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## **Comparison of the Public Procurement System in Romania and the UK**

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**Abstract:** The present paper aims at a comparative study in the EU, mainly focusing on the analysis of the United Kingdom and Romania on procurement systems. One of the points made is that the European Union is trying an upgrade and revision of the regulations on public procurement, thus trying to promote quality and innovation in this area.

**Keywords:** public procurement, reform, public system

**JEL Classification:** H50; K00; H53

### **Introduction**

Constitutional framework for the organization and functioning of state administration structures differ considerably from country to country. It is necessary to know and understand this framework different constitutional principles and rules as this we can determine how to choose a specific operating structures of the state administration.

A simple comparison of these national systems we can reveal that there is a general pattern of organization and functioning of state administration. Study on National Procurement systems in the 28 Member States of the European Union has shown that, in every state, the legal framework is given by national legislation harmonized (Nuta A, 2014) with European legislation transposing EU Directives. Institutional framework highlights that there is a single common model of shape and tools used. Thus some states have public procurement regulatory institutions such as France, Latvia, Luxembourg's, Sweden, Germany, in contrast to other public institutions meet state regulatory role subordinate governments or ministries such as: Belgium , Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Italy, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Malta, United Kingdom. In these countries, specialized public institutions are ministries, departments, offices, authorities, units and offices as appropriate.

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### **Comparative Analysis between the System Used by Great Britain and Romania**

Great Britain is a member state of the European Union, and as such is governed by EU law. It has implemented the EU directives on public procurement in the regions of England, Wales and Northern Ireland, by the following regulations: Regulation of public contracts in 2006 for the implementation of Directive 2004/18 / EC on the coordination of procedures for the award of public works contracts, public supply contracts and service and utility contracts, Regulation 2006 for the implementation of Directive 2004/17 / EC on the coordination of procedures for the award of public contracts in the water, energy , transport and postal services.

Thus Procurement Rules 2006 regulate public procurement practices in the works, services and supplies of goods to the United Kingdom Government, local authorities and other public sector bodies. Procurement regulations and requirements implemented remedies under the Agreement on Government Procurement of the World Trade Organization (WTO Government Procurement Agreement) for contractors in countries signatory to the Agreement. It may be noted that in terms of WTO accession, Romania is a member originally from 1 January 1995.

In the UK operates a group efficiently and Reform established under the “Cabinet Office”, which took over in 2010 the Office of Government Commerce (Office of Government Commerce - agency work in 2000 under UK Treasury) and the Agency “Buying Solutions “. In July 2011, the latter agency was renamed the Government Procurement Service (Government Procurement Service). This group, through its structures, develop and publish recommendations, guidelines, models and documentation of best practices manuals that cover a wide range, including programming and project management, more efficient public spending. Also menus for government entities centralized purchasing system both classical and electronic means (e-Auctions), and provides expert advice for them.

Compared to the national level, we can see some similarities between the two authorities, namely, both in the UK and in Romania there is a regulatory authority, which is subordinated to the Government and having as main objective the development, promotion and implementation of policies in public procurement. At the same time we observed that unlike the National Authority for Regulating and Monitoring Public Procurement, which have the power to establish offenses and penalties for evading or violating legal provisions The Service of the Government Procurement in the UK, has a more indicative.

Regarding the contracting authority find that both the Romanian system and the Anglo-Saxon system, it can be represented by any state body acting at central, regional or local level of any public undertaking or any association law subject formed by one or more contracting authorities.

In addition to the entity specifically mentioned in regulation of public contracts in the UK and GEO 34/2006 of Romania, there is a wide range of other public health state law, which can be described as bodies created for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and are either fully funded or in part by another contracting authority. If the British system in the same category of actors involved in the procurement process enters and associations formed by one or more contracting authorities, the Romanian system are included, in addition to these activities and public undertakings relevant legal subjects performing relevant on the basis of special or exclusive, and operators that were funded by a public body<sup>1</sup>. The associations that are involved with one or more of the above entities, also fall under the regulation on

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<sup>1</sup> GEO no. 34/2006 regarding the award of public procurement of public works concession contracts and services concession contracts, with subsequent amendments, art. 8.

public procurement. The legislature defines special or exclusive rights as the right resulting from any form of authorization granted under the law or through the issuance of administrative acts, by a competent authority which has the effect of reserving conduct certain activities in the field of public services only to a limited number of people, essentially dividing others' ability to conduct such activity.

