



**THE NATIONAL COUNCIL  
FOR SOLVING  
COMPLAINTS**

**ACTIVITY REPORT  
2011**

**NCSSC**



## FOREWORD



**BOGDAN  
LEHEL – LORAND**  
President C.N.S.C.

This activity report for 2011 of The National Council for Solving Complaints is the second one since the beginning of the office for president of the institution on the 23rd of February 2010.

It presents synthetic and statistic results of the Council's activity in the previous year, which started with a major change in status and its funding mechanism, along with the entry into force of Law no. 278/2010, which specifically granted the independence of the Council and ensured direct financing from the state budget, its president acquiring the status of budget manager.

According to the current legal framework, the Council represents the only administrative authority with jurisdiction on the awarding of procurement contracts, public works concessions, services concessions, delegation of public utilities services management for which specific legislation refers to Government Emergency Ordinance no. 34/2006, public-public partnership and, following the review of the Law on public-private partnership no. 178/2010, the contracts covered by this law.

During the almost six years since its establishment in 2006, the Council had the opportunity to exercise jurisdiction in more than 30,000 cases, impressive volume compared to the records of the years prior to the ordinance, but also to that of the cases registered in other Member States of the European Union, abundantly proving that the national mechanism for remedies is functional and efficient. The Council's usefulness is evident not only in terms of the functions it performs in protecting the rights and interests of economic operators, but also in the terms of a wider context - European and international –to which it aligned.

The judicial review the Council exercises on the acts and operations of contracting authorities is independent and depoliticized, an optimal solution to correct the errors of these authorities, without delays, without expenses and, in principle, without the tensions the applicants would be involved in when bringing a case to court.

The performances achieved by the Council over time confirm and strengthen a well-deserved role as guarantor of the rule of law in its scope, dimension of the state subject to the rule of law. It is beyond any doubt that the judicial practice created around the ordinance and its regulations have contributed and contribute significantly to the knowledge, the regulation and discipline of the public procurement system in Romania.

From another perspective, through the efforts made in the previous year, the Council actively participated in the smoothing and streamlining of the public procurement intercessions, aiming to rapidly unblock this process and, thereby, including the operational engagement of the allocated funds, especially those from European sources. Concurrently, through its sustained activity, the Council has brought significant contributions to the cognition and the correct implementation of specific legislation by all the structures involved as well as to promoting the best practice in the use and management of public resources, thereby supporting the increase of professionalism and accountability in public administration in Romania.

Our goal remains to further strengthen and improve the functional capacity of the Council to promptly, impartially and transparently review, in accordance to the provisions of the Law and to the highest standards, all the complaints filed.



## SUMMARY

CHAPTER 1 <b>ROLE AND PURPOSE OF N.C.S.C.</b>	<b>pag. 3</b>
CHAPTER 2 <b>HUMAN RESOURCES, MANAGEMENT AND ORGANIZATIONAL STRUCTURE</b>	<b>pag. 5</b>
CHAPTER 3 <b>EVOLUTION OF COMPLAINTS FILLED BY ECONOMIC OPERATORS</b>	<b>pag. 6</b>
CHAPTER 4 <b>THE EVOLUTION OF DECISIONS ISSUED BY THE N.C.S.C.</b>	<b>pag. 11</b>
CHAPTER 5 <b>EVOLUTION OF FILES RESOLVED BY THE N.C.S.C.</b>	<b>pag. 13</b>
CHAPTER 6 <b>THE SITUATION OF SOLVING COMPLAINTS REGISTERED AT THE N.C.S.C.</b>	<b>pag. 14</b>
CHAPTER 7 <b>ESTIMATED VALUE OF THE PUBLIC PROCUREMENT PROCEDURES IN WHICH THE N.S.C.S. ISSUED COMPLAINT ADMITTANCE/REJECTION DECISIONS</b>	<b>pag. 17</b>
CHAPTER 8 <b>ESTIMATED VALUE OF THE PROCEDURES IN WHICH THE N.C.S.C. HAS ISSUED DECISIONS OF ADMITTANCE OF COMPLAINTS, COMPARED TO THE ESTIMATED VALUE OF PROCEDURES INITIATED WITHIN THE S.E.A.P.</b>	<b>pag. 19</b>
CHAPTER 9 <b>THE OBJECT OF THE COMPLAINTS FORMULATED BY ECONOMIC OPERATORS</b>	<b>pag. 21</b>
CHAPTER 10 <b>SITUATION OF THE DECISIONS ISSUED BY THE N.C.S.C. AND MODIFIED BY THE APPEAL COURTS AS A RESULT OF THE DEPOSED COMPLAINTS BY ECONOMIC OPERATORS / CONTRACTING AUTHORITIES</b>	<b>pag. 24</b>
CHAPTER 11 <b>INSTITUTIONAL TRANSPARENCY AND STAFF TRAINING</b>	<b>pag. 26</b>
CHAPTER 12 <b>THE N.C.S.C. BUDGET</b>	<b>pag. 28</b>



## CHAPTER 1

### ROLE AND PURPOSE OF N.C.S.C.

The National Council for Solving Complaints (N.C.S.C.) is an independent body with administrative-jurisdictional activity, and competences in solving the complaints addressed within public procurement procedures, until the end of the procurement procedures.

N.C.S.C. works on the grounds of its own Organisation and Working Regulations approved by Government Decision no. 1.037/2011 - published in the Official Gazette, Part I no. 775, dated November 2nd, 2011.

According to the provisions of the G.E.O. no. 34/2006, regarding public procurement procedures of the public works concession contracts and of the service concession contracts, modified and completed, **N.C.S.C. is competent to solve the complaints issued within the awarding procedure, before the closing of the contract, through specialised panels** set up in accordance with the Organisation and Working Regulations.

In exercising its powers, the Council takes decisions, and in its activity, N.C.S.C. ensures the coherent application of the legislation, in accordance with the following principles: legality, celerity, cross-examination, and the right to defence.

Council members are appointed by the decision of the Prime Minister, following the passing of a contest organized in accordance with the provisions of Law no. 188/1999 on the Statute of Civil Servants, republished with subsequent changes and those of the Government Decision no. 611/2008 for approval of the organization and career of civil servants, with changes and additions.

According to the provisions of the article 267, paragraphs 1 and 2 of the G.E.O. no. 34/2006, **the complaints lodged with the N.C.S.C. are solved by an panels formed of three members of the Council**, of which one holds the capacity of Integral Chair. Within each integral, at least the Chair must hold a degree in law, while the other members can hold technical or economical degrees.

For the good performance of the institution, as well as in order to rapidly solve the complaints lodged **in each panel of solving complaints is allocated technical-administrative staff, having the status of contract staff and legal, economical or technical studies.**

According to Law no. 278/2010 approving G.E.O. no. 76/2010 amending and supplementing G.E.O. no. 34/2010, **"The Council President must be licensed in the practice of Law"**.

With the entry into force of Law no. 278/2010, the provision that **"the Council President is the chief quality officer"** was inserted.

The volume of the activities within N.C.S.C. mainly reflects in the number of complaints lodged, the number of decisions issued and the number of cases resolved.

Moreover, along with the entry into force of Law no. 278/2010, N.C.S.C. became virtually the only body that resolves disputes in public procurement, including disputes / complaints on procurement procedures for services and / or works related to the national transport infrastructure (taken out of the jurisdiction of the Court of Appeal of Bucharest with the repeal of paragraph no. 2 of art. of 256 in G.E.O. no. 34/2006, approved with amendments and supplements by Law no. 337/2006, with subsequent amendments and supplements) formulated by persons who consider themselves injured in a right or legitimate interest with a an act of the contracting authority, in violation of legal provisions on public procurement.



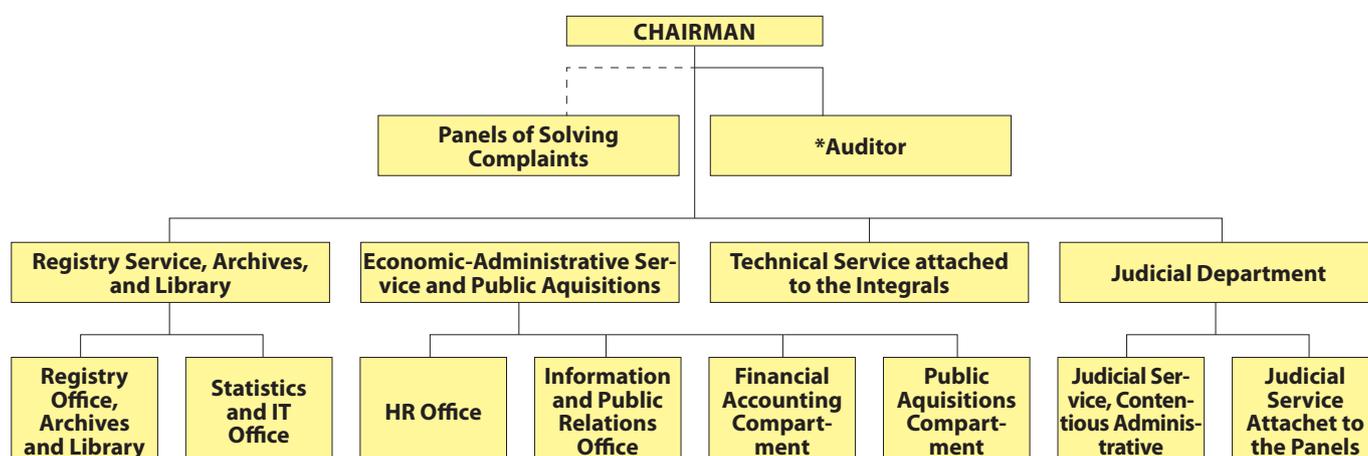
To note that, according to the provisions of Law no. 279/2011 amending and supplementing G.E.O. no. 34/2006, **N.C.S.C. was also empowered to solve the challenges brought in an on-going project within a public-private partnership, as well as public procurement contracts carried out by contracting authorities in the field of defence and national security** (subject cases that may involve the provision of information whose disclosure would be contrary to essential security interests of the country, or involving the protection of essential security interests of the country in connection with the production or marketing of weapons, munitions and war material).

Finally, it should be noted that in the Official Gazette of Romania no. 775, dated November 2nd, 2011, the Government Decision no. 1037/2011 for approval of the organization and functioning of the Council was published, bill which repealed Government Decision no. 782/2006. Changes to the new Regulation are mainly in the following aspects:

- the chief accountant status of N.C.S.C.;
- Council organization (tasks' structures within the Council subsequently amended and completed)

The new Organization and Operation Regulation provides that the technical and administrative staff will be working in the following structures:

- Registry Service, Archives and Libraries, which includes:
  - Registry Service, Archives and Libraries;
  - Statistics and IT Bureau.
- Economic-Administrative and Public Procurement Service, which includes:
  - HR Bureau;
  - Information and PR Bureau;
  - Financial-Accounting Bureau;
  - Public Procurement Department;
- Legal Department, which includes:
  - Legal Department, Contentious-Administrative;
  - Legal Department attached to the appeal panels;
  - Technical Department attached to the appeal panels;
  - Public Internal Audit;



N.C.S.C. STAFF CHART



## CHAPTER 2

# HUMAN RESOURCES, MANAGEMENT AND ORGANIZATIONAL STRUCTURE

In terms of organizational structure, the National Council for Solving Complaints operates with a resolution of 36 counsellors for solving the complaints in the public procurement field (three are suspended at the moment), according to Government Decision no. 1.037/2011 for approval of the organization and functioning of the Council.

The staff chart of the Council includes 53 persons with the status of technical and administrative staff (according to Government Decision no. 1.037/2011 for approval of the organization and functioning of the N.C.S.C., the organization has 64 positions for technical and administrative staff).

The management chair of the National Council for Solving Complaints is held by Mr Bogdan Lehel-Lorand.

In exercising its powers, the chairman of the National Council for Solving Complaints is assisted by a panel consisting of 3 members (Budulan Constantin, Pârvu Dumitru-Viorel, Popescu Bianca-Laura), elected by secret vote by an absolute majority of counsellors for solving the complaints in the public procurement field.

During 2011, in order to fill out the staff diagram, N.C.S.C. set up a vacancy contest for three positions of counsellors for solving the complaints in the public procurement field, which were all occupied.

The staff diagram of N.C.S.C. on 31st December 2011 is as follows: 88 persons (100% with higher education), 59 of which are women (67,05%) and 29 men (32,95%).



