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

The Council continued to promote and implement all those measures designed to lead to the disappearance of illegal practices that distort the judicious use of public money.

Foreword

One of the fundamental elements that marked the activity of National Council for Solving Complaints in 2014 was to actively contribute to the development of a efficient and reliable system of public procurement, impacting all other areas of interest of the *acquis communautaire* in the internal market. Strictly respecting the rules of the European public procurement market – in the context in which Brussels accuses Romania that this area still faces a number of deficiencies that constitute „an important source of corruption” – the Council continued to promote and implement all those measures designed to lead to the disappearance of illegal practices that distort the judicious use of public money.

Aware that the number of professionals in the field of public procurement is still insufficient for the amount of work in this area – which leads to inadequate tender documents generating a fair evaluation, and rigorous execution of public contracts – the Council acted over the past year as a filter to prevent a substantial number of existing irregularities in awarding procedures organized at national level, many of them financed by Community funds.

The fact that N.C.S.C. acted as a guarantor of equal treatment and legal access of economic operators to public resources managed by the authorities, was noted by the European Commission (EC) in its latest CVM report. This document, published earlier this year, found that in the context in which “the local authorities are particularly affected by the lack of transparency in the allocation of public funds for public procurement projects and the risks of corruption in awarding public procurement projects at local level is substantial”, the activity of the N.C.S.C. largely contributed to loss of appetite of actors in acquisitions market in committing potential acts of corruption.

The performance achieved by the Council since its establishment and up to December 31, 2014 (98.14% of the 45,070 decisions issued by our institution in this range remained final and irrevocable, as issued by our institution) confirms that that it has confirmed its role as guarantor of the rule of law within its jurisdiction.

Consistent in strengthening and improving institutional capacity to enable settlement with transparency, speed and impartiality of the complaints which is invested to solve, the Council will continue in 2015 to be a promoter of good European practices contributing to the efficiency and streamlining of public procurement contracts, especially those financed by Community funds.

1. OVERVIEW

1.1. THE ROLE AND MISSION N.C.S.C.



The National Council for Solving Complaints (N.C.S.C.) is a specific jurisdiction body (in the field of public procurements), created with the purpose of guaranteeing the compliance with the legislation by the contracting authorities, due to its primary role of remediation and, subsidiary, of cancelling the illegal designation procedures.

The Council is an administrative body, with jurisdictional attributions, of public law, which enjoys the independence required to the performance of the administrative- jurisdictional act, not being subordinated to any authority or public institution that complies with the constitutional provisions regulated by art. 21 section (4).

Although the activity performed (resolving the complaints submitted by the economic operators within the awarding procedures of the public procurement contract) leads towards the area of the judicial power – wherein, cannot be yet integrated due to its nature – this body is part of the executive-administrative power area.

According to the legal¹ provisions, the 33 members of the Council, wherefrom at least half are licensed in law, are public clerks with special status, assigned to their positions by the decision of the prime minister, at the proposal of the Council president as a result of winning a professional contest².

The main task of the Council members is to solve the complaints submitted within the awarding procedures by specialized panels formed by 3 members³.

Initially, the competence of the Council in solving the complaints submitted within the awarding procedures was limited until the moment of the contract conclusion, yet, due to the amendments occurred by Law no. 279/2011⁴ to G.E.O. no. 34/2006, this competence limitation was eliminated, reason for the Council to be able to decide on the legality of the acts released within an awarding procedure, whether it had been legally apprised, regardless if the contracting authority chose to conclude or not the public procurement contract.

According to legislation, N.C.S.C. is a Self-Regulatory Organization (SRO), approved by the Government Decision no. 1037/2011⁵. In its activity, N.C.S.C. is subject only to the law; in exercising its attributions, the Council adopts decisions, and in performing the activity, the Council ensures the coherent application of the legislation in force, according to the principles of law expressly regulated⁶: legality, expediency, contradictory and the right to a defence.

Under the provisions of art. 267, sections (1) and (2) from G.E.O. no.

34/2006, the complaints submitted by the economic operators to N.C.S.C. are electronically and randomly assigned for resolution to a panel formed by three members of the Council, wherefrom one has the quality of panel's president. Within each panel, at least the president needs to have an academic degree in law.

For the proper functioning of the institution and for the expedient resolution of the complaints submitted by the economic operators, each complaint resolution panel is assigned with technical-administrative staff with a status of contractual personnel, with legal, economic or technical educational background.

The president of the Council, chosen among the members of the Councils for a three years⁷ period, by secret vote, with an absolute majority⁸, needs to have an academic degree in law⁹ and acts as chief credit officer¹⁰.

The volume of the activity performed within N.C.S.C. is mainly reflected by the number of decisions issued and the number of files solved, while the effects/ results of the Council are reflected by the number of the decisions challenged by complaints to the Complaint Courts (in whose jurisdiction is the headquarters of the contracting authority) and the number of complaints admitted.

An aspect that must be highlighted is the fact that, aside from the activity performed in the field of public procurements based on G.E.O. no. 34/2006, the Council also has other activities/competencies such as:

- to solve by administrative-jurisdictional means the complaints submitted by any individual who considers oneself offended in his/her legal rights or in a legitimate interest by an act of the public partner, by breaching the legal provisions in the matter of public-private partnership¹¹;
- to solve by administrative-jurisdictional means the complaints submitted by any individual who considers oneself offended in his/her legal rights or in a legitimate interest by an act of the public partner, by breaching the legal provisions in the matter of public procurement contracts, including district contracts, and frame contracts assigned in the fields of defence and security¹².

Thus, in order to exercise the competences regulated by G.E.O. no. 114/2011, in force starting October 1st 2012, the NATIONAL COUNCIL FOR SOLVING COMPLAINTS become “Classified Information Holding Unit”, and therefore the following actions were taken:

- the status of the relational regime with the Security Designated Authority – SDA (Romanian Intelligence Service specialized unit) was established;
- the legal procedures within the relationship with The National Registry Office for Classified Information (ORNISS) for initiating and performing the verification procedures were executed in order to issue the security certificates/access authorizations to classified information of state;
- security certificates and authorizations for access to classified information were issued for a number of 80 people;
- measures concerning the physical protection against unauthorized access to classified information, personnel protection and information generated sources were initiated;
- the commencement of the accreditation process for the informatic security system was approved.

Considering the G.D. no. 215/2012, the Council joined the core values, principles, objectives and monitoring mechanism of the National Anticorruption Strategy 2012-2015 and adopted the sectoral plan of action within we identified our institutional vulnerabilities and risks associated with the main work processes, as well as the measures for strengthening the already existing preventive mechanisms.

During 2014, the Council actively participated to the all the meetings, work groups, sessions etc., organized by various public institutions (NARMPP, UCVPP, NAI, Competition Council etc.) for interpretation, modification and development of secondary legislation on public procurement, for the development of the national strategy on public procurement and a common practice in terms of approaching the provisions of G.E.O. no. 34/2006 and implementation of the new directives on public procurement.

1.2. HUMAN RESOURCES, MANAGEMENT AND ORGANIZATIONAL STRUCTURE

As an organizational structure, the Council operated in 2014 with a number of 33 resolution counselors in the field of public procurements under G.D. no. 1037/2011, organized in 11 complaints resolution panels in the field of public procurements.

In the organigram of the Council 55 people with the status of technical and administrative staff were also included (G.D. n. 1037/2011 for the approval of the Regulation of N.C.S.C. organization and functioning provides a total of 64 posts for administrative and technical staff).

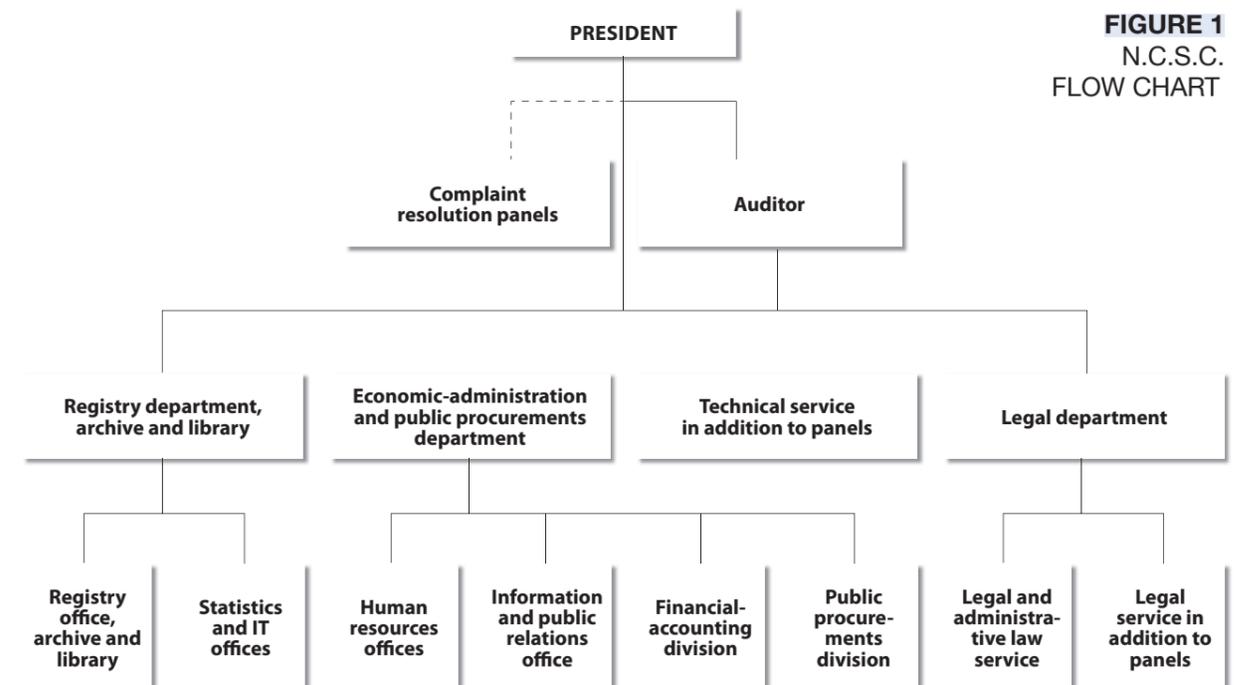
The management of the NATIONAL COUNCIL FOR SOLVING COMPLAINTS is provided by Mr. Lehel - Lorand BOGDAN, at a second term.

In exercising his attributions, the president of the National Council for Solving Complaints is helped by a board composed of three members (Florentina DRAGAN, Silviu-Cristian POPA, Catalin POPESCU), elected for a period of two years by secret ballot with an absolute majority from the counselors for resolving complaints in the public procurement area.

Within the NATIONAL COUNCIL FOR SOLVING COMPLAINTS, on December 31, 2014, 87 people (100% with higher education) were employed, of which 60 women (68.96%) and 27 men (31.04%), the average age at the institution level being 43 years.

According to the Council's Regulation on organization and functioning¹³, the administrative and technical staff operates in the following structures:

- Registry department, archive and library which includes:
 - Registry office, archive and library;
 - Statistics and IT offices;
- Economic-administration and public procurements department which includes:
 - Human resources office;
 - Information and public relations office;
 - Financial-accounting division;
 - Public procurements division;
- Technical service in addition to panels;
- Legal department which includes:
 - Legal and administrative law service;
 - Legal service in addition to the complaints resolution panels;
- Internal Audit Department.



2. THE ACTIVITY PERFORMED BY N.C.S.C. DURING JANUARY 01st – DECEMBER 31st 2014

2.1. COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS

The number of complaints formulated/formulated by the economic operators, their development, the object of the complaints, their complexity, as well as the resolution manner, represents important indicators that can be used in the analysis of the activity performed by the Council.

2.1.1. DEVELOPMENT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS

During January 1st – December 31st 2014, the number of complaints (case files) submitted by the economic operators and recorded to N.C.S.C. reached the figure 3.753.

During the twelve months of 2014, the number of complaints submitted by economic operators and registered at N.C.S.C. evolved as follows:

January	305
February	387
March	448
April	512
May	516
June	477
July	251
August	183
September	183
October	171
November	170
December	150

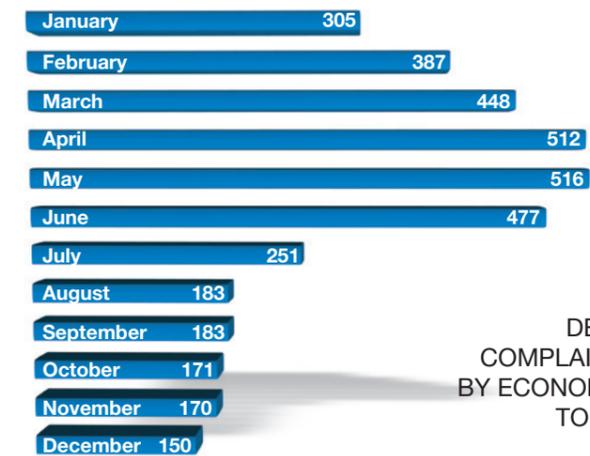


FIGURE 2
DEVELOPMENT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS TO N.C.S.C. IN 2014

Analysing the number of complaints (case files) submitted by economic operators and registered at N.C.S.C. during the years 2013 and 2014, it has been found that in the first half of 2014 occurred only a 2.97% increase in the number of complaints compared to the previous year, but in the second semester there was a decrease of 63.22% compared to the same period of 2013.

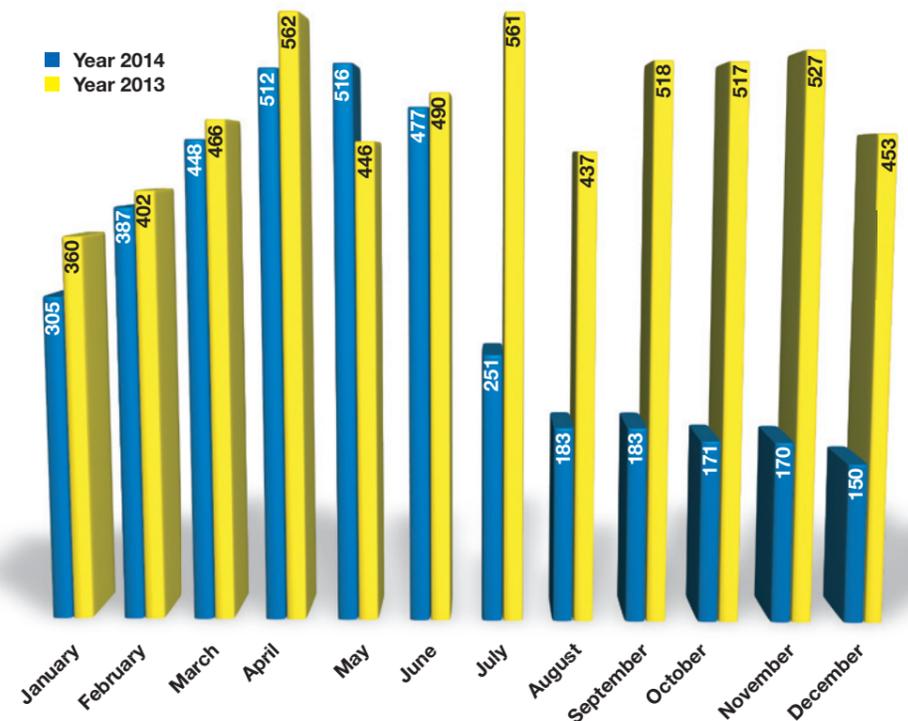
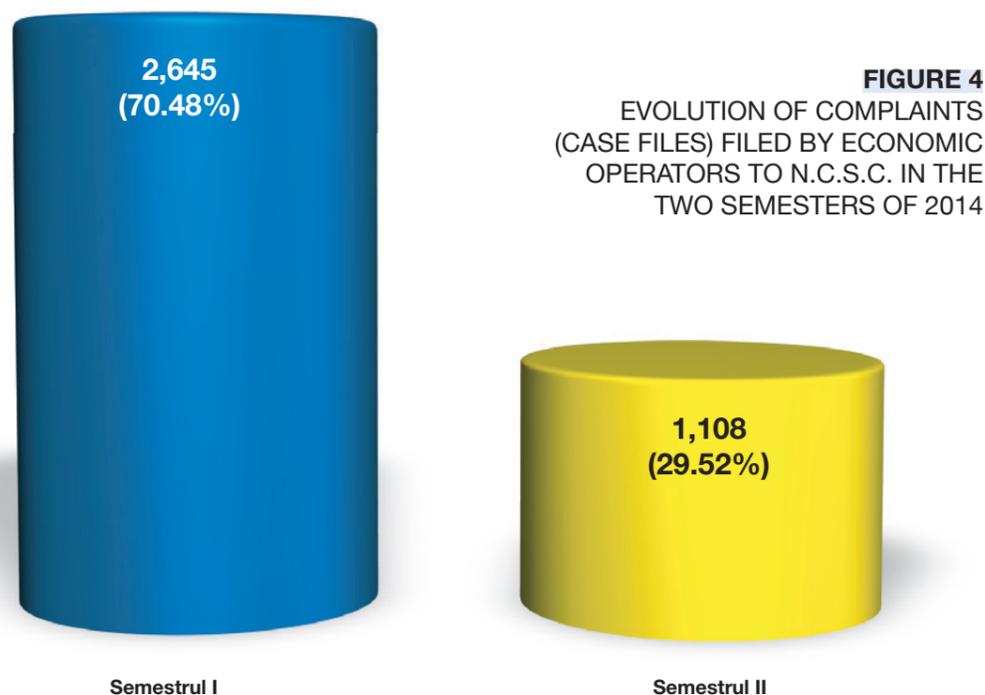


FIGURE 3
EVOLUTION OF COMPLAINTS (CASE FILES) SUBMITTED BY ECONOMIC OPERATORS TO N.C.S.C. DURING 2013-2014

Complaint

DEVELOPMENT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS



Comparing the development of total number of complaints submitted in 2014 to that of 2013, there was a decrease of 34,60%, which can be considered significant.

The reason for this decrease in the number of complaints filed at CNSC by economic operators in the second half of 2014 compared to the same period of the previous year was the introduction of obligation of economic operators to constitute the security of good conduct¹⁴ for the entire the period from the date of filing the complaint to the date of the final decision of the Council; the amount of this security was determined by the type and value of the contract to be awarded and could reach a maximum value of 100,000 euros.¹⁵

Basically, obliging the economic operators to constitute the security of good behavior for the entire period from the date of filing the appeal to the date of the final decision of the Council led, in the second half of 2014, to a decrease in complaints filed with 58.11% compared to the first half of the year.

For this reason, due to introducing the security of good conduct, the number of complaints made in the period July-December 2014 was only a third of the total number of complaints filed for the entire year.

The purpose of introducing this instrument to protect the contracting authorities by any misconduct of contestor was probably reached, the economic operators being retained in referral to the Council or the courts, but this instrument does not guarantee that the award procedures, starting with 30 June 2014, were initiated and carried out correctly and legally.

However, we emphasize that, according to Decision no.5 /01.15.2015, the Constitutional Court found that the provisions of art. 2712 par. (1) and (2) of the GEO no. 34/2006 are unconstitutional.¹⁶

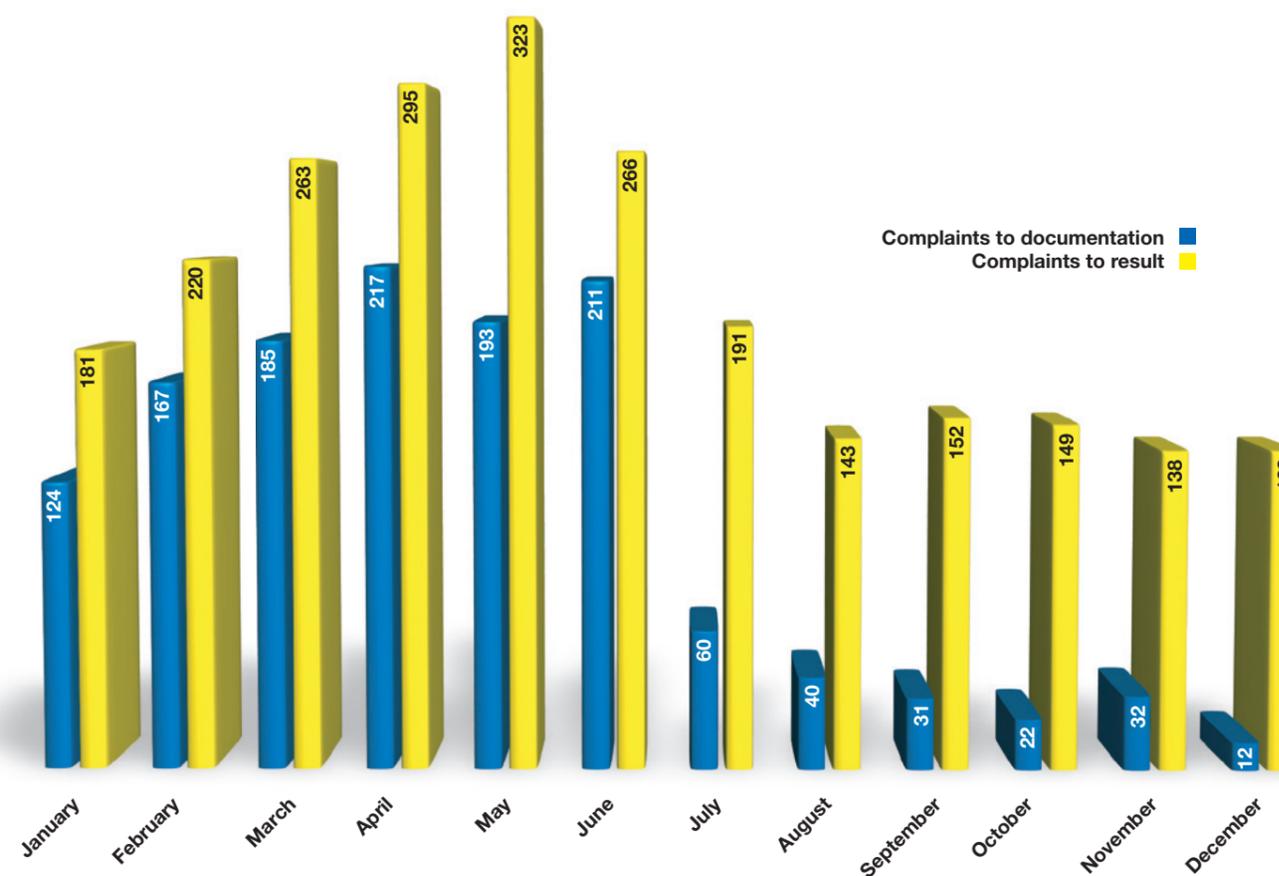
It should be mentioned that the decrease in number of complaints submitted by economic operators in 2014 compared to 2013 had a number of causes, such as the package of legislative changes initiated since the end of 2010, which decreased the “momentum” of economic operators to submit complaints – which mainly consisted of control regulation “ex ante”, which involves the obligation of contracting authority to submit the awarding documentation to the National Authority for Regulating and Monitoring Public Procurement (NARMPP) for being evaluated before submission to publication of the call / notice¹⁷;

The effect of these legislative measures, undertaken in 2012, continued in 2013 and 2014 and was to

change the time/ procedural stage for submitting complaints. For this reason, in 2014, corroborating the amendments to GEO no. 34/2006 with the reduction in the number of proceedings in the S.E.A.P. by about 5% compared to the previous year, at the N.C.S.C., the number of complaints filed by the economic operators against the tender documentation (stage of the tendering procedure in which, starting with 30 June 2014, was established the legal obligation of the security of good conduct) decreased by 44.53% compared previous year (stage of the award in which the security of participation was not mandatory and thus the percentages covered by art. 2781 of the GEO no. 34/2006 could not be retained, provisions which are now repealed), while on the segment of contestations filed after result, the decrease was 28.87%.

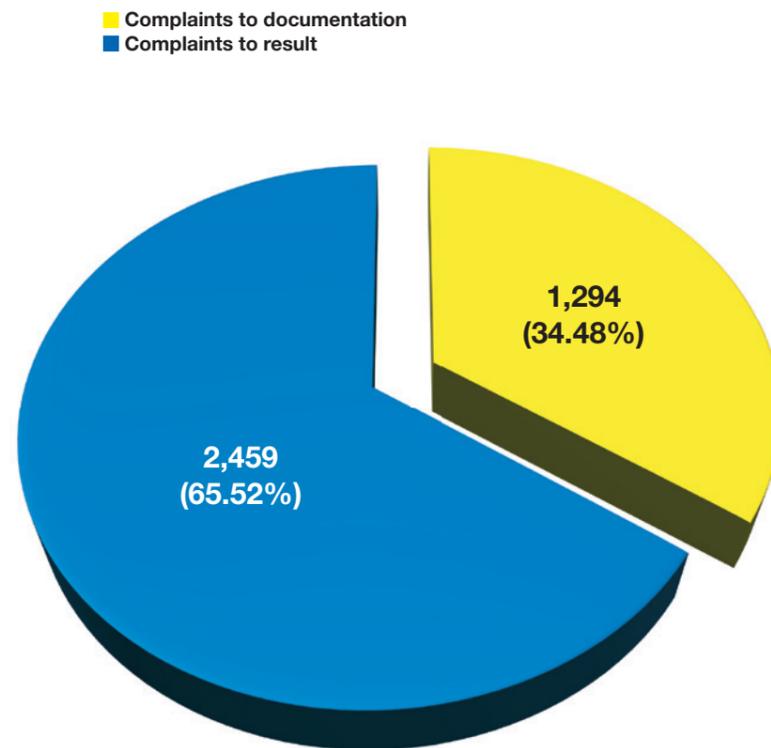
However, it should be noted that in 2014, 34.48% of the complaints filed at N.C.S.C. by the economic operators (1,294) were directed against tender documentation – even if they have been evaluated “ex-ante” by NARMPP, and 65.52% were raised against the result of the award (2,459).

