



Consiliul  
Național de  
Soluționare a  
Contestațiilor

# ACTIVITY REPORT 2024





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# FOREWORD

## REVIEW, DIGITALIZATION, COMPETITIVENESS, AND ACCESS TO THE EUROPEAN SINGLE MARKET – THE KEY WORDS IN THE SHARED VOCABULARY ON PUBLIC PROCUREMENT IN 2024



**BOGDAN-MARIUS BOGHIU,**  
PRESIDENT OF THE N.C.S.C.

**A**t the level of the European Union and the European Single Market, the year 2024 began on a critical note prompted by Special Report No. 28/2023: *Public Procurement* in the EU, prepared following a performance audit conducted by Audit Chamber II of the European Court of Auditors, the chamber specializing in expenditure areas related to investment in cohesion, growth, and inclusion. The overall conclusion of the report was: *“Reduced competition for contracts awarded for works, goods, and services over the past 10 years up to 2021.”*

On this matter, *“The Court found that over the past decade, competition for the award of public procurement contracts has declined, and the 2014 reform of the EU directives does not appear to have contributed to reversing the situation. Overall, there is a lack of awareness regarding competition in public procurement. Available data is not systematically used to identify the root causes of declining competition, and only scattered measures are taken to reduce barriers. The Court concludes that the main objectives of the EU’s 2014 reform aimed at ensuring competition—such as simplifying and shortening procurement procedures—have not been achieved, and that some of them may even reduce the level of competition (...).”*



As can be seen from the chart above, our country is below the EU Single Market average, which shows that there are still many things to improve in the field of public procurement. Similar conclusions are also presented in this report, which I invite you to read.

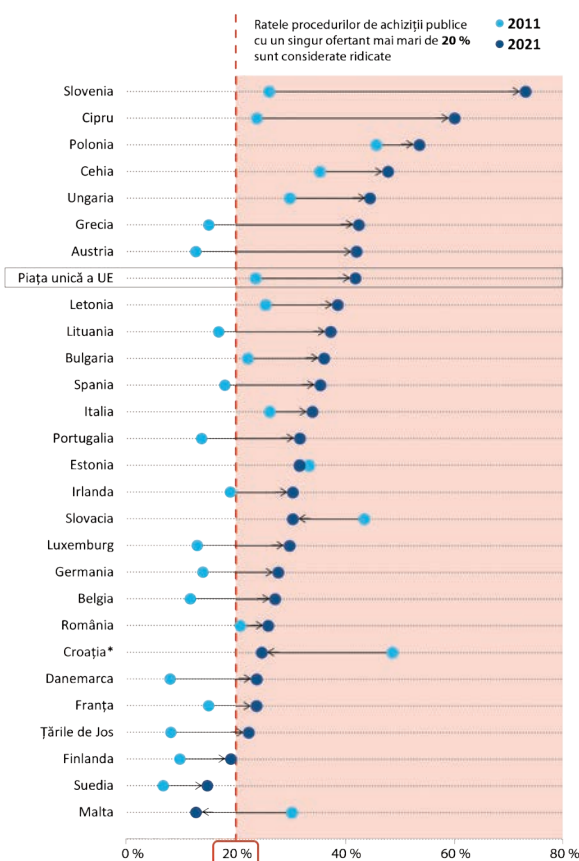
It is important to remember the recommendations that the European Court of Auditors addressed to the European Commission, namely:

- To clarify the objectives regarding public procurement and set their priority;
- To remedy deficiencies in public procurement data;
- To update the Commission's tools for better monitoring of competition in public procurement;
- To examine in more detail the root causes of limited competition, to present measures to overcome major obstacles to competition, and to promote best practices.

Some of the above recommendations have also been considered at the level of the *National Council for Solving Complaints (Consiliul Național de Soluționare a Contestațiilor)*, for example through data collection within our institution.

Thus, considering that within the national recovery and resilience plans (NRRP), alongside several member states (Croatia, Hungary, Italy, Slovakia, and Greece), our country has specified

**Figure 6 – Public procurement procedures with a single bidder – share per Member State (2011 and 2021)**



\* Pentru Croația, sunt disponibile date începând cu momentul aderării sale, în 2013.

**Source: Competition Indicators section from the dashboard of the European Court of Auditors.**

its intention to use funding provided by the Recovery and Resilience Facility to improve administrative public procurement procedures through digitalization and modernization of existing systems, our institution has started steps to modernize the platform currently used and bring it to current quality and competitiveness standards.

Regarding the above aspects, the *National Council for Solving Complaints* has also taken into account the *National Action Plan for the Digital Decade of Romania*, developed by the Ministry of Research, Innovation and Digitalization and the Romanian Authority for Digitalization, which states that “Romania, together with all EU member states, has declared at the highest level its commitment to digital transformation of the state, for recovery, prosperity, security, competitiveness, and well-being of society. *The European Digital Decade policy programme*, established by Decision (EU) 2022/2481, guides the digital transformation of all EU member states along four main action directions with concrete and measurable targets and objectives: digital public services, digital skills, digital transformation of enterprises, and secure and sustainable infrastructures.”

Also, regarding the European Court of Auditors’ remark on the existence of a “delicate balance between competition and the objectives of the 2014 reform,” the Council notes that although the procurement directives “are meant to improve the overall performance of public procurement,” their application is limited when it comes to “economic operators from a third country that

has not concluded an international agreement with the Union on public procurement cannot invoke equal treatment in this field,” as ruled by the Court of Justice of the European Union in case C-652/22.

The application of this CJEU decision has been subject to internal debates during the unified practice sessions of the National Council for Solving Complaints. We consider that these debates, both internally and internationally, including within the EU network of experts in remedial institutions, will continue in 2025. According to the Treaty on the Functioning of the European Union, in cases of general difficulties encountered and reported by enterprises from one or more member states regarding obtaining public procurement contracts in a third country, “it is the EU, not the member states, which has the competence to suspend or restrict participation of enterprises from that third country in Union public procurement procedures.” This topic will likely be included in our biannual meetings with representatives of courts of appeal to ensure harmonized and coherent conduct for both economic operators and contracting authorities at the conclusion of discussions.

Last but not least, given its essential role in public procurement, the Council has completed a program to consolidate good practices among remedial institutions in member states, initiated in 2023 through the European Commission’s TAIEX/PACE technical assistance instrument, conducting the last two working visits in Greece and Ireland.

From discussions with our Greek and Irish colleagues, a common idea emerged that in the field of public procurement, “Integrity and transparency remain a challenge.” A similar conclusion was drawn from reports by the Organisation for Economic Co-operation and Development (OECD), with which the National Council for Solving Complaints has a strong cooperation relationship in this field.

Now, at the end of these lines, dear reader, I once again invite you to read this report, prepared

as a contribution from the National Council for Solving Complaints to raise awareness of the importance of remedial institutions in public procurement, and to promote the data available within our institution, which we aim to use systematically to improve the performance of Romania’s public procurement system.