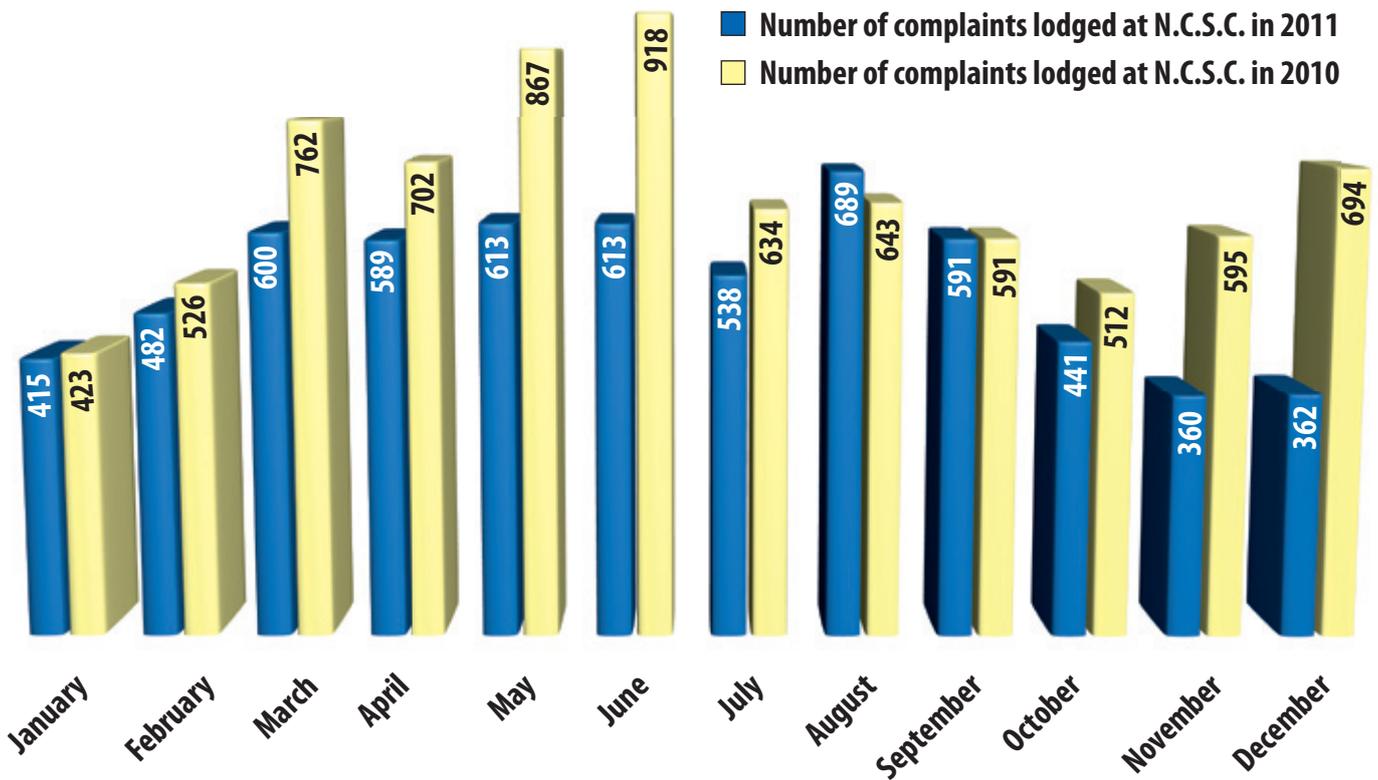
### CHAPTER 3

## EVOLUTION OF COMPLAINTS FILLED BY ECONOMIC OPERATORS

Between the 1st of January and the 31st of December 2011, the number of complaints submitted by economic operators and registered with N.C.S.C. reached 6.293.

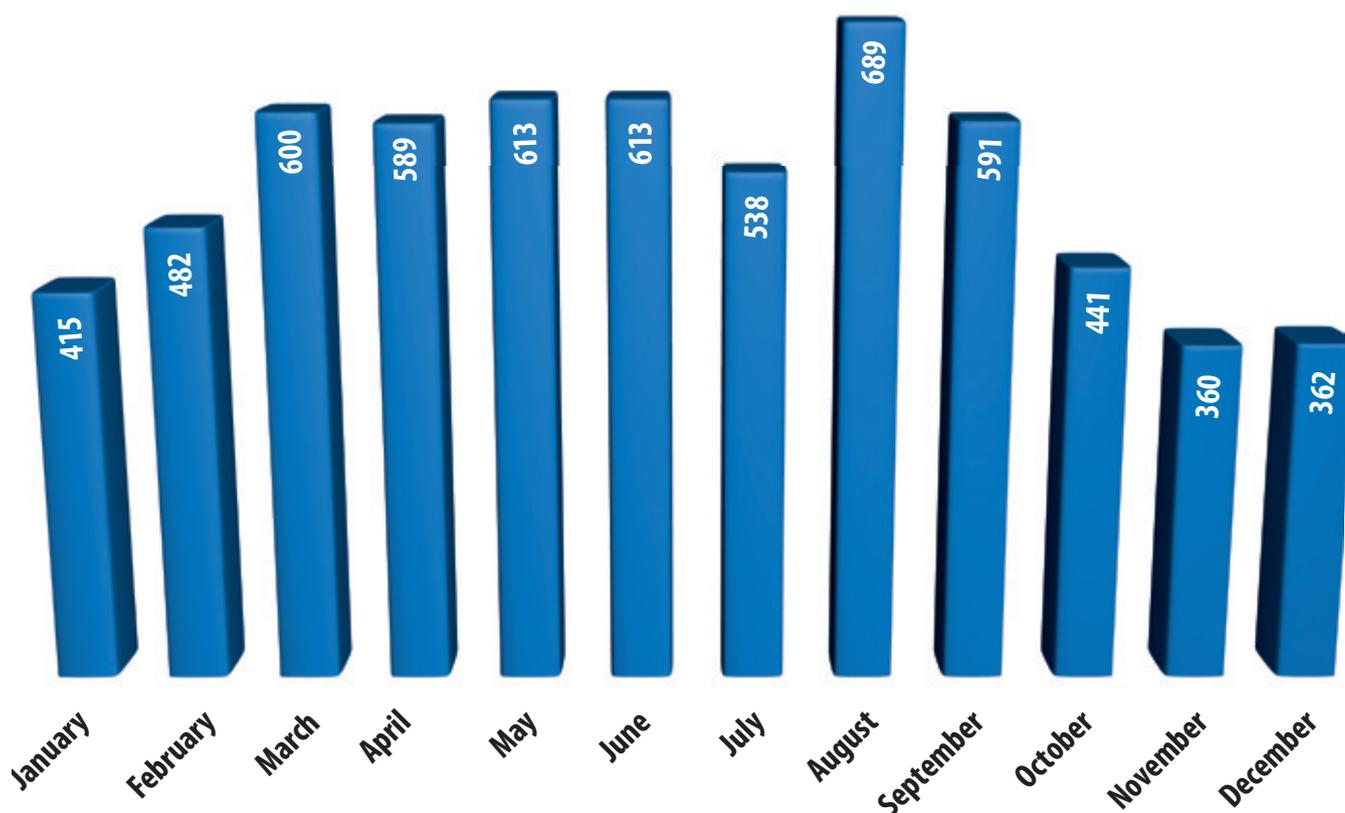
Broken down by month, the complaints submitted by economic operators and registered with N.C.S.C. in 2011 has evolved as it follows:

- January 415
- February 482
- March 600
- April 589
- May 613
- June 613
- July 538
- August 689
- September 591
- October 441
- November 360
- December 362



### THE EVOLUTION OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS

Studying the evolution of complaints submitted by economic operators in 2011, a 20.01% decrease in the number of complaints formulated compared to the previous year has been noted.



#### THE EVOLUTION OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS WITH N.C.S.C. IN 2011 COMPARED TO 2010

The decrease was due, on the one hand, to the low number of procedures initiated in the Public Acquisition Electronic System (S.E.A.P.), but also to legislative changes that have diminished the traders "appetite" to lodge complaints:

- the coercion of the contracting authority to transfer tender documentation for evaluation to the National Authority for Regulating and Monitoring Public Procurement (N.A.R.M.P.P.) prior to submission for publication of the call/participation notice;

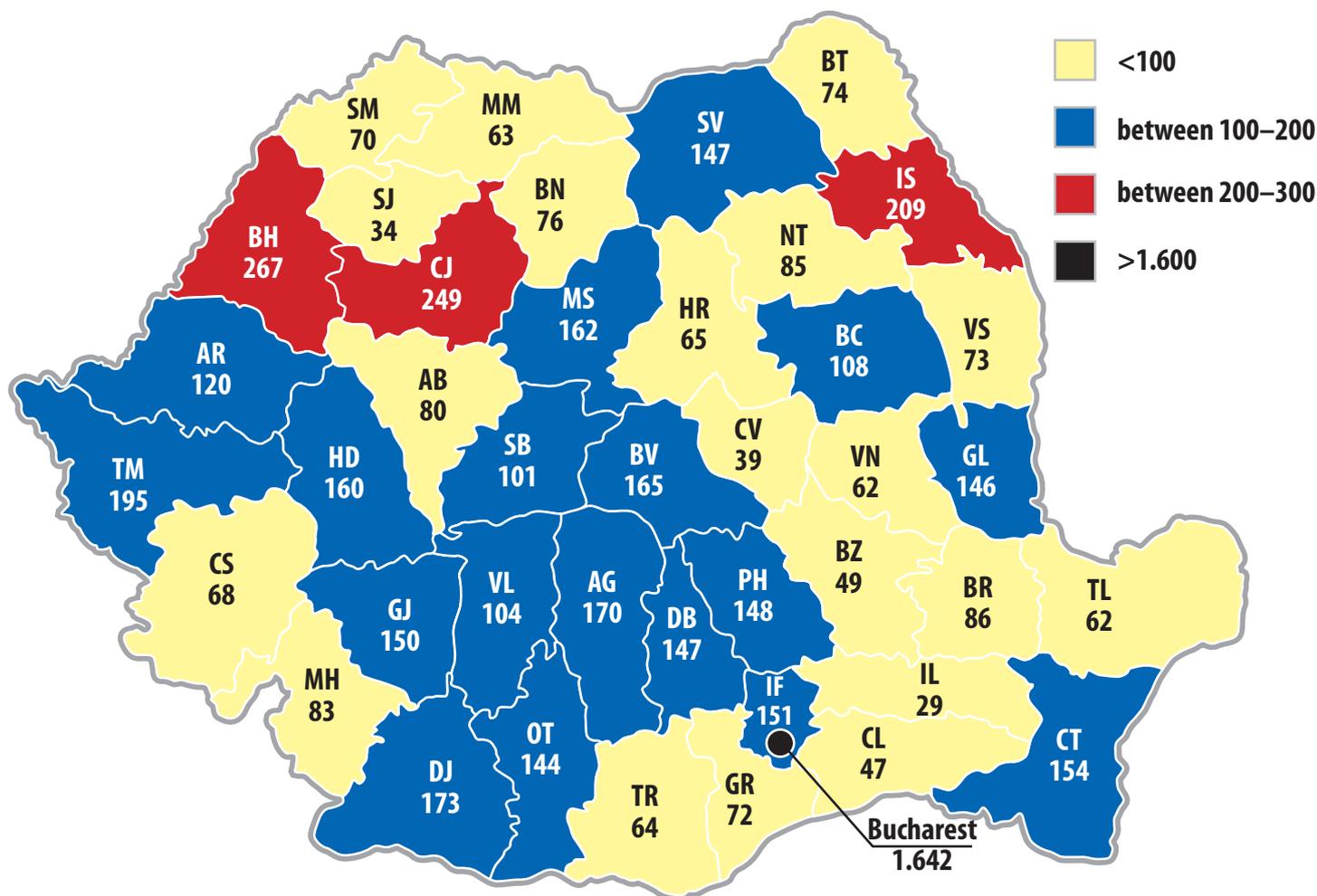
- publication in the Official Gazette of Romania no. 453/02.07.2010 of G.E.O. no. 76/2010 – which amended and supplemented G.E.O. no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts – which provides, in Art. 278<sup>1</sup>, aligned 1, that "If the Council rejects the appeal, the contracting authority will keep of the guarantee of participation in relation to the estimated contract value of the appellant, the following amounts:

- a) between 63,000 RON and 420,000 RON inclusively - 1% of this value;
- b) between 420,001 RON and 4,200,000 RON inclusively - 4,200 RON + 0.1% of what exceeds 420,001 RON;
- c) between 4,200,001 RON and 4,200,001 RON inclusively - 7,980 RON + 0.01% of what exceeds 4,200,001 RON;
- d) from 42,000,001 RON and 42,000,001 RON inclusively - 11 760 RON + 0.001% of what exceeds 42,000,001 RON;
- e) between 420,000,001 RON and 4,200,000,000 RON inclusively - 15,540 RON + 0.0001% of what exceeds 420 000 001 RON;



f) over 4,200,000,001 RON - 19,320 RON+ 0.00001% of what exceeds RON 4,200,000,001 RON.;

In terms of distribution by territorial-administrative units (UAT), the number of complaints submitted by economic operators has evolved in 2011 as follows:



**DISTRIBUTION BY TERRITORIAL UNITS-ADMINISTRATIVE OF THE COMPLAINTS FORMULATED BY ECONOMIC OPERATORS IN 2011**

UAM	Complaints no.	UAM	Complaints no.	UAT	Complaints no.	UAT	Complaints no.
BUCURESTI	1642	ILFOV	151	SIBIU	101	HARGHITA	65
BIHOR	267	GORJ	150	BRAILA	86	TELEORMAN	64
CLUJ	249	PRAHOVA	148	NEAMT	85	MARAMURES	63
IASI	209	DAMBOVITA	147	MEHEDINTI	83	TULCEA	62
TIMIS	195	SUCEAVA	147	ALBA	80	VRANCEA	62
DOLJ	173	GALATI	146	BISTRITA NASAUD	76	BUZAU	49
ARGES	170	OLT	144	BOTOSANI	74	CALARASI	47
BRASOV	165	ARAD	120	VASLUI	73	COVASNA	39
MURES	162	BACAU	108	GIURGIU	72	SALAJ	34
HUNEDOARA	160	VALCEA	104	SATU MARE	70	IALOMITA	29
CONSTANTA	154			CARAS SEVERIN	68		

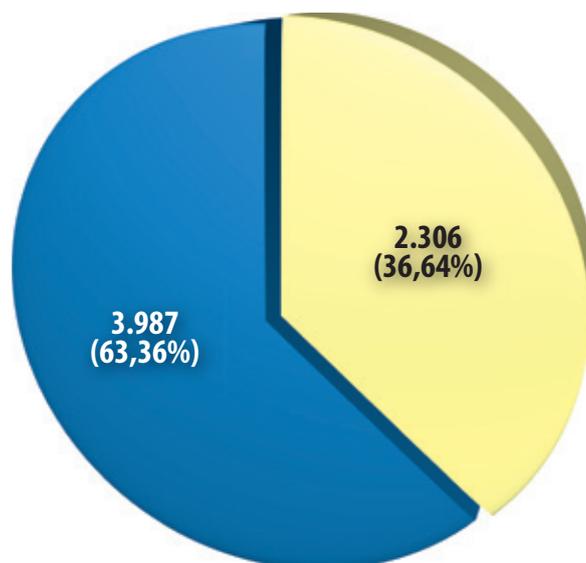
In respect to the number of complaints raised by economic operators in the public procurement procedures financed from European funds, it must be noted that they numbered



2.306, which represents a rate of 36.64% of the total number of complaints formulated to Council during 2011.

The remaining complaints formulated (3987), i.e. 63.36% of the total number of complaints formulated by economic operators at CNSC targeted public procurement procedures was financed from domestic public funds.

- Complaints formulated during the public procurement procedures financed by european funds
- Complaints formulated during the public procurement procedures financed by public (central/local) funds

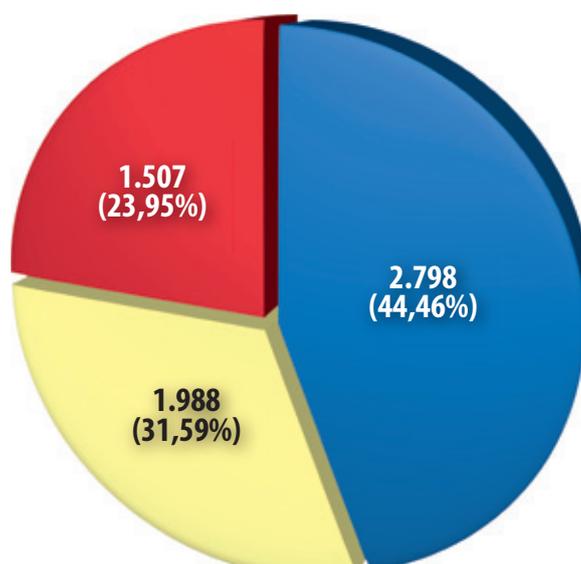


**SITUATION OF COMPLAINTS FORMULATED BY ECONOMIC OPERATORS DEPENDING ON THE SOURCE OF FUNDS FINANCING THE PUBLIC PROCUREMENT PROCEDURES.**

In respect to the complaints formulated by economic operators depending on what the public procurement contract covers, the situation has evolved as it follows:

- public procurement procedures covering **execution of works** - 2.798 (44,46%);
- public procurement procedures covering **products supply** – 1.507 (23,95%);
- public procurement procedures covering **services** - 1.988 (31,59%).

- Complaints filed within certain public procurement procedures with the object of works execution
- Complaints filed within certain public procurement procedures with the object of services
- Complaints filed within certain public procurement procedures with the object of products supply



**SITUATION OF COMPLAINTS FORMULATED BY ECONOMIC OPERATORS DEPENDING ON CONTRACT TYPE**



**If we relate the number of complaints (6.293) submitted by the economic operators in 2011 and registered at N.C.S.C., to the number panels for the solving of the complaints (11) existent with the institutions, it results that during the interval of 1 January – 31 December 2011 each panel solved an average of 572 complaints (files), which meant a monthly case-load of approx. 48 files per panel of solving complaints.**

Despite the still high number of complaints (cases) raised in 2011 by economic operators, **the appeal panel of solving complaints of the Council managed to strictly comply with the terms of solving complaints, as required by article 276, paragraph 1 of G.E.O. no. 34/2006, amended and supplemented** (*"The Council has the obligation to settle the merits of the appeal within 20 days since the receipt of the public procurement file from the contracting authority, respectively within 10 days in the situation of the incidence of an exception which prevents the analysis on merits of the appeal, according to art. 278 para. (1). In duly justified cases, the deadline for settlement the appeal may be extended once for another 10 days"*).

**Overall, since its establishment and until 31st of December 2011, a total of 35.544 complaints have been formulated by economic operators at N.C.S.C.**



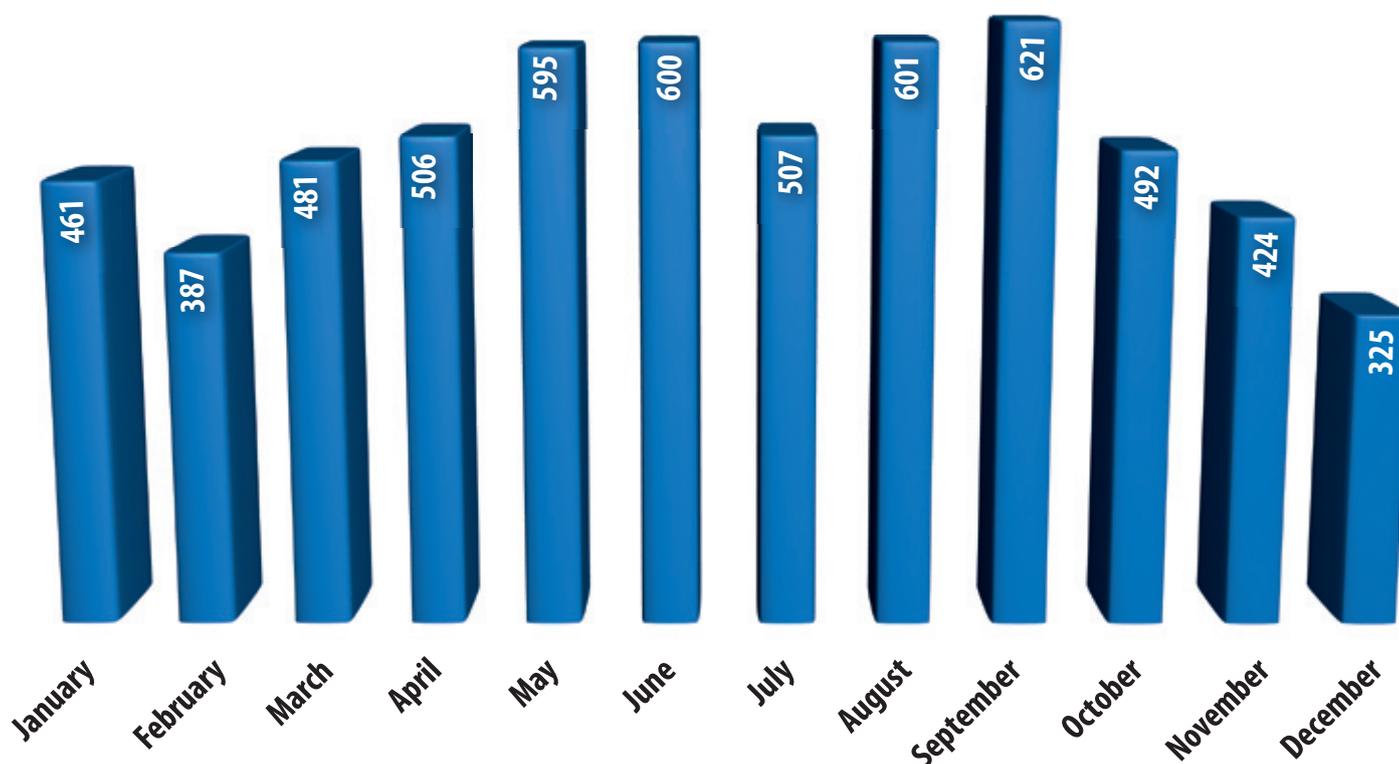
## CHAPTER 4

## THE EVOLUTION OF DECISIONS ISSUED BY THE N.C.S.C.

Between 01 January – 31 December 2011, the total number of decisions issued by the N.C.S.C. integral of solving complaints was 6.000.

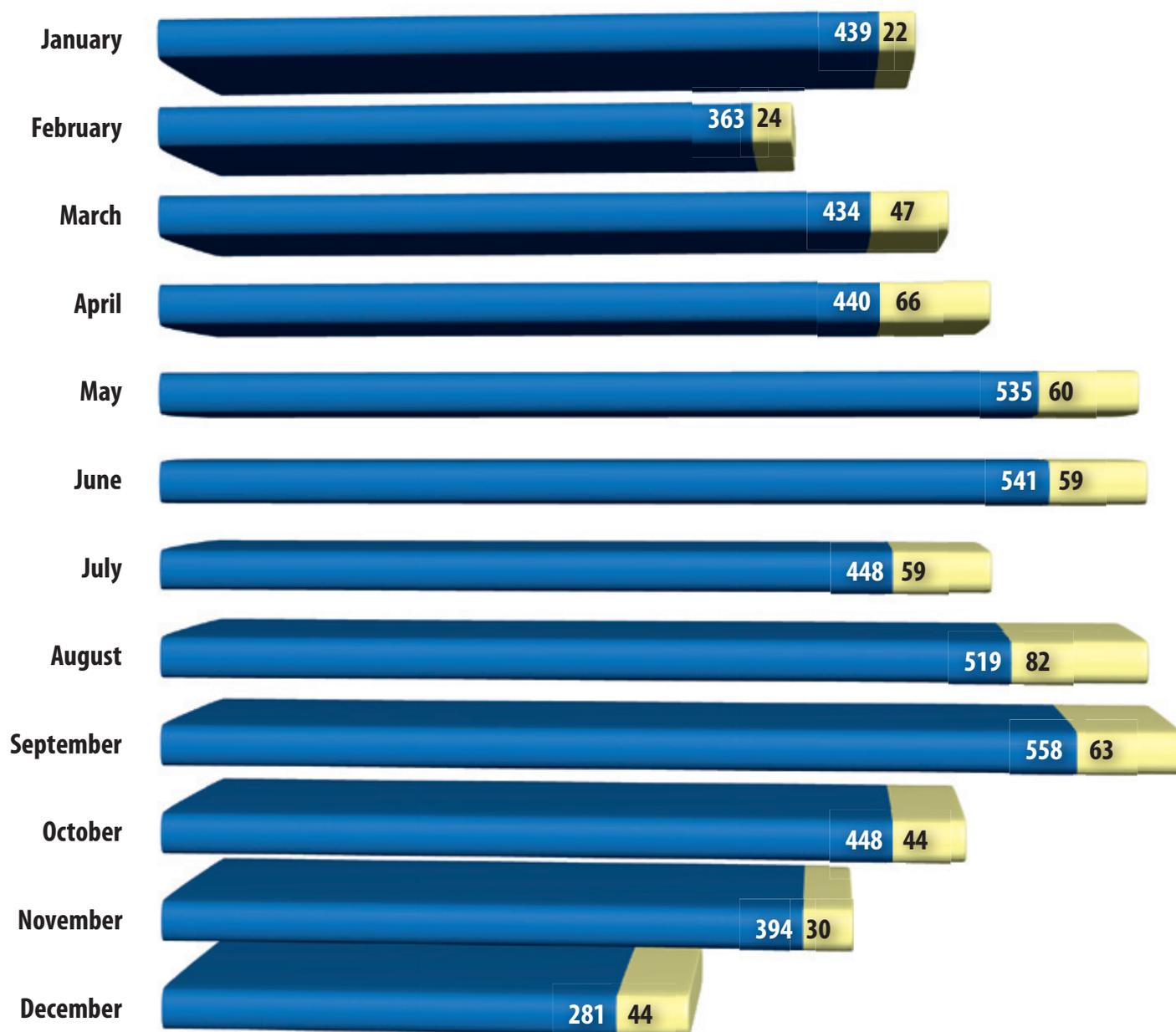
Broken down by month, the 2011 decision issuing situation has evolved as it follows:

■ January	<b>461</b>	■ July	<b>507</b>
■ February	<b>387</b>	■ August	<b>601</b>
■ March	<b>481</b>	■ September	<b>621</b>
■ April	<b>506</b>	■ October	<b>492</b>
■ May	<b>595</b>	■ November	<b>424</b>
■ June	<b>600</b>	■ December	<b>325</b>



EVOLUTION OF N.C.S.C. ISSUED DECISIONS IN 2011

Of the total number of decisions issued by the N.C.S.C. in 2011 (6.000 decisions), 599 (9.98%) were decisions to suspend the public procurement procedures until first instance decisions of the Council referring to the initial complaint, in accordance with art. 275<sup>1</sup> of G.E.O. no. 34/2006. ("(1) In duly justified cases and to prevent imminent damage, the Council, until the the settlement of the merits of the case, can order, within 3 days, at the request of the interested party, by decision, the measure of suspension of the procurement procedure; (2) The Council settles the request of suspension taking into account the consequences of such measures for all categories of interests that could be harmed, including the public interest; (3) The decision referred to in para. (1) may be appealed in the competent court, separately, within 5 days since notification").