FIGURE 5
MONTHLY SITUATION OF THE COMPLAINTS FILED AGAINST AWARDDING DOCUMENTATION COMPARED TO THOSE MADE AGAINST THE PROCEDURE’S RESULT IN 2014



DEVELOPMENT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS

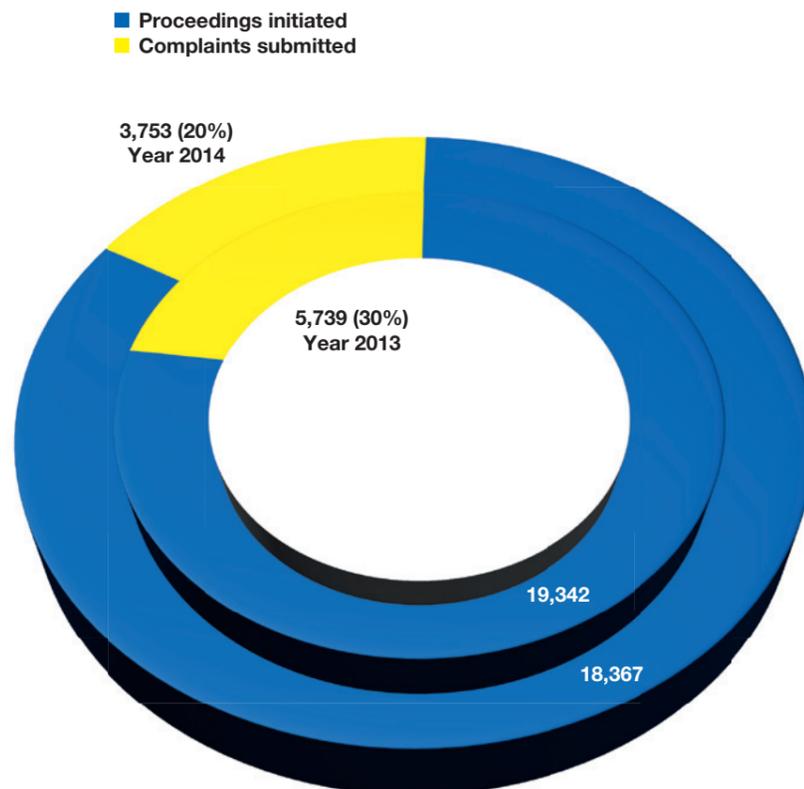
FIGURE 6
SITUATION OF COMPLAINTS
MADE TO AWARDING
DOCUMENTATION
COMPARED TO THOSE MADE
AGAINST THE RESULT OF THE
PROCEDURE IN 2014



Comparing the number of complaints made in the period 2013 - 2014 with the number of proceedings initiated S.E.A.P. there is a decrease in the number of complaints submitted to N.C.S.C. in 2014 with 34.60% compared to the previous year, while the number of proceedings initiated in S.E.A.P. in 2014 decreased by only 5% compared to 2013, as it can be seen in the chart below.

Analyzing the the chart no. 7 it can be concluded that in 2014 the number of complaints filed by economic operators at N.C.S.C. reported on award procedures initiated in S.E.A.P. decreased significantly, both because of sanctioning measures imposed by legislative amendments to GEO no. 34/2006 – respectively the verification “ex ante”, and especially following the introduction, on 30 June 2014, of obligation to create the security of good conduct.

FIGURE 7
SITUATION OF
COMPLAINTS FILED TO
N.C.S.C. REPORTED ON
PROCEEDINGS INITIAED IN
S.E.A.P. COMPARED DURING
2014-2013



In terms of distribution by administrative-territorial units (ATU), the number of complaints made by economic operators in 2014 evolved as follows:

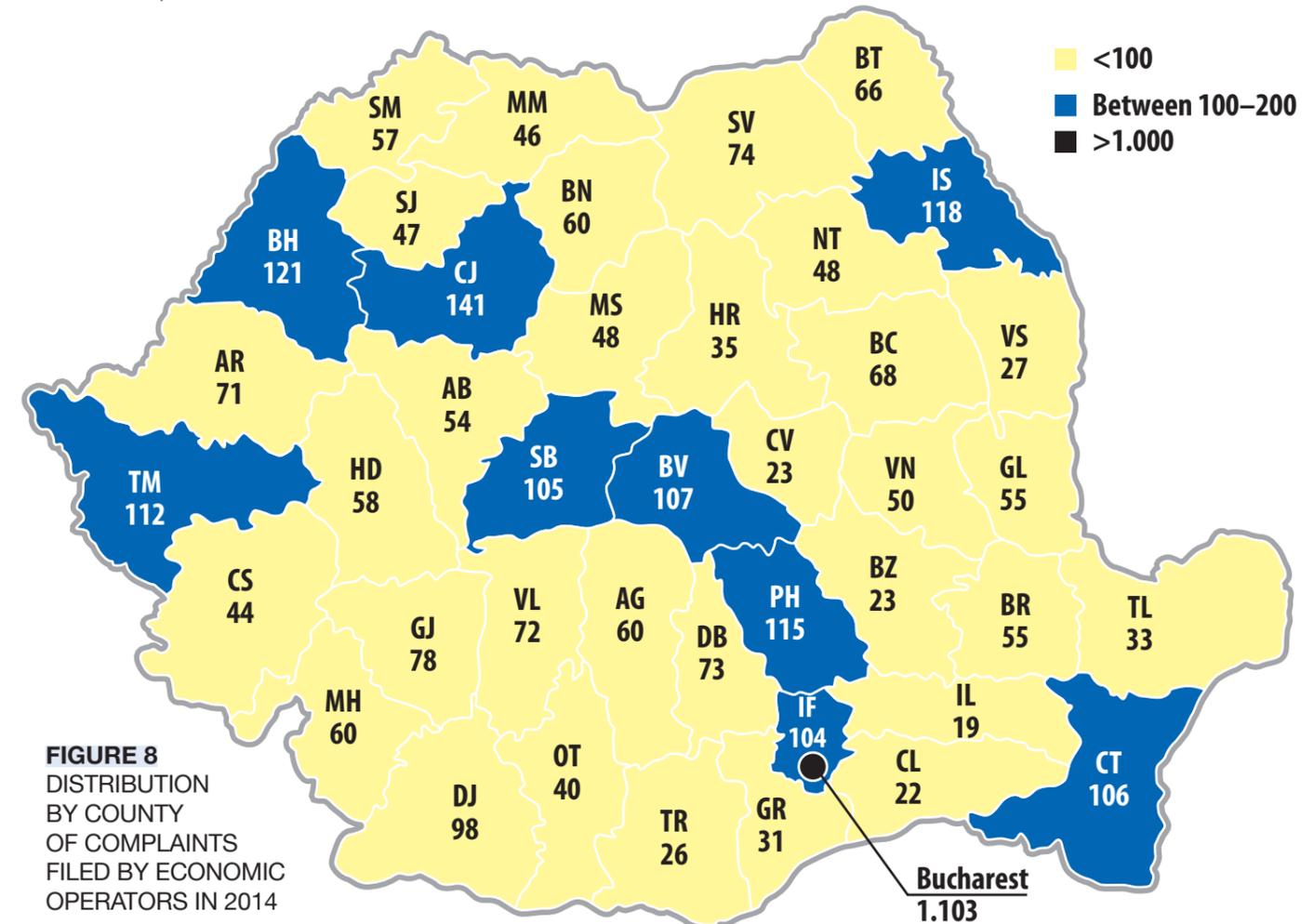


FIGURE 8
DISTRIBUTION
BY COUNTY
OF COMPLAINTS
FILED BY ECONOMIC
OPERATORS IN 2014

COUNTY	COMPLAINTS	COUNTY	COMPLAINTS	COUNTY	COMPLAINTS
BUCUREȘTI	1103	VĂLCEA	72	NEAMȚ	48
CLUJ	141	ARAD	71	SĂLAJ	47
BIHOR	121	BACĂU	68	MARAMUREȘ	46
IAȘI	118	BOTOȘANI	66	CARAȘ SEVERIN	44
PRAHOVA	115	ARGEȘ	60	OLT	40
TIMIȘ	112	BISTRIȚA NĂSĂUD	60	HARGHITA	35
BRAȘOV	107	MEHEDINȚI	60	TULCEA	33
CONSTANȚA	106	HUNEDOARA	58	GIURGIU	31
SIBIU	105	SATU MARE	57	VASLUI	27
ILFOV	104	BRĂILA	55	TELEORMAN	26
DOLJ	98	GALAȚI	55	BUZĂU	23
GORJ	78	ALBA	54	COVASNA	23
SUCEAVA	74	VRANCEA	50	CĂLĂRAȘI	22
DĂMBOVIȚA	73	MUREȘ	48	IALOMIȚA	18

DEVELOPMENT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS

Regarding the number of complaints submitted in 2014 by economic operators under the procedures for awarding public procurement contracts financed from European funds, it should be emphasized that they were in number of 1,581 which represented 42.13% of the total number of complaints submitted to the Council while a number of 2,172 complaints submitted with represented 57.87% of the total number of complaints submitted by economic operators to N.C.S.C. focused on awarding procedure of public procurement contracts financed from domestic public funds.

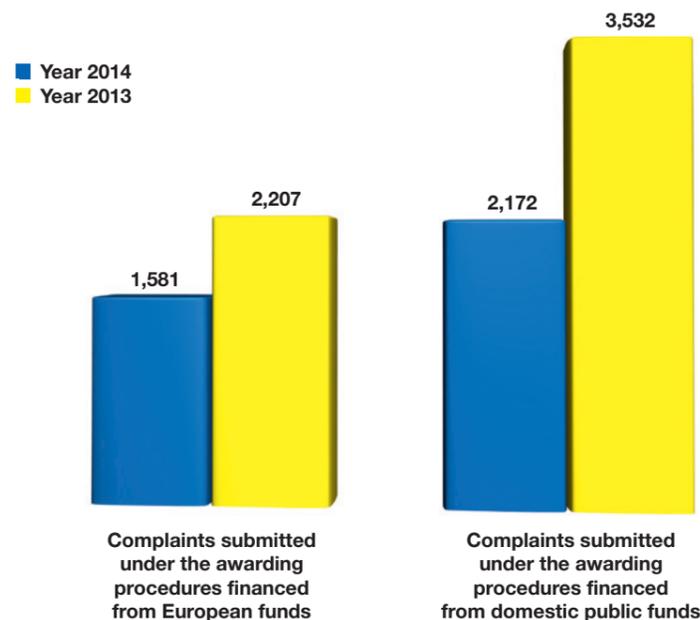


FIGURE 9

SITUATION OF COMPLAINTS SUBMITTED IN 2014 BY ECONOMIC OPERATORS BY ORIGIN OF FUNDS OF AWARDING PROCEDURES COMPARED TO 2013

From the previous chart above we can see that the the number of complaints submitted to N.C.S.C. under the awarding procedures financed from European funds decreased in 2014 by 28.36% (626 complaints) compared to the previous year. A decrease of 38.55% (1,360 complaints) was also registered in 2014 in the case of contestations filed against awarding procedures financed by domestic public funds, compared to the previous year.

Throughout 2014, ignoring the lack of institutional transparency and legislative stability favored the faulty management of public funds which led, on the one hand, to a large number of irregularities in procurement procedures initiated, and, on the other hand, in a severe lack of confidence of economic operators in the awarding system; there were voices who insinuated that the main reasons that led to a low degree of absorption of European funds would be the large number of complaints, and lack of celerity of N.C.S.C. in solving complaints.

The fact that these criticisms targeting the Council proved to be unfounded and the authorities did not taken into account to solve the real problems faced by local procurement system is the position of the European Commission in the latest CVM report. The document reveals that the domestic market of public procurement includes a combination of several factors that harm the ability of public purchasers (“lack of stability”, “fragmented legal framework”, “institutional system”, “quality of competition in public procurement”) and generate “a high proportion of awarding procedures subject to complaints”. “There is a general perception of high levels of corruption, fraud and conflict of interest. Civil society observers noticed the major differences in the number of cases identified and pursued in different areas of the country and through various agencies; Local authorities are particularly affected by the lack of transparency in the allocation of public funds for public procurement projects and the risks of corruption in public procurement is substantial at the local level”, EC experts emphasised.

Stressing that “there are concerns about the capacity and level of expertise of the staff dealing with the awarding procedures at national and local level”, CVM report shows that “the number of professionals in public procurement seems to be insufficient in relation to the volume of work in this area – which leads to inadequate bidding documents triggering complaints from economic operators and makes the evaluation

and contract enforcement difficult.” The document also notes that “repeated use of exceptions affects the transparency and the openness of public procurement market and creates the potential for corruption.”

Regarding the activity of N.C.S.C., the Report cancels the criticisms brought domestically to the judicial administrative institution responsible with solving complaints made by economic operators in public procurement procedures, emphasizing that it “acts as an effective filter in preventing a substantial number of irregularities in awarding procedures, in projects funded both at national and European level”.

Moreover, official statistics presented in the chart below shows that, in recent years, due to legislative measures taken internally, the number of complaints filed has steadily decreased.

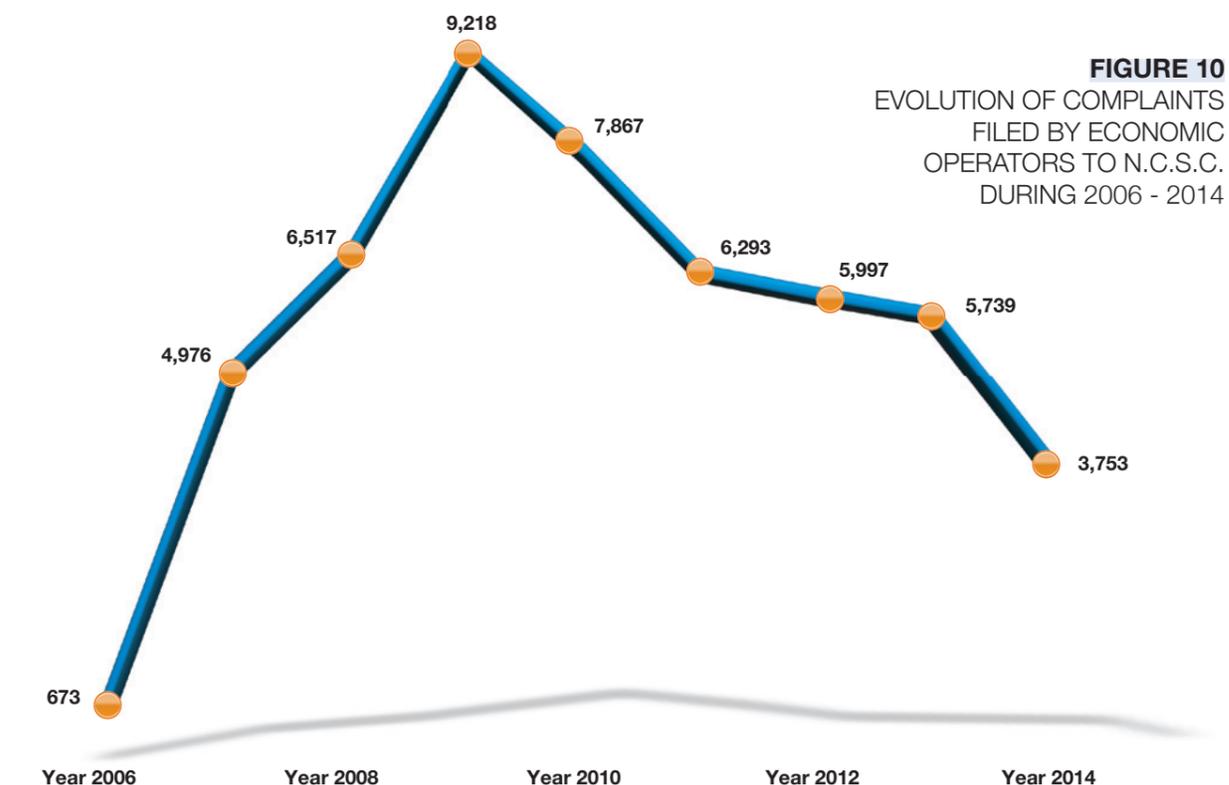


FIGURE 10
EVOLUTION OF COMPLAINTS FILED BY ECONOMIC OPERATORS TO N.C.S.C. DURING 2006 - 2014

The fact that the judicial administrative body - N.C.S.C. - was not an obstacle to EU funds absorption is also abundantly clear in the comparative evolution of complaints filed at CNSC in the years 2013 and 2014 within certain proceedings financed by European funds and in the number of EU funded awarding procedures initiated in S.E.A.P.

Official data show that, although the number of EU funded proceedings initiated in S.E.A.P. in 2014 increased by almost 50% compared to the previous year, however, the number of complaints filed to N.C.S.C. within the awarding proceedings decreased by 28.36% within the range mentioned.

Thus, if we compare the total number of complaints filed at CNSC in the period 2013 - 2014 within the EU-funded awarding procedures, it is noted that it decreased with 28,36% from 2,207 complaints to 1,581 in the mentioned period.

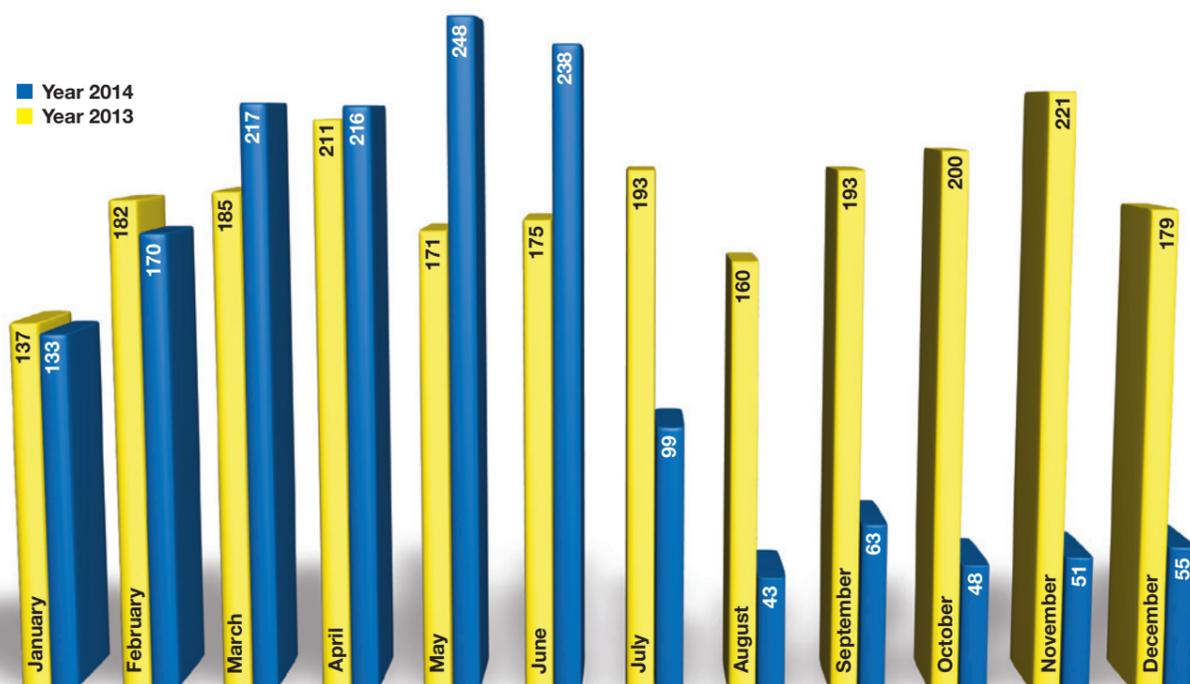
The decrease in the number of complaints filed by economic operators within the awarding procedures financed both by public funds (local budgets/state budget), especially in procedures financed from European funds was felt with the introduction of the obligation to guarantee a good conduct from 30 June 2014, as it can be seen from the charts below.

DEVELOPMENT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS

FIGURE 11
COMPARISON BETWEEN THE COMPLAINTS SUBMITTED BETWEEN 2013 AND 2014
UNDER THE AWARING PROCEDURES FINANCED FROM DOMESTIC PUBLIC FUNDS

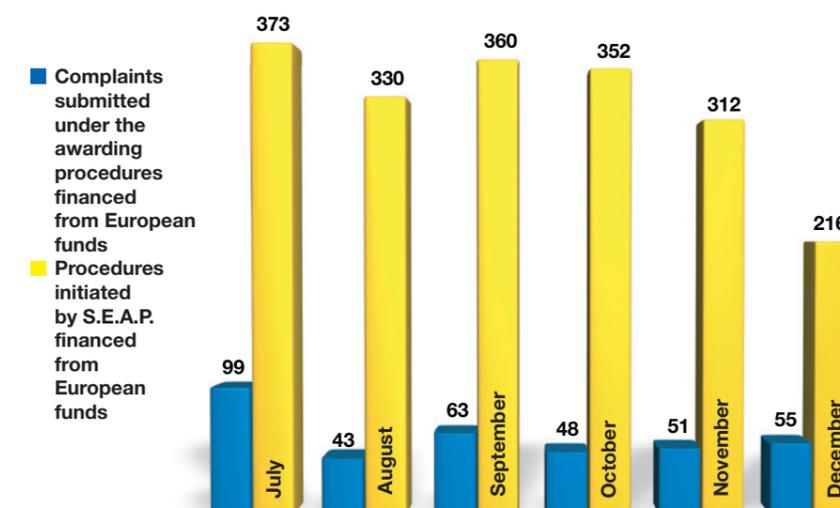


FIGURE 12
COMPARISON BETWEEN THE COMPLAINTS SUBMITTED BETWEEN 2013 AND 2014
UNDER THE AWARING PROCEDURES FINANCED FROM EUROPEAN FUNDS



Thus, during July-December 2014, following the initiation of a number of 1,943 EU-funded procedures in S.E.A.P., at N.C.S.C. were filed only 359 complaints in this segment, which means a rate of only 18.47%.

FIGURE 13
COMPARISON BETWEEN THE NUMBER OF COMPLAINTS SUBMITTED BY THE ECONOMIC OPERATORS IN THE SECOND HALF OF 2014 WITHIN EU-FUNDED PROCEDURES AND THE EU-FUNDED PROCEDURES INITIATED IN S.E.A.P.

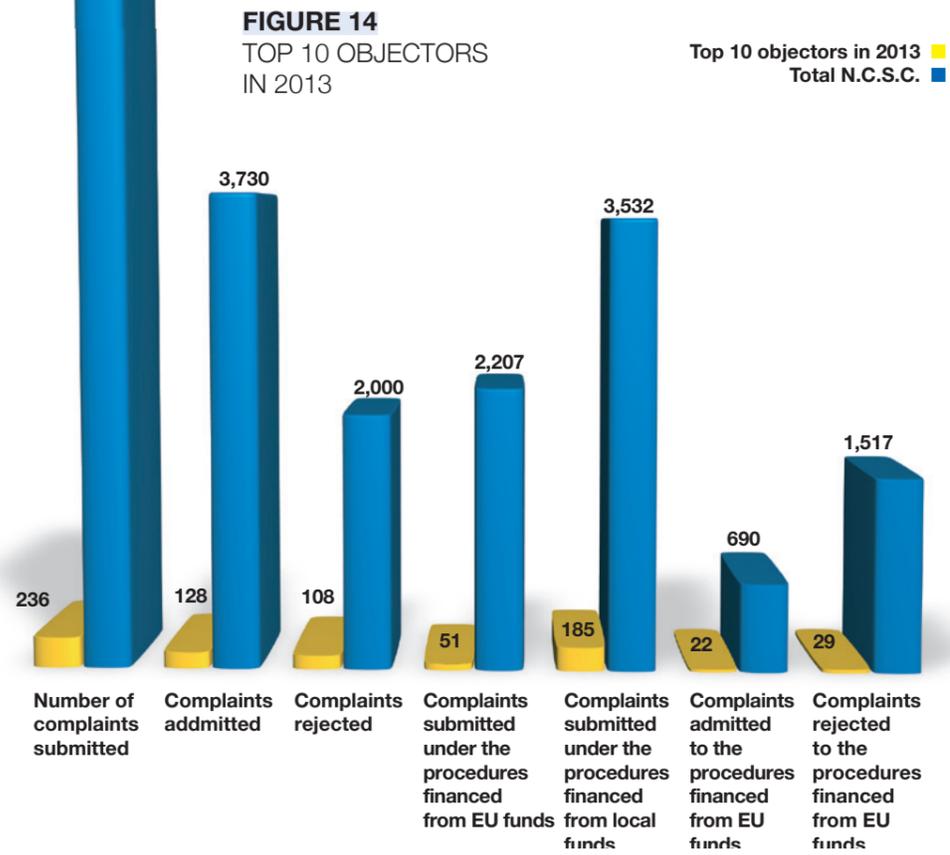


Moreover, if we consider the top ten economic operators who filed the most complaints during 2013 and 2014, we see that the number represented an extremely low percentage of the total complaints filed over those years to the Council. Thus, in 2013 the number of complaints filed by the top ten economic operators was only 236, which represented a rate of only 4.11% of all complaints made to the N.C.S.C., while in 2014 the number was 222, i.e. only 5.91% of all complaints filed at CNSC.