**BOGDAN - MARIUS BOGHIU**

*President of the National Council for Solving Complaints (N.C.S.C.)*



## CHAPTER 1

# GENERAL CONSIDERATIONS



32.1

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

Established in September 2006 to ensure compliance by contracting authorities with the legislation in the field of public procurement, the National Council for Solving Complaints (N.C.S.C.) is a public law administrative body that respects the provisions regulated by Article 21 paragraph (4) of the Constitution of Romania, which is not subordinated to any authority or public institution, thus enjoying the independence of carrying out the administrative-jurisdictional act. Although the activity of settling claims filed by economic operators within the procedures for awarding public procurement/sectorial/concession contracts leads towards the judiciary power, within which it cannot be integrated due to its nature, this body is part of the executive-administrative power sphere due to its main role of remedying and, subsidiarily, annulling illegal awarding procedures.

At the end of 2024, the Council had 29 claims settlement counselors in the field of public procurement, who are public officials with a special status, appointed by the Prime Minister's decision, upon the proposal of the Council's president, following a competition<sup>1</sup>. Of these, at least half hold a law degree and have at least 10 years of experience in the legal field.

According to the applicable legislation, the main task of the Council members is the settlement of claims filed within awarding procedures, through specialized panels made up of three members<sup>2</sup>.

According to the provisions of Article 12, combined with Article 3 letter a) of Law no. 101/2016, the Council's competence is strictly limited to settling claims filed within awarding procedures provided under Article 68 of Law no. 98/2016<sup>3</sup>, Article 82 of Law no. 99/2016<sup>4</sup>, and Article 50 of Law no. 100/2016<sup>5</sup>.

However, the Council's competence has expanded over time through the adoption of Government Emergency Ordinance no. 45/2018, a normative act which introduced new paragraphs to the provisions of Article 68 of Law no. 98/2016 and Article 82 of Law no. 99/2016, regulating the awarding procedure applied in the case of social services and other specific services.

According to national legislation, N.C.S.C. operates based on the Regulation for the Organization and Functioning of the Council<sup>14</sup>, published in the Official Gazette Part I no. 680/16.07.2024. Based on the aforementioned normative act, in its activity, N.C.S.C.

is subject only to the law, exercises its duties by adopting decisions, and ensures the coherent application of the legislation in force according to explicitly regulated legal principles<sup>7</sup>, namely the principles of legality, promptness, adversarial procedure, ensuring the right to defense, impartiality, and independence of the administrative-jurisdictional activity.

According to the provisions of Article 14 paragraph (1) of Law no. 101/2016, all claims filed by economic operators through the administrative-jurisdictional route are electronically assigned for settlement, randomly, to a panel consisting of three Council members, at least one of whom is a law graduate with at least 10 years of experience in the legal field. Each panel is chaired by one of its members, appointed applying the rotation principle.

For the smooth functioning of the institution and for the prompt resolution of claims filed by economic operators, each claims settlement panel is assigned technical-administrative personnel with the status of public officials, holding legal, economic, or technical studies.

According to legislation, the Council's President must hold a

1. Article 45 of Law no. 101/2016, corroborated with Article 46

2. Article 13 of Law no. 101/2016

3. Law no. 98/2016 on public procurement, as subsequently amended and supplemented

4. Law no. 99/2016 on sectorial procurement, as subsequently amended and supplemented

5. Law no. 100/2016 on the concessions of works and concession of services, as subsequently amended and supplemented

6. Published in the Official Gazette, Part I no. 775 as of the 2nd of November 2011

7. Article 15 of Law no. 101/2016



law degree<sup>8</sup> and has the status of the main credit authorizing officer<sup>9</sup>. The President is elected by secret ballot among the Council members, with an absolute majority<sup>10</sup> of the votes of the public procurement claims settlement counselors.

The Council's activity is mainly reflected in the number of decisions and rulings issued, as well as in the number of cases settled.

At the same time, the quality of the Council's activity is reflected in the number of decisions that remain final in the form pronounced by the Council after they have been challenged by complaint to the Court of Appeal in whose territorial jurisdiction the contracting authority's headquarters is located.

Besides the activity of settling claims filed within awarding procedures for public procurement, sectorial procurement, and concession contracts for works and/or services, the Council also has the following competencies:

- Settles claims filed within awarding procedures for public-private partnership contracts<sup>11</sup> regulated by Government Emergency Ordinance no. 39/2018, with subsequent amendments and completions;
- Settles claims filed within awarding procedures for public procurement contracts in the fields of defense and security, regulated by Government Emergency Ordinance no. 114/2011<sup>13</sup> regarding the awarding of certain public procurement contracts in the fields of defense and security, for which the claims settlement counselors are authorized, according to the provisions of Law no. 182/2002 regarding the protection of classified information, with subsequent amendments and completions. Thus, for exercising the competences regulated by Government Emergency Ordinance no. 114/2011, effective from October 1, 2012, the Council became a «Classified Information Holding Unit.» For this reason, the following actions have been undertaken within the institution:
  - o The relational system with the Designated Security Authority (the specialized unit within the Romanian Intelligence Service) was established;
  - o Legal steps were taken with O.R.N.I.S.S. to initiate and conduct the verification procedures for persons authorized to hold security certificates and access authorizations to state secret information;
  - o Security certificates and access authorizations to classified information were obtained;
  - o Measures regarding physical protection against unauthorized access to classified information, protection of personnel, and

information source generators were applied;

- o The process of Security Accreditation of the IT system was approved and the Security Accreditation Strategy of the IT system was issued;

- o The Security Accreditation of the IT system was obtained.

It is important to mention that with the appearance of Government Decision no. 1269/2021 regarding the approval of the National Anti-corruption Strategy for the period 2021-2025, the Council adhered to the fundamental values, principles, objectives, and monitoring mechanisms stipulated in this normative act, supporting the fight against corruption and promoting fundamental values concerning integrity, the priority of the public interest, transparency of the decision-making process, and ensuring unrestricted access to information of public interest.

At the same time, the Council adopted the Integrity Plan, a document through which the institution identified its own institutional risks and vulnerabilities associated with the main work processes and established measures to strengthen the already existing preventive mechanisms.

8. Article 44 of Law no. 101/2016

9. Article 40 of Law no. 101/2016

10. Article 38 of Law no. 101/2016

11. Article 29 of G.E.O. no. 39/2018

12. G.E.O. no. 39/2018 on public-private partnership, with subsequent amendments and additions

13. Article 188 of G.E.O. no. 114/2011 on the award of certain public procurement contracts in the defense and security fields, published with the Official Gazette no. 932/29.12.2011

## 1.2. HUMAN RESOURCES, MANAGEMENT AND ORGANIZATIONAL STRUCTURE

From the perspective of organizational structure, according to the provisions of the Regulation on the Organization and Functioning of the Council, published in the Official Gazette, Part I, no. 680/16.07.2024, as of December 31, 2024, the institution operated with only 29 contest resolution counselors in the field of public procurement, organized into 11 contest resolution panels.

The Council's staffing plan also included a total of 46 public servants with technical-administrative status (45 public servants and one person employed as contractual staff). In this context, it should be noted that the Regulation on the Organization and Functioning of the Council, published in the Official Gazette, Part I, no. 680/16.07.2024, provides for the allocation of 34

public servants with special status (public procurement resolution counselors) and 56 public servants with technical-administrative status.

