

Romania

Trends and Developments

Overview of the Previous Year

Following a year of intense legislative activity in 2022, 2023 saw continued progress on reforms and revisions initiated in the previous year. This accelerated pace was driven by the need to meet milestones and goals set out in Romania's National Recovery and Resilience Plan (NRRP).

On 12 June 2023, the Romanian government approved the National Strategy for Public Procurement for 2023-2027 (the "Strategy"). This document, having undergone public consultation in March 2023, was approved with its structural and conceptual framework largely unchanged from what was outlined in our 2023 Trends article.

While some important PNRR milestones, also defined as strategic directions within the Strategy, have been reached, there is a clear lack of co-ordination in their implementation. Additionally, delays have surfaced that will need to be addressed in 2024.

Furthermore, the European Commission has raised potential infringement issues with some of the more controversial legal amendments introduced in 2022. These concerns will need to be resolved, with the formal notice procedure expected to conclude in 2024.

Finally, 2023 saw a renewed interest in implementing Public-Private Partnership (PPP) projects. This was evidenced by the development of new guidelines and the adoption of legal amendments. Full implementation of these changes is anticipated in 2024.

National Public Procurement Strategy

Upon its adoption, the Strategy reaffirmed several key directions that were previously highlighted in our 2023 Trends article. These include:

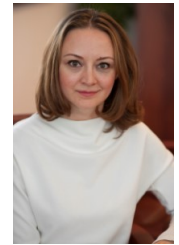
- expanding strategic public procurement (promoting green, innovative and social procurement);
- enhancing the professionalism of procurement staff by setting high performance standards for procurement officials;
- increasing procurement transparency;
- stimulating the digital transformation of the procurement process; and
- creating centralised purchasing units (CPUs) at the local level.

Throughout 2023, Romania has begun taking initial steps to realise some of these objectives, laying the groundwork for future trends that are likely to emerge in 2024 and beyond. The main milestones within the Strategy, their implementation and potential trends to be seen in 2024 are analysed below.

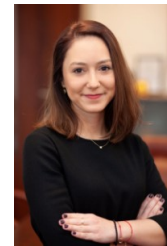
Strategic procurement: aimed at increasing the use of sustainable (green), inclusive and innovative procurement



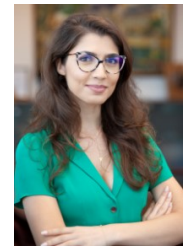
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As highlighted in our 2023 Trends article, the Strategy prioritises strategic procurement practices. This approach aims to leverage a wide range of underutilised tools within national and European public procurement legislation to achieve greater sustainability and innovation. The Strategy specifically focuses on expanding the use of green and innovative procurement, as well as social contracts, by integrating them into strategic procurement planning.

To this end, during 2023, the National Agency for Public Procurement (*Agencia Națională pentru Achiziții Publice*, or ANAP) took the first steps towards implementing green procurement. They launched public consultations on a set of ecological criteria for 11 products, including computers, paper, furniture, medical equipment, and vehicles.

These criteria were officially approved on 4 January 2024 through an ANAP President Order, establishing the first minimum ecological criteria that contracting authorities must consider in such procurements. Subsequently, Government Emergency Ordinance 3/2024 repealed Law No 69/2016 on green public procurement in light of the Strategy's implementation.

As a result, 2024 marks the beginning of public procurement under these new green procurement rules. While the full impact will likely unfold in the coming years, concerns have already been raised regarding their implementation during the initial two months. Some contracting authorities seem to be misinterpreting or misapplying the new ecological criteria.

Progress in inclusive and innovative procurement, however, remains stagnant. Despite proposals initiated in 2022 and 2023, there have been no significant advancements in 2023, and no clear trends are yet visible for 2024. This slow progress toward strategic procurement might also be attributed to delays in implementing milestones outlined in the NRRP and the Strategy, particularly those related to professionalising public procurement personnel (discussed below).

Given these circumstances, significant advances in strategic procurement adoption are unlikely in 2024. However, the proper implementation and management of the new green procurement rules could pave the way for achieving this goal in the future.

Expanding centralised procurement

The Strategy aims to broaden the scope of centralised procurement, particularly in the health, education, transport and digitalisation sectors, in line with the directions envisaged for strategic procurements.

As anticipated in our 2023 Trends article, given that these sectors are also NRRP priorities, 2023 witnessed rapid developments, at least in terms of establishing the institutional framework for centralised procurement.

During 2023, four centralised procurement units have been implemented in the Cluj Napoca, Brasov, and Bihor municipalities, as well as the Bucharest District 6 municipality. ANAP has granted support for the establishment of these units, including the development of operational procedures, workflows, and training for the newly established units.

The creation of these units appears to be a pilot project with two objectives: to encourage this type of procurement and to test the feasibility of centralised purchasing. We expect new guidelines and directions regarding centralised procurement to emerge in 2024, especially concerning the types of products and services best suited for this approach.

Digitalisation of the public procurement portal: improving transparency, monitoring, supervision and control functions of the public procurement system

The Strategy aims at improving the functionality of the public procurement portal (SEAP) by:

- defining an adequate level of data sharing to be implemented within the system for improved transparency; and
- ensuring better data collection from all institutions involved in public procurement processes, including reports from courts and other control bodies, and integrating this data within SEAP.

2023 witnessed the first steps toward this ambitious and long-overdue initiative. While progress has been reported, it has been slower than anticipated.