It is important to note that in 2013, of the 236 complaints submitted to CNSC by the economic operators nominated in "Top 10 objectors, a number of which 128 were admitted, representing a rate of 3.43% 3.43% of all complaints accepted by the Council throughout that year.

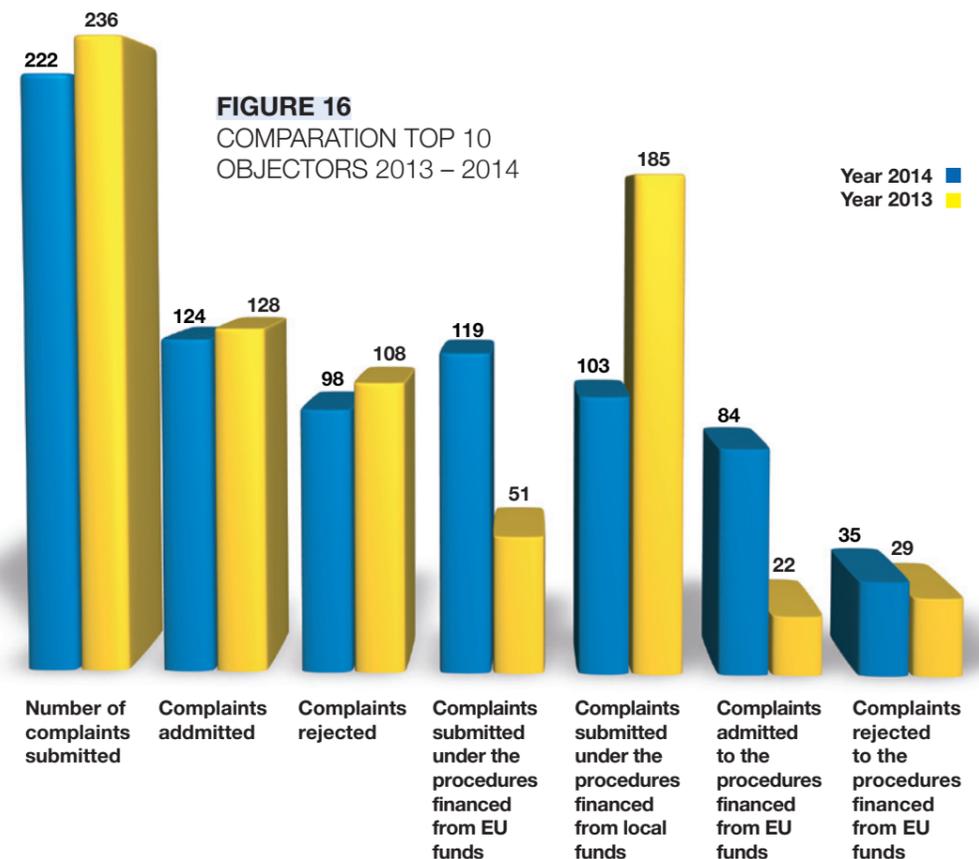
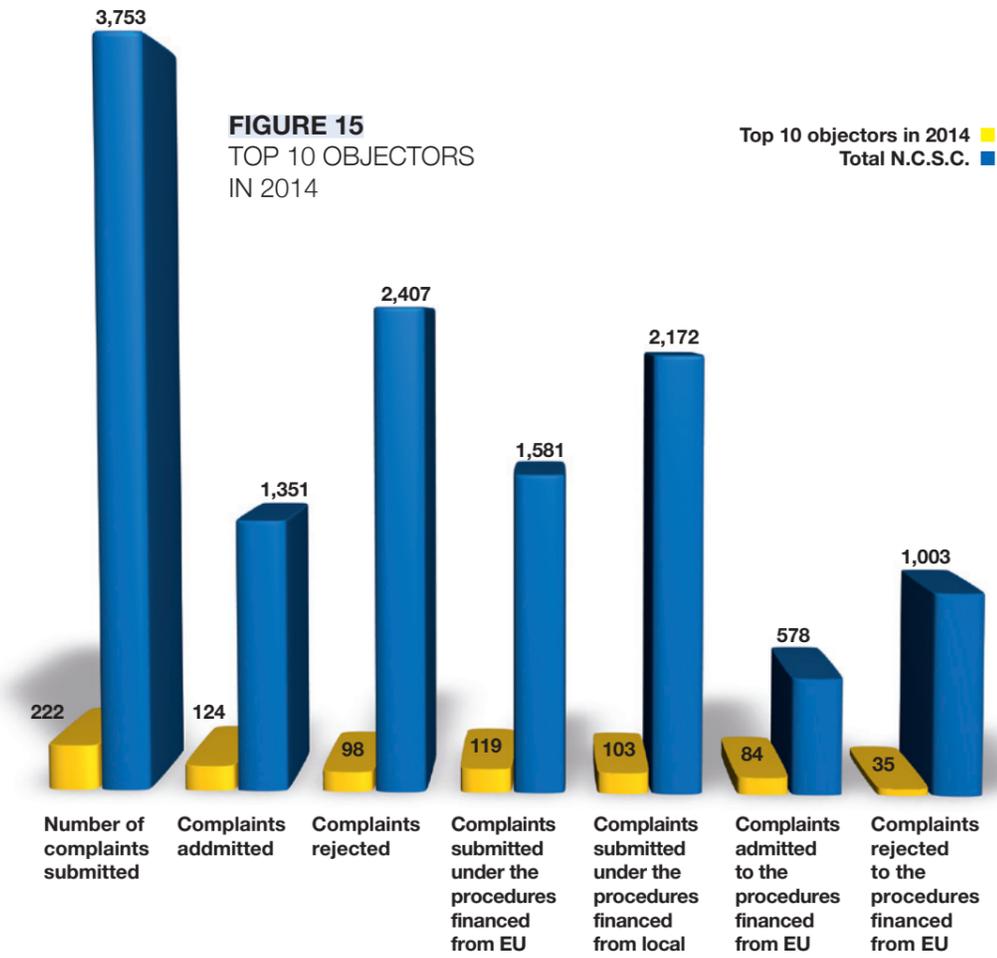
NO.	NAME OF THE OBJECTOR (2013)	NUMBER OF COMPLAINTS SUBMITTED	COMPLAINTS ADMITTED	COMPLAINTS REJECTED	COMPLAINTS SUBMITTED UNDER THE PROCEDURES FINANCED FROM EU FUNDS	COMPLAINTS SUBMITTED UNDER THE PROCEDURES FINANCED FROM DOMESTIC FUNDS	COMPLAINTS ADMITTED TO THE PROCEDURES FINANCED FROM EU FUNDS	COMPLAINTS REJECTED TO THE PROCEDURES FINANCED FROM EU FUNDS
1	SC CASIDO SRL	37	15	22	17	20	6	11
2	SC MORANI IMPEX SRL	31	16	15	8	23	1	7
3	SC FARMEXPERT DCI SA	28	14	14	0	28	0	0
4	SC CNTS SOLUTION SRL	24	13	11	2	22	1	1
5	SC DIGITRONIX TECHNOLOGY SRL	21	12	9	5	16	2	3
6	SC DIFERIT SRL	20	17	3	5	15	4	1
7	SC MEDIPLUS EXIM SRL	20	8	12	0	20	0	0
8	SC SIEMENS SRL	20	13	7	1	19	0	1
9	SC RICO SRL	18	11	7	11	7	6	5
10	SC CAST SRL	17	9	8	2	15	2	0
TOTAL TOP 10		236	128	108	51	185	22	29
TOTAL N.C.S.C.		5,739	3,730	2,000	2,207	3,532	690	1,517
%		4.11	3.43	3.55	2.31	5.23	3.19	1.32

DEVELOPMENT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS



In 2014, of the 222 complaints submitted to N.C.S.C. by the economic operators nominated in “Top 10 objectors”, 124 were admitted, representing a rate of 9.18% of all complaints accepted by the Council throughout the year.

NAME OF THE OBJECTOR (2014)	NUMBER OF COMPLAINTS SUBMITTED	COMPLAINTS ADMITTED	COMPLAINTS REJECTED	COMPLAINTS SUBMITTED UNDER THE PROCEDURES FINANCED FROM EU FUNDS	COMPLAINTS SUBMITTED UNDER THE PROCEDURES FINANCED FROM DOMESTIC FUNDS	COMPLAINTS ADMITTED TO THE PROCEDURES FINANCED FROM EU FUNDS	COMPLAINTS REJECTED TO THE PROCEDURES FINANCED FROM EU FUNDS
1 SC ENTERPRISE FOCUSED SOLUTIONS SRL	30	18	12	13	17	8	5
2 SC VIA DESIGN SRL	25	24	1	25	0	24	1
3 SC DUMEXIM SRL	25	14	11	12	13	8	4
4 SC VICTOR CONSTRUCT SRL	24	10	14	14	10	4	10
5 SC CAMELEON SECURITY SYSTEMS SRL	21	1	20	0	21	0	0
6 SC MEDIPLUS EXIM SRL	21	11	10	0	21	0	0
7 SC DIFERIT SRL	21	15	6	14	7	10	4
8 SC ECOSOFT SRL	19	10	9	19	0	10	9
9 SC TECNIC CONSULTING ENGINEERING ROMANIA SRL	18	17	1	16	2	16	0
10 SC CASIDO SRL	18	4	14	6	12	4	2
TOTAL TOP 10	222	124	98	119	103	84	35
TOTAL C.N.S.C.	3,753	1,351	2,407	1,581	2,172	578	1,003
%	5.91	9.18	4.07	7.53	4.74	14.53	3.49



DEVELOPMENT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS

Complaints submitted by economic operators under the awarding procedures may also be classified according to the subject of the public contract, a situation which in 2014 was as follows:

- awarding procedures of public procurement contracts having as their object the execution of works - 1,491(39.73%);
- awarding procedures of public procurement contracts having as their object the provision of services - 1,259 (33.55%);
- awarding procedures of public procurement contracts having as their object the supply of goods - 1,003 (26.72%).

FIGURE 17
SITUATION OF COMPLAINTS
SUBMITTED BY THE
ECONOMIC OPERATORS
IN 2014 BY THE TYPE
OF CONTRACT

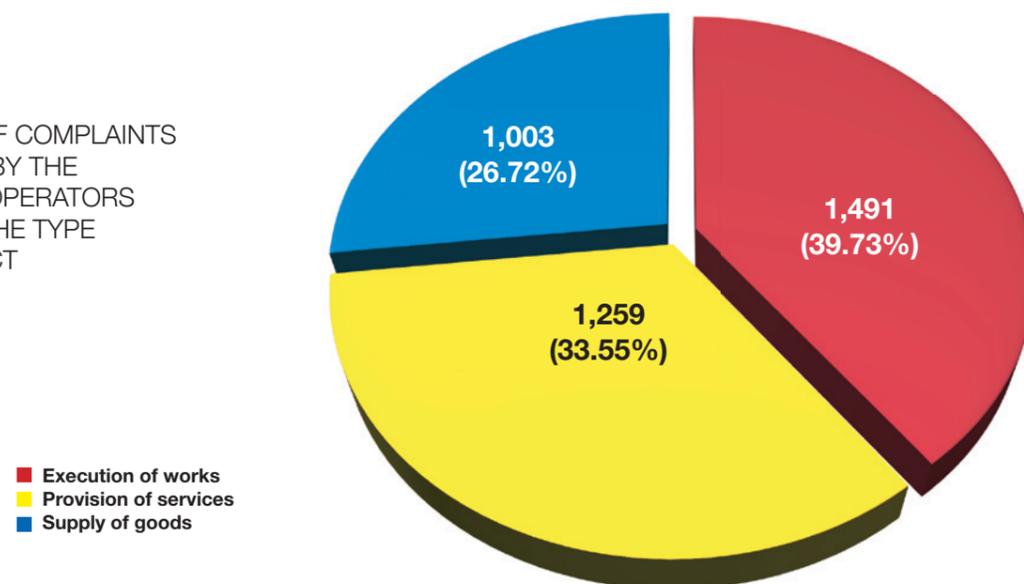
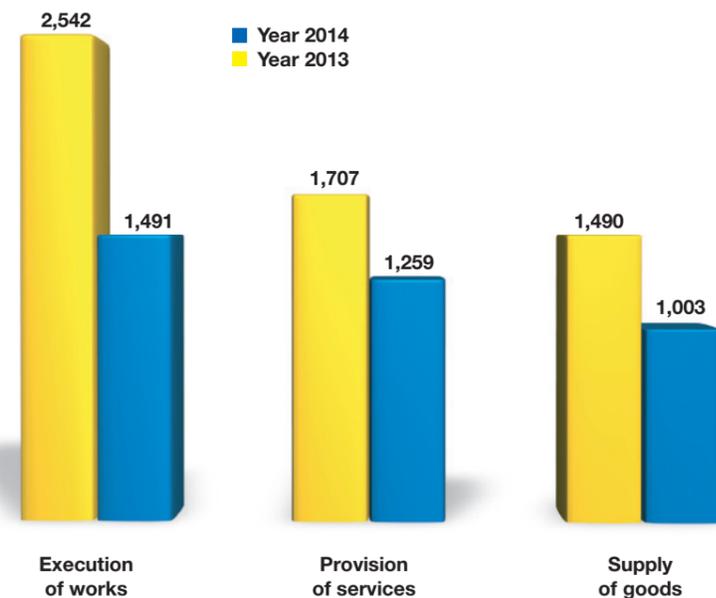


FIGURA 18
SITUATION OF COMPLAINTS
SUBMITTED in 2014 BY THE
ECONOMIC OPERATORS
BY THE TYPE OF CONTRACT
COMPARED TO 2013



Analyzing the chart above on the complaints submitted by economic operators based on the type/subject of the public procurement contract, it can be noticed that the number of complaints submitted in 2014 decreased by 34.60% compared with 2013, with the most important decrease registered in the complaints filed in procedures for the award of public procurement contracts having as their object the execution of works compared to the previous year (- 39.73%).

During 2014, the 11 panels for solving complaints were randomly, electronically assigned an average of 341 complaints/file cases each.

Although the number of complaints submitted in 2014 by economic operators was relatively high and the complexity of cases was also high, the 11 panels for solving complaints within our institution fully complied with the terms of settlement of disputes stipulated in art. 276, art. (1) from G.E.O. no. 34/2006, as amended¹⁸, which is within 20 days from the date on which the complete file of procurement reached N.C.S.C. Regarding the terms of the settlement of the disputes, it must be emphasised that it is among the shortest in the European Union, Romania topping Germany and Austria.

It is important to emphasize that, since its establishment until 31 December 2014, a total of 51,033 complaints submitted by economic operators were recorded at the N.C.S.C.

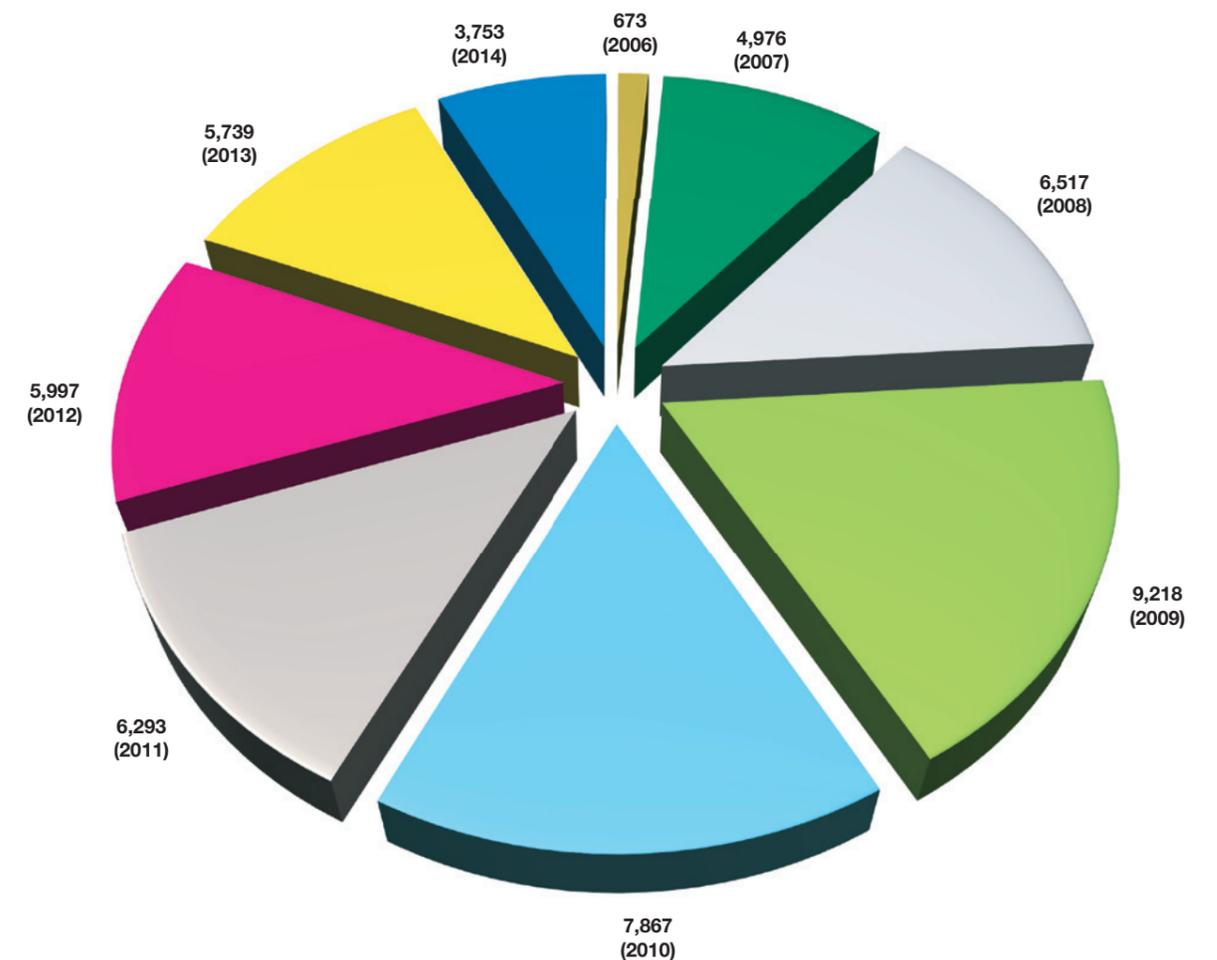


FIGURA 19
EVOLUTION OF COMPLAINTS SUBMITTED
BY ECONOMIC OPERATORS TO N.C.S.C. DURING 2006 - 2014

2.1.2. THE SUBJECT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS

Regardless of the subject of the subjective right (performance, abstention), the complaint submitted related to an awarding procedure is always about the protection of this right, but there might be situations when the object could be the protection of interests.

When a complaint is submitted, this will individualize itself, becoming a trial / litigation and its subject is what the parties agree to submit to settlement, what they will ask to advisors to review, to assess, to held to resolve. Thereby it follows “ipso facto” that solving the complaint brings into question both a matter of fact and one of law, which counselors are called to solve by the decision of the Council in order to ensure the protection of the subjective right.

Subject of the complaint may be total or partial cancellation of an administrative act or ordering of a contracting authority (in terms of the G.E.O. no. 34/2006) which refuses to issue an act or to perform a certain operation.

As noted above, following the analysis of subject of 3,753 complaints submitted by economic operators to N.C.S.C. in 2014, it resulted that 1,294 (34.48%) of these complaints concerned tender documentation and 2,459 concerned the outcome of procedures (65.52%).

Analyzing the subject of the complaints submitted against the requirements imposed by the awarding documentation, we noticed that the most frequently disputed are:

- restrictive requirements regarding similar experience, qualification criteria, technical specifications;
- awarding criteria and evaluation factors with no algorithm or with nontransparent or subjective algorithm;
- mentioning the names of technologies, products, brands, manufacturers, without the use of the phrase “or equivalent” within the awarding documentation;
- lack of a clear, complete and unambiguous answer from the contracting authority to requests for clarifications regarding the provisions of awarding documentation;
- form of collaterals for participation;
- imposing inequitable or excessive contractual clauses;
- not dividing per lots the purchase for products / similar works;

FIGURE 20
SITUATION OF COMPLAINTS CONCERNING THE TENDER DOCUMENTATION AND THE RESULT OF AWARINDG PROCEDURE DURING 2013-2014

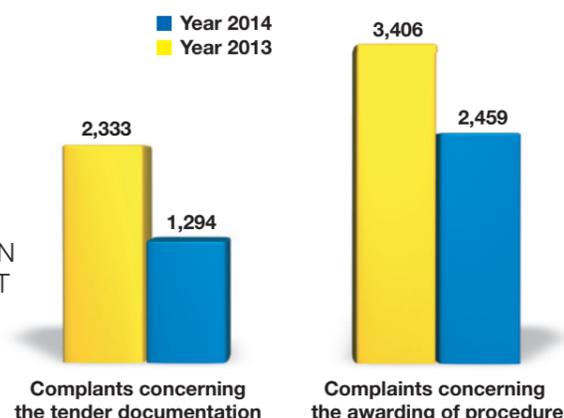
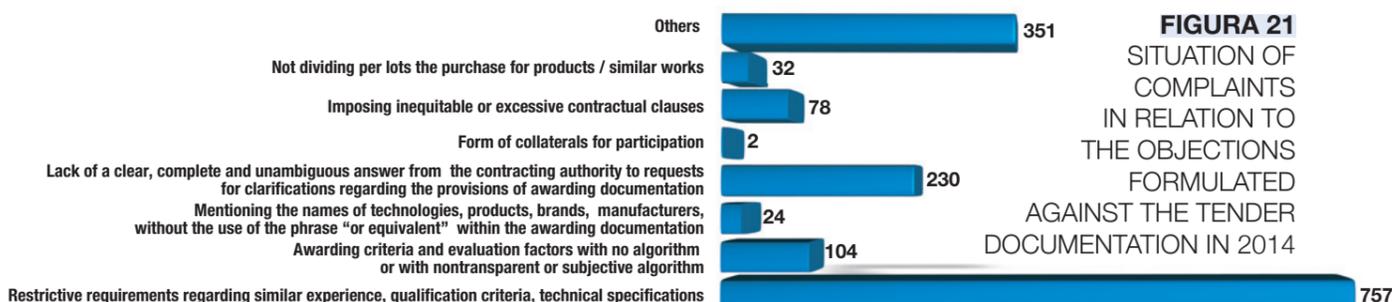


FIGURA 21
SITUATION OF COMPLAINTS IN RELATION TO THE OBJECTIONS FORMULATED AGAINST THE TENDER DOCUMENTATION IN 2014



In order to understand all these aspects, we present some cases in what follows :

1 ESTABLISHING A GOOD CONDUCT GUARANTEE AND AFTER-EFFECTS

Hereinafter, the merits of the exception not to establish of a good conduct guarantee by SC ... SRL at the time of the appeal (26.11.2014) is to be investigated, exception that the contracting authority supports in terms of art. 271¹ para. (3) of the Government Emergency Ordinance no. 34/2006.

Subsequent to the raising of the objection, the Council, by letter no. ... solicited SC ... SRL to convey within a maximum of five working days of the receipt of the letter, a copy of the proof of the establishing of a good conduct guarantee under art. 271 ind. 1 of the ordinance, as well as the confirmation of the transmission or submission of the original proof to the contracting authority.

The appellant complied with the request of the Council and provided the copy of the payment order no. 1373/02.12.2014, endorsed by Raiffeisen Bank, ... Agency, representing the good conduct guarantee amounting to 21,439 lei, in the IBAN account specified by the authority in para.. III.1.1) of the invitation to participate - ... open with the Treasury SC ... SRL also provided the confirmation of the submission of the order to the contracting authority, too.

The Authority has deemed it necessary to request the Council to rule out the appeal regarding the applicant not establishing of the good behavior guarantee, aspect that has the nature of a procedural exception. The Council retains that, since the G.E.O no. 51/2014 came into force subsequent to its publication in the Official Gazette of Romania, Part I, i.e.: on 30 June 2014, appeals submitted to the Council, following that date are subject to its provisions, under which the appeal of SC ... SRL also falls.

According to the G.E.O. no. 51/2014, art. 271 ind. 1 of the main ordinance, as follows:

(1) In order to protect the contracting authority against the risk of any contingent improper behavior, the applicant is required to establish a good conduct guarantee for the entire period between the submission date of the appeal/request/complaint and the date of Council’s final decision/Court’s decision regarding its solving.

(2) The Appeal/Request/Complaint will be dismissed if the appellant does not provide the proof that the guarantee was established as stipulated under par. (1).

(3) The good conduct guarantee is established by bank transfer or by a guarantee instrument issued in compliance with the law by a bank or insurance company and is to be submitted, in original, to the headquarters of the contracting authority, and in copy to the Council or the Court, upon the submission of the appeal/request/complaint.

(4) The amount of the good conduct guarantee is determined by refer-



ence to the estimated value of the contract to be granted as follows:

a) 1% of the assessed value, if this is less than the thresholds values stipulated under art. 55, para. (2) a) and b);

b) 1% of the assessed value, if this is less than the thresholds values stipulated under art. 55, para. (2) c) but not more than the equivalent of 10.000 euros according to the NBR rate at the date of the establishing of the guarantee;

c) 1% of the assessed value, if it is equal to or greater than the thresholds values stipulated under art. 55, para. (2) a) and b), but not more than the equivalent of 25,000 euros, in lei, according to the rate at the date of the establishing of the guarantee;

d) 1% of the assessed value, if it is equal to or greater than the thresholds values stipulated under art. 55, para. (2) a) and b), but not more than the equivalent of 100,000 EUR, in lei, according to the rate, at the date of the establishing of the guarantee.