It is therefore observed that throughout 2024, the Council operated with a staffing level approximately 20% below that stipulated in the Regulation on the Organization and Functioning of the Council, published in the Official Gazette, Part I, no. 680/16.07.2024, while by the end of 2024 the number of resolution counselors had decreased by three, due to one person retiring, another suspending their function, and one employment contract being terminated. Additionally, the technical-administrative staff was reduced by four persons due to one suspension, one secondment, and two transfers.

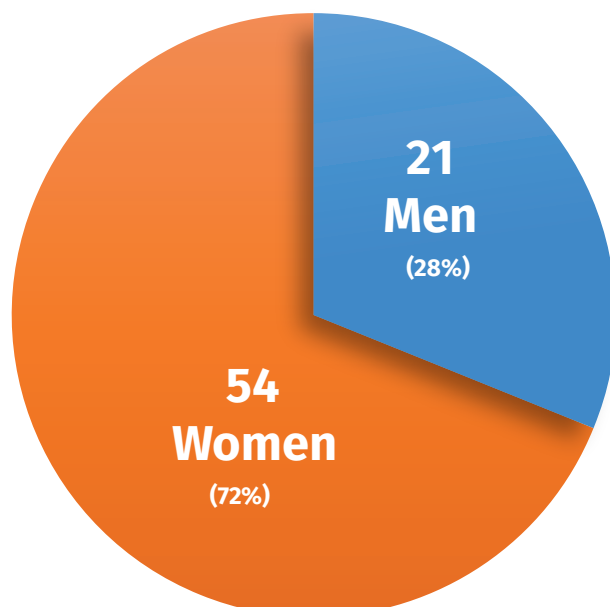
It should be mentioned that all 46 public servants with technical-administrative status employed within the N.C.S.C. as of December 31, 2024, held higher education degrees.

Regarding gender distribution, out of the 29 resolution counselors, 18 were female (59.4%) and 11 male (40.6%), while among the total technical-administrative staff, 35 were female (76%) and only 11 were male (24%).

Overall, for the entire institution, the gender distribution of the Council's employees was as follows: 54 females (72%) and 21 males (28%).

At the end of 2024, the average age of the institution's employees was 50 years.

**N.C.S.C. EMPLOYEES  
STRUCTURE BY GENDER**

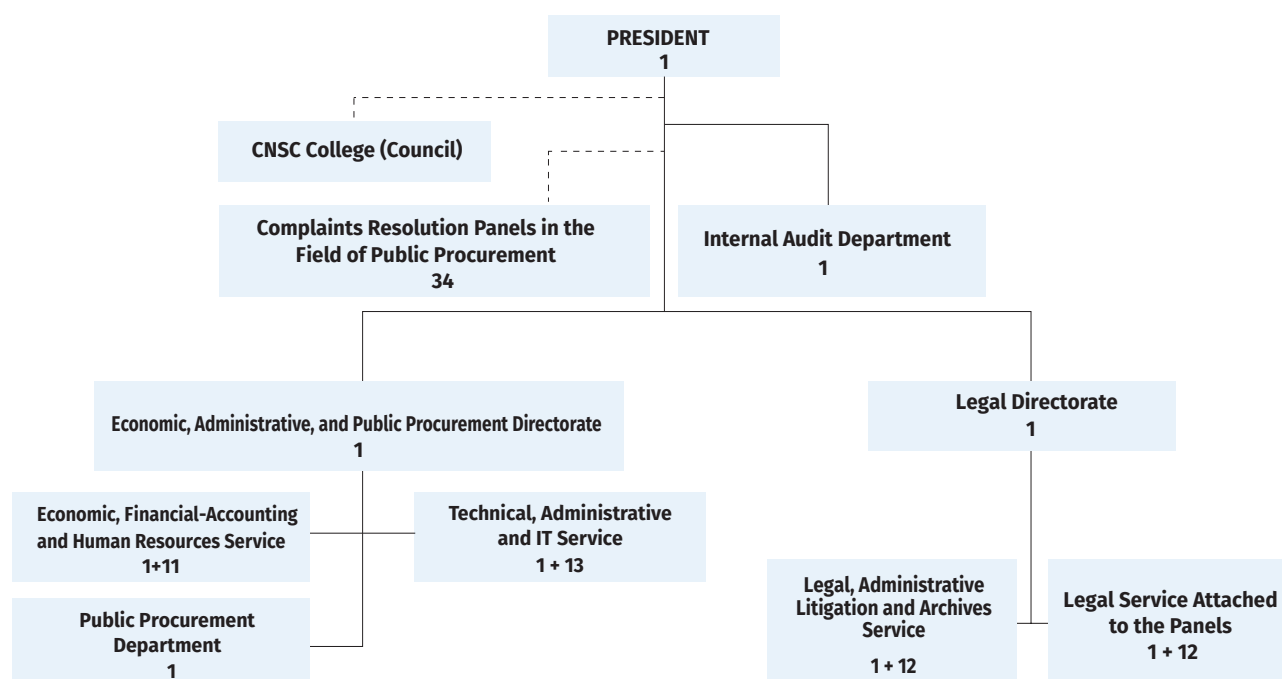




According to the Regulation on the Organization and Functioning of the Council, published in the Official Gazette, Part I, no. 680/16.07.2024, the technical-administrative staff carry out their activities within the following structures:

- Economic-Administrative and Public Procurement Directorate:
  - o Economic, Financial-Accounting, and Human Resources Service;
  - o Technical, Administrative, and IT Service;
  - o Public Procurement Department;
- Legal Directorate:
  - o Legal, Administrative Litigation, and Archive Service;
  - o Legal Service attached to the Contest Resolution Panels;
- Internal Public Audit Department.

ANNEX No. 1) to the Regulation  
 ORGANIZATIONAL STRUCTURE of the National Council for Solving Complaints  
 Number of complaint resolution counselors, including the president – 34  
 Technical and administrative staff – 56