EVOLUTION OF N.C.S.C. ISSUED DECISIONS IN 2011

Overall, since the establishment of the Council, until the 31st of December 2011, the total number of decisions issued by the institution was 30.654.



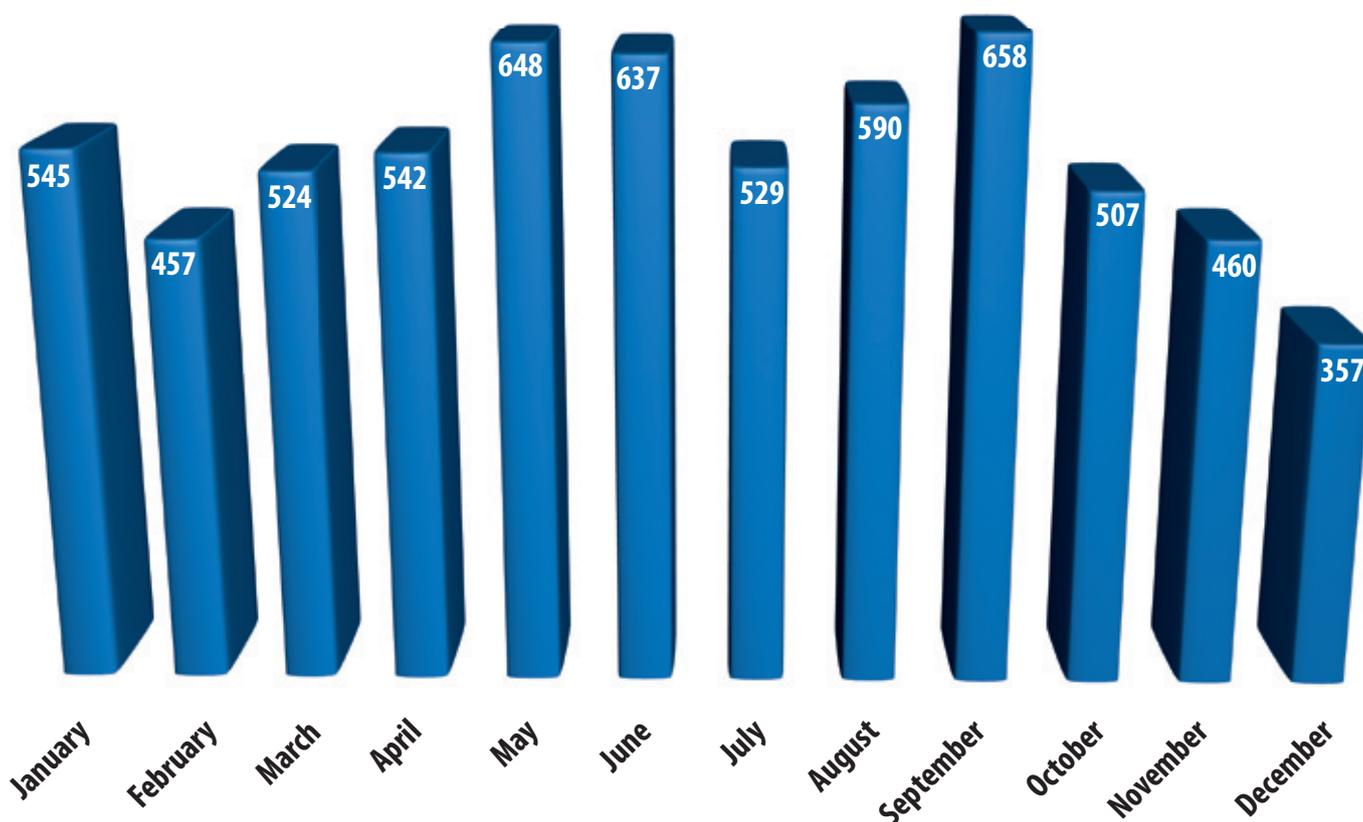
## CHAPTER 5

### EVOLUTION OF FILES RESOLVED BY THE N.C.S.C.

Throughout 2011, **the panels of solving complaints within the N.C.S.C. issued 6.000 decisions**, which means that, within the above mentioned time frame, **6.454 files were resolved**.

The annual evolution of file resolving by the panels of solving complaints within the Council is presented as it follows:

■ January	<b>545</b>	■ July	<b>529</b>
■ February	<b>457</b>	■ August	<b>590</b>
■ March	<b>524</b>	■ September	<b>658</b>
■ April	<b>542</b>	■ October	<b>507</b>
■ May	<b>648</b>	■ November	<b>461</b>
■ June	<b>637</b>	■ December	<b>357</b>



EVOLUTION OF FILES RESOLVED BY THE N.C.S.C. IN 2011

Overall, **since the establishment of the Council, until the 31st of December 2011, the total number of files resolved by the panels of solving complaints within the institution reached 35.709.**



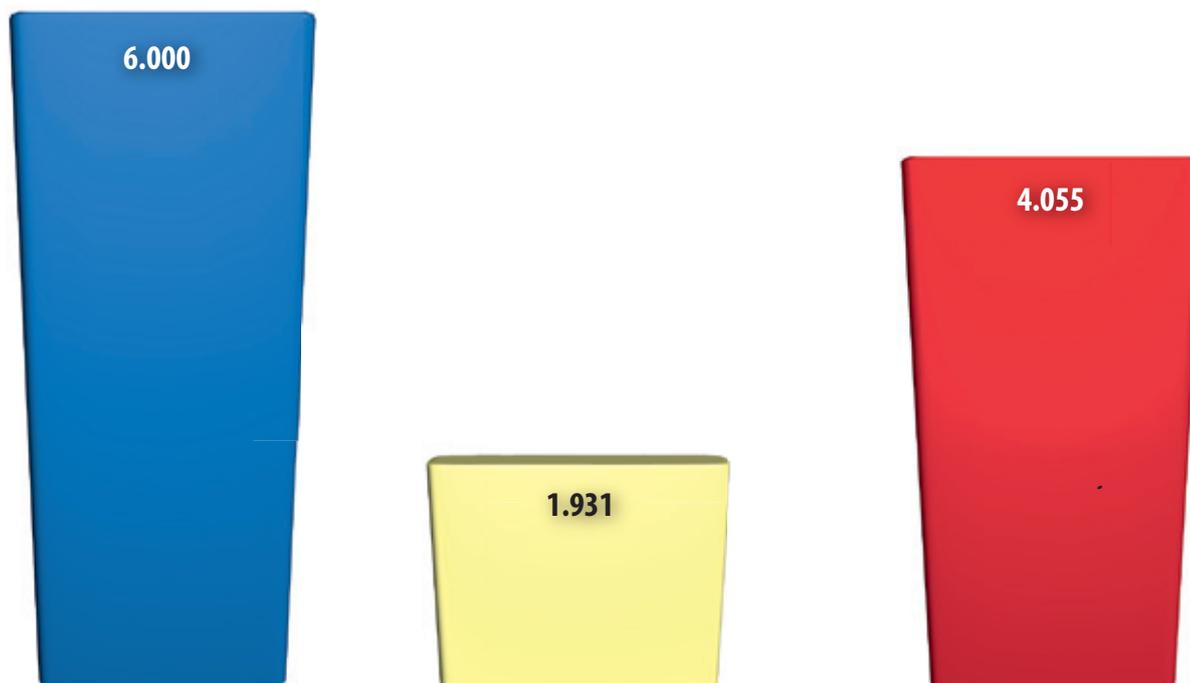
## CHAPTER 6

# THE SITUATION OF SOLVING COMPLAINTS REGISTERED AT THE N.C.S.C.

As previously stated, between 01 January - 31 December 2011, the total number of decisions issued by the panels of solving complaints within the N.C.S.C. was 6.000.

Following the complaint solving process, the Council was issued **1.931 decisions to admit the complaints and 4.055 decisions to through wich the rejection of complaints** were registered, the reasons being as follows: ungrounded, late, lacking interest, lacking object, as brought by a person without capacity or not empowered to file the appeal, as well as any other procedural or substantive exception.

- Decisions issued by N.C.S.C.
- Decisions issued by N.C.S.C. by whitch the complaint was admitted
- Decisions issued by N.C.S.C. by whitch the complaint was declined (unfounded complaint, exceptions, retractions etc)

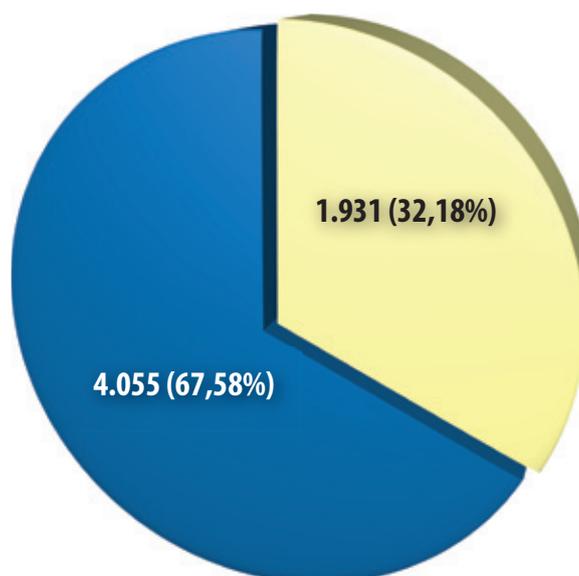


### EVOLUTION OF FILES RESOLVED BY THE N.C.S.C. IN 2011

Analyzing the figures shown above, it is apparent that as a consequence of solving complaints formulated by economic operators, **32.18% of the decisions issued by the N.C.S.C. throughout 2011 requested the admittance of the respective complaints** formulated by the economic operators, whereas **67.58% of the decisions issued by the Council** in the same timeframe requested **the rejection of the complaints** formulated by the economic operators **and the continuation of the public procurement procedures.**



- Decisions issued by N.C.S.C. by which the complaint was admitted
- Decisions issued by N.C.S.C. by which the complaint was declined



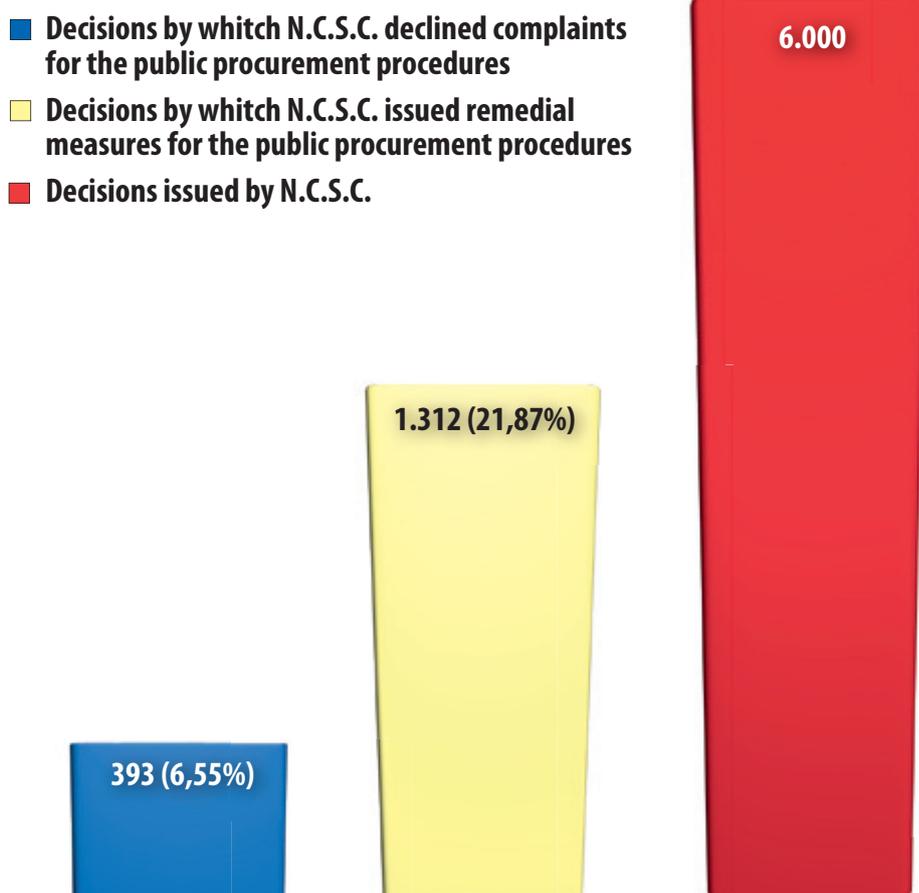
#### RESOLUTION SITUATION OF COMPLAINTS FORMULATED BY THE ECONOMIC OPERATORS IN 2011

Out of a total number of 1.931 decisions admitted by the N.C.S.C., **226 represent decisions by which the public procurement procedures were suspended until first instance decisions regarding the cause**, according to art. 275<sup>1</sup> within the amended and supplemented G.E.O. no. 34/2006.