(5) The good conduct guarantee must be valid for at least 90 days,

THE SUBJECT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS

irrevocable and provide unconditional payment upon the first request of the contracting authority, to the extent that the appeal/request/complaint will be dismissed. [...]

The contracting authority is not satisfied with the fact that the challenging company has not submitted the guarantee together with the appeal, on 26.11.2014, but subsequently, at the Council's request, context in which demands the dismissal of the appeal. The Council cannot comply with the request of the authority, for several reasons:

- the G.E.O. does not provide any penalty if the guarantee is not submitted at the time of the appeal submission, but subsequently;

- the G.E.O. does not prohibit the regulation of appeals, including by requesting the establishing of the guarantee or, where appropriate, its increment;

- the G.E.O. prohibits the dismissal of a non-compliant appeal without the appellant being given the right to rectify the appeal [art. 270 para. (2) – should the Council consider that the appeal does not contain all the information referred to under para. (1) it shall request the appellant to supplement the appeal within 3 days of notification];

- art. 200 para. (2) the code of Civil procedure prohibits the dismissal/cancellation of a petition without notifying the applicant, in writing, of the deficiencies, provided that, within maximum 10 days of the receipt of the notification, the latter must carry out the amendments or modifications as requested;

- art. 177 para. (1) the Code of Civil Procedure stipulates that whenever removal of the injury without the annulment of the act is possible, the judge shall rule the correction of irregularities pertaining to the procedure act. However, according to para. (3), the procedure act will not be annulled if until the moment of the pronouncement regarding the defense of invalidity its cause has disappeared;

- art. 33 para. (2) of the G.E.O. no. 80/2013 with respect to the judicial stamp fees, establishes the right of the plaintiff to be granted a term for the adequate stamping of his/her request: „If the petition is unstamped or insufficiently stamped, the applicant is advised, according to the stipulations of art. 200, para. (2) thesis I of the Code of Civil Procedure, regarding the obligation to stamp the challenge compliant to the amount set by the court and to submit the proof of payment of the legal stamp duty, within 10 days of the receipt of the court's notification. „Therefore, a challenge not accompanied by the proof of payment of stamp duty is not dismissed ipso facto, but its author is advised to stamps the challenge within a specified time period. The challenge shall be dismissed only if he/she fails to comply with the measure ordered by the court.

Art. 6 para. (1) of the Code of Civil Procedure stipulates that everyone has the right to a fair trial within an optimal and predictable term by an independent, impartial court established by law. To this end, the court is obliged to provide all measures allowed by the law and ensure the quick judgment procedure. It is understood that Council's request for establishing and providing a good conduct guarantee within five days, as it is not prohibited by ordinance, is allowed.

Art. 21 of the Constitution stipulates that:

„(1) Any person may seek justice in Court for protection of rights, freedoms and legitimate interests.

2) No law may restrict the exercise of this right.

(3) Parties have the right to a fair trial and settlement of cases in a reasonable span of time.

(4) Administrative special jurisdictions are optional and free„.

To exit the reductionist optic of the contracting authority, nothing prevents the administrative-judicial body to invoke the a pari rationae argument, under which it is acknowledged that, where there is the same reason of the law, that same provision applies (law analogy). The a pari rationae argument is based on the idea of legal equality, that demands that in similar situations the same normative provisions apply. An express reference to the analogy under art. 5 para. (3) the Code of Civil Procedure - if a cause cannot be solved neither by law nor by the custom, and in the absence of the latter, nor according to the legal provisions regarding similar situations, it will have to be judged based on the general principles of law, considering all the circumstances and taking into account the equity requirements.

From the broad interpretation, supported by analogy, of the provisions of art. 270 para. (2) of the G.E.O. no. 34/2006 it results that as far as the Council determines that an appeal is not accompanied by a good conduct guarantee or that it is not sufficient, it cannot simply dismiss the appeal, but must act and advise the appellant to establish the guarantee required

by law. The analogy argument (ubi eadem est ratio, debet esse eadem lex) stipulates that where there are the same reasons the same law should apply, the same solution (one proceeds to fill the gaps by finding texts that may be applied in cases not provided for in law).

The analogy regarding the interpretation of a provision of the law is based on the reasoning that if the legislator has issued a certain provision for a particular situation, its application may be extended to other situations which, although not foreseen under the provision, are similar to the ones foreseen, thus justifying the extension of the scope. Relevant to this case are, as noted, the circumstances in which the court must grant the applicant a term for the regularization of the petition or to pay the legal fees, the stamp duty, in order to rectify the deficiencies of the procedural document, respectively.

The good conduct guarantee is, by its nature, a kind of bail and the rules governing the judicial bail (Book VI, Title XIV Code of Civil Procedure) enable the court to provide a term for bail setting.

The recitals of the Constitutional Court decision no. 176 of 24 March 2005 can be transposed, with the adequate amendments, to this case:

Considering the entire legal system of the Constitution, the Court also notes that the freedom of the legislator to determine the conditions to recourse to legal indictment procedures and the trial procedure is not absolute, the limits of the regulatory freedom are determined in such cases by the necessity to comply to the rules and principles of fundamental rights and freedoms and other principles enshrined by the Basic Law and international legal instruments to which Romania is a party.

Thus, according to art. 21, para. (1) of the Constitution, any person may seek the protection of the rights, freedoms and legitimate interests in court and, according to par. (2) of the same article, no law may restrict the exercise of this right.

Upon the regulating the exercise of this right, the legislator is entitled to impose certain procedural conditions, pertaining to the nature and requirements of the administration of justice, but without these limitations affect the substance of the law or deprive it of efficiency.

For the purposes of the above considerations, the Constitutional Court

takes into account the European Court of Human Rights jurisprudence that stated the purpose of the Convention for the Protection of Human Rights and Fundamental Freedoms is “to defend not theoretical or illusory rights, but practical and effective rights” (Case Airey vs. Ireland, 1979, and Artico vs. Italy case, 1980).

In a case similar to the one deducted to the constitutional review, the Court of Strasbourg ruled in the Decision of 9 November 2004, pronounced in the Saez Maeso vs. Spain case, that there had been a violation of art. 6, para. 1 of the convention, when the provisions related to the forms to be observed for the recording of an appeal and their application prevents the litigants to recourse to any available legal indictment procedures. The recitals of the decisions of the Court stated that although the access to court is not an absolute right, but is likely susceptible to limitations, particularly with regard to the admissibility criteria of an indictment procedure, however, these limitations should not restrict the open access of a litigant, in such a manner or to such an extent that the law may be affected in its very substance.

In light of these considerations the Constitutional Court finds that the provisions of art. 302 ind. 1, para. 1 let. a) of the Code of Civil Procedure, which sanctions by absolute invalidity the failure to specify in the notice of appeal “the name, domicile or residence of the parties or for legal persons, their name and address and, where appropriate, the registration number with the Trade Register Office or of the registration with the Register



THE SUBJECT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS



of Legal Entities, the unique registration code or, where appropriate, the fiscal code and bank account”, and - if the applicant resides abroad -” the address chosen in Romania, where all communications related to the trial are to be sent”, seem now unacceptably rigid formal, seriously affecting the effectiveness of the recourse to the legal indictment procedure and to restrict the free access to justice in unjustified manner.

[...] The imposition of the invalidity sanction for failure to comply with such requirements in the appeal, without any possibility of remedying the omission, deprives the appellant, without any reasonable justification, of the possibility to examine by the appeal, his/her valid arguments regarding the wrong way, possibly abusive, by which the dispute he/she is part of was settled by the appealed decision.

Considering these effects of the applying of the provisions of art. 302 ind. 1, para. 1 let, a) of the Code of Civil Procedure, the Court finds that by the invalidity sanction it establishes, the contested text of the law violates both provision of art. 21, as well as those of art. 129 and art. 24 para. (1) of the Constitution.

Thus, in order not to affect the substance of the right of the aggrieved parties to challenge the unlawful acts of the contracting authorities, having constitutional effects, the Council is held to show an active role, and corroborated with the analogy of the abovementioned texts, to grant the appellant a term for establishing and providing of the good conduct guarantee that is subject to prosecution on the merits.

In this case, since SC ... SRL has responded to the Council's solicitation, by providing the proof of guarantee, the purpose of which is to cover, the appeal cannot be dismissed on the grounds of no provision of guarantee, the exception arose by the contracting authority being unfounded. In addition, the rejection of penalty would be unfair as long as the authority has taken possession of the good conduct guarantee, the amount of 21.439 lei being wired to its account. The scope of protecting the contracting authority against the risk of any misconduct of SC ... SRL, as required by 271 ind. 1 para. (1) of the Ordinance, is affected in this matter. Even if the authority was not in possession of an eventual guarantee on 26.11.2014, it has not been placed in a position to retain the appellant a possible guarantee, at that date, for his conduct, and at this time the guarantee is established, valid and covers the risk targeted by the legislator.

From another perspective, it should be added that the authority has not suffered any grievance due to the late establishment of the guarantee by the author of the appeal. It is also noted that, regardless of the date of the establishment or provision of the guarantee, the right of the recipient authority to execute it arises only at the end of the litigation, this being the only time relevant to the contracting authority when it must be in possession of an available and sufficient guarantee.

Similar were the rulings of the courts, the civil decision no. 6837 of 10 September 2014 of the Court of Appeals ..., the Contentions administrative and fiscal department, being indicative and wherein it was retained:

The Court notes that the Council has correctly resolved the exception regarding the lack of the good conduct guarantee since, although the provisions of art. 271 ind. 1 para. (3) of the G.E.O. stipulate that the proof of the established guarantee shall be submitted at the same time as the appeal, these provisions do not preclude the subsequent submission of the abovementioned proof. In other words, the mentioned legal provisions do not establish the forfeiture of the right in the event of failure to carry out within a certain set term, the procedural sanctions needing to be expressly stipulated, no application by analogy with other legal texts being possible.

As the appellant filed the proof of guarantee establishment on 17.07.2014, prior to the Council's pronouncement on the main issue, the Court finds that the mentioned exception was properly resolved.

**2 ANSWERS
TO CLARIFICATION REQUESTS**

Dissatisfied with the answer to the clarification requests issued by the contracting authority in the S.E.A.P., on 22.04.2014, ... submitted to the Council this appeal requesting what was specified within the introductory part of the decision.

Moving on to the analysis of the appeal, the Council notes that, following a request for clarification submitted by an economic operator, and which informed the Council of the lack of certain paragraphs (section 7 followed section 3) in the tender documentation, the contracting authority republished the unabridged tender documentation.

In addition to the initial tender documentation, the operations that will take place during a general monthly cleaning, the operations taking place on the outer surface, the list of equipment and materials that will be provided by the supplier were published.

Regarding its perspective of the appeal, the contracting authority admitted that the tender documentation had not initially been published in full due to a page scanning error, its unabridged version being made available to economic operators within the clarification published in S.E.A.P., on 22.04.2014.

Indeed, by publishing the unabridged version of the tender documentation new information, missing on the date of the announcement publication (13.03.2014), were brought to the attention of economic operators, but given the context when it can be seen easily noticed that there was an error (section 7 followed section 3), and the procedure was suspended on ... a remedial measure may be enforced for the purposes of establishing a new date for tender submission, so that the economic operators benefit from enough time to proper develop the tenders, taking into account the unabridged version of the tender documentation.

As to what concerns the criticisms of the fact that the materials and equipment to be used needed not to be imposed, as each provider could have identified them on his/her own, the Council retains that the contracting authority is entitled, in case of a service agreement, according to art. 188 para. (2) g) of the G.E.O. no. 34/2006, to request information about the equipment, facilities, the technical equipment

the economic operator may possess for the adequate performance of the service contract.

The appellant did not bring concrete arguments, in law and in fact, that the equipment and materials specified in the tender documentation would not be needed to the adequate performance of the contract.

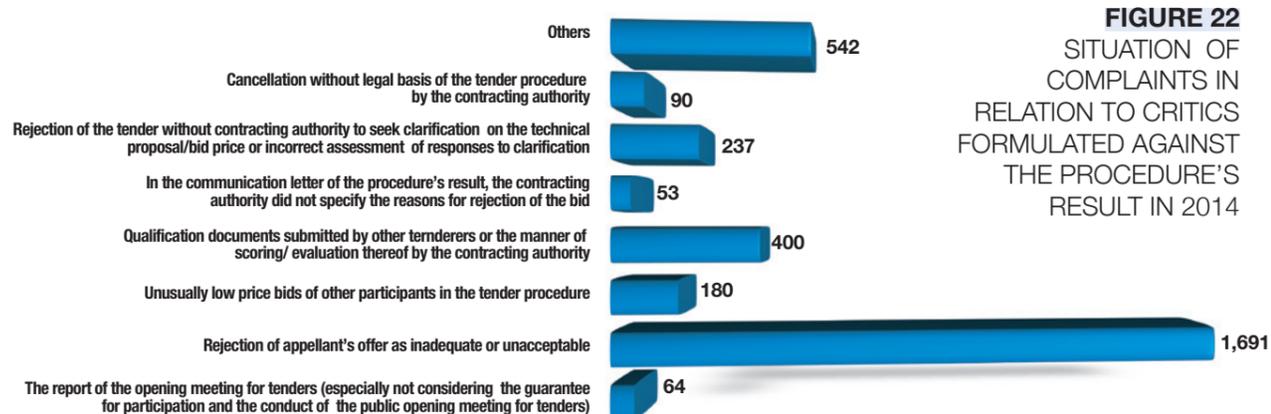
Considering those presented, taking into account the publication, in S.E.A.P., of the unabridged version of the tender documentation on 22.04.2014, based on art. 278 para. (2) and (4) of the G.E.O. no. 34/2006, the Council will allow, in part, the appeal submitted by ... and will commit the contracting authority to establish a new date for the submission of tenders, so that the economic operators benefit from enough time in order to proper prepare the tenders.



THE SUBJECT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS

In the complaints brought against the result of the procedure, it was noticed that the most frequently disputed/ criticized are:

- the report of the opening meeting for tenders (especially not considering the guarantee for participation and the conduct of the public opening meeting for tenders);
- rejection of appellant's offer as inadequate or unacceptable;
- unusually low price bids of other participants in the tender procedure;
- qualification documents submitted by other tenderers or the manner of scoring/ evaluation thereof by the contracting authority;
- the fact that, in the communication letter of the procedure's result, the contracting authority did not specify the reasons for rejection of the bid;
- rejection of the tender without contracting authority to seek clarification on the technical proposal/bid price or incorrect assessment of responses to clarification;
- cancellation without legal basis of the tender procedure by the contracting authority.



In order to understand all these aspects, we present some cases in what follows:

1 DELEGATING MANAGEMENT BY THE CONCESSION OF A PART OF THE SANITATION SERVICE - MINIMUM 3 BIDS

For awarding the concession contract whose object is „Delegating management by the concession of a part of the sanitation service of the commune ...”, COMMUNE ... as the contracting authority, has initiated the tender procedure opened by the publication in S.E.A.P. of

the concession notice no. ... of ... 2014, together with which it has also posted the tender documentation. With the opening of the two bids submitted, the contracting authority has drawn up the report no. 2000 of 30/04/2014. Frustrated by the fact that the contracting authority has refused to cancel the award procedure (only two bids have been submitted) SC ... SRL brought this appeal seeking the annulment of the award procedure.

The appellant critics leveled against the contracting authority's decision to proceed with the award of the aforementioned contract, although only two bids have been submitted are considered grounded by the Council. The Council considers that the object of the contract of procurement is the Delegating management by the concession of a part of the sanitation service of the commune ... activity that is conducted in accordance with the provisions of Law no. 101/2006 of the sanitation service of localities in conjunction with Law. no. 51/2006.

In accordance with art. 11 of Law no. 101/2006, (1) The management of the sanitation service is done according to Law no. 51/2006,



in the following ways:

- a) direct management;
- b) delegated management.

(2) The choice of sanitation service management is done by decisions of the deliberative bodies of the administrative-territorial unit or of the inter-community development associations, as appropriate, in accordance with the sanitation strategies and programs adopted in each commune / Bucharest sectors and in accordance with Law no. 51/2006, as amended and supplemented.

The provisions of art. 13 of Law no. 101/2006 provide: (1) The management organization, function and operation of sanitation service, according to the method of administration adopted shall be as provided by Law no. 51/2006 and the present law.

(2) Direct management or delegated management, as ap-

propriate, may be granted for one or more activities referred to in Art. 2 para. (3).

(3) The award procedure and the legal regime of the delegation contracts for supplying the sanitation services of localities are those set by the deliberative bodies of the administrative-territorial units, according to Law no. 51/2006, as amended and supplemented, and of the G.E.O. no. 34/2006 on the award of public procurement of public works, of public works concession contracts and of services concession contracts, approved with amendments by Law no. 337/2006, as amended and supplemented.

From the content of the legal provisions cited above it appears beyond doubt that the award of the delegation contracts of sanitation services management of localities is in compliance with both the provisions of the Public utilities services Law no. 51/2006 and of the G.E.O. no. 34/2006 on the award of public procurement of public works, of concession contracts and of services concession contracts. In reference to this aspect the provisions of this article. 29 para. (9) of Law no. 51/2006 provide:

The delegate is obliged to award the management delegation contract by applying the open public tender procedure. The tender procedure can be completed only if, after the publication of the tender notice at least three bids have been submitted and at least three bidders meet the eligibility criteria. If, after the publication of the tender notice at least three bids have not been submitted and at least three bidders do not meet the eligibility criteria, the delegate is forced to cancel the procedure and to organize a new tender within a maximum of 60 days from the date of proceedings cancellation.

As the provisions of art. 29 para. (9) of Law no. 51/2006 are mandatory, so that the tender procedure can be completed only if at least 3 bids have been submitted and at least 3 bidders meet the eligibility criteria, the contracting authority was obliged to cancel the tender procedure as only two bids have been submitted. These provisions constitute special rules in relation to those contained in G.E.O. no. 34/2006 and should be applied in priority.

Reliance by the contracting authority of a Draft Framework Procedure on the organization, execution and award of the delegation contracts by concession of the public utilities management services, under public debate on the ANRSC site is irrelevant in solving this case. On the one hand the procedure is conducted under the legislation in force at this time, namely Law no. 51/2006 and G.E.O. no. 34/2006 and not under a draft law in public debate. On the other hand the framework procedure on the organization, conduct and award of the delegating contracts by the concession of the public utilities services management, is a normative act issued pursuant Law no. 51/2006, which is why it cannot exceed the limits imposed by law. For this reason even this draft framework procedure provides in art. 44 and 60 the obligation of annulment of the award if at least three bids have not been submitted.

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2 REQUEST FOR CLARIFICATION TO OBTAIN INFORMATION AND DOCUMENTS SHOWING WITH CERTAINTY THAT THE CONDITIONS LAID DOWN IN THE QUOTED LEGAL PROVISIONS ARE MET, FAILING WHICH THIS BID BEING WRONGLY REJECTED

The assessment report no. 20486/03.24.2014, concluded before conducting the final stage of electronic auction on bid ... the followings have been found and concluded:

According to the website of the Insurance Supervisory Commission (CSA), the followings were decided on 23rd July 2013 regarding the company ...:

- imposition of a fine of 50,000 lei to Mr ... - ... Executive Chairman;
- imposition of a fine of 50,000 lei to Mr - Executive Vice Chairman;
- imposition of a fine of 30,000 lei to Mrs ... - Member of the Executive Board;
- set deadlines of 30 or 60 days for the company to rectify the deficiencies.

The control prerequisites: Insurance Supervisory Commission (CSA) decided, on 26 April 2013 an inspection of the company ... , with the theme of checking the way the claim files are instrumented as well as the observance of the Order no. 11/2012 (for the implementation of the rules on the settlement of complaints regarding the activity of insurers and insurance intermediaries);

Summary of the findings:

1. The accounting and operative records do not allow for proper preparation of reports required by the supervisory authority;
2. the approved claim reserves are undervalued both on 31.12.2012 and on 30.04.2013 and not incorporated at the value and when acknowledging the claims of the policyholders/the injured parties;
3. the legal provisions on the approval, the ascertain of damages, the payment of compensations have not been met;
4. the procedure on how to solve the petitions is not inconsistent with the norms.

The control was held from 16 May 2013 to 14 June 2013 and the measures aforementioned have been ordered after the findings, in respect of the company

It was concluded that they had violated Art. 181 lit. c1 of the G.E.O. no. 34/2006.

The invoked provisions state that „The contracting authority is entitled to exclude from a procedure of public procurement awarding any bidder/candidate who is in any of the following situations: c1) in the last two years he/she has not fulfilled or has improperly fulfilled his/her contractual obligations for reasons attributable to the contractor in question, which has caused or is likely to cause serious damage to its beneficiaries”.

From the above it is noted that the contracting authority's decision was based on information taken from the website of the Insurance Supervisory Commission (CSA).

Apart from the fact that the bidder has not been requested any clarification on the findings from any document drawn up by the evaluation committee it does not come out unequivocally, that the terms of the article



quoted previously are met.

Thus, the failure or the improper fulfillment of contractual obligations by ... the last two years have not been found, not even indicating those unfulfilled contractual obligations or those that have not been fulfilled properly.

As noted by the contracting authority and as shown by the appellant, the control thematic was to verify the way the claim files are dealt with as well as the observance of the Order no. 11/2012 (for the implementation of the rules on the settlement of complaints regarding the activity of insurers and insurance intermediaries), the penalization of the company management does not automatically lead to the definite conclusion that certain contractual obligations have not been met.

Moreover, the reasons that caused the failure or improper fulfillment of contractual obligations must be attributable to the bidder and to have caused or to be likely to cause serious damage to his/her beneficiaries, and the contracting authority has not proved that ... has not met these conditions, as a conclusion of the report of the Supervisory Board.

As argued by the appellant, the exclusion due to the incidence of art. 181 c1 from the ordinance can be taken by the contracting authority on the basis of clear evidence, showing, without any doubt that the conditions provided in the legal provisions are met.

So firstly, prior to the bid rejection, under art. 78 of the Government Decision no. 925/2006, the contracting authority should have clarified with the bidder its findings as a consequence of the consultation of the Insurance Supervisory Commission (CSA) or the website institution. Secondly, to have clear evidence on the application of art. 181 c1 of the ordinance, the contracting authority was able to request additional information from the Supervisory Board, according to art. 11 para. (3) of the judgment „If there are uncertainties or ambiguities concerning certain documents presented, the contracting authority is entitled to request details, clarifications or additional confirmations both from the bidder / candidate concerned and the competent authorities that can provide information on this. In any case, the contracting authority has the obligation to ensure a reasonable period of time to provide the required specifications/confirmations”.

Moreover, in the award procedure report, art. 36 para. (1) b) the Government Decision no. 925/2006 it has been retained as legal basis for rejection of the bid, without specifying which is the requirement/requirements of the Procurement Data Sheet unfulfilled/fulfilled by the bidder, unable to appreciate that the penalization of an individual from the company management is a requirement that causes rejection of the bid.

The above remain also valid for the bid... in the bid evaluation report nr. 20486/03.24.2014, having retained the following reasons for rejecting the bid:

According to the website of the Insurance Supervisory Commission (CSA), it was decided that ASF conducts some checks at

1. In the first five months of last year, 5,462 complaints were record-

ed at the Insurance Supervisory Commission, number increasing by 71.82% compared to the same period of the previous year. This worrying trend in the number of complaints, which reflects the grievances of the insured persons, caused the CSA Board to analyze the situation of companies that have seen an increase in the number of complaints, mostly due to delays in payment of compensations, over the time periods provided in the law.

Following this analysis, in the CSA Board meeting, dated 6 June 2012, in order to protect the policyholders, measures to sanction important persons in five insurance companies that have a larger number of such cases, including the company ..., were taken as follows:

- ..., Chairman of the Board ... – 30.000 lei fine;

The sanctions imposed by the CSA Council are in accordance with Article 39 para. (3) of Law no. 32/2000.

2. Following a decision dated 20 November 2013, CSA decided to sanction three important persons in the management of the company ... local market leader. Fines were imposed from irregularities noticed in the CSA control conducted during July-August 2013 at the company ..., announced CSA in a press release issued on January 22, 2014.

The sanctioned individuals are the Chairman of the Executive ..., sanctioned by a fine of 50,000 lei, ..., the Member of the Executive (50,000 lei) and ..., The Damage Department

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Head (30,000 lei).

The controls also aimed at checking and investigating the method to instrument and complete the claim files and the observance of the provisions of Order no. 11/2012 (Norm on the procedure for settlement of complaints).

Moreover, CSA release was the confirmation of the market rumors on the penalization of the local insurance market leader at the end of last year.

„The control decision has been taken after CSA has previously required ... company some clarifications on how the company intends to instrument the claim files. Since the clarifications provided by the company have not been satisfactory, CSA decided to control ... „, explains the institution.

Given the above findings, the Chairman of the committee, by vote of its members finds that the provisions of Art. 181 lit. c1 of the G.E.O. no. 34/2006, as amended and supplemented are not met, which states that „in the last two years it did not fulfill or has improperly fulfill the contractual obligations for reasons attributable to the bidder in question, which has caused or is likely to cause serious prejudice to its beneficiaries. „

So, regarding this bidder, the contracting authority should have requested some clarifications to obtain information and documents showing with certainty that the conditions laid down in the quoted legal provisions are met, failing which this bid is erroneously rejected.

3 JUSTIFICATION OF THE APPARENTLY UNUSUALLY LOW PRICE

After having assessed the bids applied the award criterion „the lowest price”, the report of the procedure no. ... /11.4.2014, the bid winning was desernated the company SC SRL.