In Anglo-Saxon practice<sup>1</sup>, some private entities may be subject to essentially public procurement rules, if they are financed or controlled by a contracting authority and fulfill a non-commercial purpose. There are other limited circumstances when a private entity may fall under this regulation, for example in the case of works concessions, where a public authority shall state subsidy or state aid, subsidized entity is bound by the Regulatory and like a public authority, and ultimately where some of the private sector is engaged in an activity of public utility, it must obey the regulation on utilities contracts.

Regarding the classification of contracts note that it is identical in both countries, as some encounter works contracts, supply contracts and service contracts. Works contracts having as their object the execution of works related to one of the activities of the nature of the works, the execution of a construction or design and execution of works related to one of the activities of the nature of the work. Service contracts as main provision of services, and ancillary activities carried out by the nature of the works and supply contracts for the supply of goods to pay the purchase, providing products hire, supplying products through rental with or without option to purchase and supply of products and ancillary operations / installation work and commissioning.

As in any field, I could identify exceptions to the application of legal regulations. In Romania there are a number of contracts that are considered exceptions to the law in this category include: contracts awarded by a contracting authority in the country's defense and national security because the contract may lead to the provision of information whose disclosure would be contrary to the interests essential security of the country and involves the protection of essential security interests of the country in connection with the production or trade in arms, munitions and war material. In the same category of exceptions include contracts that contain state secrets, contracts that require the imposition of special security measures for the protection of national interests, and works contracts awarded by a trader who is not a contracting authority if cumulatively: contract directly subsidized at a rate of less than 50% by a contracting authority and the estimated value of the contract is less than or equal to the RON equivalent of EUR 5,000,000.

In the UK<sup>2</sup>, the British Ministry of Defence (MoD), the governmental body who purchase military equipment is subject to the provisions of the Regulation in the same way as any other public body. However, Article 346 on the Functioning of the European Union (TFEU) provides for a mandatory exemption in connection with the defense and made the ministry achizițiile (“national security exemption”), which were introduced in the regulations as an express exclusion. There is also an express exclusion in Regulation secret contracts. Regulation on defense and security procurement contracts in 2011, has implemented EU Directive 2009/81 Defense, which entered into force on 21 August 2011. Rules for the Protection set specific rules for procurement of weapons, ammunition and war material (plus related works and services) for defense purposes and for the acquisition of sensitive goods, works and services for non-military security purposes.

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<sup>1</sup> The International Comparative Legal Guide to: Public Procurement 2012, published by Global Legal Group p. 69 [www.ICLG.co.uk](http://www.ICLG.co.uk)

<sup>2</sup> The International Comparative Legal Guide to: Public Procurement 2012, published by Global Legal Group p. 70 [www.ICLG.co.uk](http://www.ICLG.co.uk)

The principles underlying the interpretation of United Kingdom legislation that Romanian legislation, are those that are at the level of the European Union stipulated in the Public Procurement Directives, under the Treaty on the Functioning of the European Union (TFEU), which applies throughout Union territory. These principles are: free movement of goods, that principle requires harmonization of the laws of each Member State to the rules at European level, including the provisions relating to technical standards and product certification. Another principle concerns the right of establishment and freedom to provide services. This principle states that the self-employed may freely exercise an activity in one of the following: the company can be built in another Member State or provide services in another Member State, even if it remains in the home. Other principles refer to non-discrimination, equal treatment, transparency, proportionality and mutual recognition. These fundamental principles underlying the interpretation of United Kingdom legislation applies to all situations where an authority purchasing works, goods or services from a third party, including where contracts fall outside the scope of directives or regulations of the United Kingdom.

If we refer to the method of awarding public procurement contracts can say that the two systems are similar simply because in both Romanian and administrative practice in the Anglo-Saxon open procedure and restricted the rule award any public contract, while competitive dialogue, negotiation, invitation to tender is the exception to the rule.