**CHAPTER 2**

# THE ACTIVITY PERFORMED BY N.C.S.C. IN 2024

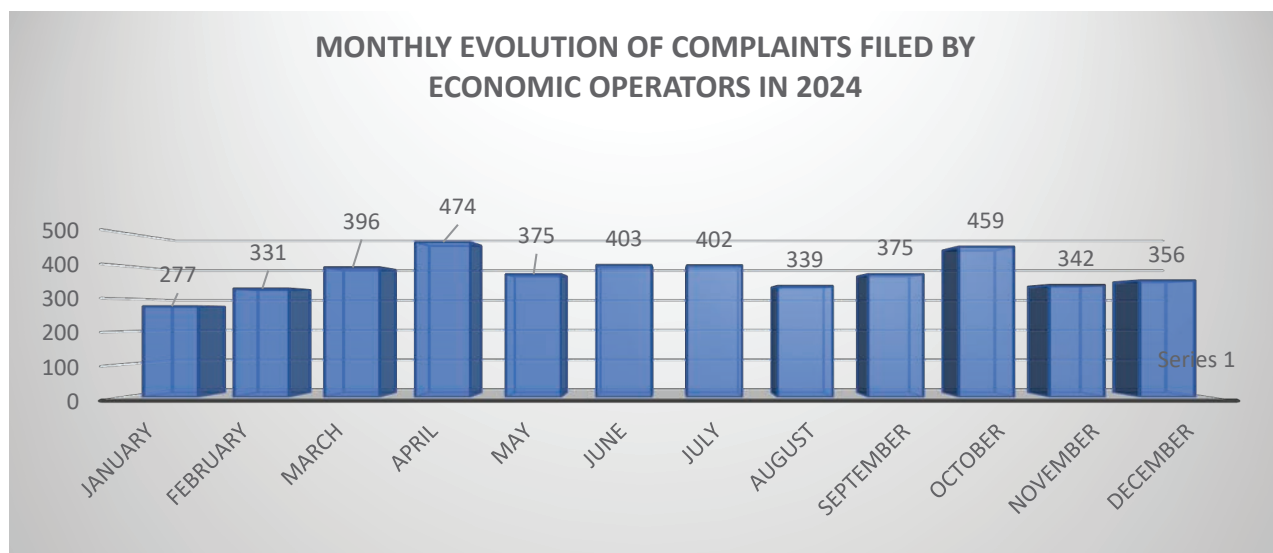
## 2.1. EVOLUTION OF CONTESTATIONS FILED BY ECONOMIC OPERATORS

The main indicator characterizing the annual activity carried out by the National Council for Solving Complaints (N.C.S.C.) is the number of complaints filed and registered with the Council by economic operators. However, this is supplemented by a series of other highly relevant indicators, such as the subject matter and complexity

of the complaints, their evolution and resolution methods, the number of decisions issued, as well as the percentage of decisions that remain final in the form issued by the institution after being challenged with an appeal at the Court of Appeal within the jurisdiction of the contracting authority.

Regarding the number of complaints (cases) filed by economic operators and registered with the N.C.S.C. in the period from January 1 to December 31, 2024, it amounted to 4,529.

Thus, over the course of the twelve months of the previous year, the number of complaints filed by economic operators and registered with the N.C.S.C. evolved as follows:



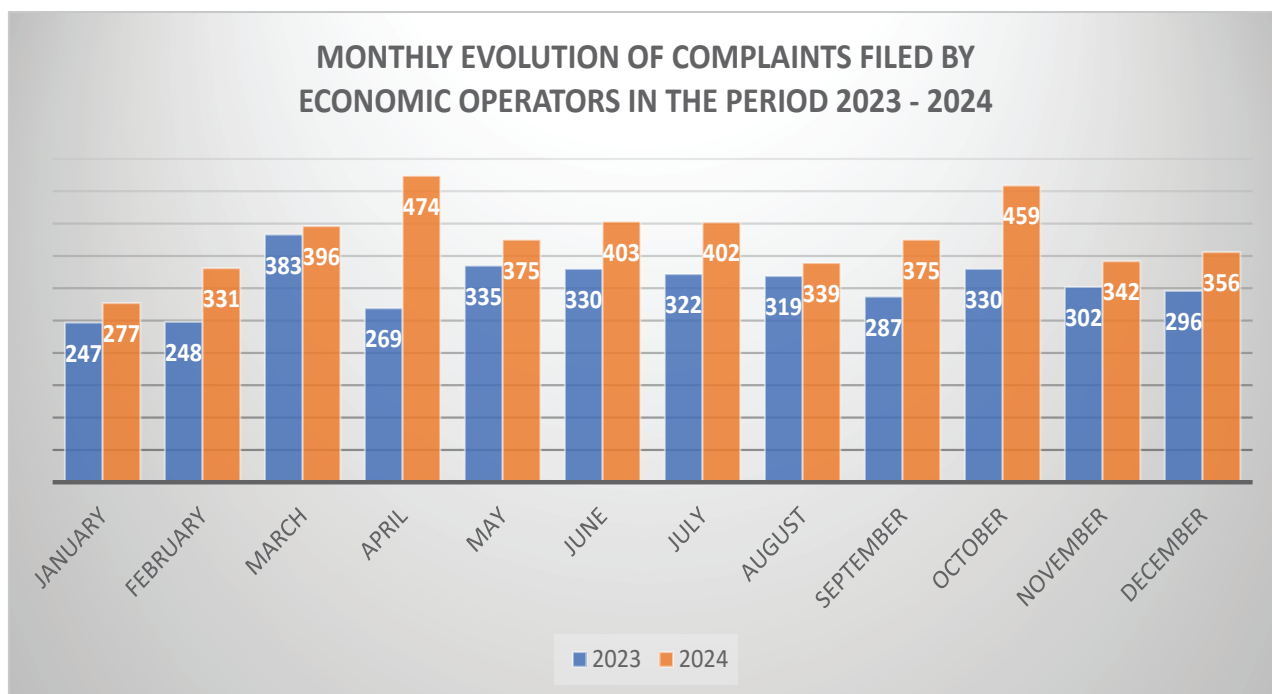




Comparing the evolution of the number of complaints filed by economic operators and registered with the N.C.S.C. during the years 2023 and 2024, a significant increase in the number of complaints is observed, both in the two semesters of 2024 compared to the corresponding periods of the previous year, and throughout the entire year.

Thus, making a comparison of the annual evolution of the number of complaints filed and registered with the Council by econo-

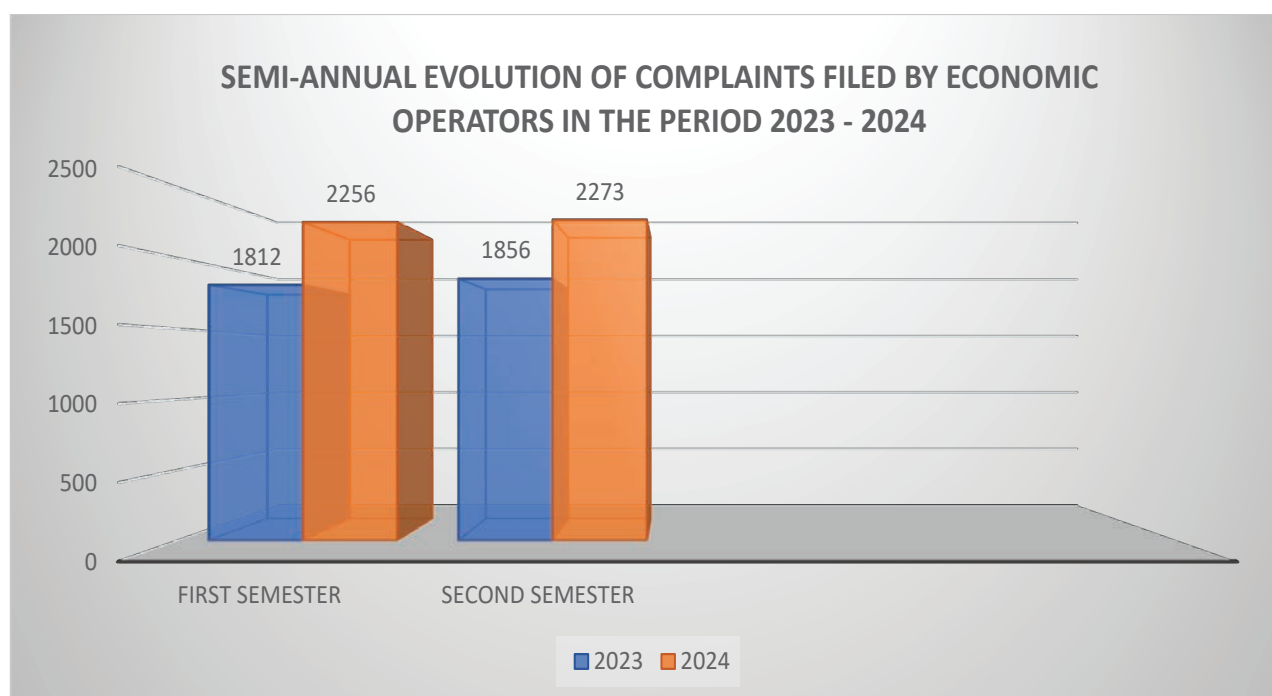
mic operators in 2024 with that of 2023, it is found that during the last year there was an increase of 23.47% compared to the previous year (+861 complaints).



