MONITORING THE SPENDING
OF PUBLICITY BUDGETS OF THE EU-FUNDED PROJECTS

- Report on Romania, Republic of Moldova and Macedonia -
The project Monitoring the spending of publicity budgets of the EU-funded projects – Romania’s Experience, supported by the European Union through the European Anti-fraud Office (OLAF) was implemented between October 2013 and August 2014.

This presentation is part of the action “Monitoring the pending of the advertising budgets of the EU funded projects – the Romanian experience”, coordinated by the Center for Independent Journalism.

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(For more information see: http://europa.eu/anti_fraud/about-us/funding/index_en.htm).

This presentation reflects the author’s view, the European Commission (OLAF) is not reliable for any use that may be made of the information contained therein. The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.

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MONITORING THE SPENDING OF PUBLICITY BUDGETS OF THE EU-FUNDED PROJECTS

- The experience of Romania, Moldova and Macedonia -
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1. REASON FOR THE STUDY

The study of the advertising market in Romania has a tradition of over 10 years. The first steps were taken in the early 2000s, when media monitoring reports showed a significant presence of advertising paid by public authorities or by state-owned companies. The parallel monitoring of the volume of advertising paid by such entities and the number of critical materials published in those media outlets showed a direct link between the size of the public advertising budgets and the “journalistic goodwill” enjoyed by those who paid them. Thus, it was clear that the advertising from public funds was used to influence the editorial agenda and so the problem of “economic censorship” (also called “soft censorship”) was put on the public agenda.

Starting from 2004, the Center for Independent Journalism (CIJ) has been monitoring the spending of public advertisement, initiating several programs with the aim of bringing positive changes in the transparency and responsibility of the advertisement spending of public authorities. CIJ published such monitoring reports in 2005, 2010 and 2012.

During 2005-2006, CIJ lead the civil society’s efforts to change the legislation for public procurement. These efforts resulted in the transparency obligation for all procurement contracts (which are included since then, by law, in the domain of information of public interest) and in a greater transparency for advertisement budgets (including the justification of the necessity and the evaluation of the impact of advertising campaigns paid from public funds). CIJ developed a Guide for good practices in advertisement allocation from public funds, its stipulations being subsequently adopted at the legislative level, in an ANRMAP order. CIJ also organized several campaigns with courses for public servants responsible with advertisement procurement and for journalists and other media professionals.

The monitoring report “Public advertisement – Less transparency, more mistrust”, published in 2010, showed an erosion of the spirit of the law and a drop in the transparency of the allocation of “state” advertisement. The report also pointed out the fact that the public authorities maintained an important role in the advertisement market, investing sizeable budgets, mainly from European funds. From the partial information received for the year 2010, we estimated an advertisement spending (from the state budget) of over 47 million lei (over 11 million euro).

The next report, published in 2012, aimed to identify the effects generated by the legislative changes in the public procurement domain in 2010.

Thus, the report “Public Advertisement – Accelerate!” drew attention on a growing phenomenon regarding non-refundable European funds: the low transparency level regarding procurements. This phenomenon included the public advertisement market, because procurements made under special procedures regulated by the management authorities were going under the radar of the public eye. Based on a brief research, the CIJ study mentioned that the “Unseen advertisement”, as we called it, has an estimated annual value of over 1 million euro.

1 National Regulatory and Monitoring Authority for Public Procurement (www.anrmap.ro).

2 Available at http://www.cji.ro/?p=1090
3 Available at http://www.cji.ro/?p=1761
Starting from this study and with the objective of a more accurate evaluation of the influence of European funds in the Romanian advertising market, the Centre for Independent Journalism initiated the current project, “Monitoring the spending of publicity budgets of the EU-funded projects – Romania’s Experience”.

The project is conducted between October 2013 and August 2014 and has the following objectives:

1. To create a methodology for the monitorization of advertising budgets in EU funded projects in Romania;
2. To write a report on the allocation of advertising budgets from European funds in Romania in 2013, by applying the new methodology;
3. To test the methodology in Macedonia and Republic of Moldova and to gather a list of problems regarding the allocation of advertising funds in these countries;
4. To formulate a set of recommendations for legal interventions, suggestions for better implementation and good practices in order to improve the transparency of advertising budgets in EU funded projects.

The project is funded by the European Anti-fraud Office (OLAF) and its objective is to document the way in which the advertising budgets of European funded projects are allocated. The study does not aim to present the biggest beneficiaries and the way these funds are affecting the competition in the mass-media market. Moreover, due to the present lack of transparency, we believe that in the current architecture of the information regarding European funds it’s impossible to answer these questions.

2. METHODOLOGY

STEP 1 – Identifying the regulations related to the procurement domain and, specifically, the regulations regarding the procurement of public advertising

Romania has regulations for procurements done by the contracting authorities (authorities and public institutions assimilated in the former) and special regulations (regarding accessing of non-refundable European funds, applicable to judicial entities which are not contracting authorities in the sense of the general regulation for public procurement):

OUG nr. 34 / 2006 – applicability:

» Contracting authorities:

a) Any state organism – public authority or public institution – which acts at a central, regional or local level;

b) Any organism, other than those listed at letter a), of legal entity, established to satisfy general needs, with no commercial or industrial interest, and which is in one of the following situations:
   - is financed, in majority, by a contracting authority, defined according to letter a), or by another organism under public law;
   - is under the control of a contracting authority, defined according to letter a), or of another public law organism;
   - in its board of directors/administration or supervision organ, more than half of the members are named by a contracting authority, defined according to letter a), or of another public law organism;

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   - is financed, in majority, by a contracting authority, defined according to letter a), or by another organism under public law;
   - is under the control of a contracting authority, defined according to letter a), or of another public law organism;
   - in its board of directors/administration or supervision organ, more than half of the members are named by a contracting authority, defined according to letter a), or of another public law organization;

c) Any association formed by one or more contracting authorities from those listed at letters a), b), d) or e);
d) Any public company which runs one or more of the activities listed in chapter VIII section 4, when it allocates public procurement contracts or signs frameworks agreements for those activities;

e) Any subject of law, other than those listed at letters a) - d), which conducts one or more activities set out in chapter VIII, section 1, on the basis of a special or exclusive right, as defined in art. 3 letter k), awarded by a competent authority, when it allocates public procurement contracts or signs framework agreements for those activities.

Legal entity which is not a contracting authority – which awards:

a) a public works contract with an estimated value equal or bigger than the equivalent in RON of 5,000,000 euro and which is financed/subsidized directly, of more than 50% of its value, by a contracting authority;

b) a contract for services with an estimated value equal or over the equivalent in RON of 200,000 euro which is financed/subsidized directly, of more than 50% of its value, by a contracting authority.

Special procedures (applicable when the OUG no. 34/2006 is not relevant):

- Order of the minister of European funds no. 1.120/2013 – applicable for structural and cohesion funds starting from 22.10.2013 (in force)
  - compulsoriness of publishing a tender announcement and an award notice on www.fonduri-ue.ro;
  - it is no longer mandatory to publish the announcement in printed media (national/regional/local newspaper).

- Order of the minister of European funds no. 1050/2012 – applicable for structural and cohesion funds starting from 16.11.2012 (abrogated)
  - compulsoriness of publishing an invitation to tenders in the print media (national/regional/newspaper).

Procedures specific to each individual operational programme funded from structural funds (ex: POS DRU Instruction 26/2010) (abrogated)

- compulsoriness of publishing an invitation to tenders in print media (national/regional/newspaper) if the estimated value of the contract exceeds 15,000 Euro, equivalent in RON (without VAT);
- compulsoriness of publishing an invitation to tenders on its own website if the estimated value of the contract is less than 15,000 Euro, equivalent in RON (without VAT).

STEP 2 – Setting the scope for the concept of public advertisement

OUG nr. 34 / 2006, art. 58, paragraphs (1) and (2):

(1) In the case of awarding contracts for media publicity, with an estimated value bigger than the one stipulated in article 19, the contracting authority is required to publish a tender invitation and an award notice in the electronic system of public utility available on the Internet, on a dedicated address and also on its own website.

(2) In the sense of the stipulations of paragraph (1), a public advertising contract is any contract for services whose object is the distribution of advertising or of any other form of promotion through mass media, audiovisual or electronic.

OUG nr. 34 / 2006, art. 19:

The contracting authority directly buys products, services or works, if the procurement value, estimated according to the stipulations of the second

---

4 Relevant activities in public utility sectors: water, energy, transport, mail.
section of this chapter, does not exceed the equivalent in RON of 30,000 euro, without VAT, for individual procurements of products or services, and of 100,000 euro, without VAT, for every procurement of works. The procurement is made on the basis of a supporting document.

**Attention!!!** The stipulations in force at a certain time can be less coherent/correct and, starting from them, the entities which organize public procurements can disguise the nature of the contract.

*Examples:* the combination of some advertising services (publishing announcements in the print media) with recruitment or job agency services, in order to benefit from the more favorable regime applicable to the last type of services. Thus, the entity which organizes the procurement declares that it wants to sign a contract for recruitment and job agency services, with an estimated value around 300,000 euro.

According to the stipulations of OUG 34 / 2006, art. 16 in conjunction with art. 57, for recruitment and job agency services (mentioned in Annex 2B) the obligation of applying the OUG 34 / 2006 is valid only in the situation in which the estimated value of the awarded contract for the supply of goods or services is equal or bigger than the equivalent in RON of 400,000 euro.

**STEP 3 – Determining the CPV codes that must be taken into consideration in the analysis**

**OUG nr. 34 / 2006, Annex 2A:**

Point 13: Advertising services --- CPV from 79341000-6 to 79342200-5 (with the exception of 79342000-3 and 79342100-4)

**CPV codes:**

- 79340000-9 - Advertising and commercial services
- 79341000-6 - Advertising services
- 79341100-7 - Services for advertising consulting
- 79341200-8 - Services for advertising management
- 79341400-0 - Services for advertising campaigns
- 79341500-1 - Services for aerial advertising
- 79342200-5 - Promotion services

Considering the limitative definition of media advertising in the OUG no. 34/2006, and also history of these cases, we believe that, for Romania, the following CPV codes must be reviewed:

- 79341000-6 - Advertising services
- 79341100-7 - Services for advertising consulting
- 79341200-8 - Services for advertising management
- 79341400-0 - Services for advertising campaigns
- 79342200-5 - Promotional services
- 92111200-4 - Production of movies and video cassettes for advertising, propaganda or information
- 92111210-7 - Production of advertising movies
- 9211210-7 - Production of advertising movies
- 92210000-6 - Radio services
- 92200000-3 - Radio and television services
- 92220000-9 - Television services
- 9225100-7 - Services for on demand distribution of movies

**Attention!!!**

- some procedures can target several of the CPV codes mentioned above and the CPV code related to advertising is not always the main code
(the tendency is that the beneficiaries establish the type of the procedure starting from the main CPV);
- some procedures are wrongly established as being/or not of public advertising:
  • either the public advertising is included in the ‘etcetera’ in various service packages (for example: services for event organizing which include public advertising);
  • or the effective public advertising represents a low percentage from the service package (for example: it is considered public advertising the service package which includes an announcement in a national newspaper + the graphics and the printing of materials for an end of project seminar);
- there are contracts in which the public advertising is not mentioned as a CPV, thus being hard to identify (for example: in contracts for technical assistance for the implementation of nonrefundable projects it is sometimes stipulated that the contractor has the obligation to execute the promotion/advertising measures for the respective project).

Adjacent CPVs or related to public advertising:
- 22462000-6 – Advertising materials
- 39294100-0 – Informative or promotional products
- 79800000-2 – Printing and related services
- 79810000-5 – Printing services
- 79823000-9 – Printing and distribution services
- 79951000-5 – Seminar organizing services
- 79952000-2 – Events services
- 98230000-9 – Printing and distribution services

Romanian websites for procurement announcements:
- www.anrmap.ro
- www.e-licitatie.ro
- www.fonduri-ue.ro
- achizitii.apdrp.ro
- www.data.gov.ro
- www.publicitatepublica.ro

Websites for European financed programmes in Romania:
➢ structural and cohesion funds

1. Operational Programme 'Increase of Economic Competitiveness (POS CCE)
   - http://amposcce.minind.ro
   - http://oimm.minmcma.ro
   - http://www.poscce.edu.ro
   - http://fonduri.mcsi.ro
   - http://oie.minind.ro

2. Sectoral Operational Programme for the Development of Human Resources (POS DRU)
   - www.fseromania.ro
   - www.fsenordest.ro
   - www.fsesudest.ro
   - www.fsesudmuntenia.ro
   - www.oirsvfse.ro
   - www.oirposdru-vest.ro
   - www.runv.ro
   - www.oiposdrucentru.ro
   - www.oiposdrubi.ro
   - www.posdru.edu.ro

STEP 4 – Identifying the information sources for the for public advertising procurement procedures
3. Sectoral Operational Programme ‘Transport’ (POS-T)
   • www.ampost.ro

4. Sectoral Operational Programme ‘Environment’ (POS Mediu)
   • www.posmediu.ro

5. Regional Operational Programme (POR)
   • www.inforegio.ro
   • www.inforegionordest.ro
   • www.adrse.ro
   • www.adrmuntenia.ro
   • www.adroltenia.ro
   • www.nord-vest.ro
   • www.adrcentru.ro
   • www.adrbi.ro

6. Operational Programme for Administrative Capacity Development (PODCA)
   • www.fonduriadministratie.ro

7. Operational Programme for Technical Assistance (POAT)
   • www.poat.ro

8. Romania-Bulgaria Cross-Border Cooperation Programme
   • cbcromaniabulgaria.eu

9. Hungary-Romania Cross-Border Cooperation Programme
   • www.huro-cbc.eu/ro

10. South-East Europe Cross-Border Cooperation Programme

11. Interregional Cooperation Programme INTERREG IVC
    • www.interreg4c.eu

12. Urban Development Network Programme URBACT II
    • urbact.eu

13. Interregional Development Programme INTERACT II
    • www.interact-eu.net

    • www.esponromania.ro

15. Romania-Republic of Serbia IPA Cross-Border Cooperation Programme
    • www.romania-serbia.net

16. The ENPI Black Sea Basin Cross-Border Cooperation Programme
    • www.blacksea-cbc.net

17. The ENPI Romania-Ukraine-Republic of Moldova Cross-Border Cooperation Programme
    • www.ro-ua-md.net

18. The ENPI Hungary-Slovakia-Romania-Ukraine Cross-Border Cooperation Programme
    • www.huskroua-cbc.net

➢ funds for rural development
1. National Programme for Rural Development
   • www.apdrp.ro

2. Operational Programme for Fisheries
   • www.ampeste.ro

Attention!!!

