirements of the Guidelines. (Fig. 9).

The value of the procedures related to the period 01.01.2021 - 15.05.2021 is RON 6,484,335.49, of which 73% related to the procedures that did not comply with the requirements of the Order, 13% related to the procedures that complied with the requirements of the Order and 14% for those that partially complied with the requirements (Fig. 10).

Comparing the 4 analysed periods (part of 2018 - 13.11.2018 - 31.12.2018; 2019, 2020 and part of 2021 - 01.01.2021-15.05.2021), we noted that:

- the percentage of tenders that do not comply with the requirements of Order 1068/1652/2018 is the most preponderant. It should be mentioned that there is a decrease over the years: it was 92%, in 2018, 80% in 2019, 79% in 2020, reaching 72% in 2021.
- the percentage of tenders that comply with the requirements of the Order fluctuated during the analysed period. Thus, it was 8% in 2018, it increased to 16% in 2019, it decreased to 11% in 2020, and it increased to 20% in 2021.
- the percentage of award procedures that partially complies with the requirements of the Order also fluctuated: it was 0% in 2018, it increased to 4% in 2019, in 2020 it continued to increase up to 10%, and it decreased to 8% in 2021.
FINAL CONCLUSIONS & RECOMMENDATIONS

Achieving climate neutrality targets by 2050 can only be achieved through concerted, strategic, sustained efforts.

At European level, GPP, as an instrument of public environmental policy, is becoming increasingly important. So important that it is also mentioned in the European Green Pact.

The European Commission will propose additional legislation and guidelines on green public procurement. More and more European countries have already adopted normative acts that make green public procurement mandatory: Norway, Italy, Czech Republic.

Other European states, even if they have not established the obligation of green public procurement with a completion rate of 100%, have adopted national action plans for green procurement with target percentages between 60-100%. This information indicates that the use of green public procurement will be mandatory in the future.

In Romania, the concept of green public procurement is a far too little-known tool, and the application of this type of procedure is not a strategic one but rather a conjunctural one. In the case of certain products, green public procurement is more often used than in the case of other products/services/works, as a result of provisions in environmental legislation rather than as a result of a management decision oriented towards sustainability.

It is likely that the percentage of use of green public procurement increases due to environmental and energy efficiency legislation.

However, there is not enough time for an increase on its own. Achieving climate neutrality targets by 2050 and reducing the greenhouse gas emissions by at least 55% by 2030 can only be accomplished with a concerted effort and only through the coordinated, strategic and responsible use of public environmental policies, including the GPP.
RECOMMENDATIONS FOR THE PUBLIC AUTHORITIES

Both locally and centrally, green public procurement must be promoted and popularised more often among all contracting authorities and also among economic operators.

Increasing the degree of use will increase the market share of products/services/works with ecological component and thus the attractiveness of economic operators to manufacture and trade products and services with ecological component.

It is necessary to popularise the existing models of good practice.

The decision to buy green must be a strategic and priority-oriented one. The commitment to environmental protection of public authorities must be declared and undertaken by all staff of the authority.

Training the staff of the contracting authorities in green procurement and sharing practical experience in organising such procurement should be a priority.

The commitment to purchase environmentally friendly products, works or services must be communicated to the market.

APPENDIX 1

01 Decision to purchase ecologically at the level of management
02 Identify what product, service or work you want to buy
03 Verify whether the product/service/work falls under the GPP Guidelines or the 19 categories of products/services or works for which the European Commission has established green criteria
04 Look for models of good practice and how other contracting authorities have applied the GPP criteria for the same product/service/work
05 Establish where precisely in the award documentation could ecological criteria be introduced - qualification criteria? technical specifications? contract award criteria? contractual clauses?
06 Verify if there are economic operators that offer the product/service/work with the ecological component on the Romanian market, through an analysis or public consultation in order not to distort the competition
07 Use good practice models
08 Seek the support of European consultants or bodies

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ONAC (National Office for Centralised Procurement)

GOOD PRACTICE MODEL

What is ONAC?

The National Office for Centralised Procurement (ONAC) is a public institution with legal personality, subordinated to the Ministry of Finance and it was established by G.E.O. No. 46/2018 as a centralised procurement unit that carries out framework agreements for the products purchased in a centralised system on behalf of and for users.

It purchases centrally for all central and subordinate authorities as well as for those that voluntarily register as users. It has a very strong commitment to promoting and implementing green public and social procurement. For example, it was published as a model of good practice for the centralised purchase of furniture that also had a social component.