Analyzing the semi-annual evolution of complaints registered with the Council in 2024, it can be observed that their number increased in both semesters, compared to the corresponding periods of the previous year. Thus, compared to the similar periods of the previous year, in the first semester of 2024 the number of complaints filed with the

Council experienced an increase of 24.5% (+444 complaints), while in the second semester the increase was 18.35% (+417 complaints).





As can be observed, despite the fact that economic operators had the legal obligation to constitute a security deposit at the time of submitting a complaint, the amount of which is calculated based on the estimated value of the public procurement procedure and the procedural stage of the awarding process in which the complaint is filed, this requirement did not constitute a barrier to the increase in the number of complaints.

The reason for this is that the instrument called the “security deposit,” as regulated by Law no. 101/2016, has proven ineffective because the majority of contracting authorities have refused to request courts, within 30 days from the date the Council’s decisions became final, to recognize the existence of prejudice caused by an economic operator who filed a complaint and to oblige them to pay compensation for damages caused by the delay in the awarding procedures.

Thus, in the overwhelming majority of cases, when economic operators requested the return of their security deposits, most contracting authorities explicitly informed the Council that they had suffered no prejudice due to the complaint(s) filed by various economic operators within a public procurement procedure and did not take legal action to recover any potential damages.

The result? The purpose of constituting the security deposit

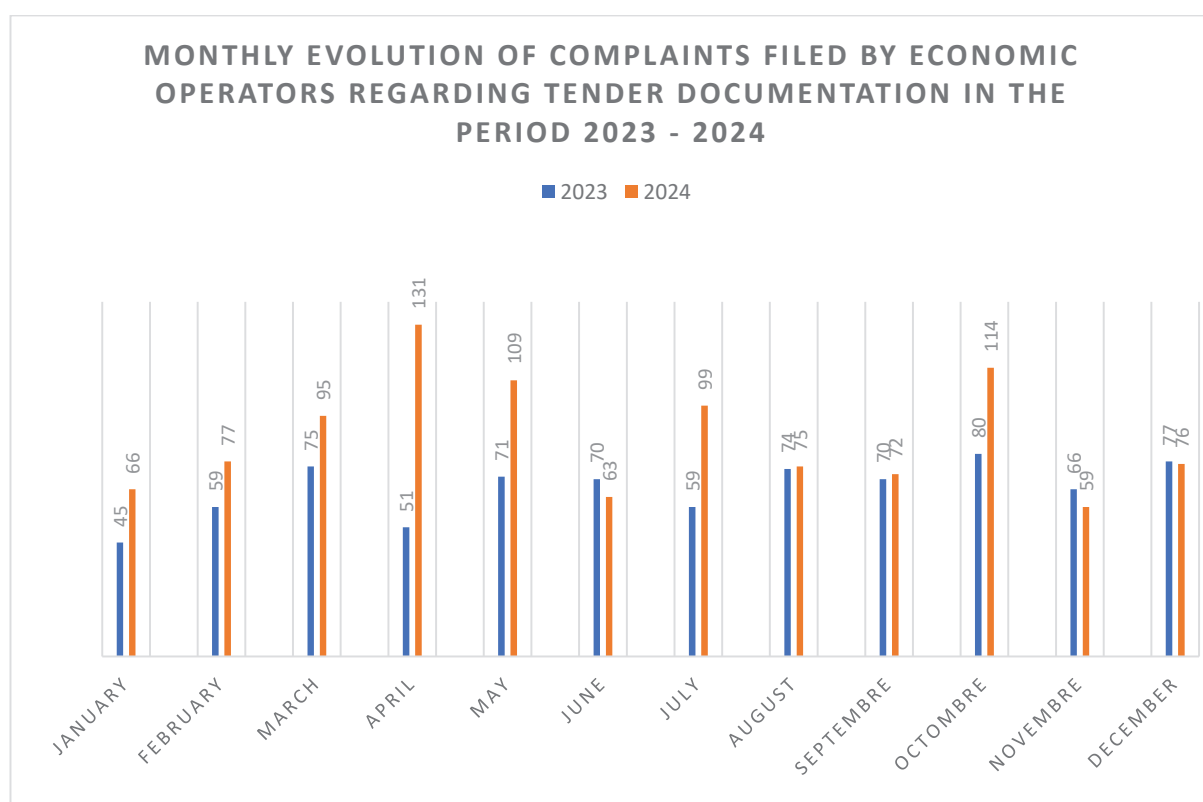
was only partially achieved by the legislator during 2024, in the sense that the legal provisions did not generate a deterrent effect among economic operators in filing complaints, as they were aware of the contracting authorities' reluctance to act firmly to prevent abusive complaints or to prove the existence of prejudice caused by the filing of a complaint.

It should be noted that during 2024, according to art. 611, para. (8) of Law no. 101/2016, as amended and supplemented, a total of 44 security deposits amounting to 1,244,855.44 RON, for which no refund requests were made within three years calculated from the date the deposit could be requested, were transferred by the N.C.S.C. to the National Agency for Fiscal Administration (A.N.A.F.), thus becoming state budget revenue.

In this context, we mention that since the introduction in legislation of the obligation for economic operators filing complaints to constitute a security deposit, until the end of 2024, the N.C.S.C. transferred to A.N.A.F. a total of 271 security deposits amounting to 4,822,971.68 RON plus 500 euros, for which no refund requests

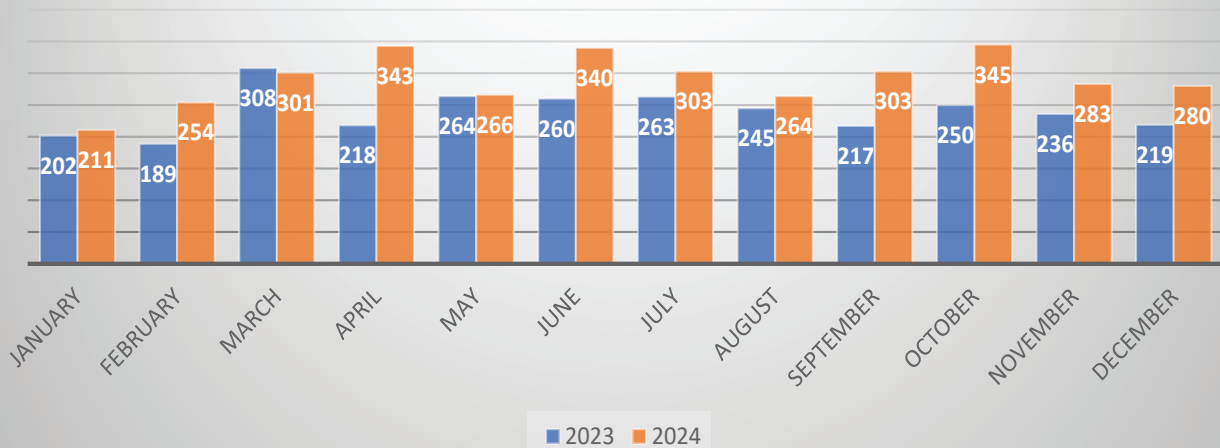
were made within three years calculated from the date they could have been requested.