Direct procurements are difficult to identify because most of the private operators which benefit from the nonrefundable funds are not under an obligation to publish information about them. Also, the contracting authorities who purchase public advertising services with a value under 5,000 euro are not under an obligation to publish the contract.

OUG nr. 34 / 2006, art. 19^1:

(1) In the situation mentioned in art. 19, the contracting authority communicates in SEAP a notification regarding the direct procurement with a value over the equivalent in RON of 5,000 euro, without VAT, in 10 days from the date of receiving the supporting document for the respective procurement.

STEP 5 – Delimitation of the types of beneficiaries and of applicable procedures

The multitude of regulations in this domain makes it necessary the identification of the applicable procedures for each type of beneficiary and for each type of funding.

In Romania, the categories of funding beneficiaries can be structured as such:
1. authorities and public institutions (ministries, agencies, county councils, local councils etc.)
2. non-governmental organizations + religious organizations
3. commercial companies (SMEs, large companies, cooperative societies etc.)
4. natural persons (in the case of PNDR – with the obligation to become a legal person authorized as a PFA or a microenterprise until the end of the project)

Starting from these types of beneficiaries, the main applicable procedures can be structured as follows:

<table>
<thead>
<tr>
<th>Type of beneficiary</th>
<th>Applied procedure</th>
<th>Procurement publicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorities and public institutions</td>
<td>only OUG 34/2006</td>
<td><a href="http://www.e-licitatie.ro">www.e-licitatie.ro</a></td>
</tr>
<tr>
<td>Non-governmental institutions + religious organizations</td>
<td>OUG 34/2006 or special procedure</td>
<td><a href="http://www.e-licitatie.ro">www.e-licitatie.ro</a> or newspaper + own website or <a href="http://www.fonduri-ue.ro">www.fonduri-ue.ro</a> + own website</td>
</tr>
<tr>
<td>Commercial companies</td>
<td>OUG 34/2006 or special procedure</td>
<td><a href="http://www.e-licitatie.ro">www.e-licitatie.ro</a> or newspaper + own website or <a href="http://www.fonduri-ue.ro">www.fonduri-ue.ro</a> + own website</td>
</tr>
</tbody>
</table>
STEP 6 – Analyzing the procurement procedures and structuring them based on the objectives of the study

This final step led to the structuring of the results from the research based on criteria like: allocation on development regions; dividing them in allocated, annulled or in operation; structuring them based on the procurement procedure used or on the criterion of attribution.

3. INFORMATION SOURCES USED

In order to make coherent comparisons and to identify the real effects of legislative changes, the research involved the identification and analysis of the procurement procedures launched from the year 2013, both by contracting authorities through SEAP (www.e-licitatie.ro), and by entities forced to use special procurement procedures.

Starting from this, the main sources of information available were:
- www.e-licitatie.ro
- www.data.gov.ro
- https://www.fonduri-ue.ro
- www.publicitatepublica.ro
- replies to our requests for information of public interest (made on the basis of the Free Access to Public Information Law, no. 544/2001) sent to the authorities which are administering structural and cohesion funds.

3.1. www.e-licitatie.ro

The Electronic Public Procurement System, available at the address www.e-licitatie.ro, is still criticized for the way it provides access to information. Thus, the research analyzed the announcements or tender invitations for various procedures and the awarding notices related to direct procurements made by the contracting authorities.

Identification of all the information pertaining to a procedure implies these several steps:
1. Selecting the particular section for tender invitations, participation invitations or awarding notices;
2. Introducing the name of the contracting authority, the number of the announcement or at least the CPV code associated to the procedure;
   *Attention! Often, the name of the contracting authority can be slightly different than what we would expect (for example: Village x vs. Local council X vs. UAT X). This implies the identification of the name by trial and error searches or by a search in the menu for the list of participants either by the fiscal identification code or by reading the whole list. Both demand a big time consumption.
   *Attention! Knowing the number of the announcement can be done by requesting information from the contracting authority.
3. Searching the procedures which correspond to the criteria contracting authority or announcement number or CPV code, then identifying the wanted procedure;
   *Attention! To use the search system in the SEAP website you must constantly introduce a validation code (CAPTCHA).
4. Accessing the wanted procurement procedure to analyze all the information.
   *Attention! In order to access the details of a procurement procedure you must introduce the validation code (CAPTCHA).

Thus, finding information regarding a certain procedure involves spending 3-5 minutes for a person which knows how to use the SEAP website and which has the correct information about the contracting authority, the number of the announcement/tender or the CPV code used for it.
For a normal citizen, without any knowledge in the field of public procurement and without any specific information about the contracting authority, the number of the announcement/tender or the CPV code used, the time required to verify a procedure can be 15 to 20 minutes.

3.2. www.data.gov.ro

As it is presented in the dedicated section “About data.gov.ro”, the website www.data.gov.ro represents the application of the European initiative Open Data – to provide to the public accessible, reusable and redistributable data in a free manner, with no restrictions like copyright, patent or other control mechanisms – open data. Some data were already made public and the website data.gov.ro will facilitate the access to them, presenting them in a unified form.

In the respect of public procurement, www.data.gov.ro provides to the public data sets regarding to contracts signed by the contracting authorities as a result of finalizing the competitive procedures (for example: tender, competitive dialogue), respectively data related to the direct procurement procedures for which the contracting authorities published an announcement in SEAP⁵.

Although the initiative is commendable, the following elements must be quickly improved in order to ensure the correctness of the information:

- for each procedure it is mentioned a single CPV code, which does not correspond to reality, because most procurement procedures which include public advertising services have several CPV codes. Declaring a single CPV code leads to false results (a procedure with a value of hundreds of thousands of euro is declared in the public advertising category, although in reality it represents a procedure with an object of supplying services of technical assistance for a project);
- the values contracted in the case of direct procurements are mentioned at the level of measuring units (pieces, copies etc.), not per the total of the procurement. The result is that, in many cases, the procedure seems less relevant (for example: an announcement which refers to a publication worth 500 RON, although the contract has a value of 10,000 RON, because it implies 20 announcements published);
- the data are presented in CSV format, in large files, so the access of an uninitiated person to the information regarding a certain procedure being very time consuming. Moreover, the conversion of CSV files in other formats sometimes leads to the corruption of the data.

3.3. https://www.fonduri-ue.ro

The website https://www.fonduri-ue.ro is managed by the Ministry of European Funds and represents the address where all the announcements regarding procurement procedures must be published, developed in accordance to the stipulations of Order 1.120/2013 regarding the approval of the simplified procedure applied by the private beneficiaries in projects funded by structural instruments, objective “Convergence”, as well as in projects funded through the financial mechanisms SEE and Norwegian grants for allocation of contracts for supplying goods, services or works (published in the Official Gazette no. 650 from 22.10.2013).

We did not use this website as an information source for the present study for the following reasons:

- The website was online and populated with announcement only from the end of October 2013;

⁵ As it was mentioned above, according to OUG no. 34 / 2006, art. 19*1: “In the situation stipulated in art. 19, the contracting authority transmits in SEAP a notification regarding a direct procurement with a value over the equivalent in RON of 5,000 euro without VAT, within 10 days from the date of receiving the supporting document for the respective procurement.”
- The website does not have a search mechanism for CPVs, the only search option being for keywords, the name of the project in which the procurement is done, the publishing date of the announcement, the end date of it, the county, the type of contract (supplying, services, works), if the contract was awarded or if the technical specs were updated or not. A search using keywords offers inconclusive results, listing virtually all the procedures which mention the respective keyword (for example: a procurement procedure for heavy equipment which refers to advertising in the sense that one of the equipment will be used for printing posters used for advertising);

- The announcements include information as written by the project beneficiaries, the only way to correctly identify a procedure being to download and analyze the awarding documentation annexed to the announcement;

- The obligation to use the procedure stipulated by Order 1120, and to publish on this website, is only for the beneficiaries of contracts for services with a value over 30,000 euros, converted in RON and excluding VAT. This increases the possibility that many procurements will not be published on this website, considering that the average value of a public advertising contract is of a few thousand euros.

3.4. www.publicitatepublica.ro

As we presented in the previous rapports on this subject, published in 2010 and 2012, the website www.publicitatepublica.ro has increasing problems in its functionality and use. The search system does not offer the correct information (for example, it makes a difference if the official name of an authority is written with diacritical marks or not, when setting up its account), it works only for one search word at a time, you cannot select procedures after a specific year and you cannot use a useful selection criterion, like CPVs, awarded or annulled contract etc.

On the other hand, the use of the website is seen as an unnecessary burden by those who administer public advertisement funds. Thus, for 2013 on the website www.publicitatepublica.ro you can find information for only 87 procurements and, out of these, only 7 have also an evaluation report.

The information published for the 87 procurements were copied by the contracting authorities either from www.e-licitatie.ro, or from their own work files. As a result, most texts are very dense, with no spaces between paragraphs and with no markings for sections, thus being very hard to read.

Moreover, from the second part of March 2014 and until the beginning of June 2014, the website was not functional, the comment from the representatives of the General Secretariat of the Government being that the website was under reconstructed, because it needed improving. But even after being non-functional for almost three months, presently the website has the same design and functionalities as in March 2014, when it was put offline for improvements. Even more, they are the same as in 2006, when the website was created.

3.5. Requests for Information of Public Interest

When information sources are scarce, incomplete or inconclusive, Law no. 544/2001 remains a useful tool for those who want to find out how the public finances are being spent.

Considering the problems in the effort to gather information regarding the total value of European nonrefundable funding that includes procurements of public advertising services, in December 2013 CJI sent public interest information requests (see Annex no. 1) to the following
management authorities that manage European structural and cohesion funds for 2007-2013:

- Ministry of European Funds – Management Authority for Operational Programme Technical Assistance (PO AT)
- Management Authority for ‘Regional Operational Programme’ (POR)
- Management Authority for the Administrative Capacity Development Operational Programme (PODCA)
- Management Authority for Sectoral Operational Programme Human Resources Development (POS DRU)
- Management Authority for Sectoral Operational Programme ‘Increase of Economic Competitiveness’ (POS CCE)
- Management Authority for Sectoral Operational Programme ‘Environment’ (POS Mediu)
- Management Authority for Sectoral Operational Programme ‘Transport’ (POS Transport)
- Management Authority for Co-operation programs

The responses from these management authorities were the following:
- The Ministry of Regional Development and Public Administration offered pertinent information regarding POR, PODCA and the co-operation programs;
- The Ministry of Environment and Climate Change and the Ministry of Transport sent the requested information regarding POS Mediu and POS Transport;
- The Ministry of European Funds sent information partially pertinent to our request, but only for the Operational Programme Technical Assistance (although we requested information regarding only services of public advertising, the answer included, among others, procurements of office equipment, personnel expenses, software licenses or translating services);
- The Ministry of Economy sent an answer which mentioned the fact that procurements made under POS CCE are mentioned in the annexes of the financing contracts and that they are not information of public interest;
- The Ministry of Labour, Family, Social Protection and Elderly communicated that it cannot interfere in the activity of its own Directorate AM POS DRU, which in turn replied that “it cannot offer information regarding the contractual relation with the beneficiaries of nonrefundable financing”. It also suggested to the authors of this study that they should contact the beneficiaries in order to obtain the requested information.

We emphasize the fact that AM POS DRU is a management authority which forces the beneficiaries of nonrefundable financing to periodically report the implementation status of the procurement plan for every project, requesting information regarding the name of the procedure, the estimated value in RON or euro, the corresponding CPV codes, the contracted value, the number of the contract etc. As such, the requested information were in the possession of AM POS DRU and it were of public interest, as a result of the activity of this authority.

As a result, for POS CCE and POS DRU we could not use any information regarding procurements of public advertising in projects implemented in 2013. Considering that the Ministry of European Funds reported on 31 December 2013 a number of 4,470 financing contracts under POS CCE, and 2,515 contracts under POS DRU, it can be concluded that for a number of almost 7,000 projects with nonrefundable financing no information could be obtained for this study.

If we consider an average value of 1,000 euros for public advertising contracts in each project under POS CCE and POS DRU, we can
conclude that in 2013 there were awarded advertising contracts worth at least 7 million euros.

We must take into consideration that many projects were already finalized in 2013, but also the fact that in many POS DRU projects there were large-scale public advertising campaigns sometimes worth hundreds of thousands per project.

Therefore, we can conclude that the value of the sums obtained in 2013 through POS DRU and POS CCE for public advertising contracts is still unknown.

### 3.6. Other sources

The website www.achizitii.apdrp.ro proved useless for this study, having not a single procedure with the object of public advertising services.

And, according to the stipulations of the National Programme for Rural Development, the funding beneficiaries are investing in equipment, machinery, industrial spaces etc, with the obligation of ensuring the advertising for the project through promotional boards at the place of the investment or by sticking tags on the equipment.