From the above, we can see that the price offered by SC ... SRL (... lei) represents 84.25% of the estimated value (... lei).

According to art. 202 para. (1) of the G.E.O. no. 34/2006 If a bid is apparently unusually low-priced compared to what is to be provided, executed or performed, the contracting authority is obliged to ask the bidder, in writing, and before taking a decision to reject that bid, details and explanations which it considers significant about the bid and to check the answers that justify that price.

(11) A bid presents an apparently unusually low price compared to what is to be provided, executed or performed when the bid price, excluding VAT, is less than 80% of the estimated value of the contract.

As shown by the contracting authority in its appraisal, para. (11) as cited, it was introduced by Law no. 193/2006 on the approving of the G.E.O. no. 77/2012, published in the Official Gazette of Romania, Part I, no. 387 / 28.06.2013.

According to art. 361 para. (1), invoked by the appellant, in the meaning of Art. 202 para. (1) of the G.E.O., a bid presents an apparently unusually low price compared to what is to be provided, executed or performed when the bid price, excluding VAT, is less than 85% of the estimated value of the contract in question or, if in the award procedure



there are at least 5 bids that are not in the situations referred to in art. 36 para. (1) a-e) and par. (2) when the bid price is less than 85% of the arithmetic mean of those bids. (Article as amended by Government Decision no. 834/2009).

As argued by the contracting authority, applying the principle of hierarchical superiority of the law on the government decision, the percentage in relation to which the apparently unusually low price is determined is that provided in the G.E.O. no. 34/2006, namely 80% of the estimated value of the contract.

Since the price offered by SC ... SRL represents 84.25% of the estimated value, the contracting authority was not obliged to request for the price justification, as wrongly claimed by the appellant.

Regarding the fact that the report of the bid opening session, it was noted that it is not appropriate to seek clarification, as shown by the city hall, the provisions of Art. 33 para. (4) of Government Decision no. 925/2006 have been met when drawing it up, any decision regarding the evaluation of the bids being taken within a session subsequent to the bid opening session.

As to the basis in law invoked at the end of the appeal (Law no. 448/2006 on the protection and promotion of the rights of the disabled persons, Law no. 340/2013 on the state social insurance budget for 2014 and the Law no. 356/2013 of the state budget for 2013) they are not relevant for solving the case.

4 THE DECISION BY WHICH THE COUNCIL CANCELS ALL OR PART OF THE CONTESTED MEASURE IS BINDING ON THE CONTRACTING AUTHORITY

During the procedure, the same company filed the complaint registered with the Council under no. 435 / 08.01.2014, settled by decision no. ... of ... by which the appeal was accepted and the reassessment of the submitted bids was ordered... and

The followings have been held, inter alia, in the reasons for the decision:

„The Council then proceeds to analyze the critics of the appellant regarding the fact that from the content of the environmental permit issued by the APM Ilfov it comes out that the waste with the code 5/16/06 are not subject to permit for the collection, transport, storage and treatment activities.

Analyzing the Procurement Data Sheet provisions, the Council notes that point III.2.1.b) Ability to pursue the professional activity, the contracting authority noted the following requirement: „The Environmental Permit for activities of collection, transport, sorting, hazardous chemicals waste treatment issued on behalf of the bidder for the collection and transport of medical waste and hazardous chemical waste issued by the National Agency for Environmental Protection under Government Decision no. 544/2012 on the organization and functioning ... and of G.E.O. no. 195/2005 on ... approved by Law no. 265/2006, with subsequent amendments and under Law no. 211/2011 on waste regime. The environmental permit must contain the waste codes provided in the tender book. „

Analyzing the tender book the Council finds that the contracting authority therein mentioned, among others the taking, transportation, final disposal and providing the necessary containers for the transport of the medical waste coded 16.05.06 - laboratory chemicals, consisting of or containing dangerous substances including mixtures of laboratory chemicals.

Checking the environmental permit no. 375/10.24.2013 issued by the Agency ..., the Council notes that the Incineration plant ... with pyrolytic combustion type CP 100 owned by ... can provide the final disposal of the waste coded 18.01.06 - chemicals consisting of or containing dangerous substances, and coded 16.05.06 - laboratory chemicals, consisting of or containing dangerous substances, including mixtures of laboratory chemicals, is not mentioned in this permit.

The Council cannot accept to support the contracting authority regarding the fact that under OMS no. 1226/2012, the waste coded 16.05.06 is equivalent to that coded 18.01.06 since the invoked regulation does not clearly state such assimilation.

In these circumstances, the Council considers that in this case it is necessary that the contracting authority applies art. 11 Para. (3) of Government Decision no. 925/2006, which states that: „If there are

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uncertainties or ambiguities concerning certain documents presented, the contracting authority is entitled to request details, clarifications or additional confirmations both from the bidder / candidate concerned and the competent authorities that can provide information on this. In any case, the contracting authority has the obligation to ensure a reasonable period of time to provide the required specifications / confirmations” and to request ... to clarify whether the under the environmental permit no. 375/10.24.2013 the Incineration plant ... Incineration plant ... with pyrolytic combustion type CP 100 owned by ... can provide the final disposal of the waste coded 16.05.06 - laboratory chemicals, consisting of or containing dangerous substances, including mixtures of laboratory chemicals, although this code is not specified in the environmental permit in question.

[...]

As to the complaint alleging that the ADR certificate was not submitted for euro bins of 240 liters, although they are specifically mentioned in the note to justify the price ..., the Council notes the followings:

The acquisition data sheet, point III.2.3.a) - Technical and / or professional capacity, the following requirements have been provided:

„ The ADR Quality Certificate of the packaging for hazardous waste collection.

The ADR quality certificate of the packaging for hazardous waste collection shall be submitted according to Law no. 31/1994 for Romania's accession to the European Agreement concerning the international carriage of dangerous goods (A.D.R.),.

Reported to the checked critics in case the provisions of art. 24 para. (3) (iv) of Government Decision no. 1061/2008 on the transport of hazardous and non-dangerous waste in Romania have incidence, stipulating that the transport of hazardous waste from medical activity is done taking into account: „it must have plastic containers with lid, eurobin type where packaged waste is stored during transport, safely. „

Analyzing the address no. 148/12.23.2013, registered at the contracting authority under the no. 16027/24.12.2013, the by which the winning bidder responded to the requests for clarification of The Council notes that the content of this document mentions the euro bins for the hazardous waste collection - yellow mobile containers of 240 liters.

From the checking of the qualification documents submitted by ..., it comes out that the authorization no. 7926/11.21.2013, authorized to participate in the award tender procedure with the products „plastic film bags for transporting hazardous medical waste with useful capacity of 40 liters, 120 liters, 240 liters, cardboard boxes for transporting hazardous medical waste with a capacity of 4 kg/20 liters, 10 kg/40 liters, plastic containers for transporting hazardous infectious, biting and cutting waste from medical activities with a capacity of 0.5 liters/1kg - 48.5 liters/27 kg, enclosing approval certificates type no. CERT - AT - Amb – 0153*11, 0150-11, 0149-11, 0152-11 and 0147-11 (for plastic containers for transporting hazardous infectious, biting

and cutting waste from medical activities). Analyzing this last approval certificate, the Council notes that it content does not mention the containers of 240 liters specified in address no. 148/12.23.2013, registered at the contracting authority under the no. 16027/24.12.2013, and it is necessary that the members of the Evaluation commission clarify this situation through a request for clarification to the winning bidder.

The Council may not consider the Certificate no. 02162 /11.11.2013 (attached to the address no. 2216/02.05.2013 sent to the Council by the contracting authority in response to the CNSC address no. 1969 issued by ... on the technical inspection of the pack ... for eurobins with a capacity of 240 litres manufactured in 2013 by ..., issued at the request of ... because “it is a new document that has not been officially filed in the case given that it cannot be found among the documents submitted by the bidder in the procedure (qualification documents and / or responses to clarification) being submitted pro causa.”

For the implementation of the Council decision, the contracting authority requested ... by the address no. 3303/ 02.19.2014, to be mentioned whether, under the environmental permit no. 375/10.24.2013, the incineration plant ... with pyrolytic combustion type CP 100 owned by ... can provide the final disposal of the waste coded 16.05.06 - chemicals consisting of or containing dangerous substances,

including mixtures of laboratory chemicals.

The Agency replied with the address no. 3574/02.25.2014, which showed that the plant has been authorized at the working point in the commune ... under the environmental permit no. 375/10.24.2013, valid for five years until 24.10.2018, only for the waste codes listed in this permit. The requested code is not authorized at this plant located on the mentioned premises.

In the report of the award procedure no. 3881/26.02.2014, the contracting authority noted that the code 16.05.06 in question is provided by the permit no. 228/07.02.2013, revised on 24.10.2013, of ... for the working point for the H 150 Converter plant. This was also mentioned in the appraisal no. 2216/05.02.2014, issued by N.C.S.C.

As it can be seen in the previous analysis, the Council considered the permit no. 375/ 24.10.2013, submitted by ... on which the request for clarification from ... has been ordered, this permit also mentioning the incineration activity, activity that is not specified in the environmental permit no. 228/ 02.07.2012, envisaged by the contracting authority after the bids revaluation.

Since, as it comes out from the address ... the code 16.05.06 is not authorized to the incineration plant ... with pyrolytic combustion type CP 100; the evaluation committee should have rejected the bid as unacceptable



As highlighted by the appellant company in the written notes filed in response to the justification of the bid price, the winning company revealed the costs of incineration, on page 3 of the response, being expressly indicated for the code 16.05.06 disposal method - incineration. So the final disposal of the waste from the aforementioned code shall be done by incineration, unlike the waste from codes 15.01.10, 18.01.03, 18.01.04, for which sterilization has been provided as the method of final disposal.

Or, as long as one of the activities referred to be performed under the contract is not authorized, namely the incineration of waste coded 05.16.06 - laboratory chemicals or containing dangerous substances including mixtures of laboratory chemicals, the winning company cannot provide the services legally.

Indeed, that aforementioned code is provided in the environmental permit no. 228/02.07.2012, but that authorization does not apply to final disposal by incineration, the permit no. 375/10.24.2013 of the incineration ... with pyrolytic combustion type CP 100 is submitted.

Further clarification of aspects of authorization for the code 16.05.06 is no longer required, given that, specifically, both in answer no. 148/ 23.12.2013, and in answer no. 30/21.02.2014, both on price justification, incineration is mentioned as a means of disposing of waste coded 16.05.06 activity non-authorized by the permit no. 375/10.24.2013.

Compared to the above, the Board determines that the bid ... must have been rejected as unacceptable in accordance with art. 36 para. (1) b) of the Government Decision no. 925/2006.

As for the ADR certificate for eurobins, the award procedure report no. 3881/26.02.2014 noted that the 240 litres eurobins are containers for transport, and not for collection, this is why . has not submitted the certificate.

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Apart from the fact that the contracting authority has not implemented the earlier decision of the Council, which clearly established that „considering the latter certificate of approval, the Council notes that the 240 litre containers are not contained in its content, being mentioned in the address no. 148/12.23.2013, registered at the contracting authority under the no. 16027/24.12.2013, the members of the Evaluation Commission must clarify this situation through a request for clarification to the winning bidder”, the Council notes that, according to art. 7 letter b) of the Technical rules on the management of medical waste, Appendix 1 of the Order no. 1226/2012, packaging for waste arising from medical activity are containers and containers used for the collection, packaging, transportation, treatment and final disposal of waste from medical activity. Therefore, even containers are considered packaging that can be used for the waste collection.

Also, according to art. 21 para. (1) of the aforementioned norms, „the second container where the bags, boxes and containers for hazardous waste are placed is represented by mobile containers with rigid walls, located in the central space for temporary storage of waste from inside the health unit.”

Furthermore, both in the response no. 148/12.23.2013, and in the response no. 30 / 21.02.2014, submitted to justify the bid price , ... eurobins for hazardous waste collection are referred to - yellow mobile containers of 240 litres.

Moreover, as argued by the appellant company , in its previous decision, the Board held that the contracting authority itself submitted the certificate no. 02162/11.11.2013 issued by ... on the technical inspection of the packaging ... for eurobins with a capacity of 240 l manufactured in 2013 by ... issued upon the request of ... but which has not been considered by the Council, because “it is a new document that has not been officially filed in the case given that it cannot be found among the documents submitted by the bidder in the procedure (qualification documents and / or responses to clarification) being submitted pro causa. ,”

According to art. 280 para. (1) of the Government Emergency Ordinance no. 34/2006, the decision by which the Council cancels all or part of the contested act is binding on the contracting authority.

Moreover, against the decision of the Council, ... filed complaint at the Department of Contentious Administrative and Fiscal matters, complaint that was rejected by decision no. ... (File no. ...).

Therefore, the contracting authority was obliged to fully respect the decision of the Council which clearly established that the members of the evaluation commission must clarify, by a request for clarification to the winning bidder, the situation regarding the certificate ... for eurobins of 240 liters .

However, given the unacceptable nature of the bid, such clarification is no longer required.

As to the appellant request to check the technical proposal of ... the Council notes that, by appeal, no specific arguments have been made

and which could be subject to the administrative and judicial body review.

The Council is not a control body to carry out an overvaluation of the bids upon the request of tenderers who have doubts or assumptions about whether or not the requirements of the tender documentation have been met by the competitors, being able to investigate the reasoning with matters of fact that have been notified to it and being unable to pronounce itself beyond the limits it has been invested with. The appellants cannot charge the Council to conduct a research in integrum of a tendering procedure or an overvaluation of bids, on the grounds that they have no access to the bids (technical proposals) of the competitors.

Since the bid ... is unacceptable on the grounds stated above, related to the lack of permit for the code 16.05.06, the Council shall not analyse the appellant critics on the apparently unusually low price of ... irrelevant in solving the case if these critics are grounded or not grounded, the unacceptable nature of the bid cannot be changed.

As to the bid submitted by ..., the Council notes that, after the re-evaluation ordered by decision no. ... of ... the contracting authority by the awarding procedure report no. 3881 / 26.02.2014 has rejected the bid as being non-compliant.

Given the rejection of the bid before drawing the complaint, the critics against the bid are found to be ungrounded.

5 THE AUTHORITY'S FAULT IN ELABORATING THE TENDER BOOK IS AN ABUSIVE MEASURE OF DECLINING THE TENDER

In order to grant the procurement contract the object of which is the supplying with food products, lot 3, code CPV 15000000-8 – Food, beverages, tobacco and similar products (Revision 2), the city of ... (City Hall ...), as contracting authority, has initiated the call for tenders procedure, by publishing the invitation to tender, number ... in S.E.A.P., along with the bidding documentation.

As a follow-up of the tender evaluation and the communication of the procedure result with the address... has submitted the present complaint to the Council for analysis.

In the tender book, chapter “Shipping/Delivery and Transportation”, it was stipulated that the “Delivery of goods will be done in maximum 48 hours from moment the order is placed, at the delivery location, City – The Welfare Cantina, on street ...

The transportation will be carried out with adequate vehicles that respect the hygiene norms required for the type of goods they transport.”

Likewise, in the chapter “Other information”, it was stipulated that “The delivery will be done based on invoice. The goods will be delivered only based on the order placed by the beneficiary being delivered in maximum 3 days from the moment the order is placed.”

In the shipment agreement model, art. 4.2, it was stipulated that the “Supplier is obliged to deliver the products included in the lot/lots of Annex 1, in maximum 48 hours from the time of order placement (by phone/fax) and within the parameters in the tender book.”

In the delivery chart presented by ..., the term of 72 hours from the time of order placement was specified.

By the letter dated 24.03.2014, the contracting authority has solicited the appellant to present the way the tender book request was fulfilled regarding the shipping of products in maximum 48 hours from the moment the order was placed, taking into account that he/she opted, within the technical proposal, for a 72 hours as maximum delivery time.

Likewise, it was solicited to state how the requirement concerning the appropriate vehicle transportation, was fulfilled through the documents presented, taking into account that, from the tender, no transportation-related information is given.

The tenderer responded to the request in the letter no ... 26.03.2014, to which she attached the delivery chart, in which the delivery time-frame is

of maximum 48 hours since the order was received, as well as copies of the sanitary authorities of the vehicles used.

In the intermediate evaluation report ..., registered at 31.03.2014, it was retained, with regard to the tender ... that, in her response, sent after the clarifications' request, the tenderer presented a new delivery chart for the products offered in lot 3, in which the delivery time-frame is modified to “maximum 48 hours since the order placement”. This amendment cannot be considered as formal flaw (nowhere in the provided tender is stipulated the 48 hours delivery time-frame; the only place where this is mentioned, is 72 hour time-frame), nor can it be considered a minor technical flaw. Consequently, by the answer provided, the tenderer modifies the content of the technical proposal, by changing the delivery time-frame to 48 hours, thus the offer becomes non-compliant, based on art. 79. (2) of the Government Decision no. 925/2006.

Furthermore, concerning the way the transportation aspect is



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handled, it was retained that this is not evident according to the technical proposal. The tenderer was solicited to present the way the documents provided by her comply with the qualification request, taking into account that the means of transportation of the auctioned products are not mentioned in the tender.

Following the request for clarification, the tenderer sends two documents (dated 20.01.2012) to the contracting authority, for two transportation vans for meat based products transportation. These documents are not comprised in the initial tender, therefore, their submission subsequent to the clarification request cannot be considered as clarification or justification of the services auctioned. The means of transportation are not referred to in any way within the tender, therefore neither are these specific vehicles as being those to be used. Consequently, the two documents no. 984 and 985/20.01.2012 cannot be taken into consideration as they amend the initial tender and violate the procurement data sheet, chapter VI.3. Other information, para. 3, respectively: "In case that the requested documents are not provided in their entirety within the procurement documentation, the tender will be deemed as unacceptable, in accordance to art. 36. para. 1, let. b) of the Government Decision no. 925/2006, the subsequent amendment of the tender not being accepted".

The above mentioned have been considered in the granting procedure report for lot 3, no. ... concluded after the electronic bidding stage, as well as in the communication of the results for procedure no. ...

Concerning the time-frame for the shipping of the goods, the Council agrees, as the contracting authority has, that in the tender book the existence of contradictory information, in the sense that, in the "Shipping/Delivery and Transportation" chapter, it was stipulated that shipment will be done in maximum of 48 hours, since the placement of the order, while in the "Other information" chapter, it was stipulated that the goods will only be delivered based on the beneficiary's order in maximum 3 days from order placement.

By stipulating a 72 hour time-frame (3 days) in the initial delivery chart included in the technical proposal, it cannot be considered that the appellant company did not meet the requirements in the tender book, as long as these stipulated a 3-day time-frame for delivery.

However, taking into account that, in the clarification letter dated 24.03.2014, sent to the tenderer, the buyer mentioned the 48 hour time-frame, which the appellant accepted by sending a new delivery chart with the new time-frame, and taking into account the contradictory information in the tender book, the amendment from 72 to 48 hours cannot be considered as the fault of the appellant company.

As two distinct delivery time-frames were stipulated in the tender book, while in the clarification letter, the contracting authority choosing to refer to the 48 hours one, the conduct of the appellant was determined by the authority's choice, thus the time-frame amendment from 72 to 48 hours cannot represent a dismissal reason, especially as the authority itself stipulated both time-frames.

This being the case, the authority's fault in elaborating the tender book, the dismissal measure of the appellant's tender is an abusive one, all the more so because not even the 72 hour time-frame, initially stipulated, would have respected the requirements in the tender book.

Therefore, as the clarification letter of the contracting authority made reference to the 48 hour time-frame, accepted by the tendered by the sending of the new delivery chart, the commission should have accepted this new chart without considering it an amendment to the tender, as both the 48 hour and 72 hour time-frames were stipulated in the tender book.

The contracting authority's argument that, because the 48 hour time-frame was stated in the contract model, this was the time-frame the tenderers should have considered when drafting the tender, cannot be considered as valid. The faulty drafting of the tender book and the lack of consistency between this and the contract model can only be imputed to the contracting authority, not to the lack of diligence of the economic operators by not having asked for clarifications or not having appealed the granting documents.

It cannot be considered that the appellant company proposed an amendment to the contractual clauses by suggesting a 72 hour delivery time, as long as this term, as previously shown, was stated in the tender book and the contract model was not correlated with the in-

formation presented in this book.

Furthermore, by accepting the new delivery chart in which the delivery timeframe is of maximum 48 hours, as long as the delivery time is not an evaluation factor, on one hand, it does not bring any advantage to the appellant, if taken into consideration, and on the other hand, it is in authority's interest to accept it, taking into account both its fault in drafting the tender book and the fact that it is a shorter time-frame than the initial 72 hours mentioned in the tender.

Thus, with regard to the above, the offer was wrongly denied due to the amendment of the time-frame.

With regards to the second reason for dismissal, concerning the way in which the goods would be transported, the Council agrees that, as for the technical specificities, the appellant stated that "the transportation will be carried out with adequate vehicles that comply with the hygiene norms required for the type of goods they transport."

Subsequent the authority's clarification requests, the appellant submitted two authorizations, dated 20.01.2012, for two professional transportation vans for the meat based products transportation, which the authority did not take into consideration, referring to them as new documentation amendments to the tender.

Concerning this aspect, it is important to keep in mind that, in the tender book, it was stipulated that transportation will be done with adequate vehicles that comply with the hygiene norms required for the type of goods they transport, without any request to submit any documents in this sense and, implicitly, without mentioning what these documents would be.

Under the circumstances in which, within the tender, the appellant made reference to the fact that the transportation should be done with vehicles complying with the current legislation, the amending of the offer with documents proving that the means of transportation should not have led to the declining of the tender, the measure being excessive.

In all fairness, the initial tender there were not any documents submitted following the clarification requests, but on one hand, these were not requested in the tender documentation, and on the other hand, their acceptance would not have provided any advantage to the appellant.

Not taking the respective authorizations into consideration based on the fact that, in the procurement data sheet, it was stipulated that subsequent amendment of the tender with the missing documents was not allowed, was not applicable in the examined matter, taking into account that those documents were not requested in the procurement data sheet, only that transportation should be done with adequate vehicles being mentioned.

It was the duty of the contracting authority to gather all the information and documents required to demonstrate that transportation will be done by adequate vehicles, to check them and establish the conformity/lack of conformity of the tender, based on the received documents.

Therefore, this reason is also considered as having been wrongly retained.

**6 SIMILAR BUT
NOT IDENTICAL
EXPERIENCE**

Turning to settling the appeal, the Council notes that in the procurement data sheet, chapter III.2.3.a) The technical and / or the professional capacity required a list of the principal similar services provided in the past three years, containing values, performance periods, beneficiaries, whether the latter are contracting authorities or private clients. The supplies of services are confirmed by the submission of the issued certificates/documents issued or countersigned by an authority or by a beneficiary private client showing that the bidder has provided services similar to the object of the contract to be awarded (at least one certificate / document).

To prove the fulfilment of the requirement, SC ... SRL submitted the list of the main services provided in the past three years and the similar experience sheets for the contracts whose object is:

- major modernization and upgrading of the Dumbrava plant 220/110 kV;
- power supply Dam ... - modernization of the plant 20 / 0.4 kV Dam ... - PT, CS, DDE;
- modernization of the plant 20 kV;
- modernization of LEA 110 kV ... - SF and CS;
- coil replacement neutral point 1 + resistor and neutral coil 2 + resistor, including related separators in the plant 400/110/20 kV ... - SF, PT and CS;
- Replacement of ATs and Trafo

THE SUBJECT OF COMPLAINTS SUBMITTED BY ECONOMIC OPERATORS



in power stations – replacement of Trafo 1 - 16 MVA and replacement of Trafo 2 - 10mV 110/20 kV Vetis SF and PT + CS;
Favourable opinions CTA/CTE and copies of the contracts in question have been attached for the aforementioned contracts.

Analysing the qualification requirement in the procurement data sheet it can be noted that the only condition imposed by the contracting authority on similar experience was that services similar to those which are to be purchased to have been provided in the past three years.

Given that, from the documents filed by the winning company, it comes out that that services involving design services have been provided (PT, CS, SF, technical documentation and obtaining the permits) for the 220 kV, 110 kV and 20 kV plants, the requirement of the tender documentation has been completed.

The appellant company has not brought any specific argument for considering that the contracts submitted by SC ... SRL as similar experience do not meet the qualification requirements, as required by the contracting authority.

The applicant's statement that similar design services of the same technical complexity should have been proved by:

- design documentation for revamping the 220/110/20 kV transformer substations, attesting the execution of design works similar to those specified in that design theme content for both the primary and secondary circuits and for the related constructions ;
- design documentation attesting the execution of circuit works in 220 kV plants that are different in complexity from the 20 kV plants;
- design documentation attesting the execution of circuit works in 110 kV plants that are different in complexity from the 20 kV plants;
- is found to be ungrounded, given that it exceeds the requirement of procurement data sheet.

Moreover, the interpretation of the appellant company is to consider

an identical experience and not a similar experience, as requested.

Bidders are required to prepare the bid with due observance of the tender documentation (art. 170 of the Government Emergency Ordinance no. 34/2006) and, when evaluating the bids, the committee must relate to the qualification criteria, as imposed, and not to other additional requirements, as mentioned in the provisions of art. 72 para. (2) b) of the Government Decision no. 925/2006. A bid may be rejected as unacceptable, if it has been submitted by a bidder who fails one or more of the eligibility requirements set out in the tender documentation, and no other requirements that have not been provided.

As to the appellant's statement that, after analysing the award notices published in S.E.A.P. no similar work in terms of technical complexity and that has been contracted by SC ... SRL has been identified, apart from the fact that, in the present case, a service contract and not a work contract is awarded, is irrelevant, given that, among the qualification documents submitted by the winning company in the procedure, there are documents that reveal the provision of services similar to those that are subject to procurement.