Returning to the large number of complaints filed with the Council during 2024, it should be noted that this was due to the implementation of major projects financed through the National Recovery and Resilience Plan (PNRR).



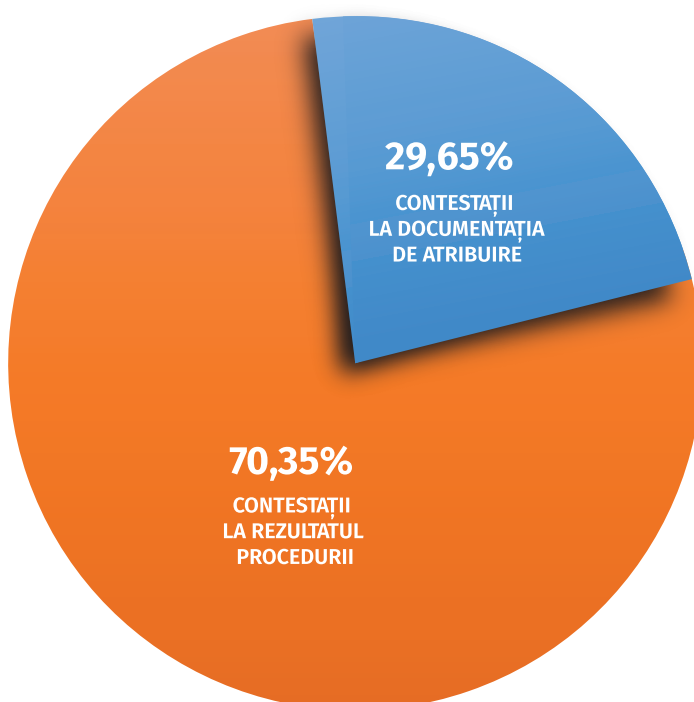
Regarding the complaints filed by economic operators against the outcome of the procedure, during 2024 their number increased by 21.66% (+622 complaints) compared to the previous year.

**EVOLUTION OF COMPLAINTS FILED BY ECONOMIC OPERATORS  
REGARDING THE OUTCOME OF THE PROCEDURE IN THE PERIOD  
2023 - 2024**



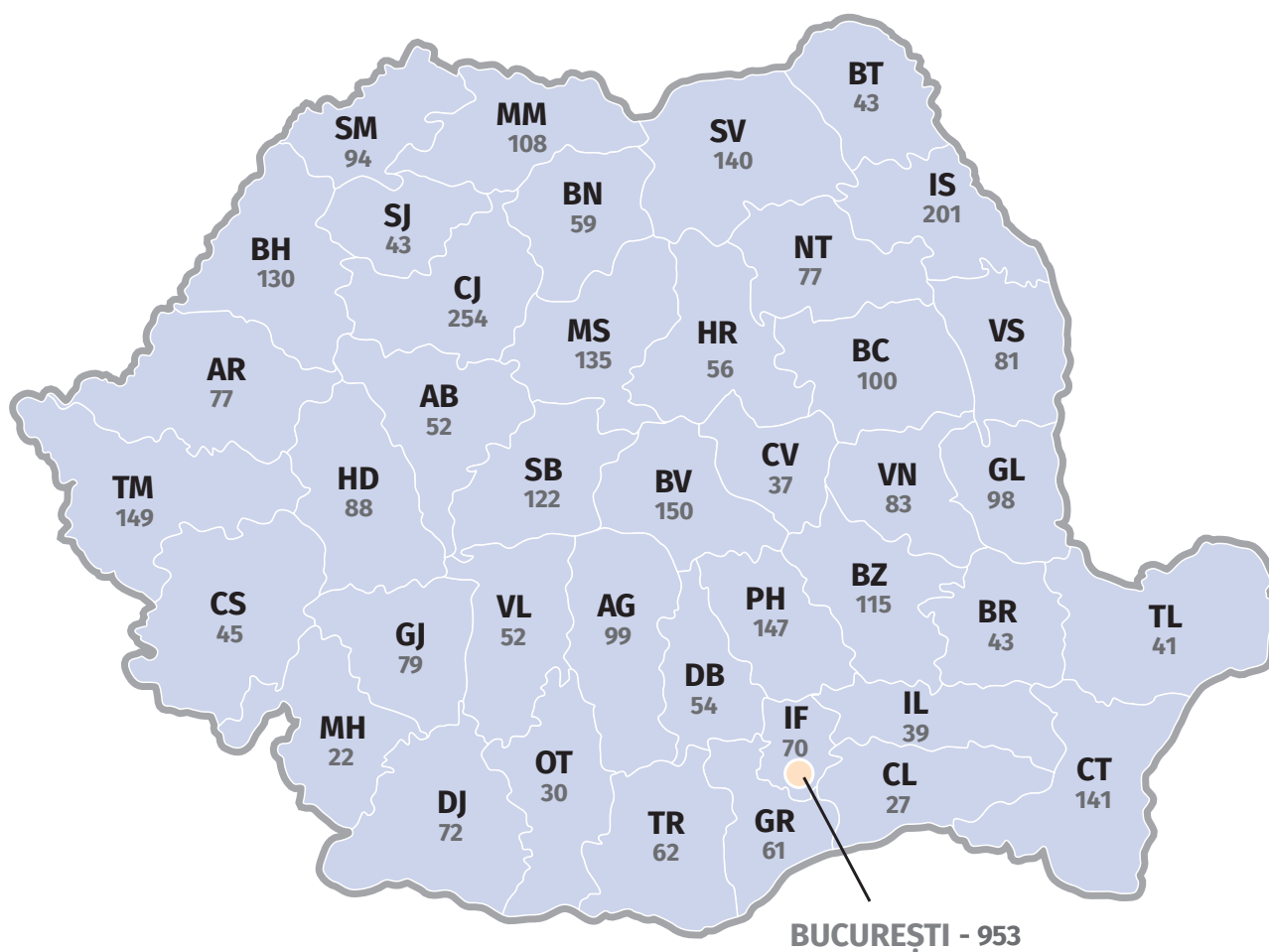
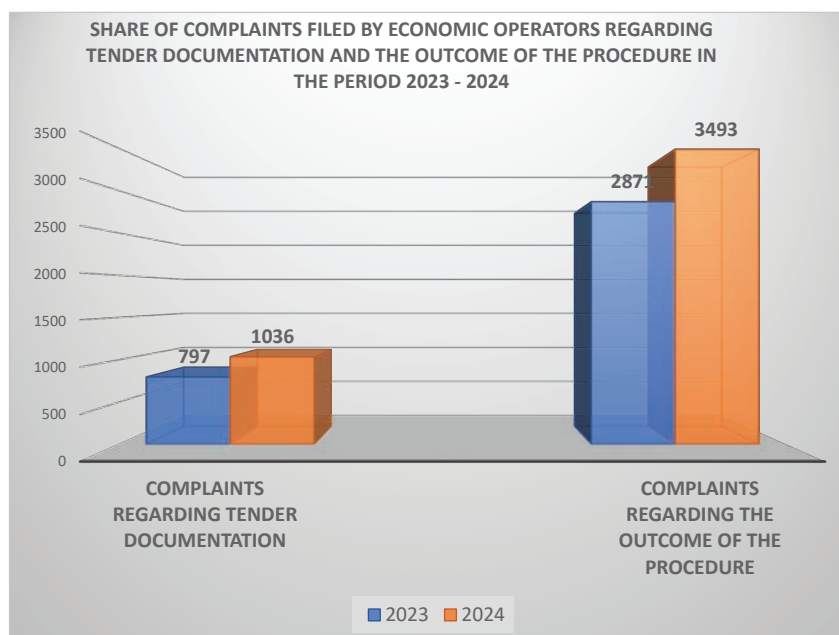
An overall “snapshot” of the timing when economic operators filed their complaints shows that out of the 4,529 complaints registered with the Council, 1,036 (22.87%) were directed against the tender documentation, while the remaining 3,493 (77.12%) concerned the outcome of the award procedure.