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6 See the 9 announcements published by Siveco Romania on the website www.publicitatepublica.ro, which refer to information and advertising campaigns for projects financed through POS DRU, with an estimated total value of 3,985,894 lei (901,990 Euro).
Number of counties with procurement procedures: 42

Distribution of the sums from the analyzed procedures among development regions:

<table>
<thead>
<tr>
<th>Region</th>
<th>TOTAL</th>
<th>Annulled</th>
<th>Awarded</th>
<th>Ongoing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bucharest-Ilfov</td>
<td>238,084,567,99</td>
<td>104,604,571,45</td>
<td>49,393,611,88</td>
<td>84,086,384,66</td>
</tr>
<tr>
<td>Center</td>
<td>17,147,764,38</td>
<td>235,520,00</td>
<td>16,567,249,18</td>
<td>344,995,20</td>
</tr>
<tr>
<td>North-East</td>
<td>23,376,491,72</td>
<td>0,00</td>
<td>21,663,291,72</td>
<td>1,713,200,00</td>
</tr>
<tr>
<td>North-West</td>
<td>5,499,250,13</td>
<td>787,746,00</td>
<td>4,711,504,13</td>
<td>0,00</td>
</tr>
<tr>
<td>South Muntenia</td>
<td>10,896,265,82</td>
<td>0,00</td>
<td>8,134,871,82</td>
<td>2,761,394,00</td>
</tr>
<tr>
<td>South-East</td>
<td>22,406,166,52</td>
<td>799,204,80</td>
<td>18,354,873,32</td>
<td>3,342,088,40</td>
</tr>
<tr>
<td>South-West</td>
<td>10,644,112,89</td>
<td>0,00</td>
<td>10,301,512,89</td>
<td>342,600,00</td>
</tr>
<tr>
<td>West</td>
<td>10,916,759,12</td>
<td>250,602,97</td>
<td>10,078,280,15</td>
<td>587,876,00</td>
</tr>
<tr>
<td>Others (Greece)</td>
<td>4,460,00</td>
<td>4,460,00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>338,975,838,57</td>
<td>106,587,645,22</td>
<td>139,209,655,09</td>
<td>93,178,538,26</td>
</tr>
</tbody>
</table>

Distribution of the sums in the analyzed procedures on the type of contracting authority:

<table>
<thead>
<tr>
<th>Type of contracting authority</th>
<th>Total</th>
<th>Annulled</th>
<th>Awarded</th>
<th>Ongoing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central authorities</td>
<td>235,603,862,92</td>
<td>104,389,431,45</td>
<td>47,222,831,81</td>
<td>83,991,599,66</td>
</tr>
<tr>
<td>Local authorities</td>
<td>95,638,435,93</td>
<td>728,053,77</td>
<td>85,818,228,56</td>
<td>9,092,153,60</td>
</tr>
<tr>
<td>Others</td>
<td>7,733,539,73</td>
<td>1,470,160,00</td>
<td>6,168,594,73</td>
<td>94,785,00</td>
</tr>
<tr>
<td>TOTAL</td>
<td>338,975,838,58</td>
<td>106,587,645,22</td>
<td>139,209,655,10</td>
<td>93,178,538,26</td>
</tr>
</tbody>
</table>

Awarding criterion used:

<table>
<thead>
<tr>
<th>Total value</th>
<th>Annulled</th>
<th>Awarded</th>
<th>Ongoing</th>
<th>No. of procurements</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Most economically advantageous offer”</td>
<td>158,222,172,90</td>
<td>118,047,959,20</td>
<td>40,039,210,54</td>
<td>135,003,16</td>
</tr>
<tr>
<td>“Lowest price”</td>
<td>91,568,654,90</td>
<td>48,098,393,18</td>
<td>43,391,621,42</td>
<td>78,640,30</td>
</tr>
<tr>
<td>Unknown (like in the case of direct procurement)</td>
<td>89,185,010,78</td>
<td>0,00</td>
<td>89,185,010,78</td>
<td>0,00</td>
</tr>
<tr>
<td>TOTAL</td>
<td>338,975,838,58</td>
<td>166,146,352,38</td>
<td>172,615,842,74</td>
<td>213,643,46</td>
</tr>
</tbody>
</table>
### Procedure Type

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Total value</th>
<th>Anulled</th>
<th>Awarded</th>
<th>Ongoing</th>
<th>No. of procurements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procurement type</td>
<td>Total value</td>
<td>Anulled</td>
<td>Awarded</td>
<td>Ongoing</td>
<td>No. of procurements</td>
</tr>
<tr>
<td>Open call for tenders</td>
<td>21.775.151,58</td>
<td>2.317.026,02</td>
<td>18.764.159,76</td>
<td>693.965,80</td>
<td>124</td>
</tr>
<tr>
<td>Private negotiation</td>
<td>10.834.737,54</td>
<td>0,00</td>
<td>10.834.737,54</td>
<td>0,00</td>
<td>23</td>
</tr>
<tr>
<td>Open tender</td>
<td>278.421.587,81</td>
<td>104.270.619,20</td>
<td>81.666.396,15</td>
<td>92.484.572,46</td>
<td>68</td>
</tr>
<tr>
<td>Restricted tender</td>
<td>5.356.441,00</td>
<td>0,00</td>
<td>5.356.441,00</td>
<td>0,00</td>
<td>2</td>
</tr>
<tr>
<td>Competitive dialogue</td>
<td>1.365.705,00</td>
<td>0,00</td>
<td>1.365.705,00</td>
<td>0,00</td>
<td>1</td>
</tr>
<tr>
<td>Exceptions – internal rules of MADR</td>
<td>2.370.700,00</td>
<td>0,00</td>
<td>2.370.700,00</td>
<td>0,00</td>
<td>2</td>
</tr>
<tr>
<td>Not mentioned</td>
<td>9.809.152,21</td>
<td>0,00</td>
<td>9.809.152,21</td>
<td>0,00</td>
<td>7</td>
</tr>
<tr>
<td>Total</td>
<td>338.975.838,58</td>
<td>106.587.645,22</td>
<td>139.209.655,10</td>
<td>93.178.538,26</td>
<td>1.220,00</td>
</tr>
</tbody>
</table>

### Type of contract funding

<table>
<thead>
<tr>
<th>Type of contract funding</th>
<th>Total value</th>
<th>Anulled</th>
<th>Awarded</th>
<th>Ongoing</th>
<th>No. of procurements</th>
</tr>
</thead>
<tbody>
<tr>
<td>- funding inside projects</td>
<td>314.989.938,12</td>
<td>105.798.754,25</td>
<td>116.690.521,61</td>
<td>92.500.662,26</td>
<td>805</td>
</tr>
<tr>
<td>- other type of funding (including budget)</td>
<td>23.985.900,46</td>
<td>788.890,97</td>
<td>22.519.133,49</td>
<td>677.876,00</td>
<td>415</td>
</tr>
<tr>
<td>Total</td>
<td>338.975.838,58</td>
<td>106.587.645,22</td>
<td>139.209.655,10</td>
<td>93.178.538,26</td>
<td>1.220</td>
</tr>
</tbody>
</table>

Regarding the publishing of announcements and invitations to tenders on www.publicitatepublica.ro, for the 87 procurements on which there are information in the system, we identified the following:

<table>
<thead>
<tr>
<th>Announcement/invitation to tender</th>
<th>Opportunity study</th>
<th>Evaluation report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published</td>
<td>82</td>
<td>5</td>
</tr>
<tr>
<td>Not published</td>
<td>5</td>
<td>82</td>
</tr>
</tbody>
</table>
4.2 Comparative data

Available funds on development regions

- Bucharest-Ilfov: 23,376,491.72
- North-East: 22,406,166.52
- Sud Muntenia: 17,147,764.38
- South-East: 10,896,265.82
- South-West: 10,644,112.89
- West: 10,916,759.12
- North-West: 5,499,250.13
- Center: 4,460.00
- Other: 238,084,567.99
<table>
<thead>
<tr>
<th>Region</th>
<th>Annulled</th>
<th>Awarded</th>
<th>Ongoing</th>
<th>% from total annulled</th>
<th>% from total awarded</th>
<th>% from total ongoing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bucharest-Ilfov</td>
<td>104,604,571.45</td>
<td>49,393,611.88</td>
<td>84,086,384.66</td>
<td>98,14%</td>
<td>35,48%</td>
<td>90,24%</td>
</tr>
<tr>
<td>Center</td>
<td>235,520.00</td>
<td>16,567,249.18</td>
<td>344,995.20</td>
<td>0,22%</td>
<td>0,22%</td>
<td>0,37%</td>
</tr>
<tr>
<td>North-East</td>
<td>0,00</td>
<td>21,663,291.72</td>
<td>1,713,200,00</td>
<td>0,00%</td>
<td>15,56%</td>
<td>1,84%</td>
</tr>
<tr>
<td>North-West</td>
<td>787,746.00</td>
<td>4,711,504.13</td>
<td>0,00</td>
<td>0,74%</td>
<td>3,38%</td>
<td>0,00%</td>
</tr>
<tr>
<td>South Muntenia</td>
<td>0,00</td>
<td>8,134,871.82</td>
<td>2,761,394.00</td>
<td>0,00%</td>
<td>5,84%</td>
<td>2,96%</td>
</tr>
<tr>
<td>South-East</td>
<td>709,204.80</td>
<td>18,354,873.32</td>
<td>3,342,088.40</td>
<td>0,67%</td>
<td>13,19%</td>
<td>3,59%</td>
</tr>
<tr>
<td>South-West</td>
<td>0,00</td>
<td>10,301,512.89</td>
<td>342,600.00</td>
<td>0,00%</td>
<td>7,40%</td>
<td>0,37%</td>
</tr>
<tr>
<td>West</td>
<td>250,602.97</td>
<td>10,078,280.15</td>
<td>587,876.00</td>
<td>0,24%</td>
<td>7,24%</td>
<td>0,63%</td>
</tr>
<tr>
<td>Others (Greece)</td>
<td>4,460.00</td>
<td>0,00</td>
<td>0,00</td>
<td>0,00%</td>
<td>100,00%</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,694,050.22</strong></td>
<td><strong>100,381,300.47</strong></td>
<td><strong>2,542,883.84</strong></td>
<td><strong>20,75%</strong></td>
<td><strong>96,61%</strong></td>
<td><strong>11,90%</strong></td>
</tr>
</tbody>
</table>
As you can see from the table above, some series of data are relevant for identifying some tendencies regarding the awarding of public advertising contracts among different development regions:

- Almost all of the annulled procedures in the country are in Bucharest-Ilfov development region (circa 98.14% from total annulled);
- 90.24% from the ongoing procedures were in Bucharest-Ilfov development region;
- In almost all other development regions over 90% of procedures (with a calculated value) were already awarded.

Here are a few explanations for this situation:

- Most of the procedures with an estimated value were launched in Bucharest-Ilfov development region;
- The procedures launched in Bucharest-Ilfov development region had the most sets of clarifications (there are procedures with over 70 sets of clarifications) and also the most litigations.

5. NEW LEGISLATIVE CHANGES WITH AN IMPACT ON PUBLIC ADVERTISING

The year 2013 brought a new legislative change touching on public advertising procurements - OUG 25/20137 which modified the Audiovisual Law. The ordinance introduced a new article in the law, article 29^1, which states:

“Art. 29^1

(1) No procurement of advertising space on television can be made through an intermediary unless in the name and expense of the final beneficiary of the broadcasted advertising.
(2) Any price offers for the procurement of television advertising presented by the intermediaries stipulated in paragraph (1) to the final beneficiaries of television advertising will be confirmed in writing by the broadcaster. In order to obtain this confirmation, the intermediaries will present broadcasters with the written mandate from the final beneficiaries of televised advertising for which they request price offers.
(3) The object of procurement stipulated in paragraph (1) will be paid directly by the final beneficiary of the televised advertising to the broadcaster, on the basis of the invoice issued by the broadcaster for the final beneficiary of the televised advertising. Any discount or price advantage, regardless of its nature, awarded by the broadcaster, must be included on the final invoice issued to the final beneficiary of the televised advertising.
(4) The intermediaries stipulated in paragraph (1) cannot receive any other payment or counter performance other than the one paid by the final beneficiary of the televised advertising for the services provided and no other material advantage, regardless of its nature, from the beneficiary.
(5) Any judicial document which violates the stipulations of this article is invalid.”

By virtue of this law, even if the winner of the procurement procedure is an advertising agency, the client of the advertising must enter into an individual contractual relation with every broadcaster included in the media plan.

Thus, the work volume of the beneficiaries if nonrefundable financing and also of the public authorities that manage their own budgetary resources (as a client) is multiplied, the bureaucracy is increased and appears a direct commercial relation between the public authorities and mass-media, which can lead to suspicions of editorial interference.

On the other hand, such a contractual agreement could provide an increased transparency of the use of these funds, because the entire budgetary exercise of the public authorities is covered by the stipulations of the law of free access to information of public interest (544/2001). But no such document ever reached the public space since 2013.

The balance sheet of the advertising agencies showed in 2013 an important drop in their turnover and profits, a drop explained by media analysts as being also an effect of this ordinance. According to Hotnews.ro, because of the ordinance „some agencies saw their profits evaporating while others suffered a 40%, 60%, or even 80% decrease in profits or turnover, in a period in which, according to estimates, the total advertising market including the TV market stagnated”.

Even so, the Media Fact Book 2014 study shows that in 2013 the level of TV advertising was around a net value of 193 million euro. „Thus, OUG 25/2013 did not affect the level of the total volume of advertising, the effort to maintain it between stable parameters being took over by the clients, agencies and TV broadcasters which allocated additional resources of people, time and also legal resources in order for the process to have the same quality standards”, says the annual study published by Initiative.

By correlating this preserved level or the market value with the decrease in the agencies’ profits we can assume that more money – including European funds – reached the mass-media industry through public advertising contracts.

The changes to the Audiovisual Law are only the latest in a long line of consecutive changes brought to this legislation and to the norms applied to public procurements in the last three years.

Thus, in June 2010, by order of the president of the National Public Procurement Regulating and Monitoring Authority no. 180/2010 it was rescinded the Order no. 183/2006 about the enforcement of the stipulations regarding public advertising contracts. This last order stipulated the structure, content and way of use for the invitations to tender in a procedure of “requested offers”, for the opportunity study, for the impact evaluation report, for the public procurement documentation and for the contract for media advertising services. This new measure eliminates the technical criteria which helped authorities to award the public advertising contracts using the same criteria as the mass-media industry.

This legislative change must be correlated with the previous changes brought to the Emergency Ordinance no. 76 from 2010 for the

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9 Available at http://www.mediafactbook.ro/
amendment and addition on the Government Emergency Ordinance no. 34/2006 regarding the awarding of public procurement contracts, of concession contracts for public works and of concession contracts for services.

OUG no. 76/2010 brought significant changes to the field if public advertising:

- \textit{Reducing the level over which it is mandatory to publish a tender announcement and an awarding notice} in the informatics system of public available on the Internet at \url{www.publicitatepublica.ro}, from 20,000 Euro annually to 15,000 Euro annually;
- \textit{Narrowing the notion of media advertising contract} only to the dissemination of advertising and other forms of promotion through the printed, audiovisual or electronic mass-media (in contrast with “creation, production and/or distribution of advertising or other forms of promotion through printed, audiovisual or electronic mass-media” in the previous formulation of the text).