**For the remainder of 1.705 admitted decisions - in case of 1.312 the Council requested remedial measures for the public procurement procedures, whereas for 393 decisions, the institution requested the cancellation of the public procurement procedures.**

Practically, if we are to relate the total number of decisions by which the Council requested the adoption of remedial measures regarding the public procurement procedures (1.312), to the total number of decisions issued by the Council (6.000), it becomes apparent that **the percentage of the admitted decisions which requested remedial measures was 21.87%.**

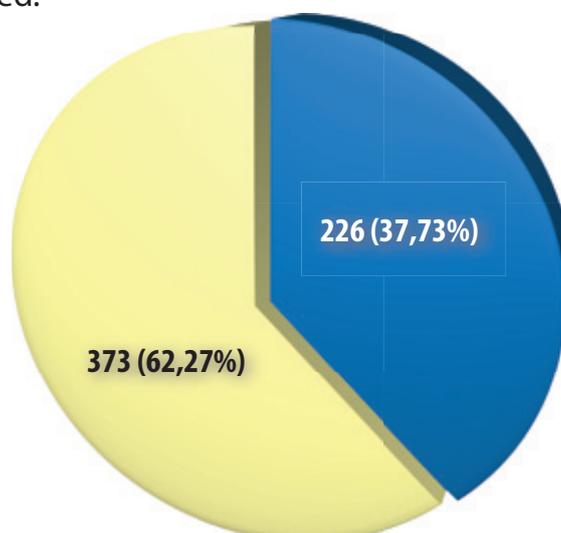
Similarly, by relating the number of admitted decisions by which the cancellation of the public procurements procedures was requested, to the total number of decisions issued by the N.C.S.C., it becomes apparent that **the percentage of the admitted decisions by which the cancellation of public acquisition proceedings was requested was 6.55%.**



MEASURES REQUESTED BY THE N.C.S.C. AS A RESULT OF COMPLAINT ADMITTANCE

Out of the 599 decisions by which the N.C.S.C. requested the suspension of the public procurement procedure until a first instance ruling on the complaint, in the case of 226 (37.73%) of them the complaint formulated by economic operators was admitted - for the purposes of the suspension of the public procurement procedure, whereas for 323 (62.27%) of them, the rejection of the complaint to suspend the public procurement procedure formulated by the economic operators was ruled.

- Decisions for suspension of the public procurement procedure issued by N.C.S.C.
- Decisions for declining the public procurement procedure issued by N.C.S.C.



RESOLUTION SITUATION OF THE PUBLIC PROCUREMENT PROCEDURE SUSPENSION REQUESTS FORMULATED BY ECONOMIC OPERATORS IN 2011

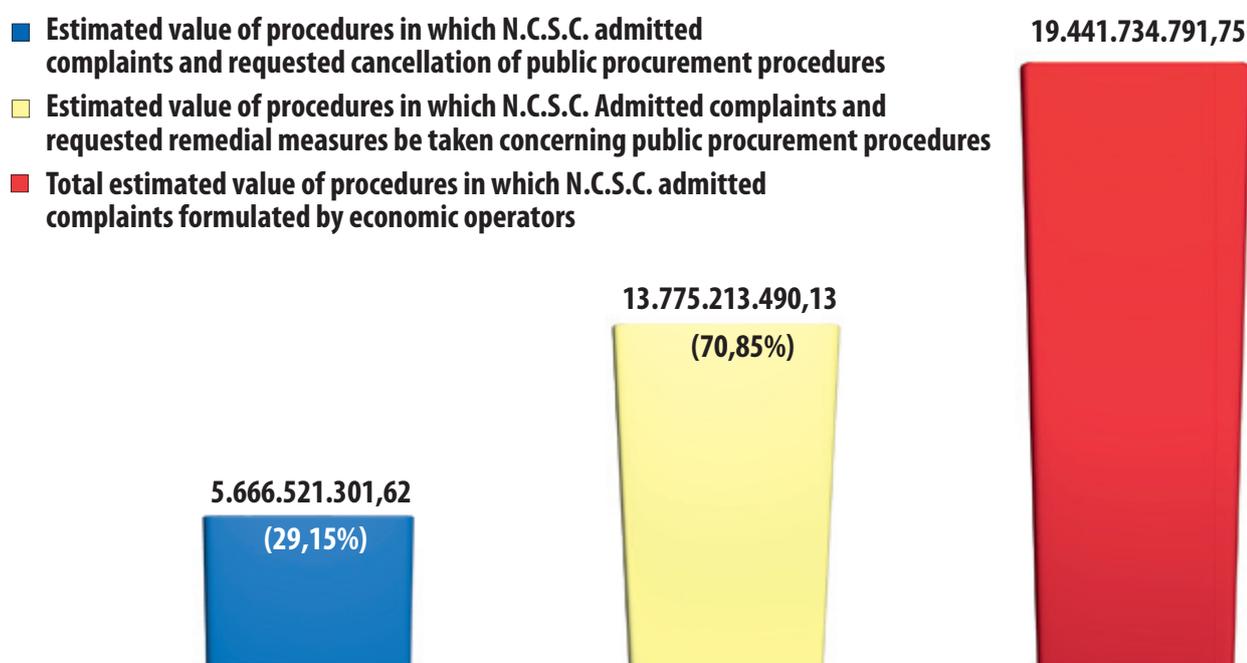


## CHAPTER 7

## ESTIMATED VALUE OF THE PUBLIC PROCUREMENT PROCEDURES IN WHICH THE N.S.C.S. ISSUED COMPLAINT ADMITTANCE/REJECTION DECISIONS

In 2011, the N.C.S.C. issued decisions regarding various public procurement procedures of a total estimated value of 57.611.041.095,05 RON, the equivalent of 13.594.242.689,78 EURO (\*the amount was calculated based on an annual average rate issued by the N.B.R. of 4,2379 RON/EURO). In regard to the value, in 2011 the total estimate value of the procedures in which had been issued admittance of the decisions of the complaints formulated by the economic operators by the Council was 19.441.734.791,75 RON, the equivalent of 4.587.586.963,29 EURO (\*the amount was calculated based on an annual average rate communicated by the N.B.R. of 4,2379 RON/EURO). Throughout 2011, the total estimated value of the procedures for which the N.C.S.C. issued rejection decisions for the complaints formulated by the economic operators was 38.169.306.303,30 RON, the equivalent of 9.006.655.726,49 EURO.

Out of the total estimate value of the procedures for which complaint admittance decisions were issued, the estimated value of public procurement procedures for which the Council requested cancellation was 5.666.521.301,62 RON, the equivalent of 1.337.105.949,08 EURO, while the estimated value of the public procurement procedures for which remedial measures were requested was 13.775.213.490,13 RON, the equivalent of 3.250.481.014,21 EURO.



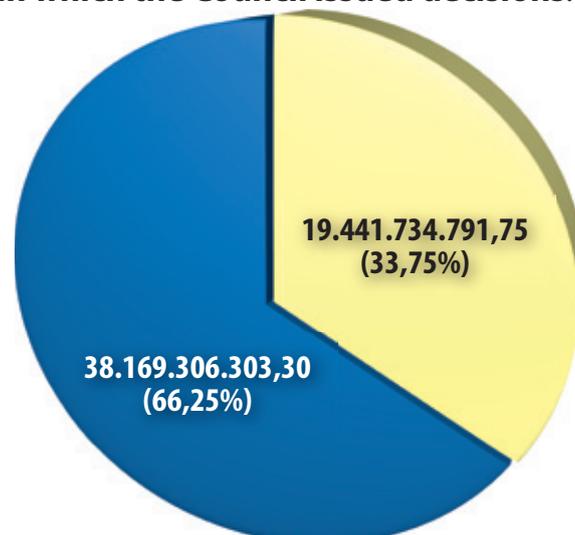
### TOTAL ESTIMATED VALUE OF PUBLIC PROCUREMENT PROCEDURES FOR WHICH THE N.C.S.C. ISSUED ADMITTANCE DECISIONS REGARDING COMPLAINTS FORMULATED BY ECONOMIC OPERATORS IN 2011

Practically, in 2011 the total estimated value of public procurement procedures for which the N.C.S.C. issued admittance decisions for complaints (19.441.734.791,75 RON) re-



presented 33,75% of the total estimated value of the procedures upon which the N.C.S.C. issued ruling (57.611.041.095,05 RON), whereas the value of procedures in which the Council issued rejection decisions for complaints (38.169.306.303,30 RON) represented 66,25% of the total estimated value of procedures in which the Council issued decisions.

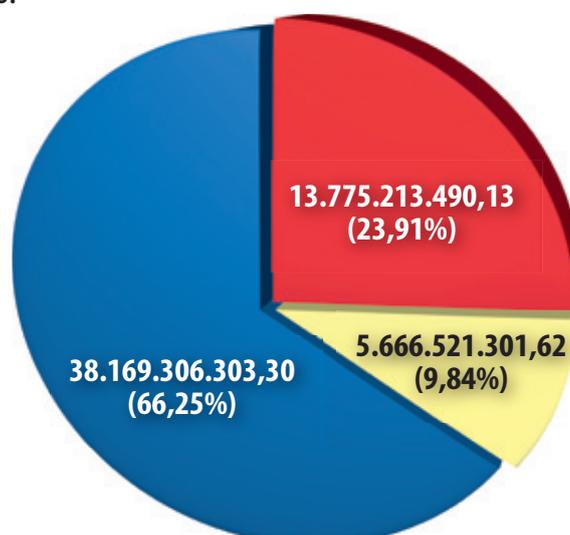
- Estimated value of procedures in which the N.C.S.C. admitted complaints formulated by economic operators
- Estimated value of procedures in which the N.C.S.C. declined complaints formulated by economic operators



**COMPARISON BETWEEN THE ESTIMATED VALUE OF THE PUBLIC PROCUREMENT PROCEDURES IN WHICH THE N.C.S.C. ADMITTED COMPLAINTS AND THE ESTIMATED VALUE OF THE PUBLIC PROCUREMENT PROCEDURES IN WHICH REJECTION OF COMPLAINT WAS RULED (RON)**

If we relate the estimated value of the procedures in which the N.C.S.C. requested the cancellation of the public procurement procedures (5.666.521.301,62 RON), to the total estimated value of the procedures in which the N.C.S.C. issued decisions in 2011 (57.611.041.095,05 RON), we observe that the value represents 9.83%. If we relate the estimated value of the procedures in which the N.C.S.C. requested remedial measures be taken for the public procurement procedures (13.775.213.490,13 RON) to the total estimated value of the procedures in which the N.C.S.C. issued decisions in 2011 (57.611.041.095,05 RON), we observe that the value represents 23,91%.

- Estimated value of procedures in which N.C.S.C. admitted complaints and requested remedial measures
- Estimated value of procedures in which N.C.S.C. admitted complaints and requested cancellation
- Estimated value of procedures in which N.C.S.C. declined complaints



**COMPARISON BETWEEN THE TOTAL ESTIMATED VALUE OF THE PROCEDURES IN WHICH THE N.C.S.C. REQUESTED REMEDIAL MEASURES / CANCELLATION OF THE PROCEDURES AND THE TOTAL ESTIMATED VALUE OF PROCEDURES FOR WHICH COMPLAINTS WERE REJECTED (RON)**



## CHAPTER 8

# ESTIMATED VALUE OF THE PROCEDURES IN WHICH THE N.C.S.C. HAS ISSUED DECISIONS OF ADMITTANCE OF COMPLAINTS, COMPARED TO THE ESTIMATED VALUE OF PROCEDURES INITIATED WITHIN THE S.E.A.P.