Compared to the above, in the absence of specific arguments leading to the conclusion that the services provided by SC ... SRL are not similar to those which shall be purchased pursuant to art. 278 para. (5) of the Government Emergency Ordinance no. 34/2006, the Council shall reject the appeal filed by ... as being ungrounded

2.2. FILES SOLVED BY N.C.S.C

2.2.1. EVOLUTION OF FILES SOLVED BY N.C.S.C

During 2014, the complaints resolution panels within N.C.S.C. issued 3,758 decisions, fact that meant the resolution, within the mentioned period, of 3,974 case files.

The annual evolution of the case files resolution by the complaints resolution panels within the Council is as it follows:

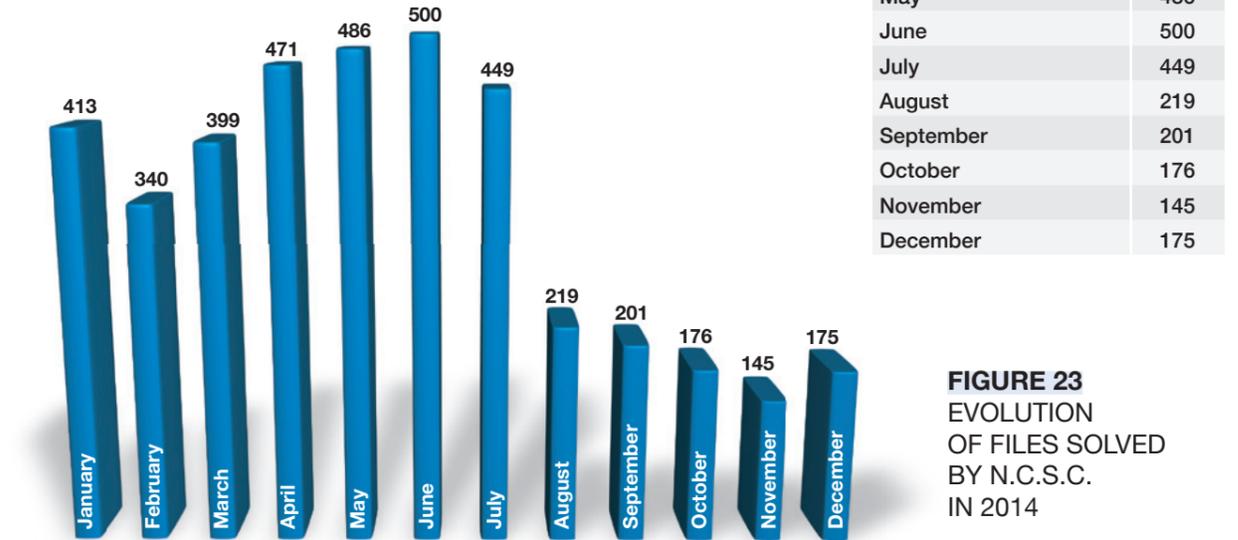


FIGURE 23
EVOLUTION
OF FILES SOLVED
BY N.C.S.C.
IN 2014

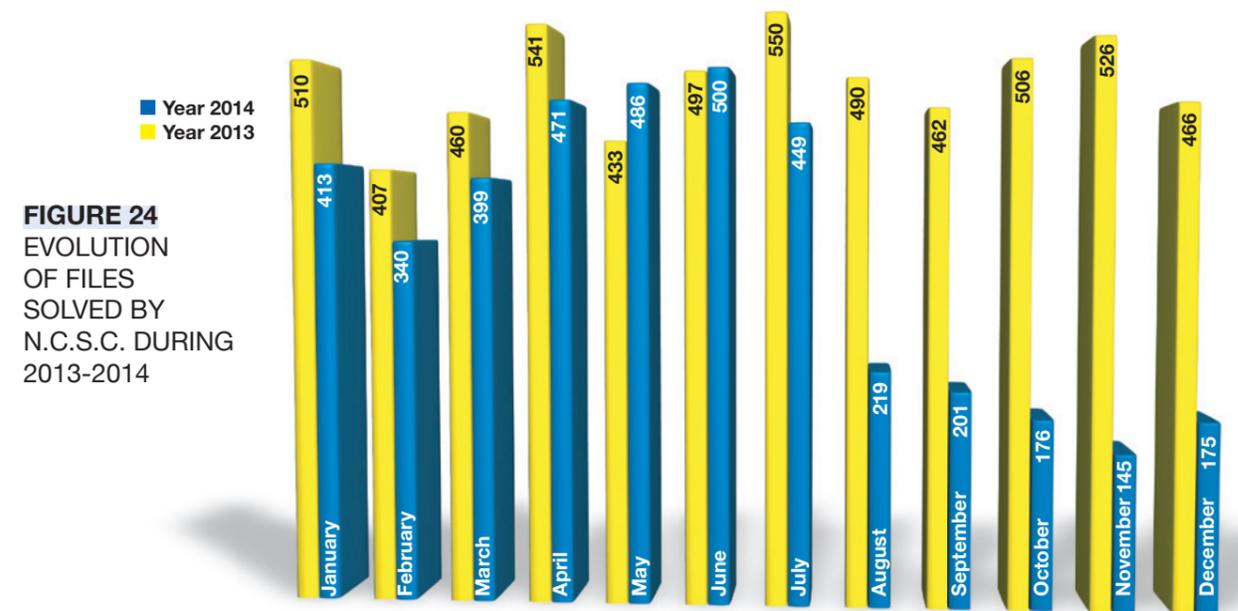


FIGURE 24
EVOLUTION
OF FILES
SOLVED BY
N.C.S.C. DURING
2013-2014

Nevertheless, we have to specify that since the Council had been established until December 31, 2014, the total number of cases settled by the complaints resolution panels within the institution was of 51,317.

2.3. DECISIONS TAKEN BY N.C.S.C.

2.3.1. EVOLUTION OF NUMBER OF DECISIONS TAKEN BY N.C.S.C.

During January 1 - December 31, 2014, the 11 complaints resolution panels within N.C.S.C. issued 3,758 decisions.

The situation of decision taken in 2014, broken down by months developed as it follows:

January	407
February	355
March	384
April	454
May	479
June	441
July	364
August	190
September	194
October	181
November	139
December	170

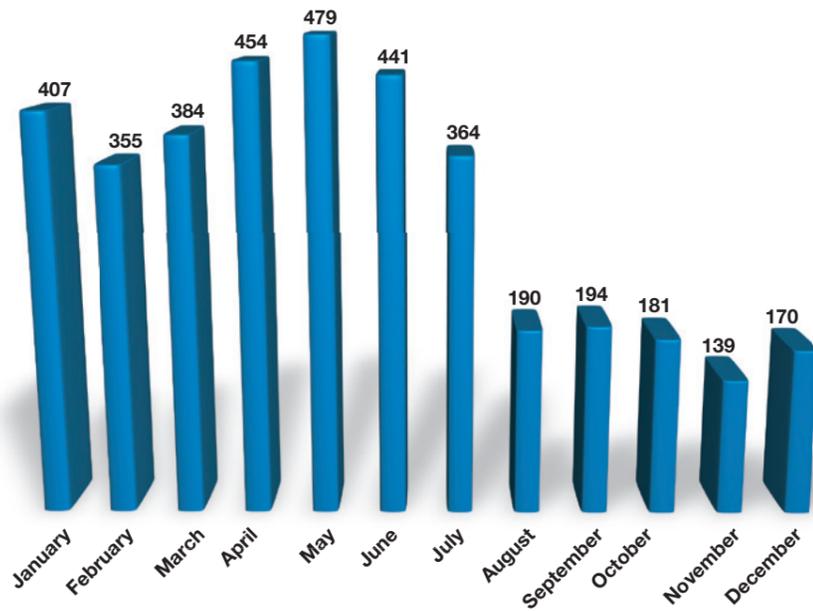


FIGURE 25
EVOLUTION OF
DECISIONS TAKEN
BY N.C.S.C. IN 2014

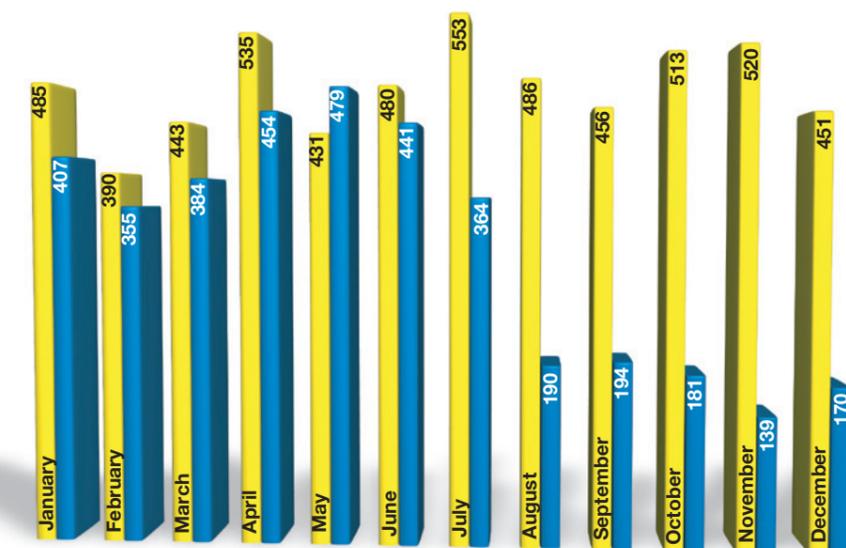


FIGURE 26
EVOLUTION OF
DECISIONS ISSUED
BY N.C.S.C. DURING
2013 - 2014

In 2014, the number of decisions rendered by the N.C.S.C. decreased by 34.41% compared to the previous year (1,972 decisions). The decrease was mainly due to the fact that as of 30 June 2014, the amendments and completions to the G.E.O. no. 34/2006 entered into force, introducing the obligation of economic operators to provide the security of good conduct for the entire period between the filing of the complaint and the date of the final decision of the Council.

Overall, since the Council was established until December 31, 2014, the total number of decisions issued by the institution was of 45,924.

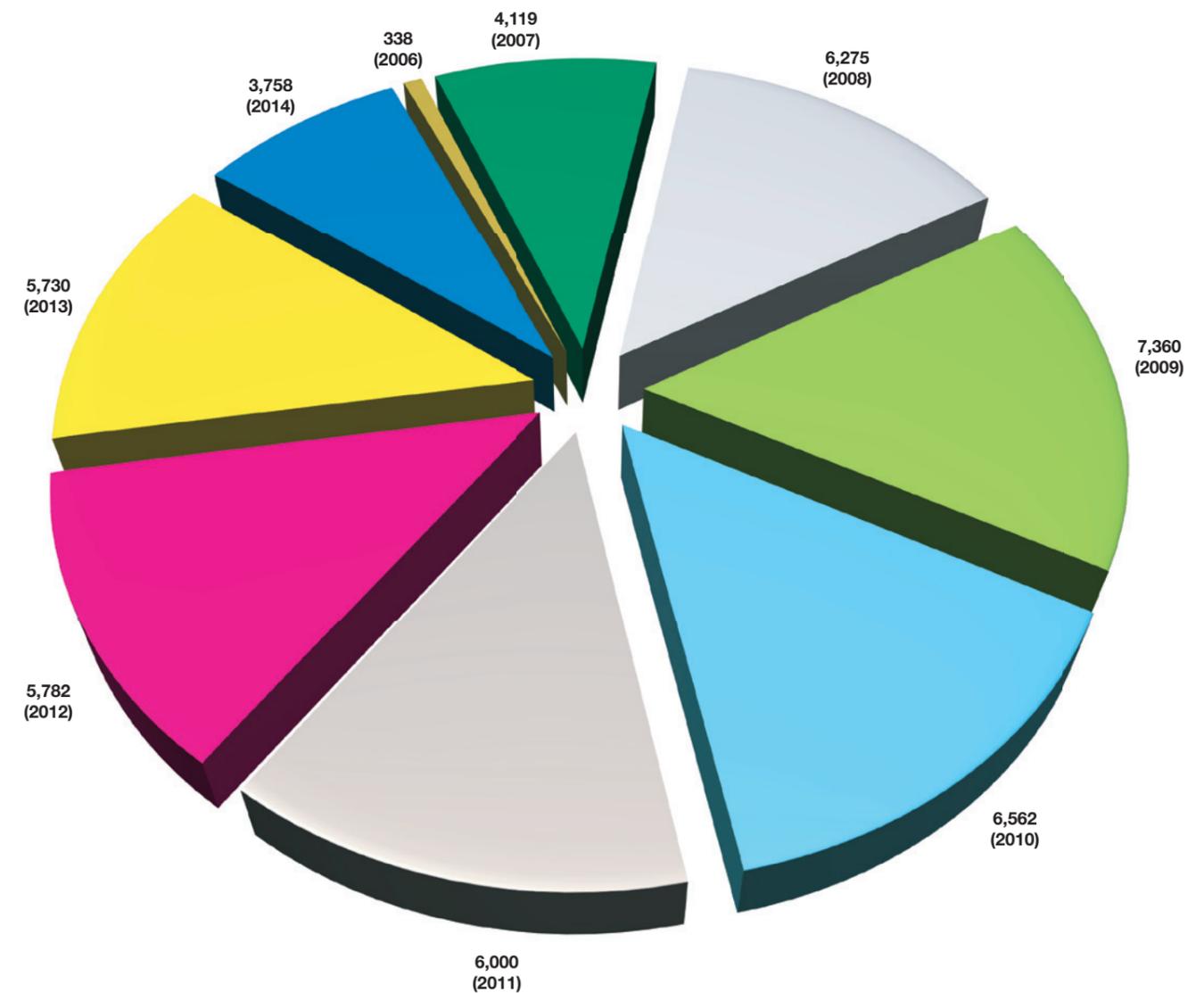


FIGURE 27
STATUS OF DECISIONS ISSUED BY N.C.S.C. DURING 2006 - 2014

2.3.2. SITUATION OF COMPLAINTS REGISTERED TO N.C.S.C

As we have specified before, between January 1st and December 31st 2014, there were 3,758 decisions issued by the 11 Councils for solving complaints within N.C.S.C.

Following the settlement of complaints formulated by the economic operators, the Council issued:

- 1,351 decisions for which it disposed to admit the complaints formulated by the economic operators. For these cases, it was considered regarding the content of the litigation legal relation formulated for settlement, giving favour to the Claimant. The solution requested by the Claimant and adopted during the deliberations of the Council for Solving Complaints, is in line with the administrative - legal defence necessity of the subjective right violated or unrecognized and reconsidering it as to provide for its holder the advantages the law acknowledges for it.
- 2,407 decisions by which the denial of complaints of the economic operators was decided as:
 - the complainant failed to prove the security of good conduct under Art. 2711 of G.E.O. no. 34/2006.
 - the Council considered, regarding the content of the complaint settled, to favour the contracting authority, due to the fact that the merits of the complaint formulated by an economic operator were proved to be ungrounded/without merits;
 - the Council had to “keep silent” due to the fact that an exception on the merits or a procedural plea (the complaint was introduced lately, has become devoid of purpose, was unacceptable, lacking its object, lacking its interest, was introduced by individuals without any interest in it, etc.) was invoked by the parties or ex officio;
 - the Claimant used its right to waive the complaint formulated, cancelling thus its litigious action. Thus, the simple waiver application to the complaint formulated by the person that initiated the litigation, results in immediate cancelation of the file.

Analysing the chart no. 28 it proves that, in 2014, due to the decreased number of complaints filed, a decrease from the previous year was automatically registered in both the number of decisions rendered by the Council by which complaints were accepted, as well as the number of the decisions by which they were rejected.

FIGURE 28
STATUS OF SOLUTIONS
GIVEN BY N.C.S.C.
DURING 2013-2014

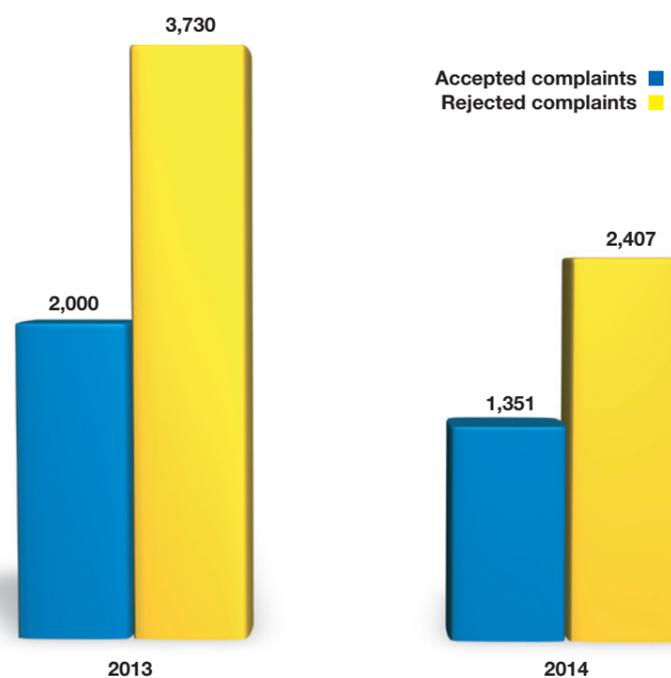
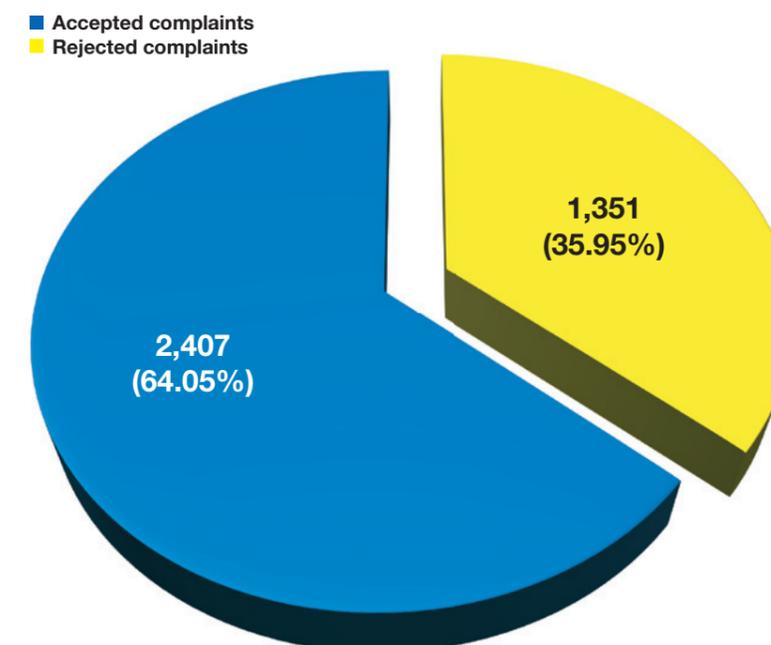


FIGURE 29
STATUS OF SOLUTIONS
GIVEN BY N.C.S.C. IN 2014



The chart above proves the fact that following the settlement of complaints formulated by the economic operators, in case of 35.95% of the decisions rendered by N.C.S.C. during 2014 the complaints were accepted, while for 64.05% of the decisions taken by N.C.S.C., the complaints were rejected and the public procurement procedures continued.

As we mentioned in Chapter 2.1.1., in 2014, at the N.C.S.C.

1,581 complaints were filed under the procedures for awarding public procurement contracts financed from EU funds. After resolving the merits of these complaints, 1,003 of them were rejected (63.44%), and only 578 were accepted (36.56%).

Last but not least, it should be noted that out of 2,407 decisions by which the Council decided to dismiss the complaint submitted by the economic operators, a number of 790 were rejected in the second half of 2014, these having a total value of 1,069,643,868.22 RON (equivalent to EUR 240,661,447.20).

It should be emphasize that within 30.06.2014 - 31.12.2014, following the decision by which N.C.S.C. ordered the rejection of complaints filed, an amount of RON 9,554,093.49 (equivalent to EURO 2,149,595.80) – constituted by economic operators as a security of good behavior – remained available to the contracting authorities involved in award procedures initiated and disputed.



2.4. ACTIVITY OF N.C.S.C. COMPARED TO THE ESTIMATED VALUE OF THE AWARDING PROCEDURES

2.4.1. ESTIMATED VALUE OF THE AWARDING PROCEDURES FOR WHICH N.C.S.C. ISSUED DECISIONS

In 2014, N.C.S.C. issued decisions within certain public procurement procedures with an estimate total value of RON 38,350,682,348.18, the equivalent of EUR 8,628,601,527.29²⁰, thus the resulting value was by 12.28% lower compared to 2013.

In terms of value, in 2014, the total estimated value of the awarding procedures in which N.C.S.C. made decisions to admit the complaints formulated by the economic operators was of RON 12,546,515,270.67, the equivalent of EUR 2,822,867,135,55²¹.

During 2014, the total estimated value of procedures for which N.C.S.C. made decisions to reject the complaints formulated by economic operators was of RON 25,804,167,077.51, the equivalent of EUR 5,805,734,391.73²².

Of the total estimated value of the procedures for which decisions to admit the complaints, the total estimated value of public procurement procedures for which the Council decided to cancel them was of RON 3,761,464,530.03, the equivalent of EUR 846,299,898.76²³, and that of the awarding procedures for which remediation measures were decided amounted to RON 8,785,050,740.64, the equivalent of EUR 1,976,567,236.79²⁴.

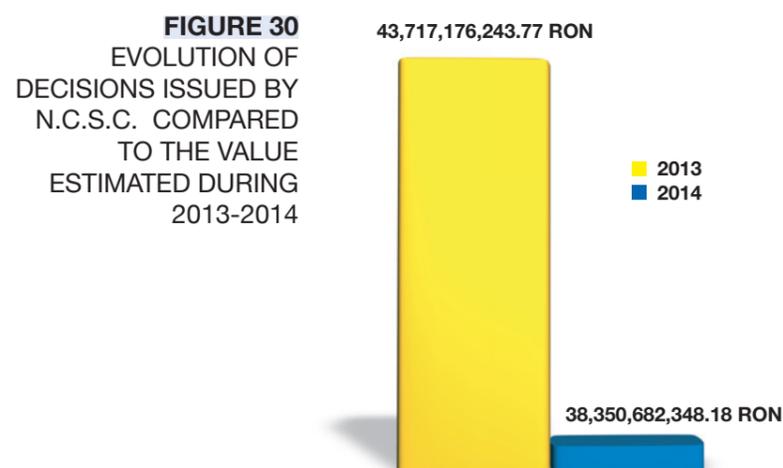
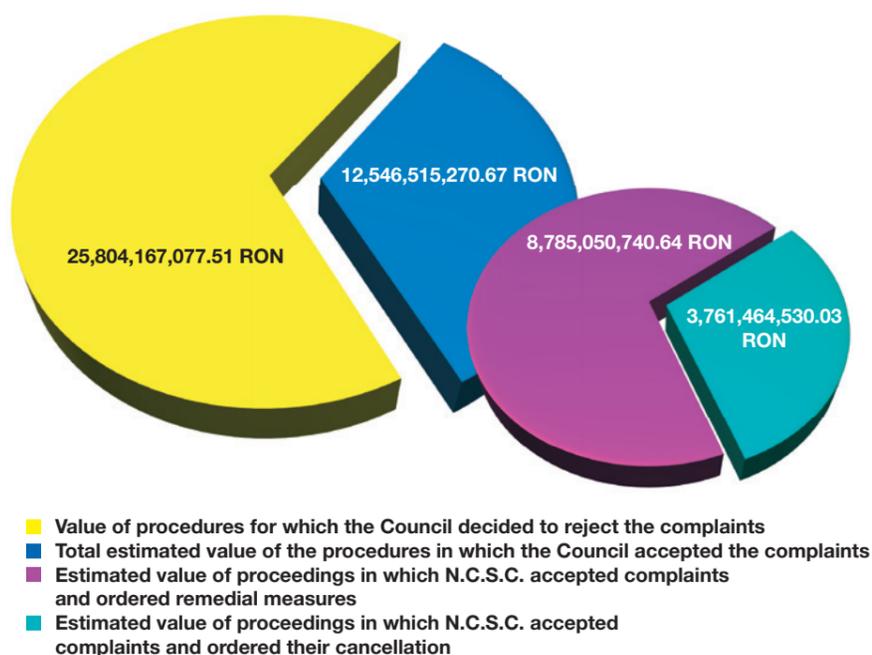


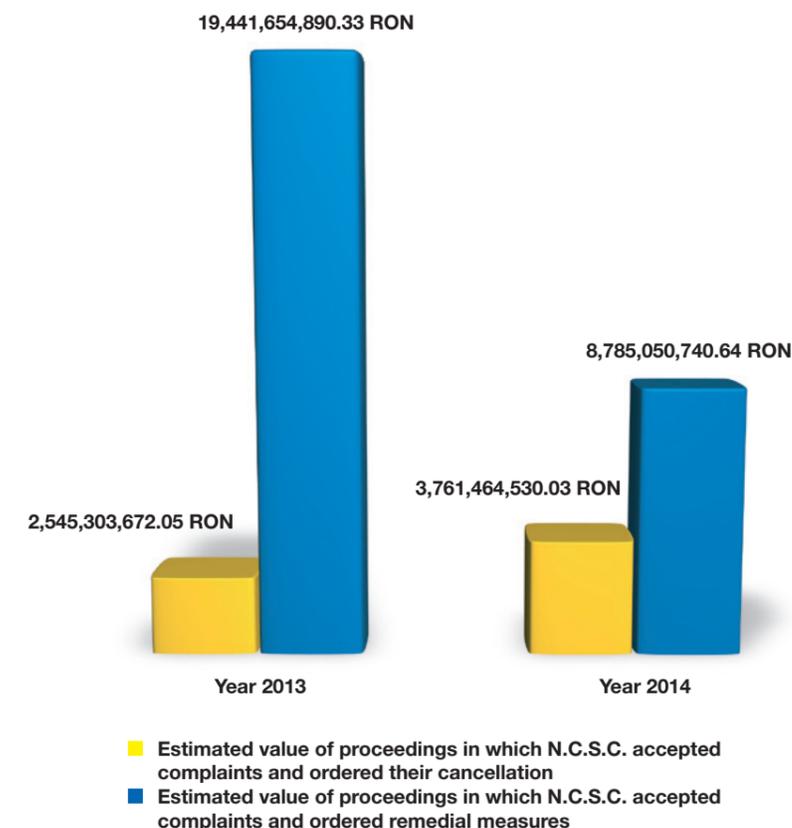
FIGURE 31
TOTAL ESTIMATED VALUE OF THE AWARDING PROCEDURES FOR WHICH N.C.S.C. ISSUED DECISIONS IN 2014



Analysing FIGURE 31, it is obvious that in 2014, the total estimated value of the awarding procedures for which N.C.S.C. rendered decisions for the complaints of the business operators (RON 12,546,515,270.67) represented 32.71% of the total estimated value of procedures in which N.C.S.C. issued decisions (RON 38,350,682,348.18), while the value of procedures for which the Council decided to reject the complaints formulated by the economic operators (RON 25,804,167,077.51), represented 67.29% of the total estimated value of the procedures in which the Council rendered decisions.