These changes brought back the public advertising procurement in the same situation as in 2004, when it was practically unregulated.

Changes to the legislation regarding public advertising procurements were also approved in November 2012 (when it became mandatory to publish on the website \url{www.publicitatepublica.ro} for procedures with an estimated value over the level of a direct procurement) and in June 2013 (when the level for direct procurements was increased to 30,000 euro).

If we add the consecutive orders of the Minister of European Funds, from November 2012 and October 2013\textsuperscript{13}, we have a complete picture of the legislative instability that affects procurement procedures, in general, and those of advertising from European funds, in particular.

\section*{6. CONCLUSIONS}

\subsection*{I. The impact on the media market}

- The public advertising market in Romania is expanding. If in 2011 the market was around 150 million RON (\~{}35 million Euro), in 2013 it topped 338 million RON (\~{}76 million Euro), even if only a part of the procedures were known. For the final years of European structural and cohesion funds, 2014-2015, the public advertising market has the potential to exceed 100 million Euro.

- Over 90\% of the public advertising funds are available through nonrefundable financing projects from structural and cohesion funds. Thus, in 2013 the awarded contracts were worth in total approximately 31.5 million Euro, which makes the EU one of the main investors in the advertising market in Romania. Considering also the annulled or ongoing procedures, the public advertising budgets have a value double than the most active industry in the advertising market – 76 million euro compared to 38 million euro spent by the cosmetic and hygiene industry.

- Noting that in 2013 the entire advertising market in Romania was estimated to be worth 305 million euro, the public advertising reaches a share of approximately 20-25\%. The non-transparent allocation of these

\textsuperscript{13}A new form of the application norms was put under public debate for amendment in June 2014. See \url{http://economie.hotnews.ro/stiri-eurofonduri-17498416-mfe-propune-noua-instructiune-privind-simplificarea-achizitiilor-publice-proiectele-europene.htm}
budgets and on unprofessional criteria can lead to a serious distortion of the media market.

II. The transparency of contract awarding

• Information regarding projects financed by European funds and the procurements which they include are not centralized, which makes it almost impossible to be monitored by civic players (NGOs or citizens). The public players, with a mandate to oversee European funds (DLAF) showed no interest, until the present time, in such monitoring. The visibility of the EU contribution in these projects suffers from the lack of coherence in the data centralizing effort.

• Most of public advertising funds (around 77%) were awarded through low transparency procedures – direct procurement or using the lowest price criterion. These procurements do not guarantee an efficient use or result for the advertising: to inform the citizens about the existence, progress and results of European funding.

• There is increasing evidence that the management authorities responsible with the administration of European funds consider them not to be public money. Thus, AM POS DRU and AM POS CCE considered that information regarding procurements made in projects funded by public money do not represent information of public interest. As a result, several thousand procedures for public advertising procurements made in 2013 could not be documented, because of the opposition from the Ministry of Economy and the Ministry of Labour, Family, Social Protection and Elderly. If the average value of these procedures would be 1,000 Euro, the total value for 2013 could reach approximately 7,000,000 Euro. But there is the possibility that this value could be much bigger, because some projects financed through POS DRU have budgets of hundreds of thousands of euro for promotion/advertising/awareness campaigns.

• Although the Law 544 regarding free access to information of public interest is in force from 2011, the authorities which we sent request for information of public interest demonstrated either that they do not know the stipulations of this law (no management authority communicated the registration number of our request in the special register, as the law requires), or that they do not respect it. Unfortunately, considering that Law 544/2001 is the last regulation which offers the European citizen a way to investigate the spending of public money in Romania and that the special procedures for procurements that apply to private organizations accessing these European funds make no reference to this law, European funding becomes part of a gray area of arbitrary use under the watch of the responsible authorities.

III. Norms and procedures of awarding/monitoring

• It is noted a strong legislative and regulatory instability which produces confusion both for the parties which are awarding the advertising and for those who are monitoring and evaluating these contracts. Therefore, a project financed from structural funds can be governed by three special procedures for procurement (for example: POS DRU in the case of Instruction AM POS DRU no. 26 from 2010 abrogated by Order MFE 1050/2012, abrogated again by Order MFE 1120/2013). As a result, at the end of the project, the project officers are suspicious about applying the special regulations for procurements, because they do not understand how to report the procurements made in the project.

IV. The administrative capacity

• There are a large proportion of annulled procedures – 30% from the total budget for public advertising in 2013. Almost all of the annulled
procedures were registered in Bucharest-Ilfov development region, which indicates deficiencies in organizing the awarding procedures in this region.

- Both www.e-licitatie.ro and https://www.fonduri-ue.ro present deficiencies in the ease of use and relevance of the available information. Moreover, the websites regulated by specific procedures, like https://www.fonduri-ue.ro, serve only to enforce the letter of the law, and not help the parties achieve the requirements for transparency and correct and efficient use of public money.

- Besides the problems in the search function, the website created by the Ministry of European Funds in 2013 - https://www.fonduri-ue.ro – has also the inconvenient of being updated with great delays. For example, the beneficiaries of European Funds through the financial mechanisms of SEE and Norwegian, forced to respect the stipulations of Order 1120/2013, were unable to progress in their procurement procedures using the mentioned website for several months because the Ministry of European Funds did not create user accounts.

- The website www.publicitatepublica.ro was not available between March and June 2014, the Romanian Government obstructing the contracting authorities in their efforts to apply OUG 34/2006, art. 58. Furthermore, the website is technically and morally outdated and the contracting authorities were using it increasingly rarely to publish announcements.

- It persists and multiplies the wrong or incomplete use of CPV codes in the description of the goods and services under procurement. Sometimes, the CPV codes are used to mask the advertising contracts.

- The financing contracts signed between the management authorities and beneficiaries of European funds include provisions which clearly violate the law and which are denying the character of public money of these funds. For example, the financing contract POS DRU, published for public debate in December 2013, stipulates, in article 7, confidentiality regulations (paragraph (1) „AM POSDRU/OIPOSDRU and the Beneficiary commit to maintain the confidentiality of the documents, materials, data and information related to the Project, which are set in agreement between the two parties as being confidential“). Considering that the contract model is imposed by AM POS DRU to the funding beneficiaries we consider these stipulations an abuse and a violations of the principles governing the transparency set out in the European regulations regarding the allocation of structural funds.

7. PROPOSALS REGARDING THE IMPROVEMENT OF THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK FOR PUBLIC ADVERTISING

1. From the point of view of the legislative regulations governing public advertising we consider an absolutely necessity the reactivation of the stipulations provided by Order no. 183/200614 regarding the enforcement of stipulations specific to media advertising contracts.

   The use of such a legal instrument, even if it has a character of tertiary legislation, would present the following advantages:

   a) The contracting authorities would be given a coherent framework in which to prepare their awarding documentation, in which to file the specific documents regarding the procurement of public advertising (opportunity study, impact evaluation report);

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14 Order no.183 from 3 November 2006 concerning the application of the stipulations regarding media advertising contracts was published in the Official Gazzette of Romania, part I, no. 979 from 7 December 2006.
b) The use of the key elements of this order, like the awarding criteria, would lead to an increased efficiency in the spending of public funds.

2. Regarding the website www.publicitatepublica.ro, created in order to apply article 58 of OUG no. 34/2006, we consider that a useful solution could be the automated uploading of public advertising procurements from www.e-licitatie.ro onto www.publicitatepublica.ro, using an informatics algorithm.

   a) The necessary framework in order to comply with article 58 of OUG no. 34/2006, regarding the publishing especially of the opportunity study and of the report on the impact of public advertising procurement – documents which do not have a support on www.e-licitatie.ro;
   b) A virtual space for monitoring the public advertising market, in order to avoid slippages.

3. In respect to the mandatory measures for information announcements and advertising in every project financed with European funds, we consider that the only way to ensure their efficiency would be to create and administer a singular website at the level of EU or at a national level in the member states, which should include information on every project.

   Thereby, it is desirable the creation of a contractual obligation for each beneficiary of European funds to set up an account on such a web portal and to introduce and update the essential information regarding its funding (for example, the name of the project, the funding programme, the implementation period, the activities in the project, its objectives and aimed results, the contract’s budget, the partners etc.).

   Implementing such a website would have the following advantages:

   a) It would reduce the costs of compulsory advertising in European funded projects (for example, in a 7 years programme period in which 20,000 projects are undertaken, 40,000 press releases, at the start and end of each project, must be published in print media; considering an average cost of 500 Euro per press release, the total costs for the entire period reaches 20,000,000 Euro);
   b) It would ensure the access to information for all EU citizens, not only for those that buy/read the newspapers where the press releases are being published;
   c) It would ensure an access to such information long after it was published, compared to the limited availability of press releases in the printed media;
   d) It would ensure the possibility to verify and control both for the competent authorities on European funds (like OLAF, DLAF, the Audit Authority), and for the vigilant eye of the nongovernmental sector.

4. In the respect of financing contracts from European funds, the elimination of the stipulations regarding confidentiality, which are contrary not only to the principles of transparency for the use of European funds, but also to the stipulations of Law no. 544/2001 regarding the free access to information of public interest.

5. Regarding the inaccurate filing of public advertising procurement procedures by the funding beneficiaries and for a correct analysis of what is being procured in the nonrefundable projects, the beneficiaries which are undertaking procurement procedures in European funded projects should be better informed by the authorities on the correct use of the CPV, through seminars, training sessions or even new regulations (order of the minister, instructions). It is useful to use the CPV codes to define the procurements even from the start of the financing application and
of the itemization of the sums on each CPV code (for example, printing materials – 2,300 RON; consulting – 12,000 RON; all of these are included in a contract with the name ‘technical assistance in project X’).

6. In respect to the support for organizations undertaking procurement procedures for public advertising, we consider to be absolutely necessary the updating and republication of the Guide of good practices in public advertising procurement by the public institutions (the Guide is currently available on www.publicitatepublica.ro) and the organization of training sessions with representatives from these institutions.

8. CASE STUDIES

8.1 Procurement of advertising services in the US by the National Authority for Tourism

The National Authority for Tourism (ANT) launched in December 2013 a tender for the procurement of advertising services on the media channels from the United States of America, in the project of implementing the multiannual marketing operational plans for the national tourism brand15. Through this tender, with an estimated value of 11,362,000 RON, without VAT, the contracting authority aims to identify media buying and planning agency which can ensure the development and implementation of the media strategy for the promotion of the national tourism brand in the United States.

This tender is part of a bigger package with a total budget of approximately 25 million euro, covering several other countries, like France (13.6 million RON), Germany (17 million RON), Romania (16.6 million RON), Italy (13.6 million RON), and Great Britain (12.5 million RON)16. Although the deadline for the submission and opening of the offers was 12 February 2014, only two bidders17 participated in the US tender, so the procedure was annulled.

According to www.e-licitatie.ro, the two bidders are Spring O’Brien (www.spring-obrien.com), a company based in New York, and Brian Cronin Associates (www.bcan.com), a company specialized in advertising services for the business sector, based in Rye Brook, NY; the second bidder registered an income of 1-2.5 million USD and had a staff of 5-9 employees18.

Even though six competitors showed interest for this tender, through questions addressed to ANT, one explanation for which the tender has such a low participation could be that ANT imposed criteria which affected the principles of non-discrimination19 and of mutual recognition20 in the process of the procurement.

Two of the six clarification requests published in SEAP referred to the restrictive conditions imposed by the Authority for Tourism, more precisely the obligation that the bidder must file the Sarbanes-Oxley certification, which represents an assurance that the internal procedures and inspections

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15 Participation announcement no. 148657/24.12.2013
17 No private company participated in the tenders for the promotion of Romanian tourism in Great Britain and Italy, Digi24, 5.03.2014, http://www.digi24.ro/Stiri/Digi24/Actualitate/Social/Nicio+firma+nu+s-a+prezentat+la+licitatiile+de+promovare+a+Roman
18 http://www.manta.com/c/mmlrkh8/bca-advertising
19 Non-discrimination = to ensure the conditions for a real competition in order that any economic operator, regardless of nationality, can participate in the attribution procedure and have the chance to become a contractor
20 Mutual recognition = to accept products, services, works provided legally on the European Union market; diplomas, certificates, other documents issued by competent authorities from other countries; technical specifications, equivalent to those imposed at a national level
of the beneficiary for the financial reporting are in accordance with the requirements of this certification.

In short, this certification is related to the Sarbanes Oxley Act\textsuperscript{21}, which entered into force in the United States in 2002, following the scandals around Enron Corporation. Practically, this certification imposes strict regulations for the transparency and accountability of public companies through procedures pertaining to the independence of external audit, the regulation of conflicts of interest, corporate responsibility or the responsibility regarding financial reporting or possible frauds in the financial activity of the company.