The National Office for Centralised Procurement is a new public institution - 2018 - subordinated to the Ministry of Public Finance, which is the centralised procurement unit at government level.

That is, the categories of products and services which were contracted separately, by each central public institution, are purchased, centrally, by ONAC, as follows:

- car fleet fuel
- A4 and A3 paper
- office furniture
- hardware
- stationery and office supplies
- vehicles
- interior lighting fixtures
- cleaning products
- mobile telephony services
- other standardisable and high-volume products and services, depending on priorities, established by a memorandum, approved by the Government

In addition, ONAC carried out centralised public procurement for medical equipment according to GEO No. 11/2020.

For the purchase of copy paper and graphic paper, ONAC concluded in 2019 a framework agreement for a period of 2 years for 1,158 contracting authorities from all regions of Romania, which is a first in the sustainable public procurement in Romania having the paper as object.

ONAC

Why is it a good practice model?

This is the first centralised public procurement carried out by ONAC and of this level. Centralised procurement generates savings in spending public money due to volume. It is among the first authorities to successfully implement the provisions of the GPP Guidelines.

The first public procurement of centralised ecological paper

The largest tender for the purchase of green paper in terms of value or number of participating contracting authorities was carried out throughout the country.

The maximum estimated value was EUR 18,076,406 net of VAT, of which:
- EUR 16,460,970 net of VAT - A4 paper
- EUR 1,615,436 net of VAT - A3 paper

For the contracted amounts, we do not have a level of comparison, being the first purchase of this kind in Romania.

There is no other centralised purchasing unit of this level. Moreover, there are authorities that are not obliged to purchase through ONAC and have however voluntarily registered to purchase through ONAC.

Cornelia Nagy

President, ONAC - National Office for Centralised Procurement

"This experience was a real challenge, if we take into account the fact that it was the first centralised procurement procedure at national level.

The planning, organisation and development of a centralised procurement procedure meant a joint effort with users (public institutions that are registered in the user register and are part of the ongoing framework agreements) as well as economic operators in the market.

We consider that by carrying out the procedure regarding the Centralised Procurement for the supply of A4 and A3 paper for photocopiers and xerography, ONAC contributed to the fulfilment of the objectives for which it was established, but also a part of the objectives of the Romanian national development strategy, such as:

- compliance with the principles related to the procurement process by all parties involved in this process;
- a better promotion of Romania’s state image in the European Union regarding green procurement and sustainable procurement;
- ensuring access to the centralised procurement procedure of SMEs (out of the 5 signatories of the centralised paper framework agreement 1 economic operator is large, the rest being small and medium economic operators)."
The Romanian Association for Local Sustainable Development is a non-governmental non-profit organisation, established in 2000, which focuses on sustainable development.

For this purpose, it supports the 17 objectives included in the 2030 Agenda to become a common concern, both for the Government, central and local authorities, but also for the business environment and civil society organisations, through research and study programs that become tools for achieving the goals included in the 2030 Agenda.

ONV LAW is a business law firm established for more than 20 years. It has extensive expertise in public procurement practice for over 15 years resulting from consultancy with public authorities and private operators and solving specific legal challenges in the field of public procurement, concessions, public utilities and infrastructure.

Within their work, ONV LAW specialist lawyers encourage contracting authorities to use green criteria in tenders by helping them implement ecological criteria at the level of tender books, qualification or selection criteria, at the level of evaluation factors or contractual terms.

Alina Bilan has been a lawyer since 2005, member of the Bucharest Bar, specialised in administrative law, public procurement, constructions and public utility services. Out of a passion for the environment and sustainability, Alina Bilan has become an expert in sustainable development and is involved as a consultant in projects involving sustainable development strategies or public environmental policies. She is currently a PhD student in public policy for sustainable development at the SNSPA Doctoral School - the field of green public procurement.

Alina coordinates the practice of public procurement, Concessions, PPP, Administrative Law, Construction and Urbanism and Public Utility Services within ONV LAW. She currently participates as a speaker in various conferences and seminars on public procurement, green public procurement and sustainable development. Alina has recently published in Springer Nature a study on green public procurement in Romania in a volume of public policy analysis entitled "Europeanization of Environmental Policies and their Limitations".

Study coordinated by Alina Bilan, author
President, ARDL - Romanian Association for Sustainable Development Partner, ONV LAW

Expertise:
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- Administrative law
- Infrastructure
- Construction & Engineering
- Sustainable development policies