In British practice there are four different types of procurement procedures: open procedure, is the procedure for awarding public procurement contract to which all interested suppliers submit a single bid price. This procedure is used for simple purchases<sup>1</sup>.

The restricted procedure, is the procedure in which the contract is promoted primarily bidders are invited to submit their candidacy. Only those bidders who were selected are invited to submit a quote. The procedure does not offer the possibility of negotiation or dialogue between the contracting authority and tenderers.

The competitive dialogue procedure, is the phase where interested bidders must first submit an application before being invited to enter into a dialogue with the contracting authority in order to identify and develop a solution. This procedure is very flexible, dialogue may take place in successive stages in order to reduce the number of bidders. This procedure is used in the award of complex contracts, such as contracts or public-private partnership projects such private funding initiative.

Negotiated procedure is used only in exceptional circumstances in public sector procurement, it is complex utility purchases. Procurement structure include the tendering stage followed by a stage of negotiation with a group of pre-selected bidders.

If the UK the most common procedure for the award of public procurement is the competitive dialogue, we can not say the same about Romania, as some here most contracts procurement shall be awarded by open or restricted.

Major differences between the two systems we encounter in setting deadlines for each procedure. UK law requires minimum periods for each procedure, the minimum periods applicable to both Regulations, Rules and Regulation public procurement contracts for utilities, are broadly the same in the open procedure, but there are variations as possible shorter periods, because the utility system as a whole is more flexible and less stringent.

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<sup>1</sup> The Public Contracts Regulations 2006, Part 3 Procedures leading to the award of a public contract [www.legislation.gov.uk](http://www.legislation.gov.uk).

In British practice where the call for the minimum time between the sending and receiving notice of the answer is 52 days and 10 days waiting period before awarding the contract. Time interval can be shortened by seven days if the notice is sent electronically and by another five days if the tender documents are sent electronically to the OJEU. However, there is the possibility of reducing the period of 30 days for the publication of a prior information notice between 52 days and 12 months before the notice. The Romanian administrative practice these terms are very dependent, and varies depending on the relationship between the estimated value and the threshold for publication in the OJEU and whether or not there was a notice. For example, if the estimated value is greater than the threshold for publication in the OJEU and was not published a prior information notice, the minimum time limit for submission of tenders is 52 days, and if a notice was published intentionally limit shall be reduced to 36 days reaching.

Regarding the restricted procedure, the minimum time between sending Britain<sup>1</sup> notice and receiving the response is 37 days, 40 days for receipt of offers 10 days standstill period prior to contract award. Time interval can be shortened by seven days if the notice is sent electronically and by another five days if the tender documents are dispatched from the date of notice in the OJEU. There is the possibility of a reduction by 18 days if a prior information notice was published between 52 days and 12 months before the notice. In Romania these terms are almost identical, but there is the possibility of conducting an accelerated procedure where the OJEU threshold estimates. Thus deadline for application in an accelerated procedure is 10 days and the deadline for submission of tenders without notice of intent is all for 10 days and the publication of a notice of 12 days.

Both the negotiated procedure and the competitive dialogue procedure require the same minimum time for applications. Thus we see that both procedures and specific terms are similar in both countries. The first term involves sending notice and receipt of tenders must be made in minimum 37 days and 10 days for the standstill period prior to contract award. Time interval can be shortened by seven days if the notice is sent electronically.

There is also an accelerated restricted procedure available if the requirement is urgent. The Commission made this procedure available to enable contracting authorities to acquire major projects that will benefit current economic industry.

In open procedures, tenders shall be submitted immediately after the publication of the notice, without any pre-selection. The contracting authority is not able to limit the participation of qualified providers and can therefore only assess issues such as economic and financial situation of a bidder once the tenders have been submitted.

Conversely, if limited dialogue procedures, negotiated and competitive dialogue, both in Romania and the UK, these procedures allow the contracting authority to select bidders may participate in the bidding process during a preselection, which occurs before being submitted bids. In the Anglo-Saxon pre-selection is to assess candidates by applying selection questionnaire completed by potential bidders. These questionnaires are applied to all potential bidders who respond to a notice. The purpose of these surveys is to provide preselection contracting authorities may identify any material legal grounds may be necessary to exclude a bidder. Also these questionnaires (PQQ - Pre-Qualification Questionnaires) will cover the criteria set out in regulations for acceptance or exclusion of a bidder.