**SITUATION OF COMPLAINTS FILED IN 2024 BY ECONOMIC  
OPERATORS REGARDING TENDER DOCUMENTATION AND  
THE OUTCOME OF THE AWARD PROCEDURE**



Official statistics also show that in 2024 the number of complaints filed against the tender documentation and against the outcome of the award procedure remained consistent with the values from previous years (over 20% for the tender documentation and over 70% for the outcome of the award procedure), with any differences recorded being insignificant.

From the perspective of distribution by administrative-territorial units (A.T.U.), the complaints filed by economic operators evolved in 2024 as follows:



COUNTY	NUMBER OF APPEALS	COUNTY	NUMBER OF APPEALS	COUNTY	NUMBER OF APPEALS
BUCHAREST	953	ARGES	99	HARGHITA	56
CLUJ	254	GALATI	98	DAMBOVITA	54
IASI	201	SATU MARE	94	ALBA	52
BRASOV	150	HUNEDOARA	88	VALCEA	52
TIMIS	149	VRANCEA	83	CARAS-SEVERIN	45
PRAHOVA	147	VASLUI	81	BOTOSANI	43
CONSTANTA	141	GORJ	79	BRAILA	43
SUCEAVA	140	ARAD	77	SALAJ	43
MURES	135	NEAMT	77	TULCEA	41
BIHOR	130	DOLJ	72	IALOMITA	39
SIBIU	122	ILFOV	70	COVASNA	37
BUZAU	115	TELEORMAN	62	OLT	30
MARAMURES	108	GIURGIU	61	CALARASI	27
BACAU	100	BISTRITA-NASAUD	59	MEHEDINTI	22

It should be noted that, as in 2022 and 2023, at the end of 2024 the top three territorial-administrative units in terms of the number of complaints filed with the Council were Bucharest, Cluj, and Iași.

Official statistics at the level of Bucharest municipality show that out of the 953 complaints registered with the N.C.S.C., 342 (35.88%) originated from Sector 1, a territorial-administrative unit that hosts many contracting authorities (City Hall, Government, ministries, government agencies, medical and educational institutions, state-owned companies, etc.).

As is well known, the activity of the Council in the public procurement market is inseparably linked to the number of procedures initiated in the Electronic Public Procurement System (S.E.A.P.).

According to official data provided by the National Agency for Public Procurement, during the year 2024, a total of 32,491 unique public procurement procedures were initiated through the Electronic Public Procurement System (S.E.A.P.), with an estimated value of 840,245,354,000 RON (equivalent to 168,049,070,800 Euro). Referring to the source of financing for the procurement procedures initiated for the conclusion of public procurement contracts, it is observed that in 2024, a number of 1,154 complaints registered at the N.C.S.C. were filed against procurement procedures financed from European funds (25.48% of the total number of complaints), while the number of complaints targeting procure-

ment procedures financed from national public funds was 3,375 (74.5% of the total number of complaints).

Compared to the previous year, it is observed that during 2024 there was a significant increase in complaints filed against procurement procedures financed from European funds (+28.36%, +255 complaints). At the same time, there was also a notable increase in complaints filed against procurement procedures financed from national public funds (+22.24%, +614 complaints).

Comparing the total number



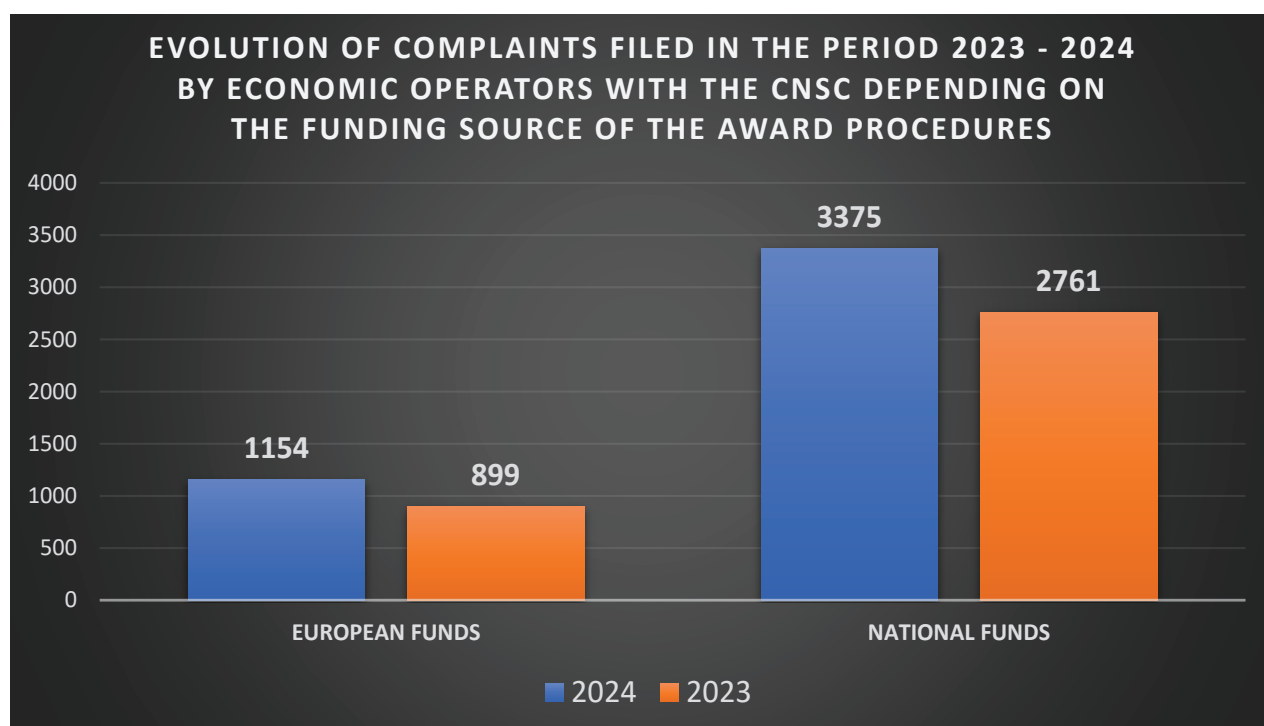
**STATUS OF APPEALS FILED IN 2024 BY ECONOMIC OPERATORS TO THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS (C.N.S.C.), CLASSIFIED BY THE FUNDING SOURCE OF THE AWARD PROCEDURES.**