The official data provided by the **Public Procurement Electronic System (S.E.A.P.)** shows that in 2011, within the communications platform used for the public procurement contract assignment process, **28.597 public procurement procedures were initiated** (12.795 - ONLINE procedures and 15.802 - OFFLINE procedures), having a total **estimated value of 71.349.308.543,61 RON, the equivalent of 16.836.005.697,07 EURO** (*\*the amount was calculated based on an annual average rate communicated by the N.B.R. of 4,2379 RON/EURO*).

By comparing the total estimated annual value of the procedures initiated within 2011 in the S.E.A.P. (71.349.308.543,61 RON) and the total estimated value of the procedures in which the N.C.S.C. issued decisions (57.611.041.095,05 RON), it becomes apparent that the latter represents **80.74%** of the total estimated value of procedures initiated within the S.E.A.P.

If however, we compare the total estimated annual value of the procedures initiated within 2011 in the S.E.A.P. (71.349.308.543,61 RON) with the total estimated value of the procedures for which the N.C.S.C. admitted complaints formulated by economic operators and requested remedial measures / cancellation of the procedures (19.441.734.791,75 RON), it becomes apparent that the latter represented **27.25%** of the total estimated value of the procedures initiated within the S.E.A.P.

Further more, if we relate the total estimated annual value of the procedures initiated within 2011 in the S.E.A.P. (71.349.308.543,61 RON) to the total estimated value of the procedures for which the N.C.S.C. had issued admittance decisions for the complaints formulated by economic operators and requested the deployment of certain measures, we observe the following aspects:

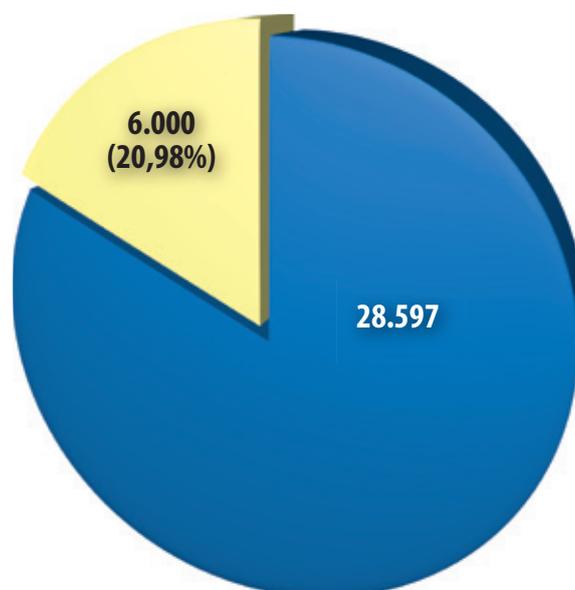
- the estimated value of the procedures for which the N.C.S.C. requested remedial measures was 13.775.213.490,13 RON (**19,31%** of the total estimated value of procedures initiated within the S.E.A.P.);

- the estimated value of the procedures for which the N.C.S.C. requested cancellation was 5.666.521.301,62 RON (**7,94%** of the total estimated value of the procedures initiated within the S.E.A.P.).

Comparing the total number of decisions issued by the N.C.S.C. in 2011 (6.000) with the total number of procedures initiated within the S.E.A.P. (28.597), it becomes apparent that **our institution issued decisions in the case of 20.98% of the procedures undertaken within the given timeframe on the electronic communications platform used in the public procurement contract assignment process.**



- Total number of procedures undertaken in S.E.A.P.
- Total number of decisions issued by N.C.S.C



**COMPARISON BETWEEN THE TOTAL NUMBER OF DECISIONS ISSUED BY THE N.C.S.C. AND THE NUMBER OF PROCEDURES UNDERTAKEN IN THE S.E.A.P. IN 2011**

**In 2010, 50.454 procedures were initiated within the S.E.A.P., with a total estimated value of 80.105.126.944,47 RON, the equivalent of 19.027.798.034,269 EURO (\*the amount was calculated based on an annual average rate issued by the N.B.R. of 4,2379 RON/EURO).**

**Thus, in comparison with 2010, throughout 2011 the number of the procedures initiated within the S.E.A.P. dropped from a numerical standpoint by 43.32% (21.857 procedures), and related to value, a 10.93% drop was registered (8.755.818.400, 86 RON).**

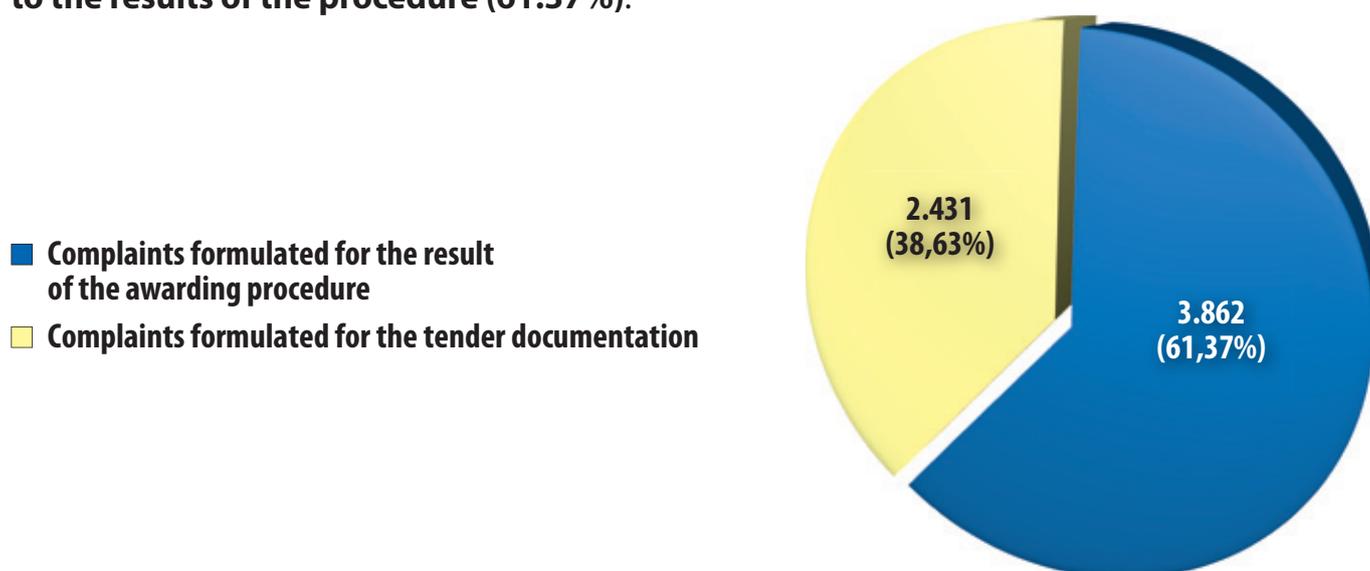
In 2010, the total estimated value of the procedures for which the N.C.S.C. admitted complaints formulated by the economic operators and for which the Council requested remedial measures / cancellation of procedures was 39.924.832.993,83 RON, which represented 49,84% of the total estimated value of procedures undertaken in the S.E.A.P.



## CHAPTER 9

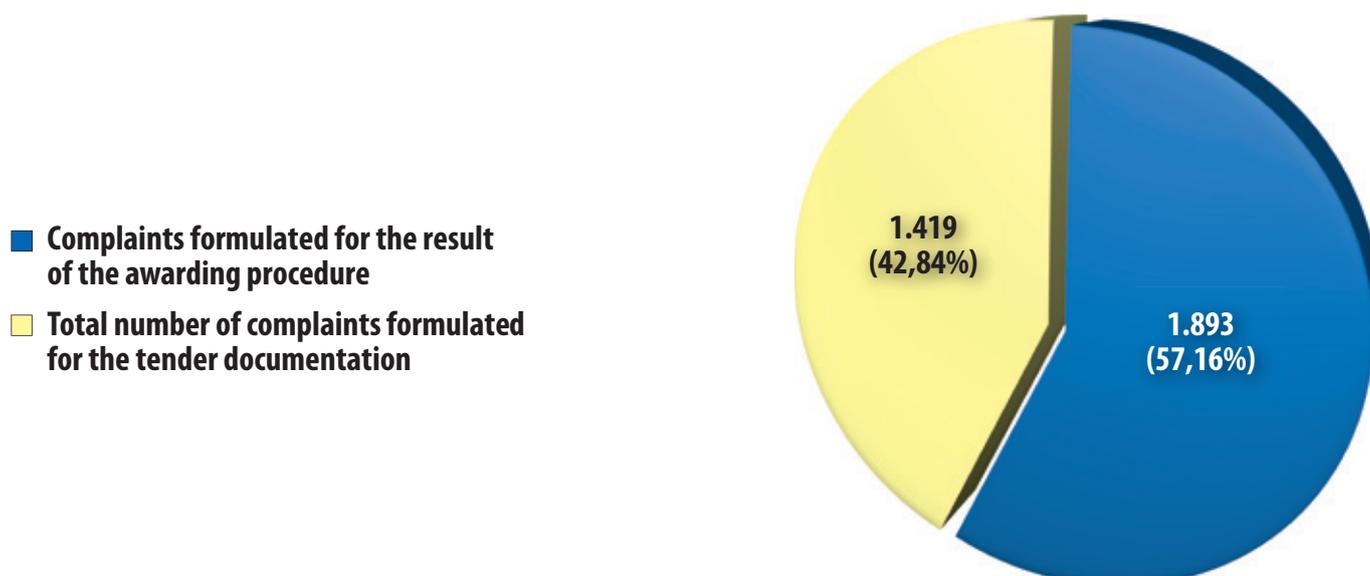
## THE OBJECT OF THE COMPLAINTS FORMULATED BY ECONOMIC OPERATORS

Analysing the object of the complaints formulated by economic operators at the NATIONAL COUNCIL FOR SOLVING COMPLAINTS in 2011 (6.293), we observed that a number of **2.431** has referred to the assignment documentation (38.63%) while **3.862** of them has referred to the results of the procedure (61.37%).



### THE OBJECT OF COMPLAINTS FORMULATED BY THE ECONOMIC OPERATORS WITH THE N.C.S.C. IN 2011

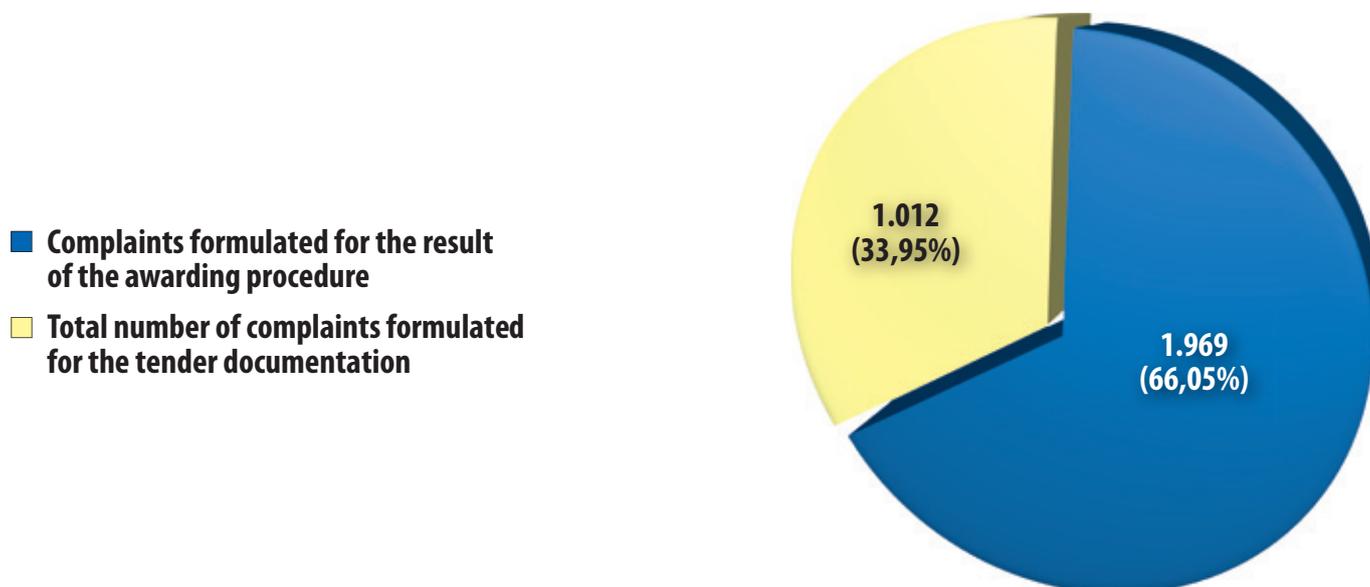
During the first semester of 2011, out of the **3.312** complaints formulated by the economic operators and registered at the N.C.S.C., **1.419** (42.84%) has referred to the assignment documentation and **1.893** (57.16%) has referred to the result of the procedures.