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<sup>1</sup> Public procurement procedures: a quick guide, [www.competition.practicallaw.com](http://www.competition.practicallaw.com).

Instead Romanian<sup>1</sup> system pre-selection of candidates is not based on a questionnaire, but the contracting authority has the right to determine qualification and selection criteria. The authorities must respect the principle of proportionality when setting criteria and minimum requirements that candidates must meet.

Also a contracting authority can exclude a tenderer for lack of technical and professional capacity, conviction for a criminal offense relating to the conduct of a business or profession, or to carry out an act in the course of a business or profession that requires serious misconduct, failure the payment of taxes or serious misrepresentation in supplying the information required under the Regulations.

A purchase will fall only if the value exceeds a certain threshold which specific financial differ depending on the classification of public procurement. Acquisition value is estimated as the net amount of value added tax. The rationale behind the use of these financial thresholds is that purchases above a certain threshold are considered capable of having an impact on competition and affect trade between Member States of the European Union because they are more likely to attract bidders from other countries. The European Union is to maintain the monetary thresholds established in accordance with the Public Procurement Agreement of the World Trade Organization. EU Commission review the thresholds from time to time. In addition, Member States of the European Union that are not part of the euro area, such as in Great Britain, receive a review of the financial thresholds every two years converted into national currencies based on the exchange rate published in the OJEU.

Both in Romania and in the UK under an acquisition is so goods and services, it will qualify as a purchase of services if the value assigned to service contracts is greater than its supply contracts, and If an acquisition is both works and services, it will be a purchase of services, provided that the item of work is only incidental to the provision of services.

After the deadline for receipt of tenders, the contracting authority will proceed to the evaluation of tenders on the basis of the award criteria. Public contracts may be awarded only on one of the following principles: either granting them to make exclusively, the lowest price is based on the most advantageous tender in economic terms.

In the UK there is a public body with responsibility for implementation of public procurement rules. Because the procedures are constantly threatened by auction unsuccessful completion of an award procedure, the contracting authorities are alerted throughout the procedure to seek legal advice to ensure that there are no violations of legal regulations. In Romania, however we can say that the Ministry of Finance, as a specialized body of central government is responsible for performing the verification function of the procedural aspects related to the award of contracts covered by the legislation on the award of public procurement contracts public works concession contracts and services concession.

Also we have seen that in the UK appeals are heard by the Court of Appeal and then the Supreme Court and there is no specific administrative tribunal for determination of appeals in public procurement. In Romania instead there is a judicial administrative organism independent National Council for Solving Complaints, which has jurisdiction to hear appeals lodged in procedures for awarding contracts before the end.

Following the analysis, we found a number of similarities between them we can mention the following: both Romania and the UK are members of the European Union and fall under European law. They have implemented the EU directives on public procurement by the following laws: in the

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<sup>1</sup> ANRMAP, Operational Manual for the award of public procurement, vol I, 2009.

UK Directive 2004/18 / EC was implemented through public procurement Regulations 2006 and Directive 2004/17 / EC was implemented Regulation utilities contracts since 2006. In Romania the two EU Directives have been transposed by GEO no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession.

Another similarity that were able to identify what way was the classification of public procurement contracts, the contracting authorities, the principles underlying the interpretation of the laws of the two countries but also in terms of procedures for the award of contracts public procurement.

We have also identified a number of differences in terms of establishing deadlines for assigning each procedure. Another difference identified was the fact that in Britain, unlike Romania, there is a public body to be responsible for implementation of public procurement rules, and also there is a judicial body which is competent to determination of appeals in this area. Another difference between the two systems is the fact that the common law is used primarily competitive dialogue procedure while in the Romanian system most used open tendering procedures are those restricted.

## **Conclusions**

Following the case study conducted found that both Romania and the UK, public procurement plays an important role in social and economic development of a society.

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

In conclusion procurement conducted by public authorities and by other similar institutions are very important because through their state reflects how public money is used. This is done through public procurement interaction between the public and private contracting authorities being equal relations with suppliers of goods and services, in order, as both are required to apply specific public procurement legislation.

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