As it can be seen from FIGURE 32 compared to the previous year, in 2014, the estimated value of the awarding procedures for which the Council accepted the complaints and cancelled procedures increased by 47.78% compared to the previous year, but the estimated value of the procedures for which the Council rendered decisions for admissions and ordered the remedy of the procedure decreased by 54.81%.

From the chart mentioned above, it can be seen that the estimated value of the procedures in which N.C.S.C. issued decisions for admission of complaints and for ordered cancellation of procedures because remediation of the aspects notified was impossible, worryingly increased.





2.4.2. THE ESTIMATED VALUE OF PROCEDURES FOR WHICH N.C.S.C. ISSUED DECISIONS TO ADMIT THE COMPLAINT, COMPARED TO THAT OF PROCEDURES INITIATED IN S.E.A.P.

The official data provided by the Electronic System for Public Acquisitions (S.E.A.P.) indicate that in 2014, within the communication platform used in the awarding process of the public procurement contracts, 18,367 awarding procedures were initiated, with a total estimated value of RON 77,401,933,025.29, the equivalent of EUR 17,414,825,411.80²⁵.

Compared to 2013, when in S.E.A.P. 19,342 awarding procedures were initiated, and to 2012 when 27,656 procedures were initiated, it is observed that in 2014 the number of awarding procedures decreased by 5% compared to 2013 and by 33.59% compared to 2012.

Comparing the total yearly estimated value of the procedures initiated in 2014 in S.E.A.P. (RON 77,401,933,025.29) and the total estimated value of the awarding procedures in which N.C.S.C. issued a decision (RON 38,350,682,348.18), results that the later represented 49.55% out of the total estimated value of the procedures initiated in S.E.A.P.

But if we compare the total yearly estimated value of the procedures initiated in 2014 in S.E.A.P. (RON 77,401,933,025.29) with a total estimated value of the procedures in which N.C.S.C. accepted the complaints formulated by the business operators and decided remediation/cancellation measures of the procedures (RON 12,546,515,270.67), results that the later represented 16.21% out of the total estimated value of the procedures initiated in S.E.A.P.

At the same time, if we compare the total yearly estimated value of the procedures initiated in 2014 in S.E.A.P. (RON 77,401,933,025.29) with the total estimated value of the procedures in which N.C.S.C. issued decisions to admit the complaints formulated by the economic operators and disposed certain measures, the following are observed:

- the estimated value of the procedures for which N.C.S.C. disposed remediation measures was of RON 8,785,050,740.64 (11.35% out of the total estimated value of the procedures initiated in S.E.A.P.);
- the estimated value of the procedures for which N.C.S.C. disposed their cancellation was of RON 3,761,464,530.03, (4.86% out of the total estimated value of the procedures initiated in S.E.A.P.).

By comparison in terms of value between 2014 (RON 77,401,933,025.29) and previous years, respectively 2013 (74,615,096,072.24 RON) and 2012 (RON 99,030,708,109), it is found that in 2014 there was a 3.73% increase in the estimated value of the awarding procedures initiated by S.E.A.P. compared with 2013 but decreased by 21.84% compared with 2012.

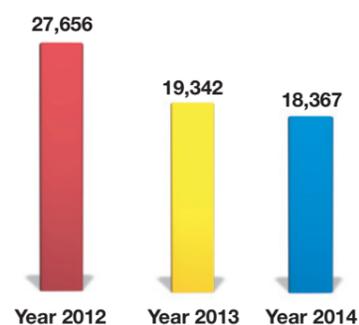


FIGURE 33
EVOLUTION OF THE AWARD PROCEDURES INITIATED BY S.E.A.P. DURING 2011-2014

- Estimated annual value of the procedures initiated in S.E.A.P.
- Estimated annual value of the procedures in which N.C.S.C. accepted the complaints and ordered remedial measures
- Estimated annual value of the procedures in which N.C.S.C. accepted the complaints and ordered their cancellation

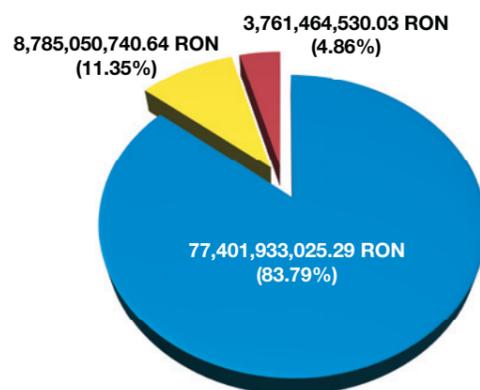


FIGURE 34
SITUATION OF THE ESTIMATED VALUE OF THE PROCEDURES INITIATED BY S.E.A.P. AND OF THE PROCEDURES IN WHICH THE COUNCIL ACCEPTED THE COMPLAINTS AND DISPOSED REMEDIATION MEASURES OR THE CANCELLATION OF THE PROCEDURE

3. THE QUALITY OF N.C.S.C. ACTIVITY BETWEEN 1 JANUARY - 31 DECEMBER 2014

3.1. SITUATION OF DECISIONS ISSUED BY N.C.S.C. AND AMENDED BY THE COURTS OF APPEAL FOLLOWING THE COMPLAINTS SUBMITTED

3.1.1. SITUATION OF DECISIONS ISSUED BY N.C.S.C. REGARDING THE MERITS OF COMPLAINTS AND AMENDED BY THE COURTS OF APPEAL FOLLOWING THE COMPLAINTS SUBMITTED

Observing the constitutional principle of “double degree of jurisdiction”, the law maker determined that it is necessary for the decision given by the Council following the settlement of the complaint by administrative and legal means to be “controlled” by a court of law, as to remedy any error occurred during the first settlement. Thus, for the decisions given by administrative and legal means by the Council, they are “verified” by a superior office, respectively the Courts of Appeal in administrative-territorial unit where the contracting authority is registered or the Bucharest Court of Appeal in case of filing complaints against the decisions given by N.C.S.C. in procedures for award or services and/or works in connection with transport infrastructure of national interest.

The existence of this control is a guarantee for the parties involved, meaning that any injustice can be settled/ or repaired and for the solving counsellors of the Council, it provides incentives to fulfil their duties with the utmost rigor and exigencies, knowing that their decision could be controlled by a higher court.

Following settlement by the Council of the complaints formulated by economic operators made in accordance with art. 281 (1) of G.E.O. no. 34/2006, its decisions on the settlement of a complaint may be appealed to the court under art. 283 (1) of the same law, within 10 days following the notification, for reasons of illegality and groundlessness.

In compliance with the legislation in force, the complaint against the decisions of N.C.S.C. can be initiated either by the contracting authority, or by one or several economic operators participating in the procedure, or by the contracting authority together with one or several economic operators involved in a public procurement procedure.

SITUATION OF DECISIONS ISSUED BY N.C.S.C. REGARDING THE MERITS OF COMPLAINTS AND AMENDED BY THE COURTS OF APPEAL FOLLOWING THE COMPLAINTS SUBMITTED

For this reason, against a decision issued by N.C.S.C. there are often several complaints registered, formulated to competent Courts of Appeal.

During 2014, out of the total of 3.758 decisions issued by the N.C.S.C., a number of 724 (19.26%) decisions were appealed with complaints to the competent Court of Appeal where the contracting authority is registered. In 2013, there were 868 appealed decisions, which meant 15.14% of the total number of decisions issued by the N.C.S.C. (5,730).

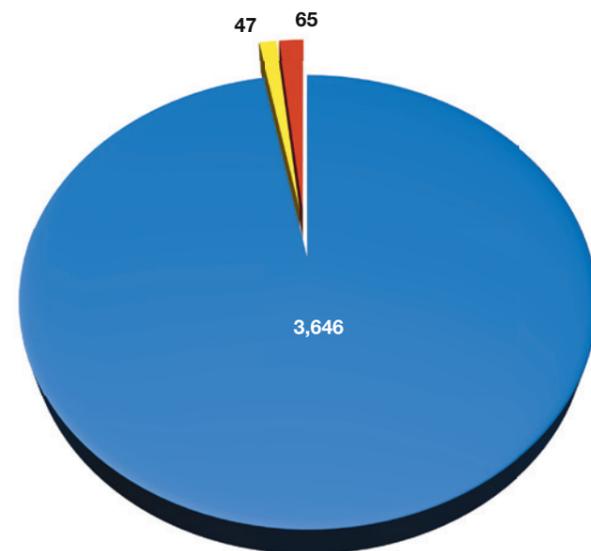
It thus appears that, despite the measures introduced on 30 June 2014 by G.E.O. no. 51 amending and supplementing G.E.O. no. 34/2006, the percentage of decisions issued by the Council and appealed in the Courts of Appeal of the contracting authority unit increased in 2014 with 4.12% compared to the previous year.

The explanation for this increase: the intention of a growing number of economic operators to make use of all remedies against contracting authorities so that they do not lose the security of good conduct imposed by G.E.O. no. 51/2014.

Thus it is seen that the enactment mentioned – which declared aim was the shortening of proceedings concerning the award of public procurement by discouraging professional complainants to submit complaints – had a boomerang effect, helping to prolong the award procedures following the repeated complaints of a procedure by economic operators in all competent courts, in the hope of recovery the constituted security of good conduct in the favour of the contracting authorities.

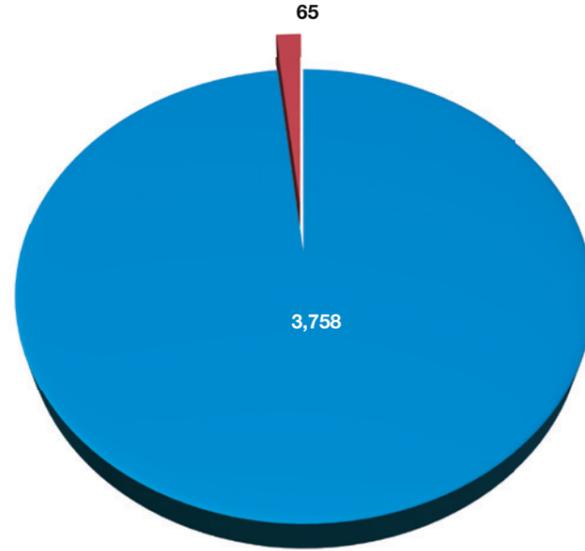
In 2014, following the complaints filed with to the competent Courts of Appeal in which the contracting authority is registered, 65 decisions issued by the N.C.S.C. were under cassation/cancelled in full by the courts (1.73% of all decisions issued by the Council) and 47 were amended in part (1.25% of total decisions of the Council).

FIGURE 35
STATUS OF COMPLAINTS FORMULATED AGAINST THE DECISIONS ISSUED BY N.C.S.C. IN 2014

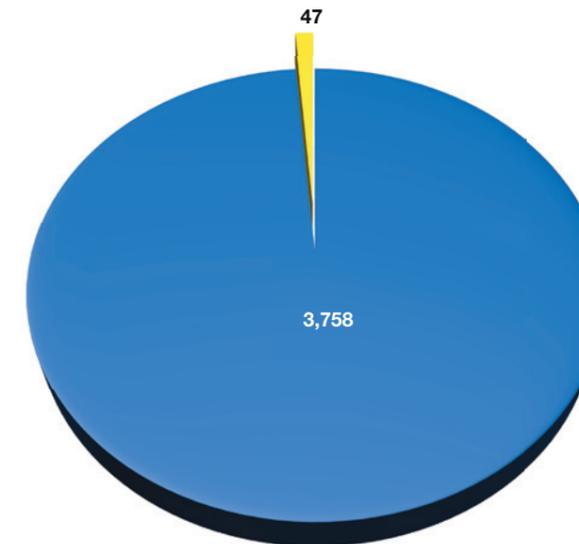


- Decisions issued by N.C.S.C. remaining final and irrevocable
- Decisions issued by the N.C.S.C. amended partially
- Decisions issued by the N.C.S.C. under cassation/cancelled in full

FIGURE 36
NUMBER OF DECISIONS ISSUED COMPARED TO THOSE UNDER CASSATION/ CANCELLED IN FULL IN 2014



- Decisions issued by NCSC
- Decisions under cassation / cancelled in full



- Decisions issued by N.C.S.C.
- Decisions issued by the N.C.S.C. amended partially

FIGURE 37
NUMBER OF DECISIONS ISSUED COMPARED TO THOSE AMENDED PARTIALLY IN 2014

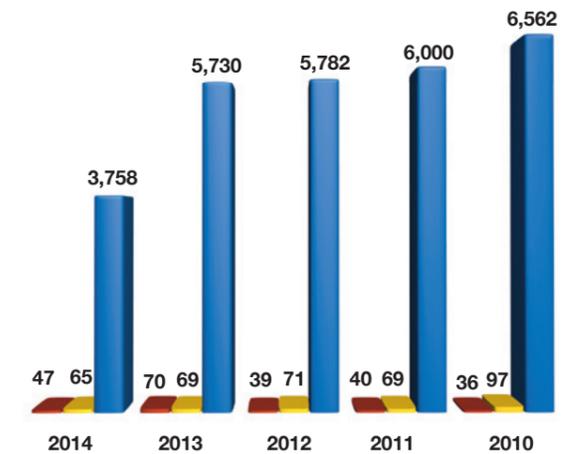
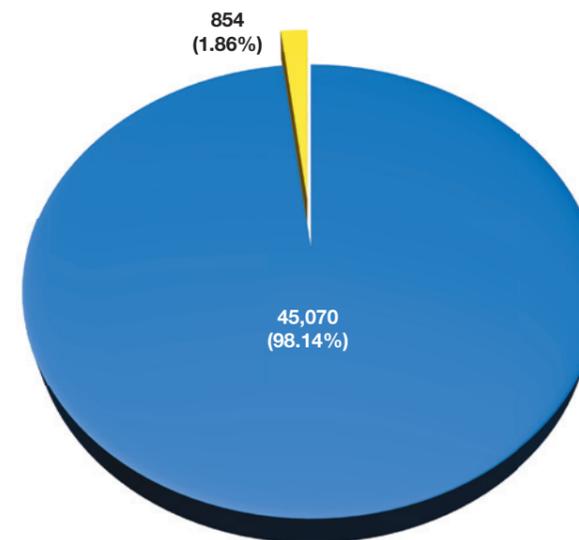


FIGURE 38
SITUATION OF COMPLAINTS FORMULATED AGAINST THE DECISIONS ISSUED BY N.C.S.C. DURING 2010-2014

Therefore, it results that during 2014, 3.646 decisions issued by the Council (which means 97.01% out of the total of decisions issued in 2014) were final and irrevocable as they were issued by our institution, which maintains the credibility and trust of this institution.

FIGURE 39
SITUATION OF COMPLAINTS ACCEPTED BY COURTS OF LAW DURING 2006-2014



- Final and irrevocable decisions during 2006 - 2014
- Decisions issued by the NCSC repealed / amended by Courts of Appeal during 2006 - 2014

From the statistic documents we can draw the conclusion that the percentage of the decisions issued by the Courts of Appeal after the Council was established and until the end of 2014 it is constant and, at the same time, very low compared to the percentage of the decisions issued by it which remained final and irrevocable.

If we summarize the decisions issued by N.C.S.C. from its establishment and until the end of 2014, our institution issued 45,924 decisions.

If we compare, for the period between September 2006 - December 31st 2014, the decisions under cassation/ amended in full by the competent Courts of Appeal following the complaints of the economic operators/contracting authorities (854 decisions), with the number of decisions issued by the Council, it is noted that 45,070 decisions issued by our institution (98.14%) were final and irrevocable.

As it can be noticed from the chart above, the credibility share of the Council increased in 2014 to a level of 98.14% compared to 2013, when it was 97.57%.

Due to the total independence the Council had in the past and still has, and to the profile and competence of its employees, in 2014 the quality of our institutional activity and the fast settlement of complaints formulated by the economic operators (N.B. - within the term of 20 days provided by G.E.O. no. 34/2006, as further amended and completed), shall be considered main elements of the N.C.S.C.'s performance.

4. INSTITUTIONAL TRANSPARENCY AND TRAINING OF STAFF



4.1. INSTITUTIONAL TRANSPARENCY

In 2014, the NATIONAL COUNCIL FOR SOLVING COMPLAINTS (N.C.S.C.) was continuously concerned with increasing the transparency, competition and efficiency of public procurement market, with promoting the best practices at European level and disseminating its own experience in the area to its institutional partners. Additionally, special attention was given to its own staff continual training, alongside with activities to discourage and fight anti-competitive practices within public procurement area.

In this regard, N.C.S.C. gave an increased attention to institutional collaboration with offices on the public procurement market (Competition Council, National Authority for the Regulation and Monitoring of Public Procurement - N.A.R.M.P.P., Unit for Coordinating and Verifying Public Procurement - U.C.V.P.P., National Agency for Integrity - N.A.I.).

Being interested in establishing and coherent operation of the Romanian public procurement system and absorption of EU grants, the Council continued to send on weekly basis to N.A.R.M.P.P. - based on the protocols concluded with this institution - official reports on the assessment terms given by the contracting authorities for different projects in progress, decisions of the Council and settlement measures decided by it following the complaints of economic operators.

On 6-7 October 2014, the Council participated in the second edition of Annual Conference against Corruption on "Good practices in preventing corruption, promoting integrity and transparency" - part of the project "Additional measures to achieve the benchmarks in the Mechanism Cooperation and Verification" funded by the Ministry of Justice of Romania and the Netherlands Ministry of Foreign Affairs, showcasing materials within the session devoted to projects, programs, campaigns and best practices.

4.1.1. PROJECTS AND INITIATIVES

The Council, along with a number of public authorities and institutions, such as the Ministry of Justice, the National Anticorruption Superior Council of Magistracy and the National Institute of Magistracy, Fraud Investigation Division of IGRR, the National Authority for Regulating and Monitoring Public Procurement, National Agency for Integrity and the Public Ministry, are partners in the transnational project for Fighting public procurement fraud initiated by Freedom House Romania, which has received funding from the ISEC.

The project, called „Fighting Public Procurement Criminality. An Operational Approach” focuses on:

- promoting the exchange of experience between trainers, experts and managerial staff from institutions in Romania and other European countries;
- conducting training seminars for magistrates and operative officers, including both theoretical modules and practical exercises with an emphasis on the inter-institutional collaboration and to be in line with best training practice in this field at European level;
- development of operational guidelines for magistrates and operative officers.

The project aims to achieve a beneficial effect on both the institutional capacity of the Romanian authorities to solve the cases of fraud, corruption and other crimes in public procurement and on their ability to cooperate.

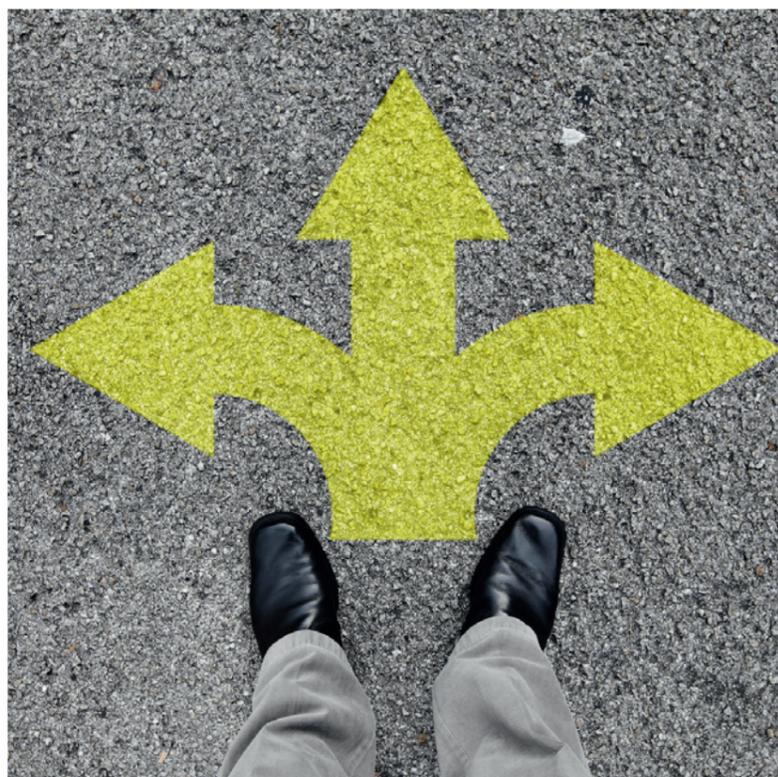
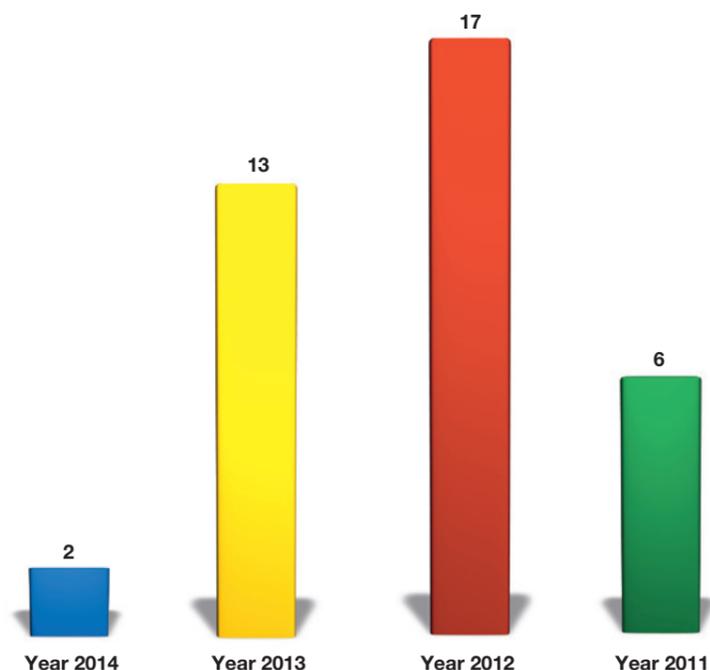
4.2. DECISIONS ON THE OCCURENCE OF POTENTIAL CONFLICTS OF INTEREST

The issue of conflict of interest within the public procurement has multiple aspects addressed in the report "Assessment of the Public Procurement System from Romania" elaborated by the company Deloitte and acknowledged by the European Commission.

Due to the collaboration protocols specified above, N.C.S.C. contributed and contributes at all times to create a general frame for the unitary application both of specific legislation and that concerning competition, which makes possible to identify any possible conflict of interests between the contracting authority and different economic operators, or of unfair competition following different "agreements" between several economic operators.

In 2014, our institution informed the National Agency for Integrity (N.A.I.), the National Authority for the Regulation and Monitoring of Public Procurement - N.A.R.M.P.P. and the Unit for Coordinating and Verifying Public Procurement - U.C.V.P.P. regarding only 2 (two) awarding procedures for which the existence of potential conflicts of interests was invoked (the respective cases are to be found on the web page of the institution - www.cnsc.ro, section "Decisions 2014")

To facilitate the understanding of information presented in this chapter, we detail the settlement given for the 2 (two) complaints formulated within the awarding procedures, where issues concerning the existence of any potential conflict of interests were invoked



1 ALLEGED CONFLICT OF INTEREST

Considering the above, the Council will resolve the complaint by analyzing the way the contracting authority assessed the winning bid taking into account the provisions of the tender documents, the applicable legislation in the field of public procurement and the support of the parties.

In this regard, the Council will retain, of the content of the complaint no. ... registered with the N.C.S.C. under no. ... that what the appellant criticizes refers to the contracting authority's decision to grant the procurement contract to an association of economic operators of which SC ... SRL is part of, entity whose main shareholder is the contracting authority.

According to the provisions of Art. 69 let. a) of the Government Emergency Ordinance no. 34/2006, invoked by the appellant as ground of appeal, „the following are not entitled to be involved in the verification / assessment of applications / tenders: a) persons holding shares, parts of interest, stocks in the subscribed capital of one of the tenderers/candidates or subcontractors, or persons part of the board of directors/management or supervisory body of one of the tenderer/candidates or subcontractors.”