Romanian companies that are part of corporations listed on the New York Stock Exchange had to implement the SOX regulations, this model being later extended to other entities that wanted an increased level of control and financial reporting in their business\textsuperscript{22}. However, the costs for implementing these regulations are high, reaching tens of millions of dollars, which limits the number of the companies that can benefit from SOX. Among the Romanian companies that apply such internal regulations are Romtelecom, Vodafone, Orange, Coca-Cola, ArcelorMittal, Bunge Romania, Autoliv Romania, Fiat, Delphi-Packard, Avon Cosmetics etc.\textsuperscript{23}

This criterion can prove to be discriminating, considering that it applies only to public companies and not privately owned ones\textsuperscript{24} – according to the regulations in force and also to a clarification issued by the contracting authority. Moreover, OUG 34 specifies in article 177 (2) that:

*The contracting authority has no right to impose on the candidates/ bidders the obligation to present such a specific certification, the latter having the right to present, in order to demonstrate that they fulfill certain requirements, any other documents equivalent to such a certification or which prove in a conclusive manner that they fulfill the respective requirements. The contracting authority has the right to request, if it deems necessary, clarifications or supplementations of the filled documents.*

Moreover, according to another reply from ANT, *The Sarbanes Oxley Certification represents a way of ensuring the beneficiary in respect to complying with the transparency and legality regulations (including the rules referring to fraud and corruption) in the use of the financial resources\textsuperscript{25}, but considering that this applies only to public companies, we find that this principle does not apply to privately owned companies. The contracting authority invoked the danger of a lesser control on the spending of European funds outside of the EU, but even if the legislation applies in a distinct way outside the member states, the European Anti-fraud Office (OLAF) has jurisdiction to investigate possible frauds with European funds, so it can ensure this control over the beneficiary.*

This procurement process is still ongoing, one of the reasons for the postponing of the tender being the appeal filed by Spring O’Brian at the National Council for Solving Complaints (CNSC). The American company requested the annulment of the procedure report and of the subsequent documents and the evaluation of the offer it filed, which was initially rejected because of the non-conformity invoked by ANT in respect to

\textsuperscript{21} http://www.gpo.gov/fdsys/pkg/PLAW-107publ204/html/PLAW-107publ204.html


\textsuperscript{23} The impact of the Sarbanes-Oxley law on comercial companies in Romania, http://www.marketwatch.ro/articol/5562/Impactul_legii_Sarbanes-Oxley_asupra_companiilor_romanesti/

\textsuperscript{24} http://turism.gov.ro/wp-content/uploads/2013/12/CLARIFICARE-nr-6-MEDIA-SUA.pdf

\textsuperscript{25} http://turism.gov.ro/wp-content/uploads/2013/12/CLARIFICARE-nr-3-MEDIA-SUA.pdf
lodging the guaranty. The company claims that the offer was not rejected at the moment of opening the offer by the ANT and accuses that it did not receive a report according to art. 33 (4) from HG 925/2006, which was published in SEAP after almost a month. Ultimately, the competitor was notified that his offer was declared unacceptable according to article 36 (1). The motivation offered by ANT focused on the fact that the bidder deposited the guarantee in another account or in another currency than those specified in the assignment sheet, a fact admitted by the American company in its appeal – though it claims that that account also belongs to ANT. According to the appeal, the guarantee was deposited in the account of the Agency for international tourism promotion in the US, which does not have legal personality and is under the control of the ANT. CNSC rejected the appeal as unfounded through decision 1416/C8/1476 from 15.05.2014.

Considering the aspects mentioned above, we consider that imposing the Sarbanes-Oxley Certification is restrictive and significantly limits the number of potential bidders (especially in Romania), and violates also the principle of proportionality stipulated by OUG 34/2006.

### 8.2 Advertising for European funds

In June 2013, the Ministry of European Funds launched a public procurement procedure (144436/18.06.2013), for Services of organizing informative and promotional events for the next period of programmes 2014-2020 and services of qualitative and quantitative research regarding the level of public awareness about the next period of programmes. The contract is still disputed, after countless appeals addressed to the National Council for Solving Complaints and clarification documents published in SEAP; initially, the opening of the offers was scheduled for 1 August 2013.

This is an awareness campaign, for the population and the players involved in the management of European funds, of the opportunities offered by this new programming period at a national and regional level and of the necessity for an adequate preparedness of the institutional and administrative framework for the implementation of these funds.

The estimated value of the procedure is 35,266,854.18 RON, divided into two lots:

- Services for organizing informative events for potential beneficiaries of structural instruments for the programming period 2014 -2020, CPV 79341400-0 – Services of advertising campaigns (Rev.2) – 8,233,624.45 RON

- Services for promoting the next programming period 2014-2020 and services of qualitative and quantitative research regarding the level of public awareness about the next period of programmes, CPV 79320000-3 – Services for opinion polling (Rev.2) – 27,033,624.73 RON

For the first lot, the bidders had to include in their offers the organization of an international conference over two and a half days, in Bucharest, 8 information caravans regarding the next programming period 2014-2020, 42 public debates and a one and a half day national conference organized in Bucharest to present the results of the events organized at the regional and local levels.

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26 Which references article 33 (3) b: offers are not compliant if “they are not accompanied by the participation guarantee, in the value and form and with a validity period requested in the attribution documentation.”
The requirements for the second lot included 9 TV spots and 9 radio spots, with a duration of 30 seconds each, formats for thematic TV and radio shows, created a mini-series, with 24 episodes each, TV reports, dissemination of the media campaign, creating the dedicated website, an awareness campaign online and in print media and a media monitoring report.

20 competitors signed for the procurement procedure, including associations between bidders, some of them participating for only one of the two lots while others filed the documentation for both lots. For the first lot there were 15 competitors and for the second there were 6.

The procurement procedure was moored in problems. First of all, the procedure was postponed several times because of the high number of clarifications requested by the potential beneficiaries. Thus, the website www.e-licitatie.ro registered 76 clarifications, some of them including several questions. Also, 23 errata were published for the public procurement documentation. Because of this bureaucracy overload, the Ministry of European Funds was forced to postpone the completion of the procedure and to reschedule for several times the opening of the offers.

Even so, although according to the initial programme the implementation of the contract should have already started, the procedure is still ongoing because of the numerous appeals filed by the participants. On one hand, the National Council for Solving Complaints (CNSC) was notified several times, most of the appeals being resolved at the start of March 2014. On the other hand, there is still a case pending at the Bucharest Court of Appeal.

The history of this case demonstrates on one hand the lack of clarity of the contracting authority in formulating the public procurement documentation, in formulating equivocal responses to the clarification requests filed by the competitors and the vague information regarding the evaluation of the winning offers.

In the first phase, S.C. Optimedia S.R.L. contested the CPV 92400000-5, Services of press agencies, mentioning that the requested services are not included in this category. Also, the same bidder contested the score awarded for the mix of TV stations from lot II, demanded in order to reach a bigger audience, mentioning that the weighting of the scoring was not fair, discriminating by scoring differently TV stations with the same ratings. The company withdrew the appeal from the CNSC, even though it demanded the elimination of that CPV and the review of the scoring system.

Subsequent requests contest the awarding of the contracts to the two bidders, S.C. Agrafics Communication S.R.L. for lot I and the Association between S.C. Mindshare Media SRL – S.C Solvers S.R.L. The appeals referred mostly to the fact that the offers were accepted even though they did not comply with the procurement's requests, because of the documents included in the offers or because of the technical and human capacity of these companies.

For lot 1, LDK Consultants Engineers and Planners SRL requested the annulment or the procedure’s report and the related documentation, the resumption of the procedure and the reevaluation of the technical and financial offer, accusing the contracting authority of discriminatory behavior by abusive requests of documentation and clarification. The association between Innovación Y Desarrollo Local S.L. and S.C. Patru Ace SRL contested the fact that the number of identified risks (3746)
had an incorrect score, even if it was way bigger than that of the winning offer (508) and demanded the annulment of the awarding notice and reevaluation of the procedure’s result. The association between SC Libro Events SRL and SC Exact Consultanta and Cercetare SRL contested the capacity of the winning company to implement the project because of the lack of adequate human resources and requested that the Agrafics offer be declared non-compliant because of multiple errors in its documentation.

The first appeal regarding lot 2, filed by SC. Best Advertising & Consult SRL, demanded the annulment of the awarding decision and of all the documents by which the participating companies were declared to be in conformity, because of a complication regarding SC PRO TV SA, which we will explain in the following pages, because the offer made by Prima TV was formulated in euro, not in RON, and because of the fact that the radio station Național FM is included in the offer although it is not present in the top 10 ratings provided by the Radio Audience Association. Furthermore, the company criticized the fact that the clarifications regarding the measuring criteria requested by the ministry were unclear.

The company Qual Media also requested the annulment of the procedure’s documentation and the reevaluation of the offers, accusing the inclusion in the winning offer of the National FM radio station (which holds position 11 in the ARA index) and uncertainties regarding the ratings measuring instrument which was supposed to be used by the bidders and even the illegal changing of the documentation during the procedure, by introducing the Average Quarter Rating indicator.

Clarification 2 contains an answer to this question, but not entirely clear, used by the contracting authority to reject this appeal.

The TV/radio top for the period presented in CS is set by what indicator: reach, rating, or share?

The TV/radio top for the mentioned period will be set on the basis of rating indicator.

Regarding the inclusion of National FM radio station in the request, its seems to be unfounded according to the management authority, considering that the procedure refers to national radios and Iasi and Craiova, which are referred to in the appeal on the 9th and 10th places, are not considered national stations.

The third appeal was filed by SC Arrow Consulting SRL, as leader of the association between SC Arrow Consulting SRL and SC Mediatrust Romania SRL, which notified that including the offer of SC PRO TV SA (through its radio station PRO FM) in the documentation of the winning company determines its non-conformity, because the company mentioned declined its intention to participate in this procedure, because of internal conflicts. The dispute between the contracting authority and the bidders centered on the question if the company’s decision not to participate in the tender also applies to its radio stations, like Pro FM, Dance FM, Music FM, ProFM’s Cool, or other media outlets in the Pro TV Group. Even though both the contracting authority and the winning association said that the answer only applies to the TV stations, according to the official website of Pro TV media trust, these include the following channels and TV and radio stations: PRO TV SA: Pro Tv, Acasă, Pro Tv International, Pro Cinema, sport.ro, MTV, Pro FM, Voyo.ro, www.internetprotv.ro, so the address is also against radio stations.

Furthermore, the bidder demanded that SC Realitatea Media SA should be excluded from the list because it is in the process of judicial restructuring.
and that the score of Realitatea TV station should be annulled as it is in contradiction with Directive 2004/18/CE of the European Parliament and Council from 31 March 2004 regarding the coordination of awarding procedures in public procurements of works, goods and services, art. 45, 2.b., the company being in an impossibility to receive European funds. The third request aimed at the Intact media trust, specifically Antena 3 station, which was investigated under the charge of extortion. The bidder argued that if Antena 3 were to be found guilty during the procurement procedure (still ongoing) this could damage the image of the Ministry of European Funds. The contracting authority previously issued clarification 61 in which it mentioned that “until the competent courts reach a final decision in this case, the judicial process cannot, in any circumstance, break the principle of being innocent until proven otherwise.”

At the beginning of May, CNSC ordered, by joining all the appeals, to annul the procedure for lot 1, to continue the procedure in 10 days by requesting clarifications and reevaluating the offers presented by LDK Consultants Engineers & Planners SRL, Innovacion Y Desarrollo Local SL and SC Libro Events SRL and by SC Agrafics Communication SRL. Furthermore, the Council rejects, as unfounded, the appeals formulated for lot 2 by SC Best Advertising SRL, SC Arrow Consulting SRL and by SC Qual Media Group SRL and orders the procedure to continue, by admitting the intervention formulated by Mindshare Media.

Regarding the winning company, it was the subject of several media investigations. The company Agrafics is owned by Gabriel Marian Ștefănescu and his wife Daniela Ștefănescu. They are also partners in Ars Advertising. The company was involved in a case opened by DNA against the former minister of the Environment Nicolae Nemirski, accused of an alleged abuse of office in a direct awarding of an advertising contract worth 500,000 euro to the above mentioned company. In 2012, Agrafics won another public procurement, out of 16 competitors, for a contract worth 2 million RON from the Ministry of Environment for the organization of promotional events for POS Mediu. In 2013, it won three contracts worth almost one million euro from the Ministry of Administration and Interior, the Ministry of Labour and the Ministry of Tourism, and in 2012 the two companies won another tender with a contract worth 5.3 million RON for advertising services for the Ministry of Labour. The companies also implemented projects for the National Institute of Public Health or the National Agency of Civil Servants. The Agrafics portfolio can be seen on the company’s website: http://www.agrafics.ro/portofoliu/?lang=ro.

According to the Finance Ministry, Agrafics declared 2 employees in 2010, 4 in 2011 and 25 in 2012, and a profit of 120,535 RON from a turnover of 12,791,938 RON in 2012. It must be mentioned that Marian Ștefănescu is associated also in SC. Solvers SRL, a company declared winner of the second lot.

Ultimately, in June 2014, the Ministry of European Funds decided to annul the procedure of public procurement for both lots, because its purpose no longer corresponded with the current priorities. The annulment was justified by the stipulations of art. 209, 1), letter c from OUG 34/2006, which mentions that this can be done “if the awarding procedure is affected by serious deviations from the legislative stipulations or if the awarding of the contract becomes impossible”. The contracting authority explains that, starting from March 2014, it took over the activity and the structures with the role of management authority for POSCCE (from the Ministry of Economy) and for POSDRU (from the Ministry of Labour, Family, Social Protection and Elderly), which had at the moment of the restructuring a procurement necessity communication services specific to those two programs.

In the argumentation offered by the Ministry of European Funds
(MFE) it is mentioned that, after more than a year from the launch of the procedure, the contract was not awarded and the needs of the beneficiary changed according to the changes at the institutional level. So the needs to inform the public are different from those at the moment of the launch of the procedure, in June 2013. In other words, it’s needed a horizontal strategy, applicable to all financial instruments, which would include a new strategy. Furthermore, MFE admits that the principles of proportionality and efficiency in the spending of public funds are not respected, as specified by OUG 34.

On 23 June, the Bucharest Court of Appeal, Section VIII, Administrative and Fiscal Appeals, a court contested by SC Agrafics Communication SRL, decision no. 1413 of CNSC (resumed in the previous pages) decided to maintain the provisions of the Council, for which it “partially admits the appeal made by SC Libro Events SRL and leaves out of the CNSC decision the inadmissible character of the offer made by the applicant.” The solution is definitive.

Overall, we can note that the entire public procurement process was criticized by the participants with both valid and invalid arguments. On one hand, some of the requests sent to CNSC do not have a solid justification, being caused rather by a misinterpretation of the requirements in the awarding documentation. On the other hand, there are arguments, backed by CNSC decisions, by which this tender had problems regarding transparency, the objective evaluation and the correct use of the legislation. The high number of clarifications, exceeding 100 questions and related errata, is proves the lack of clarity of the contracting authority in the elaboration of the awarding documentation. All these aspects lead to delays in the implementation of the contract and raised suspicions regarding the legality of the procedures of elaborating the awarding documentation and of the evaluation of the offers and can affect the optimal development of the awareness campaign. The decision of the Court of Appeals and the ultimate annulment of the procedure by the Ministry of European Funds indicate serious problems regarding the management of the funds and the correctness, realism and transparency of managing the public procurement procedures. Besides prejudicing the taxpayers and the public, by delaying the campaign for the 2014-2020 period (considering that we are already in the middle of 2014 and there will be significant delays), we can also talk about damage for competitors and for the competitiveness and integrity of the Romanian and European markets of public procurements.

