

## **DECLARATION on the increase of the thresholds for the public procurement procedures**

The signatory organizations condemn the adoption by the Parliament, in the most non-transparent way, of the draft amendment to the Law 131 on public procurement. This bill has raised the thresholds for public procurement, which creates prerequisites for a substantial increase in the amount of public money used non-transparently and inefficiently.

On Friday, November 30, 2018, the Parliament of the Republic of Moldova adopted, in two consecutive readings, the draft Law no. 430, registered by Deputy Bacalu Elena on November 26, 2018. This draft amends Law 131/2015 on Public Procurement by significantly increasing the thresholds for public procurement procedures. First, it provides for the increase of the thresholds for purchases not covered by Law 131, ie purchases of small value, from 80,000 lei to 200,000 lei for goods and services, and from 100,000 to 400,000 for works. Secondly, the project foresaw the increase of the limit for the procedures conducted through the request for price quotation (RPQ) from 400,000 lei to 1,000,000 lei for goods and services and from 1,500,000 to 2,000,000 lei for works.

Most alarming is, however, the considerable increase in thresholds for small value purchases. These acquisitions are totally non-transparent, not regulated by Law 131, are carried outside any public competition, and the results of the procedure can only be viewed through the already signed contract with the only "participant" on the MTender electronic purchasing platform. The results of these procedures can not be appealed to the National Agency for Solving Complaints. Moreover, this type of procedure is most often resorted to by contracting authorities by splitting larger procurement batches into two or more smaller batches so as to avoid a transparent procedure such as the RPQ or the Open Tender. Although they are called "low value" purchases, their cumulative value expressed in figures is not at all low.

The way in which the draft law no. 430 was adopted in two consecutive readings on the same day, on the last day of the parliamentary session, in the absence of any public consultations and debates, and only after four days of registration, is a defiance of democratic norms and values so frequently assumed by the governors. This project was not found in any of the agendas of the meetings of the Committee on Economy, Budget and Finance. It is, however, on the agenda of the Legal Commission on Appointments and Immunities - the sitting of 28.11.2018, and on that of the Commission on Social Protection, Health and Family (in addition to the Agenda). Although the Culture, Education, Research, Youth, Sport, and Media Commission did present its approval of the draft, it did not include it in its agendas, just like in the case of the Public Administration Commission. The draft does not have the Government's approval nor anti-corruption expertise.

As grounds for adopting this project, the informative Note states the following: "With the start of the experimental use of SIA RSAP (MTender) on national level by all contracting authorities, full transparency of public procurement is ensured and conditions are created for the change of the implementation thresholds stipulated in art. 2 of the Law no. 131/2015 on public procurement, without losing the quality of public procurement. This change, in turn, makes it possible to increase the degree of efficiency for contracting authorities in carrying out public procurement by applying low-value procurement procedures and demanding price quotations from a higher threshold. "

It is obvious that the author's interest is not in ensuring the most efficient and transparent use of public money, by conducting procurement planning and applying transparent procedures.

The civil society has supported the development of the MTender electronic procurement system from the outset and welcomes its launch and compulsory usage for all contracting authorities. At the same time, we regret that this system is now being used as an argument to promote legislative initiatives that will not contribute to making public money more efficient, but rather the opposite.

Taking into account the fact that the Parliament has adopted the draft, the Government is expected to amend the Decision no. 665 of 27.05.2016 for the approval of the Small Value Public Procurement Regulation, which regulates this type of acquisitions, in order to comply with the new legal regulations. The signatory organizations insist that the amendment of the Regulation should not be limited to amending the thresholds for this procedure, but should provide for conditions that ensure a minimum of transparency, through the publication of a call for participation and the conducting of a procedure entirely through the MTender system. Otherwise, returning to previous thresholds for low-value purchases is imperative.

In conclusion, we strongly condemn the way in which the bill was adopted and we reiterate the importance of complying with the provisions of the national legislation, as well as with the international commitments assumed by the Republic of Moldova.

**Signatories:**

Association for Efficient and Responsible Governance

Association of Independent Press

Center for Legal Resources in Moldova

Center for Journalistic Investigations

Center for Policies and Reforms

Promo-LEX

Expert-Grup

IDIS Viitorul