Upon the interpretation of the previous rule of the law, the Council considers that the lawmaker intended that decisions regarding the verification/assessment of applications/tenders not be enacted by persons who may have various interests in obtaining personal benefits subsequent to such decisions.

Upon the study of the case file, the Council will retain that according

to confirmation of company details no. 16719/04.16.2014, the associated legal person of SC SRL is „... city by the municipal council ...” with a 99.82% participation share in benefits and losses and ... as the natural person, with a 0.18% participation share in benefits and losses.

In this context, the Council reckons that, as the profit obtained subsequent to the contract to be granted by the procedure which is the object of this appeal is to reach the local budget of ... and not a natural person, one cannot speak of any interest of a person in the procurement contract granted by the association of which the SC SRL is part of.

In fact, the Council considers that the way the rule of the law is drawn, by using such phrases as „ the following are not entitled to be involved in the verification/assessment of applications/tenders”, the rule of the law is applicable to individuals carrying out activities pertaining to verification/assessment of applications/tenders, exclusively, such an activity being impossible to be associated with a legal person.

To this end, the Court of Appeal of ... ruled out, by Decision no. 1885/2014, dated 26.03.2014, the complaint against the N.C.S.C. decision no. ... dated: 06.12.2013, according to which „upon reference to the involvement in the procurement process, the persons on the list comprising those holding decision-making positions within the contracting authority related to the organization, execution and completion of the granting procedure – that is, all persons who approve/sign documents issued in connection with or for the awarding procedure, including the persons approving the budget pertaining to the contracting authority and required for the funding of procurement contracts - are not included on the list of authorized persons within the SC ... SA”.

In other words, the existence of the conflict of interest must be strictly verified by reference to the relevant legal provisions, according to the principle of law „Ubi lex non distinguit, nec nos distinguere debemus” and not according to appellant's interests.

Upon the checking of the qualification documents submitted by SC SRL, Council will retain that the company has filled-in and submitted the Form no. 15, the Declaration regarding the non-compliance with the provisions of art. 691 of the G.E.O., enclosing the order no. 329/22.05.2013 of the mayor ... comprising the list of persons holding decision-making positions within the contracting authority regarding the organization, execution and completion of the granting procedure.

At this time, the Council deems it necessary to reiterate the principle of law according to which „actori incumbit probatio” - „the burden of proof lies exclusively with the plaintiff”; the principle in question is found transposed into the national law under the provisions of art. 249 CCP, according to which and related to the burden of proof, „that who makes an affirmation during the process must bring proof to support it, except for the cases specifically stipulated by the law.”

But, as there is no evidence in the existing documents of the case file and in the claims of the parties that persons holding shares, parts of interest, stocks in the subscribed capital of SC SRL or persons part of the board of directors/management or supervisory body thereof, would be involved in the bid verification/assessment, the Council is to reject the appellant's criticisms as unfounded on the matter of the alleged conflict of interest.

DECISIONS ON THE OCCURENCE OF POTENTIAL CONFLICTS OF INTEREST

**2 ALLEGED CONFLICT
OF INTEREST**

Regarding the criticism ... on „the flagrant violation of the provisions of art. 69 and ... in G.E.O. 34/2006 concerning the conflict of interest” by ... who „knowingly committed the offense of misrepresentation, within the submitted qualification documentation, presented the Form 12D representing the Statement regarding the avoidance of the conflict of interest, dated 12.09.2013, wherein the company representative declared fully responsible and under penalty of exclusion from award procedure, that there is no breach of art. 69 and 69 index 1 of the G.E.O. no. 34/2006 updated”, the Council retains that, at the time of submission of tenders 12.09.2013 as well as on the date of bid 13.09.2013 opening, Mr. ... as member of the assessment committee and occupying the position (both on the alleged date and currently) of head of the Legal Service and of Property Law Enforcing within the speciality apparatus of the Townhall ... was and is part of the shareholder structure of the company ... company that took part in the „ Recreation Island rehabilitation and modernization ...” procedure as tenderer.

In this regard, the following legal provisions of G.E.O. no. 34/2006, „Rules for the avoidance of the conflict of interest” appear to be applicable in this case:

- art. 66 - „During the granting procedure, the contracting authority must take all necessary measures in order to avoid the situations that are likely to cause a conflict of interest and/or unfair competition”;

- art. 68 - „The natural or legal persons directly involved in the verification/assessment of applications/tenders are not entitled to be candidate, tenderer, associated tenderer or subcontractor, under penalty of exclusion from the award procedure”;

- art. 69 - „The following persons are not entitled to be involved in the verification/ assessment of applications/tenders:

a) persons holding shares, parts of interest, stocks in the subscribed capital of one of the tenderer/candidates or subcontractors, or persons part of the board of directors/management or supervisory body of one of the tenderer/candidates or subcontractors.”

- art. 691 - The Tenderer/Applicant/Associated Tenderer/Subcontractor/Supporting third party who has as members of the board of directors/management or supervisory body and/or have shareholders or associates who are husband/wife, relatives or relatives by affinity up to the fourth degree or who are in trade relations, as they are set out in art. 69 a) with persons holding decision functions within the contracting authority, is excluded from the award procedure”;

- and art. 2 para. (31) of the G.D. no. 925/2006: „In order to fulfill the obligation referred to in art. 66 of the G.E.O., the contracting authority shall require the tenderer/candidate/Associated tenderer /subcontractor/Supporting third party an affidavit regarding the failure to comply with the provisions of art. ... of the G.E.O.”.

By analyzing the documents submitted in the case file by the contracting authority, the Council retains that according to the assessment report regarding the qualification documents and registered under no. 7469/03.10.2013, at this date, the evaluation committee proceeded to „the completing of the assessment of the qualification documents submitted to SEPA according to the contract notice, which were downloaded from S.E.A.P. and individually analyzed between 13.09.2013 - 02.10.2013”. Thus, as no other documents confirming that Mr. ... „has directly took part in the verification/assessment of applications/ tenders”, as referred to in art. 68 of the G.D. no. 925/2006, were submitted in the case file, and considering that the incompatibility report was recorded with the Technical Department - Procurement Service under no. 7009/17.09.2013 and that the replacement disposition, regarding him, of the evaluation committee was dated 26.09.2013, the Council determines that such criticism appears to be unfounded.



4.3. PROFESSIONAL TRAINING

In compliance with provisions of Law no. 188/1999²⁷, training and continuous professional training is both a right and an obligation of public clerks.

In order to enforce the principles of a good operation within the public sector, a solid knowledge of the administrative system and especially of public procurement system, and the requirements and exigencies imposed by such system are needed.

Under such circumstances, the training and continuous professional training are considered a national priority; support of such process falls within the competence of each central and local public authority or institution.

In compliance with regulations in force, the Council holds full competence in planning the professional training, in procuring professional training services and in controlling and assessment of the professional training of public clerks.

Strengthening of the institutional capacity of the Council is strictly determined by a proper professional training of the counsellors resolving complaints within the public procurement area, by their offices as special public clerks, within areas and subjects regarding the professional training and continuous professional training which should reflect the real need of the administrative system and especially of the public procurement system and public sector.

Provision of such professional training and continuous professional training service, at high quality standards, in line with the requirements of a modern public administration, in a permanent change, is the key ele-

PROFESSIONAL TRAINING

ment of the general process providing quality professional training of the staff within the public administration. Continuity of the public offices reform, within the context of an ample reform of the whole administration, can be stimulated by a qualified, motivated, competitive and highly trained staff.

Maintaining and subsequently increasing/developing the professional skills within the Council, are strictly connected to the need of continual professional training of its staff.

Thus, taking into account the obligation to improve their skills and professional training at all times²⁸ and being interested in the permanent professional training of their staff, the members of the Council attended two workshops in 2014, with the following subjects:

- Electronic System of Public Procurement. Incompatibility versus conflict of interest in public procurement.

The workshop, initiated and organized by the N.C.S.C., had two parts / sections. Thus, within the first section, it was discussed with representatives of the Romanian Agency for the Digital Agenda on the operation and implementation of e-procurement system and in particular the use of the system with regard to electronic public procurement procedures; in the second section, the differences between incompatibility and conflict of interest were emphasised together with the representatives of the National Agency of Integrity.

- Transposition of directives.

The workshop, also initiated and organized by the N.C.S.C. aimed at analyzing how the Romanian legislature will transpose EU directives on public procurement, together with representatives of the National Authority for Regulating and Monitoring Public Procurement and judges seconded to Romania's Government Agent for the Court of Justice of the European Union.

In parallel, N.C.S.C. management gave serious concern to improve administrative and technical staff, encouraging and financially supporting employee participation in various training courses.

Another important element in the continuous improvement of Council members was the participation, during 2014, to an exchange of experience organized in three sessions: in Prague – the Czech Republic, Bonn – Germany and Vienna – Austria. Each of the three sessions focused on the exchange of experience with the members of the counterparts in the Czech Republic, Germany and Austria in order to:

- identify working procedures meant to improve the efficiency of N.C.S.C. staff and certain common problems in the similar bodies in EU member countries.

- Increase the efficiency of mechanisms for remedies in public procurement within N.C.S.C. on the basis information of gained following the exchange of experience with the counterpart organizations in the three EU member states.

- ensure the consistency in addressing various issues aimed at resolving complaints filed within public procurement procedures;

This exchange of experience was funded by OPTA, financed by European Regional Development Fund.



4.4. RELATIONSHIP WITH MASS MEDIA AND GENERAL PUBLIC

Concerning the relation with the media and general public, the activity developed by N.C.S.C. in 2014 materialized in an interactive approach, meant to grant the institutional transparency.

Beside the answers given periodically to media representatives, in compliance with Law 544/2001 on free access to public information, the National Council for Solving Complaints periodically provided Official Press Releases regarding its activity for correct information of the public. Periodically, information concerning the activity of the N.C.S.C. was sent by e-mail to the journalists accredited with the institution.

In parallel, in 2014, the Information and Public Relations Office, in collaboration with the Statistics and IT Office within the N.C.S.C organized, modernized and managed the web page for this institution; they also published the Official Journal of the National Council for Solving Complaints.

Regarding the number of request from the media, during 2014, the Information and Public Relations Office within the N.C.S.C. received, in compliance with Law no. 544/2001 on the free access to public information, more than 100 requests of the journalists accredited and from different individuals/legal entities.

We also must mention the activity of this office also materialized through elaboration and forwarding of periodical press releases and the yearly activity report of 2014 concerning the institution to more than 300 mass-media institutions, news portals, freelance journalists, public institutions (Parliament, Local Councils, Municipalities, etc.) or NGOs.

We have to specify that in order to provide a total transparency regarding the activity of the N.C.S.C., the management of this institution created since 2011 a Statistics Department and continued the measures dedicated to the upgrade of an integrated IT system, actions which:

- were finished in 2012 by the elaboration and implementation of an IT application to provide the random electronic distribution of the complaints;
- the implementation of an IT application was initiated starting with January 2013, intended to render anonymous the decisions in order to fulfil the obligations falling within the responsibility of the Council to publish on its own website, in the Official Bulletin, the motivated decisions within 5 days following the adoption "with no reference to the identification data of the decision and of the parties, to personal data and that information the economic operator specifies in its tender as being confidential, classified or protected by an intellectual property right"²⁹;
- at all times, provided the economic operators interested, general public and media with official data on the complaints lodged within the public procurement procedures and decisions issued by the Council.

In order to improve the quality and the efficiency of solving complaints in a transparent environment and to ensure access to accurate,detailed, prompt and easy information on the activity of N.C.S.C., all those interested in public procurement (including litigants), developed by Community and / or national financing, the Council concluded the financing contract no. CTRF 1.1.146/07.05.2014 of the project "Improving the management of the National Council for Solving Complaints in specific competencies related to successful implementation of projects supported by structural instruments, based on streamlining the procurement process", SMIS code 48792.

The project is co-financed from the European Regional Development Fund through OPTA 2007 - 2013 (Priority Axis 1 Support for the implementation and the coordination of structural instruments; Area of Intervention: DMI 1.1 Support for managing and implementing structural instruments) and has a implementation period of 16 months.

5. BUDGET OF N.C.S.C.

Budget OF N.C.S.C. afferent for 2014 was in the amount of RON 10,610 thousand and it was distributed as follows:

- Budgetary provision for Current expenses: RON 10,480 thousand, of which:
 - Expenses with the personnel: RON 8,584 thousand
 - Products and services: RON 1,714 thousand
- Budgetary provision for Capital expenditure: RON 130 thousand.

The budget of N.C.S.C., detailed on budgetary titles and chapters is presented in the table below.

Code	Indicator	Budget	of total per year, of which,			
			1st quarter	2nd quarter	3rd quarter	4th quarter
5000	Total budget	10.610	2.573	2.573	2.801	2.663
01	Current expenses	10.480	2.563	2.563	2.791	2.563
10	Title I expenses with the personnel	8.584	2.175	2.175	2.155	2.079
20	Title II products and services	1.714	388	385	457	484
56	Title VIII projects financed from post-accession external funds (NEF)	182	0	3	179	0
70	Capital expenditure	130	10	10	10	100
71	Title XII non-financial assets	130	10	10	10	100
5001	Public authorities and external actions	10.610	2.573	2.573	2.801	2.663
01	Current expenses	10.480	2.563	2.563	2.791	2.563
10	Title I expenses with the personnel	8.584	2.175	2.175	2.155	2.079
20	Title II products and services	1.714	388	385	457	484
56	Title VIII projects financed from post-accession external funds (NEF)	182	0	3	179	0
70	Capital expenditure	130	10	10	10	100
71	Title XII non-financial assets	130	10	10	10	100
5101	Legislative and executive authorities	10.610	2.573	2.573	2.801	2.663
510103	Executive authorities	10.610	2.573	2.573	2.801	2.663

CONCLUSIONS AND FORECAST

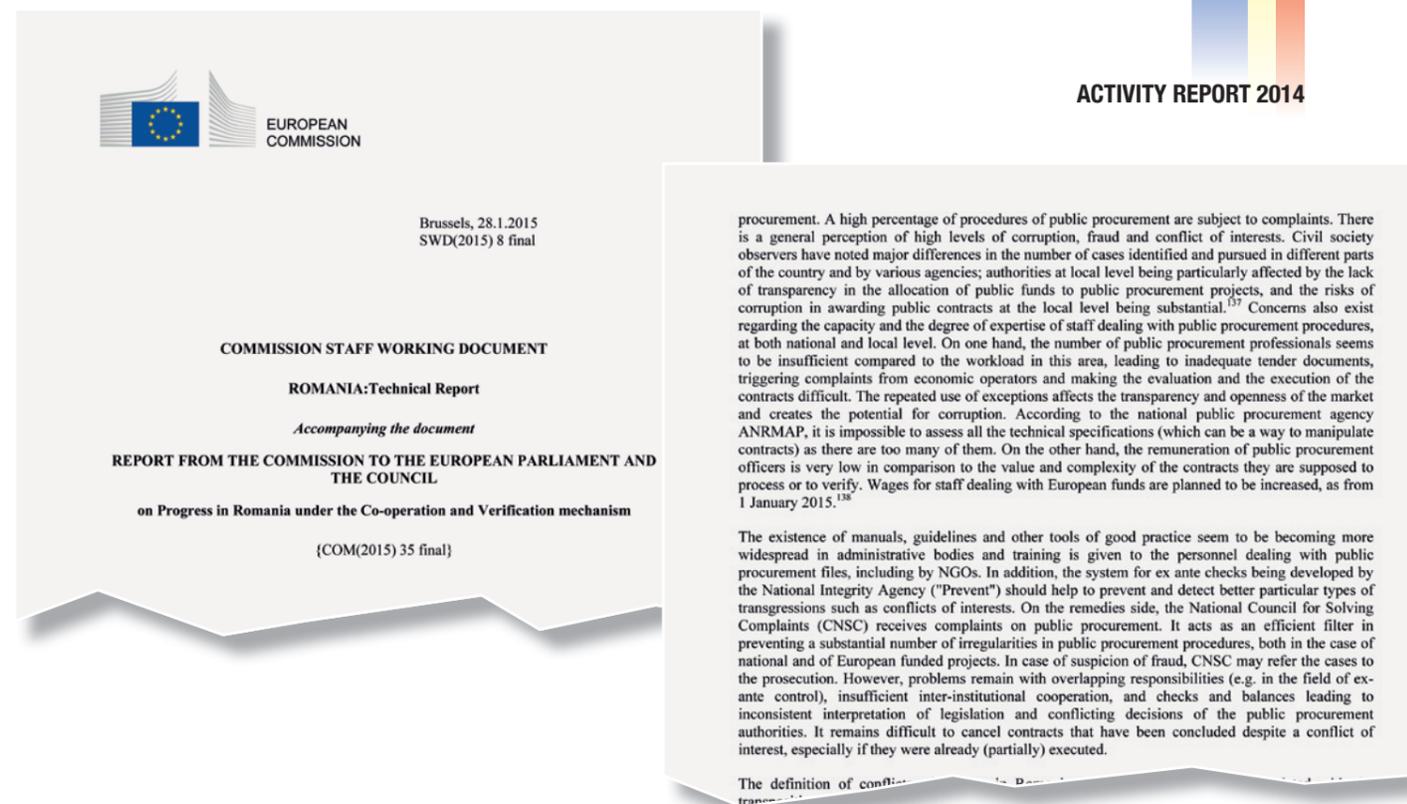
Not infrequently, the Constitutional Court, in accordance with the provisions of the first article of the Basic Law expressed its views on Romania's character of "rule of law", whose essential feature is the supremacy of the Constitution and the obligation to observe the law. The same Court noted that the Parliament has a duty to legislate appropriate rules to ensure genuine respect for freedom of justice, without which one cannot conceive of the rule of law. Without fulfilling this duty, the constitutional rules would have a purely declarative character, a situation unacceptable for a country that shares democratic values which are part of European public order.

Although there is no doubt that justice is carried out by the courts considered by art. 126 of the Constitution, we take the liberty to believe that, in its 9 years of activity, the National Council for Solving Complaints, an organ belonging to the executive power, proved to be an active, capable and credible partner in administration of justice as a public interest service, for compliance with rule of law, fundamental freedoms, rights and interests of individuals and legal entities, law enforcement and ensuring its supremacy. Thus, within the mechanism of the state, the National Council for Solving Complaints contributed successfully to restoring the function of the rule of law by the judiciary.

Regarding the constitutional legitimacy of administrative-jurisdictional procedures, the Plenum of the Constitutional Court in its decision no. 1/1994, recognized the exclusive competence of the legislature to institute such proceedings generally meant to ensure faster settlement of certain categories of disputes, the decongestion of courts with cases that can be solved this way and the avoidance of costs. From this perspective, the Council remarkable efficiency in achieving its goals cannot be denied, in its 9 years of operation, the institution managing to relieve the courts of appeals with over 40,000 complaints, and the median duration of solving this impressive volume of cases did not exceed 20 days from receiving the necessary documents from the parties. Also, the absence of any charge for access to the jurisdiction of the Council, in contrast with the referral fees courts, was an important asset for economic operators harmed by unlawful acts of contracting authorities as they did not hesitate to use them with confidence in the impartial jurisdiction of the Council.

Unfortunately, in 2014, following the imposition by Emergency Ordinance of a security of good conduct for each complaint, there was a decline in the number of complaints on public procurement; economic operators hesitated to exercise their right of access to a court (administrative or judicial), as enshrined in the Constitution. The regret that we express is that the reduction in the number of complaints in this area was not caused by a decrease in the number of abuses committed by the contracting authorities in awarding contracts, but a tightening of access conditions of harmed people to the Council and the competent courts. Obviously induced reluctance to act of the injured persons led to the restriction of the intervention of the courts to restore legality in cases in which fraudulent award of contracts was suspected. Basically, a legal framework needed to protect the economic operators in relation to contracting authorities and to stimulate the onset of remedies against any corruption acts became an inhibitor of them, for fear of potential financial losses associated with the submission of complaints.

The access to the Council should return to its original form, unrestrained, free of any kind of warranties and available to anyone injured, with or without financial possibilities. Only then Romania will be able to reduce and prevent corruption in public procurement, a phenomenon reported in all monitoring reports from the



European Commission. Thus, the last report on progress of Romania under the Cooperation and Verification Mechanism, presented in Brussels on 01.28.2015, the attention is drawn again on the fact that "The procurement procedures, especially at the local level, are further encumbered by corruption and conflicts of interest – a fact widely recognized by the Romanian authorities on integrity and enforcement. This had a negative impact on the absorption of EU funds." Finally, the Commission invites Romania to intensify preventive and repressive measures directed against conflicts of interest, favouritism, fraud and corruption in public procurement.

Facilitating the access of economic operators in conjunction with strengthening the role of the Council is certainly a measure to prevent and combat fraud and corruption in public procurement. Besides, the Commission itself states that: "In terms of remedies, the National Council for Solving Complaints received complaints on public procurement. It acts as an effective filter to prevent a significant number of irregularities in public procurement procedures, both for national and European-funded projects."

It should be understood by anyone that irregularities in public procurement have effect on the whole society, which has to bear not only the higher costs of public services, but their dubious quality.

All these should be considered when implementing the new public procurement directives, scheduled for this year, in which regard the Council reaffirms its openness to dialogue and collaborate with all institutions involved in the adoption of the new regulatory framework, so that optimal legislative solutions to be identified. Although the case law of the Council is not a source of law in Romania, it certainly can contribute to the development and improvement of law.

We believe that the work of transposition is not possible without the co-optation and involvement of the Council, which found the limits and deficiencies of current legislation, a source of many interpretations, more or less contradictory. We hope that institutions with legislative role to capitalize the Council's huge practical experience in developing a new legislative framework which will involve not only the replacement of the current Government Emergency Ordinance no. 34/2006, but also dozens of laws issued in its application.

We also hope that 2015 will mark a rethinking and mitigation, if not elimination, of the conditions of access of economic operators to the jurisdiction of public procurement, the targeted effect being its increasingly extended involvement in the fight against fraud and corruption in this area, namely in disciplining the conduct of contracting authorities.

Finally, we assure the readers that, also in the next period, our goal remains the further strengthening and improving the functional capacity of the Council to undertake all complaints addressed to it with celerity, impartiality, transparency, to the highest standards and in accordance with the laws in force.



NOTE

- 1 Addendum no. 1 to the organization and operation regulation of the National Council for Solving Complaints approved by G.D. no. 1037/2011, published in Official Gazette, Part I, no. 775 from 02.11.2011;
- 2 organized according to art. 20 from G.D. 1037/2011, according to the dispositions of the Law no. 188/1999 concerning the Status of the public servants, republished with subsequent amendments and additions, as well as those of the Government decision no. 611/2008 for the approval of standards concerning the organization and development of the public servants career, with subsequent amendments and additions;
- 3 Art. 267 from G.E.O. no. 34/2006;
- 4 published in the Official Gazette, Part I no. 872 from 09.12.2011.
- 5 published in the Official Gazette, Part I no. 775 on November 2nd 2011, normative act that revoked G.D. no. 782/2006
- 6 art. 269 from G.E.O. no. 34/2006
- 7 This term can be renew only once;
- 8 art. 258 from G.E.O. no. 34/2006;
- 9 According to Law no. 278/2010 approving GEO no. 76/2010 amending and supplementing GEO no. 34/2010
- 10 under Law no. 278/2010;
- 11 art. 28 from Law no. 178/2010 of the public-private partnership, published in the Official Gazette No. 676/05.10.2010;
- 12 art. 188 G.E.O. no. 114/2011 concerning the designation of certain procurement public contracts in the field of defence and security, published in Official Gazette no. 932/29.12.2011.
- 13 approved by G.D. no. 1037/2011
- 14 According to Art. 2711 brought by pt. 4 of GEO. 51/2014 amending and supplementing Government Emergency Ordinance no. 34/2006 on the award of public procurement of public works concession contracts and services concession contracts, published in the Official no. 486 dated 30.06.2014.
- 15 At BNR exchange rate at the time of submitting the security
- 16 https://www.ccr.ro/files/products/Decizia_nr5_2015.pdf
- 17 Art. 331 from G.E.O. no. 34/2006
- 18 The Council has the obligation to solve the complaint in 20 days upon the date of receiving the public procurement file from the contracting authority; respectively within 10 days in case of an exception incidence that prevents the analysis of the complaint, under art. 278, paragraph 1. In cases duly justified, the resolution due date of the complaint may be extended only one time by another 10 days.
- 19 By GEO no. 51/2004
- 20 the amount was calculated at the average yearly rate of exchange communicated by N.B.R. of 4.4446 RON/EURO
- 21 the amount was calculated at the average yearly rate of exchange communicated by N.B.R. of 4.4446 RON/EURO
- 22 the am the amount was calculated at the average yearly rate of exchange communicated by N.B.R. of 4.4446 RON/EUROount was calculated at the average yearly rate of exchange communicated by N.B.R. of 4.4446 RON/EURO
- 23 the amount was calculated at the average yearly rate of exchange communicated by N.B.R. of 4.4446 RON/EURO
- 24 the amount was calculated at the average yearly rate of exchange communicated by N.B.R. of 4.4446 RON/EURO
- 25 the amount was calculated at the average yearly rate of exchange communicated by N.B.R. of 4.4446 RON/EURO
- 26 Article 281 of the GEO no. 34/2006 in force at the moment of the activity reported, in 2014
- 27 Regarding the Statute of Public Clerks, republished, as further amended and completed
- 28 art.50 of Law 188/1999, as further amended and supplemented
- 29 Art. 279 (4) of G.E.O. no. 34/2006.