### OBJECT OF COMPLAINTS FORMULATED BY ECONOMIC OPERATORS BETWEEN 01 JANUARY – 31 JUNE 2011

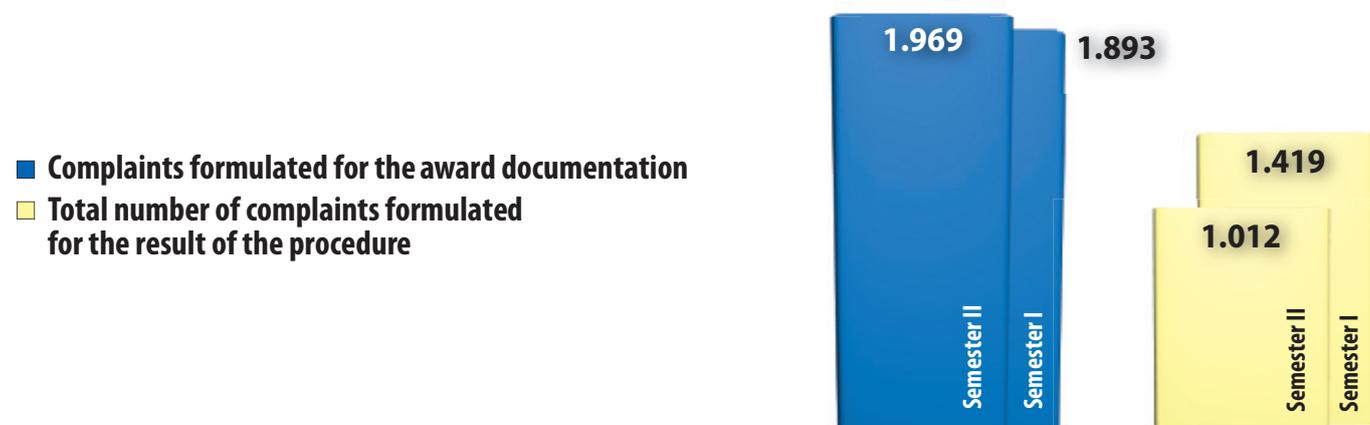


During the second semester of 2011, out of 2.981 complaints formulated by the economic operators and registered at the N.C.S.C., 1.012 (33.95%) has referred to the assignment documentation and 1.969 (66.05%) has referred to the result of the procedure.



#### THE OBJECT OF COMPLAINTS FORMULATED BY THE ECONOMIC OPERATORS BETWEEN 01 JULY – 31 DECEMBER 2011

Analysing the object of complaints formulated with the N.C.S.C. it is obvious that with the coming into force of Government Decision no. 801/2011 (see the NOTE) the number of complaints formulated by the economic operators regarding the assignment documentation showed a 28.68% drop (-407 complaints) during the second semester of 2010, compared to the previous period.



#### THE OBJECT OF COMPLAINTS FORMULATED BY THE ECONOMIC OPERATORS IN 2011 (SEMESTRAL EVOLUTION)

Making an analysis of the most frequent aspects denounced by the economic operators formulated at the award documentations it was noticed that these target the following:



- qualification requests imposed by the contracting authorities – considered as disproportionate in relation to the nature and objects of contracts;
- requests of the evaluation factors used by the contracting authorities;
- award criteria used by the contracting authorities

**Concerning the most frequent aspects denounced by the economic operators within the formulated complaints at the result of the procedure** it was observed that these targeted the following:

- the evaluation method and designation of the winning declared offers;
- pointing the offers;
- the methods used to qualify some bidders;
- lack of some legal reasons from the contracting authorities in the moment of rejecting some offers.

• **NOTE:** Government Decision no. 801/2011 is a legislative act implemented with the purpose of eliminating the criteria by which the participation of the economic operators in certain public procurement procedures is directed / restricted. The document enables N.A.R.M.P.P. to evaluate the assignment documentation via the Public Procurement Electronic System (S.E.A.P), prior to the publication of the invitation/participation announcement. The N.A.R.M.P.P. evaluation targets the assignment documentation's compliance with the applicable public procurement legislation, assignment documentation which falls under the incidence of the provisions stated within the G.E.O. no 34/2006. To this end, Government Decision no. 801/2001 forces the S.E.A.P. operator, prior to the publication of the invitation/participation announcement, to provide N.A.R.M.P.P. with exclusive, immediate and unrestricted access to the assignment documentation and supporting notes provided within public procurement legislation, uploaded entirely by the contracting authorities and certified with electronic signatures.

The legislative act states that, within a maximum of 14 days from receiving the documentation via S.E.A.P., N.A.R.M.P.P. is obliged:

- to issue the acceptance regarding the initiation of assignment procedures to the contracting authority, if the provisions within the assignment provisions are in compliance with public procurement legal provisions;
- to inform the contracting authority of found nonconformities within the assignment documentation and of the reason for which the said documentation does not meet the legal provisions concerning the public procurement.



## CHAPTER 10

# SITUATION OF THE DECISIONS ISSUED BY THE N.C.S.C. AND MODIFIED BY THE APPEAL COURTS AS A RESULT OF THE DEPOSED COMPLAINTS BY ECONOMIC OPERATORS / CONTRACTING AUTHORITIES

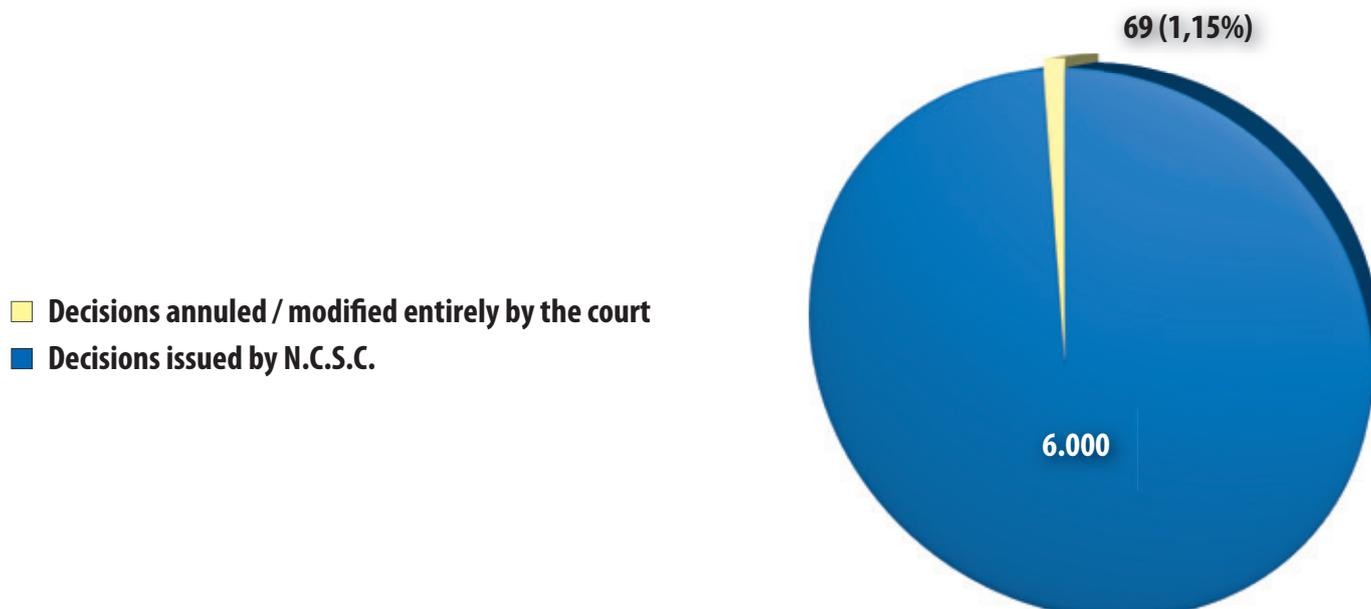
In continuance of the complaints of the economic operators being solved by the Council, in conformity with the article 281, 1st paragraph of the G.E.O. no 34/2006, amended and supplemented by G.E.O. no 76/2010, **the Council's decisions regarding the complaint resolution may be appealed to Court provided in the article 283, 1st paragraph**, within the same normative act, **within 10 days from communication**, for reasons of illegality as well as for groundlessness.

According to the legislation in force, a complaint against N.C.S.C. may be initiated either by the contracting authority, or by one or more economic operators, participants in a procedure, or by the contracting authority together with one or more economic operators involved in a public procurement procedure.

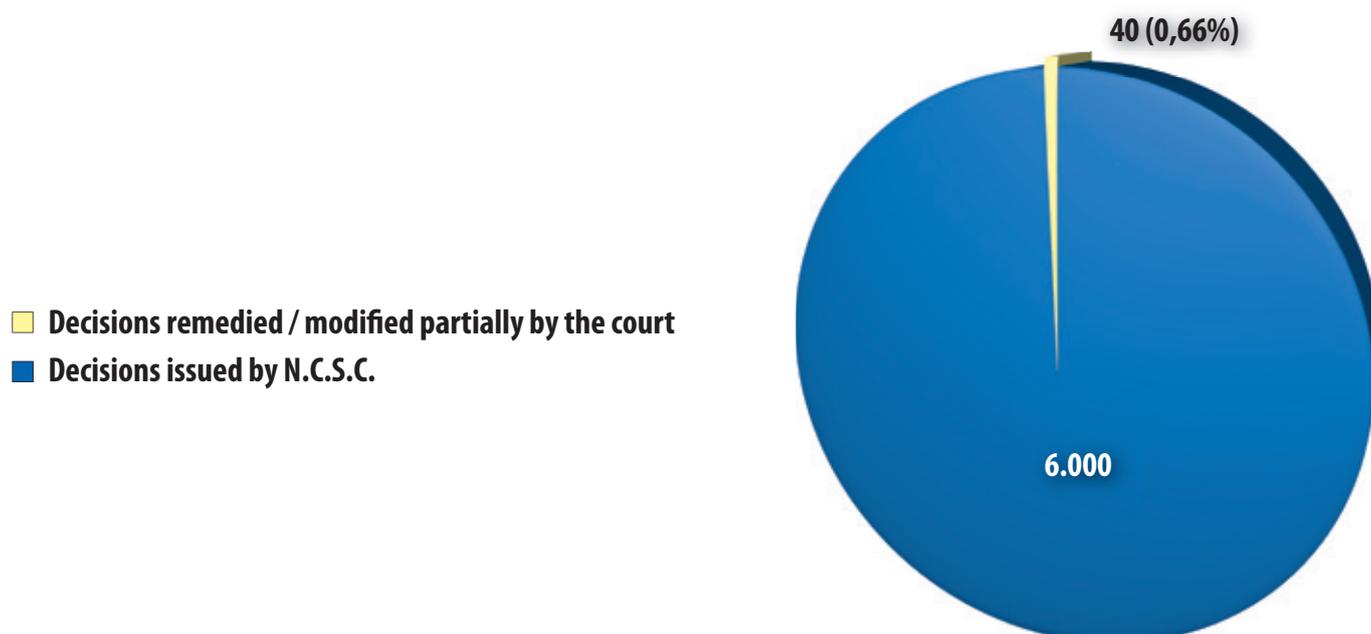
For this reason, more complaints against a decision issued by the N.C.S.C., are often registered in Court, respectively the competent Appeal Court, within the administrative territorial jurisdiction of the contracting authority.

During the year **2011**, from the total number of **6.000 decisions** issued by the N.C.S.C., a number of **763 (12,72%) decisions have been appealed within the competent Appeal Courts within the administrative territorial jurisdiction of the contracting authority.**

As a result of complaints formulated by the economic operators / the contracting authorities to the competent Appeal Courts, within the administrative territorial jurisdiction of the contracting authority, **only 69 decisions issued by the N.C.S.C. were invalidated (annulled /modified entirely) by the Courts (1,15% of the total number of the decisions issued by the Council)** and **only 40 were remedied / modified partially (0,66% of the total number of the decisions issued by the Council).**



THE NUMBER OF THE DECISIONS TOTALLY INVALIDATED (ANNULLED / MODIFIED ENTIRELY) BY THE COURTS



#### THE NUMBER OF THE DECISIONS REMEDIED / MODIFIED PARTIALLY BY THE COURTS

Practically, **during the year 2011**, a number of **5.931 decisions issued by the Council (98,85% of the total number of the decisions issued during the year 2011) have remained permanent and irreversible in the form issued by our institution**, a fact that bestows upon our institution **a very high credibility rank**.