The list of bidders in the awarding procedure
- The association between SC Arrow Consulting SRL and SC Mediatrust Romania SRL
- SC Best Advertising & Consult SRL
- SC United Media Services SRL
- The association between SC Corex&C.B.SRL, S.C. EPMC Consulting SRL and SC Institutul Roman pentru Evaluare si Strategie - IRES
- The association between SC Libro Events SRL and SC Exact Consultanta si Cercetare SRL
- Media Consulta International Holding AG
- The association between Innovación Y Desarrollo Local S.L. and S.C. Patru Ace SRL
- The association between Promo Service SRL and SC Stage Expert SRL
- The association between SC Qual Media Group SRL, SC Opti Media SRL, SC All Media Company SR1 and SC Babei Communications SRL
- SC Dai Travel
- The association between SC Avensa Consulting SRL and SC European Profiles SA
- SC SMART Integration SRL
9. Annexes

Annex no. 1 – Requests for information of public interest

To: Ministry of European Funds
To the attention of: Minister Eugen Orlando TEODOROVICI
Regarding: Request for information of public interest

Dear Mr. Minister,

The Center for Independent Journalism is conducting, between October 2013 and August 2014, the project „Monitoring of the spending of advertising budgets in European projects – Romania’s experience”, financed by OLAF through Hercule II programme. In this project, we analyze the awarding of advertising budgets from projects with European funding, in order to see how the current legislation is respected and applied to serve the economic interests of the EU.

On the basis of Law 544/2001 regarding the free access to information of public interest, which stipulates that information of public interest include any type of information related to the activity or resulting from the activity of a public authority or public institution, regardless of its support or the way it is expressed, for this project we ask you to provide us with the following information:

1. Procurement plans from nonrefundable projects being implemented in 2013, for all the financing programs from structural and cohesion funds:

   - Operational Programme ‘Increase of Economic Competitiveness’
   - Sectoral Operational Programme for the Development of Human Resources
   - Sectoral Operational Programme ‘Transport’
   - Sectoral Operational Programme ‘Environment’
   - Regional Operational Programme
   - Operational Programme for Administrative Capacity Development
   - Operational Programme for Technical Assistance
   - Romania-Bulgaria Cross-Border Cooperation Programme
   - Hungary-Romania Cross-Border Cooperation Programme
   - South-East Europe Cross-Border Cooperation Programme
   - Interregional Cooperation Programme INTERREG IVC
   - Urban Development Network Programme URBACT II
   - Interregional Development Programme INTERACT II
   - Interregional Development Programme ESPON 2013
   - Romania-Republic of Serbia IPA Cross-Border Cooperation Programme
   - The ENPI Black Sea Basin Cross-Border Cooperation Programme
   - The ENPI Romania-Ukraine-Republic of Moldova Cross-Border Cooperation Programme
   - The ENPI Hungary-Slovakia-Romania-Ukraine Cross-Border Cooperation Programme

LDK Consultants Engineers and Planners SRL

HR Investment&Consulting SRL
- Asociat -SC Schulman Consulting SRL
- The association between SC Gea Strategy & Consulting SA, SC DC Communication SRL, SC Grupul de Consultanta pentru Dezvoltare DCG SRL and SC Headvertising SRL
- SC Agrafics Communication SRL
- The association between SC Magnum SRL, SC GFK Romania and Institut de cercetare de Piaţa SRL
- The association between SC Millenium Image & Communication Grup SRL and SC Relians Corp SRL
- The association between SC Mindshare Media SRL and SC Solvers SRL
2. The list of procurements made in nonrefundable projects implemented or ongoing in 2013, for all the financing programs from structural and cohesion funds mentioned above.

We stress that we are referring to the procurement plan and list of procurements made in the projects as they are stipulated in the specific instructions of the management authorities (for example: POS DRU Instruction no. 59 from 2012).

Please send us the information electronically, preferably in a machine processable format (.doc, .xls) at the address staff@cji.ro.

Thank you,

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To: Ministry of Labour, Family, Social Protection and Elderly Management Authority for SOP for the Development of Human Resources

Regarding: Request for information of public interest

Dear Madam,

Dear Sir,

The Center for Independent Journalism is conducting, between October 2013 and August 2014, the project „Monitoring of the spending of advertising budgets in European projects – Romania’s experience”, financed by OLAF through Hercule II programme. In this project, we analyze the awarding of advertising budgets from projects with European funding, in order to see how the current legislation is respected and applied to serve the economic interests of the EU.

On the basis of Law 544/2001 regarding the free access to information of public interest, which stipulates that information of public interest include any type of information related to the activity or resulting from the activity of a public authority or public institution, regardless of its support or the way it is expressed, for this project we ask you to provide us with the following information:

1. The procurement plans from nonrefundable projects being implemented or ongoing in 2013 in the Sectoral Operational Programme ‘Human Resources Development’

2. The list of procurements made in nonrefundable projects implemented or ongoing in 2013 in the Sectoral Operational Programme ‘Human Resources Development’
To: Ministry of Regional Development and Public Administration
Management Authority for Regional Operational Programme

Regarding: Request for information of public interest

Dear Madam,

Dear Sir,

The Center for Independent Journalism is conducting, between October 2013 and August 2014, the project “Monitoring of the spending of advertising budgets in European projects – Romania’s experience”, financed by OLAF through Hercule II programme. In this project, we analyze the awarding of advertising budgets from projects with European funding, in order to see how the current legislation is respected and applied to serve the economic interests of the EU.

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1. Procurement plans from non-refundable projects implemented or ongoing in 2013 in the Regional Operational Programme

2. The list of procurements made in non-refundable projects implemented or ongoing in 2013 in the Regional Operational Programme

Thank you,

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Regarding the procurement plans in the projects, we mention that we are referring to a situation which contain at least one of the following elements:

<table>
<thead>
<tr>
<th>The project's code (ID or SMIS code)</th>
<th>Title of the project</th>
<th>The funding beneficiary</th>
<th>The name of the procurement</th>
<th>The CPV code</th>
<th>The estimated value</th>
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<th>The estimated value</th>
<th>The applied procurement procedure</th>
</tr>
</thead>
</table>

Please send us the information electronically, preferably in a machine processable format (.doc, .xls) at the address staff@cji.ro.

Thank you,

........................................
1. Legislation and norms

In the Republic of Moldova, the public procurement procedures, both for goods and services, are regulated by the Law of public procurement, no. 96 from 13.04.2007, with subsequent modifications and a few regulations, approved through Government resolutions. The media publicity has no special regulations and follows the same general rules for procurement.

The public procurement law has a very general view regarding the service categories which fall under the incidence of public procurement. For example, contracting authority means “public administration authorities, juristic persons of public law, associations of these authorities or persons”. State companies or corporations with state participations are not forced to obey the public procurement law. For these entities, the procurements are governed by internal regulations, approved by administration boards with a majority made by representatives of the Finance Ministry and Economy Ministry. The regulations stipulate a vague necessity for “ensuring transparency” of procurements, while some state companies, like those in the energy sector, are forced to use the public procurement regulations as a guide.

Also, the publicity and other media promotion or related services are not defined or clearly stipulated in the legislation of public procurement and the Publicity Law, adopted in 1997, does not include regulations for public institutions regarding public procurements in their sectors.

The public procurements included in the implementation of projects funded by development partners, in the clear case in which this is stipulated in the funding agreement, are made according to the procedures of the funding institutions or of those that are implementing the projects. Still, the majority of EU funds are allocated through the budget support mechanism or, respectively, the national mechanism for public procurement.

The public procurement law stipulates several financial thresholds for which procurement procedures are prescribed.

Public procurement contracts with a low financial value, with goods and services with an estimated value, without VAT, of under 40,000 lei (2,124 euro, at the National Bank of Moldova’s rate from 02.06.2014), and under 50,000 lei for works (2,655 euro), are made according to the Regulation of low value public procurement, approved by the Government.1

According to article 3 of the Regulation, a low value public procurement contract is done through the checking account if its value is under 10,000 lei (530 Euro) or through a contract, if its value is above that threshold. The low value public procurement contract has to be registered at the State Treasury or at one of the territorial treasuries of the Finance Ministry, if its value is over 10,000 lei, without VAT, and the administration of the financial resources is made through the treasury system, in 45 days from the signing of the contract. The low value public procurement contracts that have not been registered in the prescribed way at the Agency for public procurement do not have legal power (Art. 24).

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1Paragraph 2. Government decision regarding the approval of the Regulation for low value public procurement No. 148 from 14.02.2008
Still, the public authorities are entitled to apply the public procurement procedures to low value contracts if they want further guarantees for the transparency and correctness of the procedures.

The signing of contracts with a value over 40,000 and 50,000 lei but under 2.5 million lei for goods and services and 99 million lei for public works procurements, and the details of these procedures, are regulated under the Public Procurement Law.

Excepted from these legal procedures are contracts made by the National Bank for printing and transporting banknotes, contracts deemed state secrets, work contracts, procurements of goods intended for resale, procurements for state reserves and mobilization, weapons and ammunitions contracts and a few others. Another exception is specified in Paragraph 4.1: public procurement contracts regulated under different procedural norms and awarded, among others, according to the specific procedure of an international organization.

2. Procedures

The Common Procurement Vocabulary was adopted through the HG no. 837 from 11.11.2011. The CPV of a contract is set for the service with the highest value in that contract.

In September 3, 2012 started a pilot-project - the Automated Informational System „State Registry for Public Procurement”, with the participation of 32 central public authorities and budgetary institutions. But the public procurement portal seems not to be functional, having only three contracts awarded and no other information.

According to the Public Procurement Law, the central public authorities have to publish the Annual procurement plan and the Notice of intent on their websites and also in the Public Procurement Bulletin in 30 days from the date of the approval of the institution’s budget. The notice of intent is published separately for goods, works and services and includes all the procurement contracts estimated for the current budgetary year. For procurement contracts with an estimated value for goods and services under 200,000 de lei and for public works contracts under 1.000.000 de lei, it is not mandatory to publish the notice of intent. Example of a notice of intent: Ministerul Justiției.

An important mention is that, according to a study made by Expert Grup, very few central or local public authorities have procurement plans (only 5 out of 16 ministries and 2 from regional councils), even though the law clearly stipulates this obligation for contracting authorities.

Subsequently, for every contract there are procurement procedures, with announcements published in the Public Procurement Bulletin and on the Public Procurement Agency’s website, followed by the announcement of allocation of the contract.

An important mention is that the access to the information in the Public Procurement Bulletin is difficult because this publication is available only through paid subscriptions and cannot be bought at newsstands. Back editions of the BAP, with calls that are no longer open, are published on the website of the Public Procurement Agency in scanned PDFs, which.

2 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=340951
3 The list of institutions is available in the annexe of the Order of the minister of Finances from 03.09.2012 http://tender.gov.md/sites/default/files/sia-rsap/Ordin_SIARSAP.pdf
4 https://etender.gov.md/public/
5 http://www.expert-grup.org/ro/biblioteca/item/969-achizitii-publice-moldova
makes it impossible to search specific information in the editions.

For contracts with a value over 99 million lei, the invitation to tender is also published in the „Official Journal of the European Community“. According to art.20 of the Public Procurement Law, „In order to ensure a maximum transparency, the contracting authority has the right to also publish the invitation in other mass-media outlets, national or international, but only after the invitation is published in the Public Procurement Bulletin and on the Agency’s website. The invitation published in other media channels, local, national or international, has to include the number and date of the BAP edition in which it was first published and will not include information other than the ones published in the mentioned BAP edition“.

The contracting authorities are forced to offer the applicants „any information regarding the goods, works or services requested in the public procurement procedure, the name and contact information for the applicants and the name and contact information for the economic operator with which it signs the procurement contract, the price of this contract is communicated to the applicant by the contracting authority“. This stipulation regarding information on public procurement access is found in paragraph 10 of the Regulation regarding the public procurement documentation.

3. Terms and specific regulations

Open tender is the procedure of an open call which includes offers from all economic operators that want to participate in the auction.

Limited tender is the public procedure in which any economic operator can ask to participate and in which only the operators preselected by the contracting authority can present their offers;

Framework-agreement (art. 50) regulated by the Special Regulation approved by the Government through HG no 826 from 07.11.2012

The competitive dialogue is regulated by the Regulation of the Government Order No. 804 from 10.10.2013. The competitive dialogue is applied only for complex procurements, in which the contracting authority cannot define „the technical means suited for its needs and objectives; and/or the judicial and/or financial nature of the project“. The competitive dialogue consists of two stages. The first stage involves an invitation to the economic operators to submit technical offers, without specifying the price. In the second stage, in which the final offers are presented, the contracting authority has the right to modify any stipulation set initially in the bidding documents, the modification being announced through the invitation to present the final offers.

Negotiated procedures can be applied if all the initial offers are incorrect or unacceptable, if the nature of the procurement does not allow the setting of an advance price, if it is a procurement of complex intellectual services, and if it is a procurement of public works or services of research and development. The contracting authorities are entitled to not publish a participation announcement if they include in the negotiated procedure all the bidders or only the bidders which fulfil the selection criteria and which presented, on the occasion of the previous open or limited procedure or of the previous competitive dialogue, offers concordant with the official requirements of the assignation procedure;

6 http://lex.justice.md/md/326694/
7 http://lex.justice.md/viewdoc.php?action=view&view=doc&id=345409&lang=1
**Procurement from a single source** (Art 53.) can be applied if no adequate offer or no offer was submitted as a reply for an open or negotiated procedure, as long as the initial requirements of the contract are not substantially modified; in a strictly necessary case, for reasons of maximum urgency; if, for technical reasons, creative or related to the protection of exclusive copyrights, a single operator holds these goods or services. Single source procurements can be made for works or additional services which are not stipulated in the initial contract and which became necessary for the execution of the works or the services indicated by the initial contract. The contract must be allocated to the operator which executes the initial contract and must not exceed 30% of the value of the initial contract.

Single source procurements may also be made if a single offer was submitted twice in the procurement procedures.