Specifically, data collection and interoperability with other systems reached 85% completion in December 2023, according to ANAP. The technical solution has been built, tested, and is ready for integration into SEAP. However, the remaining 15% requires collaboration from various institutions managing the data to be integrated (eg, the National Fiscal Agency, the National Council for Solving Complaints, the Ministry of Internal Affairs, the National Integrity Agency, and the Commerce Register).

Previous collaboration efforts between Romanian public institutions for data integration have yielded limited results or faced lengthy and cumbersome processes. However, since SEAP's interconnectivity and interoperability with other databases is a critical milestone for NRRP implementation, 2024 could yield more progress in this regard.

Regarding overall improvements to SEAP's functionalities, the target completion date is the first quarter of 2025. The first 15% of the milestone, representing the initial software requirements specifications, was achieved in 2023. If there are no further delays in 2024, an improved version of the system might be launched in 2025.

Upgrading SEAP is essential for the entire Romanian public procurement system to achieve the Strategy's goals. A more robust SEAP will serve as an indispensable tool for ensuring transparency and monitoring the effectiveness of procurement processes.

Professionalising public procurement personnel

Professionalising public procurement personnel has been a strategic priority since at least 2015. The Strategy reiterates this goal, and initial steps were taken toward achieving it in 2023.

However, the ANAP report on NRRP implementation at the end of 2023 indicates a delay in the milestone related to professionalisation of procurement personnel. This delay is attributed to a lack of funding, and the revised completion timeframe is now the first and second quarters of 2024.

These delays could create imbalances within the Strategy and NRRP implementation. The structural changes being introduced may not be effectively absorbed by contracting authorities, who remain unprepared for complex procurement processes. Failure to make rapid progress on personnel professionalisation could hinder the Strategy's core objective – the drive toward strategic procurement.

Commission Infringement Letter

On 18 October 2023, the European Commission initiated, through a letter of formal notice (INFR(2023)2114), infringement procedures against Romania for non-compliance of its national rules with EU legislation on public procurement.

Although the full content of notice INFR(2023)2114 is not accessible, it seems that the Commission's notice focused on legal amendments introduced in 2022 that allowed wider use of negotiated procedures without prior publication, as well as the amendment of public procurement and sectorial procurement contracts.

Romania was granted two months to address these concerns. The deadline was initially 18 December 2023 (with additional issues raised by the Commission in the meantime), and subsequently extended to 18 February 2024.

On 19 February 2024, ANAP published on its website the draft of an Emergency Government Ordinance for the amendment of public procurement and sectorial procurement legislation with the purpose of addressing the issues raised by the European Commission. The ordinance is in the public consultation stage until 29 February. Provided no additional issues are raised by the European Commission, swift adoption is anticipated.

While the new legislation is likely to resolve the Commission's objections, we can expect a more cautious approach to public procurement legal amendments in 2024. Non-compliance with EU public procurement legislation can significantly hinder the implementation of the NRRP and other major projects funded by the EU. Additionally, the impact of the non-compliant legal provisions remains to be assessed.

Renewed Interest in Public–Private Partnership Projects

Public-private partnerships (PPP) have been on the government's agenda for over two decades, yet no project has been successfully implemented.

Despite continuous efforts to "improve" the legal framework, the administration appears to have finally recognised in 2022 and 2023 that the main obstacle lies not in the legislation itself, but in a lack of administrative capacity.

To address this, a technical assistance programme provided by the European Commission's DG REFORM ran from 14 December 2021 to 5 December 2023. This programme developed guidelines based on international best practices for PPPs. These guidelines are intended to provide a smoother path for potential public partners with limited expertise or experience.

Furthermore, in January 2024, the Romanian Parliament finally approved Government Emergency Ordinance No 39/2018 on public-private partnerships (after more than five years since its initial introduction). The ordinance includes amendments aimed at removing certain restrictions on PPP implementation. Notably, one new amendment eliminates the previously set 25% maximum threshold for public partner contributions to project financing.

These amendments necessitate an update to the December 2023 guidelines, along with their formal approval by the Minister of Finance within six months (by July 2024).

While previous revivals of interest in PPPs yielded no significant results, the administration seems to have developed a better – albeit still theoretical – understanding of such projects. They might be prepared to pursue more practical action plans.

However, the timing of these plans in relation to upcoming elections and their alignment with NRRP goals and milestones will determine whether we see any concrete steps towards PPP implementation in 2024 and beyond.

Conclusion

2023 laid the groundwork for structural reforms in Romania's public procurement system. 2024 is expected to witness progress on key public procurement milestones outlined in the Strategy and the NRRP.

We can anticipate a stronger emphasis on centralised procurement and green procurement. Contracting authorities will likely face an adjustment period as they gain a deeper understanding of the scope and application of ecological criteria. However, significant advancements in inclusive and innovative procurement are still unlikely due to the slow pace of measures aimed at improving administrative capacity.

The comparatively rapid progress in digitalisation may pave the way for better utilisation of integrated data. This could allow for appropriate revisions to the steps needed to achieve strategic procurement.

In conclusion, Romania's public procurement system will continue its ongoing review process in 2024, with key milestones potentially leading to significant improvements or strategic shifts. While initial steps towards these upgrades are already underway in 2024, based on past experiences, caution is warranted regarding the full completion of all envisaged milestones.

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