If we add up the decisions issued by the N.C.S.C. in 2011 (6.562) and 2012 (6.000) and we compare them to the decisions annulled /modified entirely by the competent Appeal Courts as a consequence of the complaints of the economic operators / the contracting authorities (2010 – 97; 2012 – 69) during those years, one can notice that **between 1 of January 2010 and 31 December 2011 a number of 12.396 decisions issued by our institution (98,68%) have remained permanent and irrevocable**.

If we are to subtract from the total number of decisions issued by N.C.S.C. from the moment of its foundation until 31 December 2011 (30.654 decisions), the number of decisions appealed before the Appeal Court, admitted and totally / partially annulled / modified (547 decisions), one can notice that the **Council managed to issue, within the mentioned amount of time, 30.107 decisions that have remained permanent and irrevocable (98,21% of the total number of decisions issued by the institution)**.

At this point we specify that although the contracting authorities and the economic operators are aware of the fact that over **98% of the decisions issued by the N.C.S.C.**, according to the 20 day terms stipulated in the G.E.O. no. 34/2006, **remain definitive and irrevocable even when appealed at the Appeal Court**, there are, however, public officials / economic operators who, for various reasons, understand to formulate complaints against the acts issued by the Council, causing an illegitimate delay of the various procedures of public acquisition.

Due to the total independence of the Council, but also to the profile and the expertise of its employees, the quality of the performance of our institute and the celerity with which the disputes formulated by the economic operators were settled (*note - within the deadline of 20 days stipulated in G.E.O. no 34/2006, amended and supplemented*) will continue to be the fundamental elements to define our performance also in 2012.



## CHAPTER 11

# INSTITUTIONAL TRANSPARENCY AND STAFF TRAINING

Concerned with increasing transparency, competitiveness and effectiveness regarding the public procurement market, as well as by the promotion of the best practices at a European level and by the dissemination of its own experiences in the field towards institutional partners, in 2011 the National Council for Solving Complaints has granted a special priority to the personnel training activity for preventing and deter anticompetitive practices regarding the public acquisitions.

To this effect, the N.C.S.C. displayed a great interest in the collaboration of the institutions with bodies which have responsibilities concerning the public procurement market (the Council of Competition and the National Authority for the Regulation and Monitoring Public Procurement - N.A.R.M.P.P., Unit for Coordinating and Verifying Public Procurement – Ministry of Economics and Finance (U.C.V.A.P)).

Being interested in the stability and in the coherent performance of the inland public procurement system and in the European funds absorption, the Council has sent N.A.R.M.P.P., on a weekly basis – in accordance with concluded protocols with the respective institution – the official statements regarding the evaluation terms formulated by the contracting authorities for various ongoing projects, the decisions issued by the Council and the recovery measures ordered by the afore mentioned Council as a consequence of the complaints of the economic operators.

Thanks to the cooperation protocols mentioned, N.C.S.C. helped create a general framework for the uniform application of specific legislation, also in the competition domain, which made possible the identification of possible conflicts of interest between the contracting authority and different economic operators or unfair competition due to the formation of monopolies between various economic operators.

In this context **in 2011, the N.C.S.C. notified the National Agency for Integrity (A.N.I.) about six public procurement procedures that might have some potential conflicts of interest** (the respective cases may be found within the N.C.S.C. Decisions no 1972/18.05.2011, no 2268/03.06.2011, no 3668/26.08.2011, no 4052/21.09.2011, no 4596/21.10.2011, no 4687/28.10.2011; the documents are public and can be found on the website institution – [www.cnsc.ro](http://www.cnsc.ro), section: “**Decisions 2011**”.

Interested in the continuous improvement of the staff and in the unification of the practice with the Appeal Courts, N.C.S.C. organized during 2011 a series of three workshops regarding the “Uniform application of public procurement legislation”, workshops attended by counsellors for solving the complaints in the public procurement field from the institution and judges of the Appeal Courts in Brasov, Constanta and Prahova.

In parallel, the management of Council demonstrated a particular concern for staff improvement, encouraging the participation of counsellors for solving the complaints in the public procurement field and of the technical and administrative staff to ECDL courses.

Therewith, in June 2011, following the request addressed to the N.C.S.C. by SIGMA representatives, a meeting with the representatives of the Albanian Commission for Public Procurement took place. The purpose of the Albanian delegation for visiting Romania was represented by their accommodation with the public procurement current practices in Europe due to their similarity to Romania regarding the transposition of the European directives within the framework of the



national legislation, as well as understanding how the key functions are performed by the various institutions with attributions in the public procurement. During the meeting, the national legal framework, the precise manner by which procurement by electronic means functions, as well as ex-ante and ex-post public procurement agreement conclusion control and monitoring functions were presented and discussed.

During July 2011, two counsellors for solving the complaints were appointed, together with U.E. experts and with experts from the Public Procurement Agency of the Republic of Moldova, for elaborate an “Guide based on best practices in procurement and in line with the legal provisions applicable in the Republic of Moldova”, within Module 3 - “Promoting good practice in the field of public procurement” within the framework of Twinning Project << Supporting the Public Procurement System in the Republic of Moldova (MD09/ENP-PCA/FI/05) >>.”

From mass-media and public relations standpoint, the activity undertaken by N.C.S.C. in 2011 developed into an interactive approach, meant to guarantee institutional transparency.

Besides the periodical answers supplied to the media representatives, in accordance to Law no. 544/2001 regarding the free access to public interest information, the N.C.S.C. has periodically supplied official statements with the purpose of correctly informing the public opinion on its activity.

Furthermore, at the end of the first semester of 2011, the Information and Public Relations Office issued a report concerning the activity of the institution, a document uploaded on the website of the institution ([www.cnsc.ro](http://www.cnsc.ro)) and sent via e-mail to the accredited journalists.

In parallel, in 2011, the Information and Public Relations Office, in collaboration with the IT and Statistics Office, took interest in organizing and managing the webpage of the institution, as well as the publishing of the Official Bulletin of the National Council for Solving Complaints.

In respect of the number of punctual requests of the mass-media, during 2011, the Information and Public Relations Office has received, according to the Law no. 544/2001 regarding free access to information of public interest, over 100 written requests formulated by accredited journalists or by various other individuals.

Last but not least, it bears mentioning that, with the purpose of total transparency on the subject of the activity of the N.C.S.C., the management of the institution created in 2011 a Statistics Office and undertook the necessary steps to improve an integrated IT system, actions that provided, at any given time, the interested economic operators, the public and the media with the official data concerning the complaints formulated during the public procurement procedures and decisions issued by the Council.



## CHAPTER 12

# THE N.C.S.C. BUDGET

---

The N.C.S.C. budget afferent to year 2011 was in a total amount of 8.695.000 RON and was distributed as it follows:

- **Budgetary provision for current expenses: 8.495.000 RON** of which:
  - **Staff expense: 6.970.000 RON.**
  - **Goods and services: 1.625.000 RON.**
- **Budgetary provision for equity expenses: 200.000 RON.**

N.C.S.C. budget detailed on titles and budgetary chapters is presented in **ADDENDUM no. 1**



## ADDENDUM no. 1

Cod	Denumire indicator	Approved budget Law 286/2010 updated 14.10.2011	of which 10%	Thousand RON					
				of the entire year, of which,					
				1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	of which 10%	4 <sup>th</sup> Quarter	of which 10%
5000	<b>TOTAL BUGET</b>	8.695	189	2.413	2.533	2.091	176	1.658	13
01	<b>CURRENT EXPENSES</b>	8.495	162	2.323	2.407	2.067	145	1.698	17
10	<b>TITLE I STAFF EXPENSES</b>	6.870	0	1.868	1.833	1.644	0	1.525	0
20	<b>TITLE II ASSETS AND SERVICES</b>	1.625	162	455	574	423	145	173	17
70	<b>CAPITAL EXPENDITURE</b>	200	27	90	126	24	31	-40	-4
71	<b>TITLE XII NON FINANCIAL ASSETS</b>	200	27	90	126	24	31	-40	-4
5001	<b>EXPENSES – STATE BUDGET</b>	8.695	189	2.413	2.533	2.091	176	1.658	13
01	<b>CURRENT EXPENSES</b>	8.495	162	2.323	2.407	2.067	145	1.698	17
10	<b>TITLE I STAFF EXPENSES</b>	6.870	0	1.868	1.833	1.644	0	1.525	0
20	<b>TITLE II ASSETS AND SERVICES</b>	1.625	162	455	574	423	145	173	17
70	<b>CAPITAL EXPENDITURE</b>	200	27	90	126	24	31	-40	-4
71	<b>TITLE XII NON FINANCIAL ASSETS</b>	200	27	90	126	24	31	-40	-4
5101	<b>PUBLIC AUTHORITIES AND EXTERNAL ACTIONS</b>	8.695	189	2.413	2.533	2.091	176	1.658	13
01	<b>CURRENT EXPENSES</b>	8.495	162	2.323	2.407	2.067	145	1.698	17
10	<b>TITLE I STAFF EXPENSE</b>	6.870	0	1.868	1.833	1.644	0	1.525	0
1001	<b>Salary expense in cash</b>	5.263	0	1.503	1.325	1.135	0	1.300	0
100101	<b>Basic salaries</b>	4.813		1.388	1.215	1.000		1.210	
100106	<b>Other incentives</b>	380		95	85	120		80	
100112	<b>Indemnities paid to various persons that do not belong to the institution</b>	3		0	2	1		0	
100113	<b>Delegation compensations</b>	7		0	3	4		0	
100130	<b>Other remuneration rights in cash</b>	60		20	20	10		10	
1003	<b>Contributions</b>	1.607	0	365	508	509	0	225	0
100301	<b>Social security contributions</b>	1.180		270	430	400		80	
100302	<b>Unemployment insurance contributions</b>	35		13	7	10		5	
100303	<b>Health insurance contributions</b>	360		75	65	90		130	
100304	<b>Contributions for work injury and occupational diseases</b>	12		2	1	4		5	
100306	<b>Contributions to leave and indemnities</b>	20		5	5	5		5	
20	<b>TITLE II ASSETS AND SERVICES</b>	1.625	162	455	574	423	145	173	17
2001	<b>Assets and services</b>	1.378	138	406	491	347	124	134	14
200101	<b>Office supplies</b>	70	7	10	40	10	6	10	1
200102	<b>Cleaning materials</b>	15	1	3	3	4	1	5	0
200103	<b>Heating, lighting and motive power</b>	107	11	50	40	10	10	7	1
200104	<b>Water supply, sewage and sanitation</b>	30	3	10	10	3	2	7	1
200105	<b>Fuel and lubricants</b>	10	1	0	5	5	1	0	0
200106	<b>Spare parts</b>	46	5	3	23	15	4	5	1
200108	<b>Post, telecommunications, radio, TV, internet</b>	350	35	110	110	110	33	20	2
200109	<b>Materials and functional services</b>	210	21	70	100	30	20	10	1
200130	<b>Other goods and services for maintenance and operation</b>	540	54	150	160	160	47	70	7



2002	<b>Current repairs</b>	20	2	5	10	5	2	0	0
2005	<b>Inventory items</b>	25	2	5	10	8	2	2	0
200530	<b>Other inventory items</b>	25	2	5	10	8	2	2	0
2006	<b>Travels, detachment, transfers</b>	14	1	0	2	3	0	9	1
200601	<b>Internal travels, detachment, transfers</b>	5	0	0	2	3	0	0	0
200602	<b>Travels abroad</b>	9	1	0	0	0	0	9	1
2011	<b>Books, publications and documentary materials</b>	10	1	2	2	3	1	3	0
2012	<b>Consulting and expertise</b>	0	0	0	0	0	0	0	0
2013	<b>Training</b>	55	6	1	33	21	6	0	0
2014	<b>Health and safety policy</b>	40	4	15	5	15	4	5	0
2030	<b>Other expenses</b>	83	8	21	21	21	6	20	2
203002	<b>Entertainment and representation</b>	3	0	1	1	1		0	0
203030	<b>Other expenses concerning assets and services</b>	80	8	20	20	20	6	20	2
70	<b>CAPITAL EXPENDITURE</b>	200	27	90	126	24	31	-40	-4
71	<b>TITLE XII NON FINANCIAL ASSETS</b>	200	27	90	126	24	31	-40	-4
7101	<b>Fixed assets</b>	200	27	90	126	24	31	-40	-4
710102	<b>Machines, equipment and vehicles</b>	170	24	90	56	24	24	0	0
710103	<b>Furniture, office support and tangible assets</b>	0	0	0	0	0	0	0	0
710130	<b>Other fixed assets</b>	30	3	0	70	0	7	-40	-4
5101	<b>Executive and legislative authorities</b>	8.695	189	2.413	2.533	2.091	176	1.658	13
510103	<b>Executive authorities</b>	8.695	189	2.413	2.533	2.091	176	1.658	13