According to Art.26 (4) of the Public Procurement Law, in the case of open or limited tenders, the deadline for submitting and receiving the requests for participation and the offers will be at least 15 calendar days from the moment the participation announcement is made and in the case of public procurements with a value over 2.5 billion lei for goods and services and 99 billion lei for works – of at least 40 calendar days. In the case or repeated contracts or in case of urgency, the deadline for submitting the offers can be reduced to a minimum of 10 calendar days. In the case of procedures demanding price offers, the deadline to submit and receive the offers will be at least 3 calendar days for goods and 10 calendar days for works and services from the date of transmitting the invitation to participate in the tender. In the case or secondary procurements, of repeated contracts and urgency, the deadline for submitting the offers can be reduced to at least 2 calendar days for goods and 5 calendar days for works and services.

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**4. Publication in mass-media**

The majority of the announcements published in the mass-media are made in the weekly Russian language financial magazine *Экономическое обозрение*. With the exception of the Public Procurement Agency and the Public Procurement Bulletin, there is no website or publication in which to easily find, in a centralized form, all the public procurement announcements. The Civil Monitor website - www.civic.md – has sections dedicated to procurements and available jobs in the public sector and is a popular instrument for promoting procurements, especially for NGOs and projects internationally financed, but does not include all the announcements.

In 2013, it was proposed the idea of centralizing all the procurement announcements made according to the procedures or the donors or of the international implementing organizations. But the idea had no effect. The centralization of all the public procurement announcements could be made on the official website of the State Chancellery, which has a data base for all the external funding.

According to the information from the State Chancellery, at the moment of 01 April 2014 there were 359 active projects financed from external sources, with a total value of 1,965.7 million euro. Out of these, 521.6 million euro were funds from the European Union, 361 million from the European Investment Bank, 289 million from the European Bank for Reconstruction and Development, both of them investment branches of the European Commission.
5. A new public procurement law was drawn up

In June 19, 2014, The Parliament of the Republic of Moldova voted after the first reading the project of the new public procurement law. The document stipulated the creation of an appeal commission, according to the Directive 18/2004/CE regarding the coordination of the awarding procedures for public procurement contracts of goods, works and services, and Directive 66/2007/CE of modifying the Directives 89/665/CEE and 92/13/CEE. Currently, the appeals are submitted to and settled by the Public Procurement Agency.

According to the Finance Ministry, the project introduces new procedures like electronic tender and revises the attribution criteria for the public procurement contracts. From now on, the contracting authorities can individually select the application either by the criterion of the smallest price, or by the most advantageous offer from a technical-economic point of view.

Concomitantly, the new law project raises the threshold for low value public procurements from 50.000 to 80.000 lei (4,159 euro). Once the law is passed, it will also modify the deadline for submitting the offers for public procurement contracts of goods and services and in the case of public works the deadline will be at least 20 calendar days from the time the participation announcement is published in the Public Procurement Bulletin and the Official Journal of the European Union and at least 52 calendar days from the date of transmitting the participation announcement in the Public Procurement Bulletin and the Official Journal of the European Union and the deadline for submitting the offers.

Also, the new law offers a new definition for the notion of contracting authority – „public administration authority, legal person of public right, and unions between these authorities or persons”.

The project was criticized by the representatives of the Centre for the analysis and prevention of corruption (CAPC), according to which the document has certain gaps. According to the CAPC experts, the creation of the Appeal Commission is not sufficiently justified from an economic perspective, „the text of the bill is vague and the author uses numerous expressions which may be corruptible”. Also, Viorel Pîrvan was not pleased by the fact that the bill didn’t include standards which could have set a control over the public procurement contracts, after their signing.

The mass-media NGOs had suggested that the Public Procurement Law should include special stipulations to regulate the procurement of publicity and related services, in order to guarantee a transparent and responsible allocation of public funds to mass-media in public procurement procedures. An according bill was elaborated and sent to Parliament in 2008, then again in 2009 to the new government. It stipulated, among others, the introduction of a new article – Public procurement contracts for mass-media – and the extension of the applicability of the Public Procurement Law to include public procurement contracts with mass-media with an estimated value, without VAT, equal or over 10,000 lei. But the bill proposed by the civil society was neither registered as legislative initiative nor debated in the Parliamentary Commission for culture, education, science, sport and mass-media.

6. EU funded projects

EU projects are funding mainly through the budget support instrument,
respectively the national procedure for public procurement.

In projects funded by European Investment Bank (EIB), procurements are made according to the EU Directives, with certain adjustments. EIB prefers open tenders, with an announcement published in the Official Journal of the European Union.

Law value contracts are not regulated by EU Directives and can be used according to national procedures – national tender (for contracts which, due to their value or nature, are not of international interest), shopping (for goods and products of small value, with offers from at least 3 tenders), direct contracting (when it is justifiable that the supplier will execute the contract in the most advantageous way and price), force account – which implies using care internal work force and equipment.

One of the projects funded by EIB, the Wine network (Filia, vinului), aimed at modernizing the wine sector, has a single procurement announcement on its website in 4 years of activity.

7. Case study

A case study of procurement from EU financed projects

The Moldova Energy and Biomass Project (MEBP) has a value of 14.5 million euro, out of which 14 million are allocated by the EU and 500.000 by the United Nations Development Programme (UNDP). UNDP is the implementing agency for this project, so all the procurements are organized according to its regulations.
For the procurement of goods and services with a value up to 5,000 $ (the numbers in the chart above are outdated) the Micro-Purchasing procedure is used, consisting in a comparative analysis of 2 or 3 offers from direct request, without announcing a public tender. In certain circumstances, when the procurement value is under 2,500$, the procurement is made based only on an invoice.

**RFQ (Request for Quotation)** – represents the procurement procedure of goods and simple services with a value between 5,000 $ and 100,000 $. In this case, a public announcement is made.

**RFP (Request for Proposal)** – a procurement procedure for complex services with a value over 100,000 $. When necessary, it can be applied for procurements under 100,000 $, as it was the case for Moldova Eco-Energy Gala (Moldova Eco-Energetică), a public awards event for the best projects in renewable sources and energy efficiency, organized in order to promote the sector.

**ITB (Invitation to Bid)** – a procurement procedure of goods with a value over 100,000 $. The method is also used for procurement of construction works.

Depending on the type of goods or services and on the value of the procurement contract, the announcements are published on the websites PNUD Moldova, PNUD Global and also on two other UN websites - UNGM and UNDB. If it is deemed necessary, it can also be published in the media.

Direct contracting can be applied in exceptional cases, according to the stipulations of the procurement regulations. Depending on the value of the contract, such procurements are approved on different levels: local, regional or central.

In 2013, there were three tenders for media procurements, announced on the UNDP Moldova website. The results of the tenders were also published here. The tenders organized by MEBP for media services are presented under the following registration numbers:

- RFQ13/00741 – billboards renting, value: 6,496 $;
- RFP13/00714 – organizing the Moldova Eco-Energy Gala, value: 28,200$;
- RFQ13/00626 – visibility materials, three contracts worth 15,170, 52,055 and 48,410 lei;
- RFQ13/00620 – visibility billboards, value: 16,380 lei.

Regarding printing contracts, PNUD has long term agreements with two printing companies, signed in 2012, and the orders are made directly at these companies, with no additional competition. Also, there were numerous other small procurements, made by micro-purchasing, which are not made public.

**Case study no. 2: PRAG type contracts for services**

Other EU funded projects, like cross-border projects, are using the PRAG Procedure for EU’s external actions, funded from the EU general budget and the European Development Fund (EDF).

*The thresholds for different procurement procedures are:*

- >300,000 euro – international restricted tender procedure
- >20,000 euro < 300,000 euro – framework contract or competitive negotiated procedure
- < 20,000 euro – single bid
- < 2,500 euro, on invoice
One project which applies the PRAG procurement procedure is Moldova Energy Projects Implementation Unit (MEPIU). MEPIU is responsible for the construction of Ungheni-Iasi gas pipeline, financed in the Joint Operational Programme Romania-Ukraine-Republic of Moldova 2007-2013. The tender announcements are published on the project website and in EU publications. There were no contracts under the mentioned CPV codes; the project includes only the printing, in the final stage of the works, of some visibility materials and roll-up banners, with a value under 2,500 euro.

### 8. Conclusions

Public procurements using funds from development partners are published on various websites so are hard to follow, which makes it hard for economic operators to access these tenders and facilitates contracts with issues regarding conflicts of interest.

The Public Procurement Bulletin (BAP), distributed in return of payment, has a small circulation. Its cost is prohibitive for many media institutions, because a subscription to BAP is too expensive compared to the few relevant tender announcements it publishes. At the same time, not all the announcements and invitations to tender are published on the website of the Agency for public procurement. Also, the names of the announcements are often not very informative, so it’s hard to understand the object of the tender without reading the tender dossier.

Often, public institutions prefer to break the required services in separate contracts with a value under 40,000 lei, in order to avoid the complicated procedures of public procurements.

In the State Register for Public Procurement there are few contracts which could include the mentioned CPVs. Most of the contracts published here refer to funding of local media by regional councils. Extracts from the Register regarding contracts awarded in 2013 and 2014 are available in the annex.

Thus, it is hard to estimate a precise value of the advertising and media services contracted by public authorities and in EU projects in the Republic of Moldova.

### 9. Recommendations

- An explicit procurement regulation for advertising and media services.
- The publication of all the procurement announcements on the website of the Agency for public procurement, and also on the websites of the contracting authorities.
- A preferential access to the Public Procurement Bulletin for media institutions or identifying other ways of achieving a greater transparency for the procurements of media services.
- Centralizing all the procurement announcements from projects funded by or involving development partners on the website of the State Chancellery or of an NGO.
1. Introduction and Background

Macedonia is a new parliamentary democracy which gained independence in 1991 from the Socialist Federal Republic of Yugoslavia. Unlike other countries from former Yugoslavia, the inter-ethnic conflict was relatively short and started in 2001 ending in the same year after the adoption of the Ohrid Framework Agreement.

The country acquired a candidate status for joining the EU since 2005 however due to the slow progress in key areas and the name dispute between Macedonia and Greece it has failed to set a date for initiating the accession negotiations.

The main issue in the country has been the large degree of unemployment (just short of 30%). Other important issue that is frequently outlined is the failure to engage substantially in combating corruption. It is ranked 67th on Transparency’s Corruption Perception Index which is better than its neighbors however worse than the recently joined member – Croatia. This complements frequent negative assessments about the development of rule of law in the country.

The issue that has developed over the last years is the decrease of media freedoms in the country. The largest media outlets, both print and electronic have been accused of being pro-government and bias has been noted during elections by OSCE/ODIHR. The last Nations in Transit report by Freedom House decreased the grade for Macedonia on Independent Media in their 2014 issue. The result was that the classification of the system was changed towards ‘Transitional Government and Hybrid Regime’.

2 Legal framework

There are two types of regulations that govern the use of European funding of programmes and projects executed in the Republic of Macedonia.

The first set of regulations are the EU regulations that govern the procurement procedures when European funding is in question. These are outlined in the Practical guidelines (PRAG) for EU External Actions and are applicable both to service and grant contracts. These are applicable both to public institutions (ie contracting authorities) and to private entities such as companies and civil society organizations that implement projects on the territory of the country.
The second set of regulation governs the public procurement of contracting authorities. The main law covering this topic is the Law on Public Procurement. The law is harmonized with the EU aquis and sets out a comprehensive legal framework for the public procurement activities of the contracting authorities in Macedonia. The article 17 of this law stipulates that production of advertising, publishing and printing services need to adhere to the regulated procedures. Although the law is applicable to contracting advertising services, the Article 8 of the law exempts buying media space (electronic media) from the standard procurement procedures. These are left to direct negotiations between the contracting authority and the media outlets. There are no details about these negotiations which are set up in the law. Usually, the contracting authorities buy media plans as part of the public procurement of production of advertising products. According to government press announcements, these media plans are then the basis for the direct negotiation between the contracting authorities and the media outlets.

Similar to the EU regulation, the national procurement procedures of service contracts depend on the estimated value of the contract. Public procurements below 500 EUR do not need to be announced. Contracts with a value of 5000 EUR can be awarded with a simplified tender however the insight into bids is not necessary. This means there is no necessity to open the offers in front of the competing parties and the awarding procedure is internal. The same simplified tender is the prescribed procedure for service contracts less than 20,000 EUR however bids are disclosed. Contracts above 20,000 EUR are subject to open or restricted tenders. Announcement of contract or procurement notices must be published in the Electronic system for public procurement.

This system has several aspects of functionality. The first dimension is that it acts as an information portal for publishing calls for procurement. Contracting authorities need to publish their calls on the system unless the purchase is below 500 euros. Its second dimension is that it provides data about contract awards given to providers. The system also shows the number of competitors and the lowest and the highest bid. It does not show the competing parties nor the challenges given by the competitors. Lastly, it provides a system where negative electronic auctions are held, where the competitors bid towards the lowest price based on the lowest bid offered in a previous stage of the procedure.

The system offers a search option which is useful while analyzing public procurements. It offers search on both the calls for offers as well as the announcements of awards. The search features are comprehensive and they provide the ability to search depending on contracting authority, contractor, the subject of contract, time period of calls or awards and so on.

There are three downsides of this online system. The first one is that calls for offers and announcements are not linked. If one finds the call, there is no ‘history’ that can link to the information about the awards and therefore another search in the ‘awards’ database has to be repeated.

A second difficulty stems from the lack of usage of the procurement vocabulary. Searches have to be done based on keywords (ex: campaign) which adds another layer of difficulty in a later stage of classification of procurements. This provides a situation where the keywords used in the search are not in the title of a call, although a procurement calls for a service which is of interest to a research.
Thirdly, there is no export of the database of calls and awards which renders the research to difficult for a more comprehensive analysis. This means that researchers have to manually compile their own databases and they often opt to do their analysis on a sample of procurement procedures. Doing network analysis or compile lists of frequent beneficiaries of awards in order to detect preferential treatment or other anomalies is therefore difficult.

The Center for Civic Communications, a public procurement watchdog NGO has published numerous criticisms on the way contracts are awarded. Their monitoring on public procurements reveals that in many cases the contract is awarded where only one bidder has appeared. In their most recent report, they are signaling an increase of such cases which raises concern that public funds are not spent in a procedure where candidates compete. Furthermore, one of the concerns that are raised is that of an increased practice of canceling tenders. According to the report, 25% of the procedures are canceled which raises concerns that the contracting authority does not give an award if the procedure does not produce the desired candidate as a winner.

Macedonia has adopted the Common Procurement Vocabulary in its legislation in the form of the General Procurement Vocabulary. However, the application of such vocabulary is not frequent in procurement with state funds. The calls use only titles which have some degree of cohesion for similar purchases however they lack the precision of a procurement vocabulary. The field in the calls (on the electronic system) is almost exclusively left blank which signals the lack of implementation of the procedures in full. This is different in procurement of services published internationally where CPVs are used more frequently.

2 The media ecosystem

According to the Agency for Audio and Audio-visual Media, the total advertising market in the media amounts to over 26 million euros. There were 66 television and 82 radio stations broadcasting on the territory of the country. According to the same report, the biggest advertiser in the electronic media is the Government of the Republic of Macedonia, with about 4% of the total market. This amounts to over 749 thousand euros in 2012 alone. According to the same report, the second largest advertiser is Procter&Gamble with 3.7% of the total market and the (then and now) ruling was the 11th advertiser with 1.75% of the market in 2012.

There is no publicly available data on the advertising market of the print and outdoor advertising media. Unofficial estimates say that print media takes about 3 million and billboard advertising 5 million of the market in 2012. The stake of advertising agencies is unknown.

The public procurement of advertising is marred by controversies. There are allegations that public institutions, most notably the Government, spends public funds without an acceptable level of transparency. There were numerous attempts to investigate the procedures employed to allocate public funds for the sake of advertising. The most notable outcome was that at the end of a process requesting public information, the General Secretariat of the Government declared such information as ‘state secret’. The failure to disclose is justified on the basis that media plans provided by marketing agencies that deliver such service to the Government are made confidential by the service providers. There is additionally a provision in the Law on Public Procurement which provides an exemption to the standard procedures of acquiring advertising space in the media (Article 8). According to the media, the European Commission has asked the government to
send information about the public spending, however, such disclosure did not happen.

The most recent controversy was the disclosure by the main opposition party of the funds that the Government has paid to the biggest private television station - TV Sitel. At the beginning of 2014, it was revealed that only this station received one million euros. The response was that those payments were for accumulated invoiced for a period of more than a year worth of advertising (end of 2012 and 2013). Nevertheless, it indicates the amount of funds that the State is paying to media outlets. By analyzing the electronic database for procurements, in 2013, the contracting authorities spent around 4 million euros developing campaigns. It is unclear how these funds are redistributed between advertising companies and media outlets.

A common assumption is that this scale of public spending is a mechanism that the ruling party uses to achieve widespread political media bias and cover their high costs during election campaigns. The political bias has been noted in several reports issued by ODIHR and organizations dealing with media such as the Macedonian Institute for Media. The media are frequently shown to be the donors in their campaign which backs the suggestion that there are implicit ways of balancing such deficits.

3 Visibility components of EU projects

The EU guidelines on visibility are applicable to programmes and projects implemented in Macedonia. Due to the name dispute between the Republic of Macedonia and the Republic of Greece, there are special provisions that are applied and are specific to this case. Namely, the EU flag must not be displayed if the country is referred with its constitutional name.

The guidelines are followed by the implementing parties and this is being monitored by the responsible authorities. This is either the Delegation of the European Union, or the state bodies which are entitled to follow the implementation such as the Ministry of Finance and other authorities.

The size of EU funded advertising cannot be precisely determined. Although every project implemented in the country needs to have a visibility component, so far no authority has been able to provide an estimate of a cumulative budget dedicated to such services.

Researchers in the field of European integration that were interviewed suggested that there are only a handful of projects with significant budgets for advertising. Therefore, the bulk of the funding that is allocated to visibility go to printing of brochures, publications and leaflets that do not constitute a significant cost. Such services fall below the threshold of 20,000 euros thus no open or restricted tenders are necessary.

The data on contract awards shows that since 2007, 15 contracts have significant parts of media components. The authority responsible for those funds is the Delegation of the European Union in Macedonia. The total EU funds spent on these projects amount to more than 2.1 million euros. The total size of the contracts is over 2.19 million euros or the percentage of EU participation is about 96%.

They are part of the Information and Communications programme of the EU and are part of the Instrument for Pre-Accession Assistance (IPA). Part of this programme is spent on projects that are part of the
‘Broadcasting the EU’. The largest projects are the information and communication program of the Delegation. The activities include the visibility needs of the organization, in large part for the purposes of the EU Info centers and information points as well as public relations activities of the Delegation. Other projects are typically less than 100 thousand euros and consist of public awareness campaigns or media productions about aspects of the integration process. Most notable are television shows about EU related questions (Eurozoom magazine) or Euro-farmer (a show covering aspects of the IPA 5th component).

There is a difficulty in identifying the ways media space is bought for such activities. In some cases, the contract is awarded to an organization, or a production house in partnership with a media outlet. In other cases, the low budget permits direct procurement of media space because of the EU regulation thresholds.

It seems that larger purchases of advertising with EU funds by public institutions in Macedonia do not occur. Contracting authorities need to publish procurement notices for contracts above 5000 euros and awards of contracts for purchases above 500 EUR in the electronic system for public procurements. The database does not contain any information on such cases.

4 Case studies

‘EU Farmer’ is an informative television magazine aimed at promoting the IPA measures with a focus on the IPARD (agricultural programme) of the aid. The award has been given to Moonlight DOO production company with the 85,000 euros participation of the EU budget and 15,000 euros participation of the company. It has been broadcast to one national television station – Alsat-M and 14 other local and regional television stations in Macedonia. The project produced 30 documentaries which premiered on the national television and they were rebroadcast later on the local and regional stations.

Being part of the ‘Broadcasting the EU’ programme, the partnership between the contractor and the media outlets has been a matter of partnership before the application. This means that the broadcasts were not paid and they act as a sort of ‘contribution’ to the partnership by the televisions. Furthermore, the partnership prescribes that these shows need to be advertised on the medium prior to airing an episode. The production company stated that this is still the ‘most difficult thing to agree’ with the media outlets and they attempt to persuade them since such products are a matter of ‘public interest’.

The choice of Alsat-M as the primary media outlet seems justified and does not suggest a previous bias or ‘closeness’ with the production company. The channel is the only private broadcaster that has a bilingual format (Albanian language is primary) and audience catering to both main ethnic groups – ethnic Albanians and Macedonians. As the target audience is specific, and mainly farmers from both ethnic groups, it was the logical choice for a partner according to the production company. The smaller audience size of this (mainly Albanian language) channel in some parts of the country was compensated by the rebroadcasts in the local televisions.

The effectiveness of the project and the media outreach was measured by population surveys which attempted to give an estimate of the viewership of the program. This was done mainly because of two reasons. There is a lack of audience measurement for local television stations which can provide better estimates of the audience of a certain media content. Secondly, the reason for doing so was
that the implementer needed to get a better feedback from the farmer population.

Another notable project was the political magazine ‘Eurozoom’ which has been running for several years. The latest project, which is still in the implementation phase is produced by Euro Vision DOO and made in cooperation with a local think-tank European Policy Institute and a partner studio in Belgium. The aim of the magazine is to promote the EU and its policies to the wider public and provide a local context of the country’s integration. The EU funds that were awarded are 85,381 euros with participation of the partners in the amount of 21,345 euros.

As in other projects of the ‘Broadcasting the EU’ programme, the participation of national, regional and local media outlets needs to be set beforehand. The latest installment of Eurozoom is in partnership with TV 24 News national television as well as other local media. This magazine has been running on various main broadcasters throughout the years.

The bulk of the funds go to either production costs and honoraria (or salaries) for the director or journalists and advertising budget is mainly distributed towards promotion of the magazine on various social media or websites. Some of the production funds cover the expenses made by the television as the studio, equipment and postproduction is in possession of the television station. The choice to cooperate with TV 24 News which is not the most viewed national television is that, according to the implementers, larger media outlets are generally not interested.

As the current project is ongoing, at the time of the interview the evaluation phase was in stage of initiation. The viewer outreach is provided by the television which buys audience measurement results and is the basis of assessing the effectiveness of the programme.

5 Conclusions

A significant part of the media ecosystem in Macedonia seems to be the involvement of the State in the advertising market. There is an obvious lack of transparency on how the contracts with the media outlets are awarded. This is somewhat peculiar as public measurement instruments are readily available and media plans need not be a state secret. The situation is counter-intuitive. The calls for production of media campaigns for the contracting authority often have a defined target audience and media plans should follow audience ranking provided by viewership measurement. They can be the basis of a ranking process which can then be used in a transparent bidding procedure where the contracting authority can get the best value for money media space for their advertising.

Attempts to get information about public spending in media have failed and it is unlikely that a challenge in court can yield results as the court system is influenced by the Government. No organization has initiated such a challenge and aside from estimates, only leaks have so far provided tangible information. The secrecy of the contracts might suggests that official price lists are not used and the expenditure is above the market value for a given time-slot.

It is therefore necessary to amend the Article 8 of the Law on Public procurement which exempts buying media time from the standard public procurement procedures. This is very important in order to have greater transparency in the way public funds are spent in the media and can provide better assessments on the degree of ‘soft influence’
that the public institutions gain as big advertisers.

Having this publicly inflated media market in mind, the part that EU funds play in the media is also important. As in the case of national funds, an acceptable level of transparency needs to be achieved. First and foremost, the cumulative advertising impact of EU funds has to be published. Such information can prove useful in assessing the effectiveness of the visibility components and the overall investment in the EU image in Macedonia which is still high but follows a downward trend.

Secondly, the success of advertising a project is largely dependent on the media used to distribute information. The current state of affairs, with relatively small budgets to operate, does not necessitate a transparent process of advertising awards. This does not ensure that the award will go to the media which can most effectively reach the target audience for the price that the organization or the authority can afford. Distributing funds for advertising in electronic media has a technical prerequisite to be objectively evaluated during both the decision to procure such services and later when evaluating the spending in a project. This is largely because there is data that can offer insights into the media outreach to a target audience. However, there is a lack of data about outdoor advertising and these can only be done after an implementation. Reports about the evaluation of a project or specifically the effectiveness of a campaign are generally unavailable.

There are a few media watchdogs such as Macedonian Institute for Media and the Center for Media Development. On the other side, there are a number of organizations dealing with corruption, transparency or public procurement such as Transparency, Transparency ‘Zero Corruption, Macedonian Center for International Cooperation, Open Society Institute, Center for Civic Cooperation and the Institute for Democracy. However, there is a lack of systematically focusing on the issue of media, public procurement and EU funded advertising.

6. Methodology evaluation

Step 1 – Regulation:

The main source for domestic regulation is the Law on Public Procurement. Regarding procurement of advertising media space, the Article 8 leaves ample room for arbitrary negotiation and is thus relatively ineffective in this regard.

Step 2:

Public advertising is defined in the Law on Audio and Audiovisual services (Official Gazette (2013/184) as: ‘Advertising is any form of advert broadcast or published for financial or other gain or goals for self promotion of a natural or legal entity in:

1. trade, business, craft or profession in order to promote product offers or services including real estate, rights and obligations in exchange for money or
2. popularization of an idea or activity or achieving other effects. (Article 3).

Step 3 – Common Procurement Vocabulary:

An analysis exploring the usage of CPVs in local public procurement is still not achievable in Macedonia as there is no widespread usage of the domestic CPV reference.
Step 4:

The main source of information for public procurement of advertising is the Electronic System for Public Procurements. However, there are few limitations to this – firstly that CPVs are rarely used which makes researching the database difficult. Perhaps more importantly, purchasing media slots is not a subject of open procedures and is a matter of closed negotiations about contracting authorities.

Private beneficiaries do not need to publish a report on direct procurement which and narrative reports about projects are also not public.

Step 5:

There is access to public procurement via the Electronic System for Public Procurement with the aforementioned limitations.
## COMPARATIVE CHART REGARDING THE LEGAL FRAMEWORK AND EXPERIENCE IN PUBLIC ADVERTISING PROCUREMENTS IN ROMANIA, MOLDOVA AND MACEDONIA

<table>
<thead>
<tr>
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<th>Romania</th>
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<td><strong>Current status</strong></td>
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<td>OUG 34/200</td>
<td>Public Procurement Law</td>
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<td></td>
<td>Ordin MFE 1120/2013</td>
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<td>Audiovisual Law</td>
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<td></td>
<td>Special instructions for various EU funds</td>
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<tr>
<td><strong>Definition of public advertising</strong></td>
<td>Covers media buying, the production costs have been expelled form the definition in 2012</td>
<td>no definition</td>
<td>ad production and space in the print media, no air time buying</td>
</tr>
<tr>
<td><strong>CPV</strong></td>
<td>compulsory, used and sometimes misused</td>
<td>not yet adopted</td>
<td>adopted, seldom used</td>
</tr>
<tr>
<td><strong>Sources of information on public advertising</strong></td>
<td><a href="http://www.elicitatie.ro">www.elicitatie.ro</a>; <a href="http://www.data.gov.ro">www.data.gov.ro</a>; <a href="http://www.fonduri-ue.ro">www.fonduri-ue.ro</a>; <a href="http://www.publicitatepublica.ro">www.publicitatepublica.ro</a>, L544/2001 access to info</td>
<td>The information on governmental spendings on advertising has been declared &quot;state secret&quot;</td>
<td></td>
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<tr>
<td><strong>Subjects of law</strong></td>
<td>contracting authorities, private entities, NGOs</td>
<td>contracting authorities</td>
<td>contracting authorities</td>
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## Conclusions

### Media market
- Public advertising amounts to 20% of the market, public advertising market on the rise.
- EU funds - 93% of the public advertising.
- Not measured.
- Unknown, presumably on the rise.
- Not accurately measured, but estimates possible.

### Transparency
- Reduced, despite specific legal provisions.
- Authorities not keen on transparency.
- Clauses of confidentiality blocking access to information.
- Reduced, legislation lacking, access to procurement files possible, but not always.
- Authorities not keen on transparency.
- Reduced, despite legislation, access to files possible.

### Legislation
- Ever changing, adopted without public consultation, erroring.
- Authorities not keen on regulation.
- Not enforced.

### Administrative capacities
- Overburding bureaucracy.
- Conflicting instructions.
- Misuse of CPVs (out of ignorance, negligence or malice).
- ITC vision lacking.
- Additional acts doubling the amount of money.