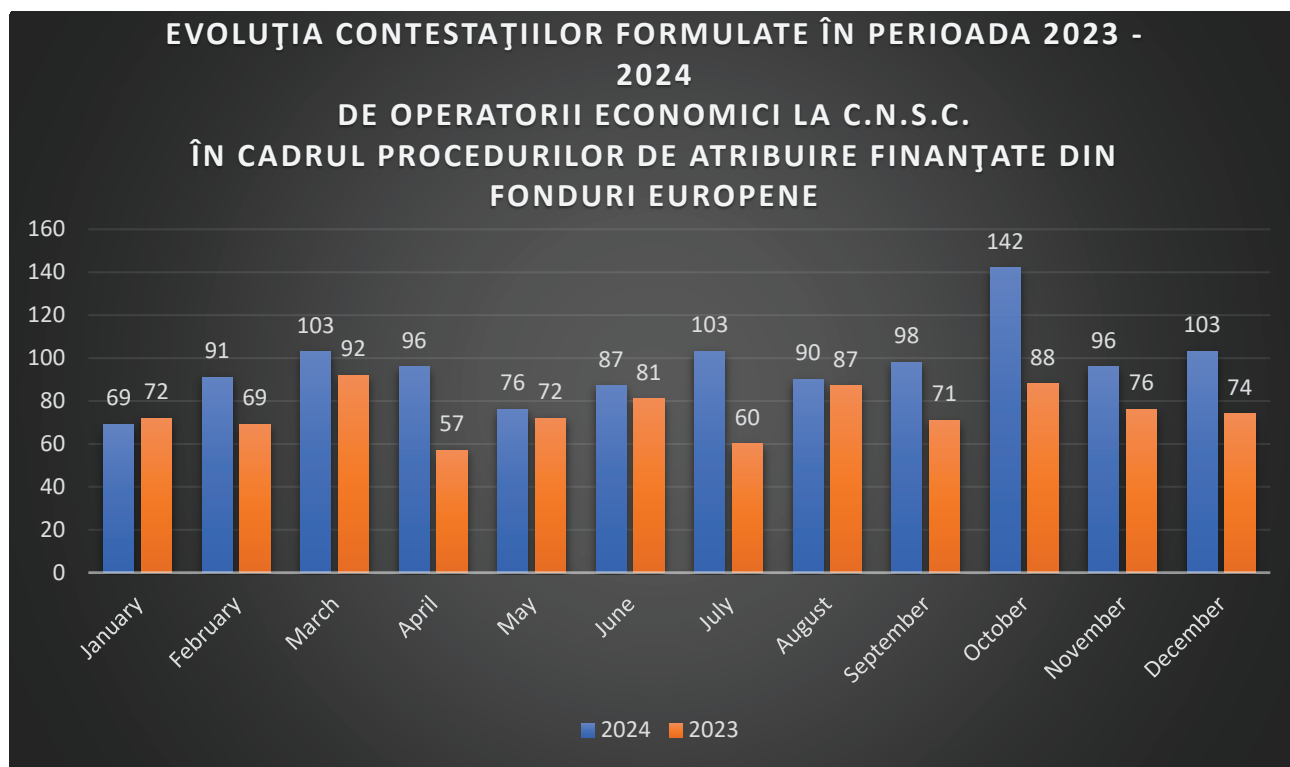


of procurement procedures financed from European funds initiated in 2024 on the S.E.A.P. platform (11,953 procedures) with the total number of complaints registered with the N.C.S.C. against procedures financed from these funds (1,154 complaints), it results that 9.65% of the procedures financed from European funds initiated on the electronic public procurement platform were contested at the Council by economic operators.

To give you an overview of the evolution of complaints filed with the N.C.S.C. regarding procurement procedures financed from European funds during the period 2023–2024, we present the monthly evolution within the mentioned timeframe:

Similarly, the number of complaints filed with the N.C.S.C.

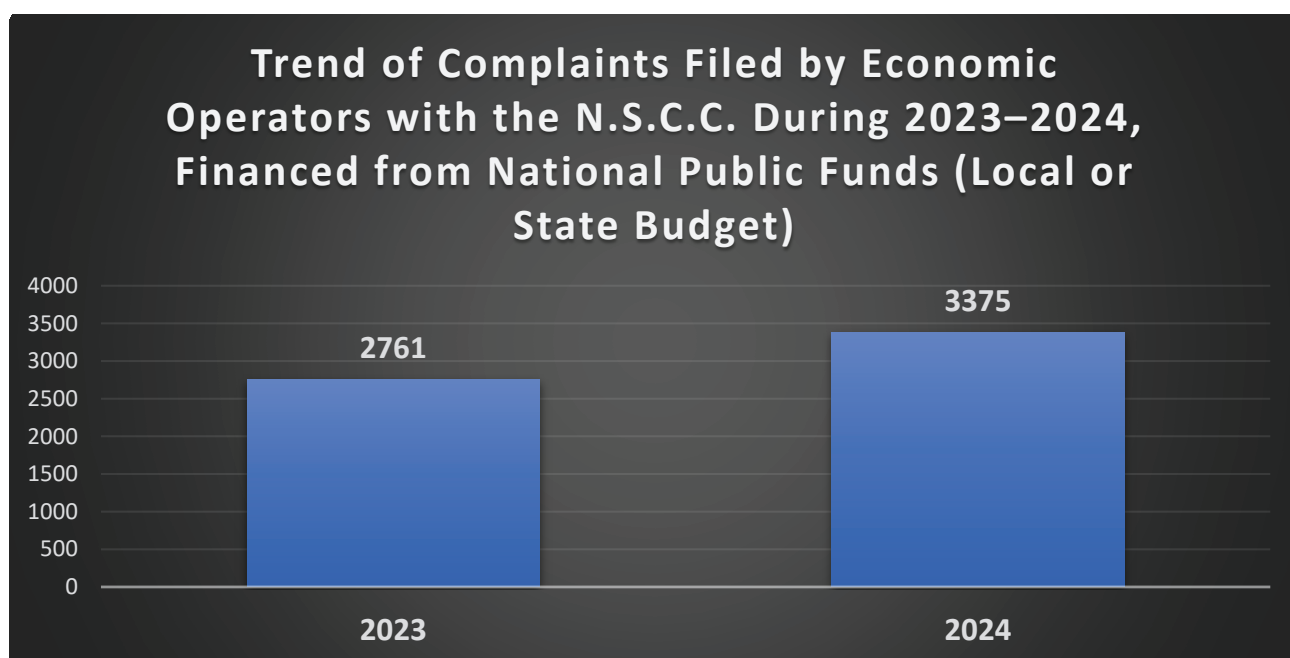




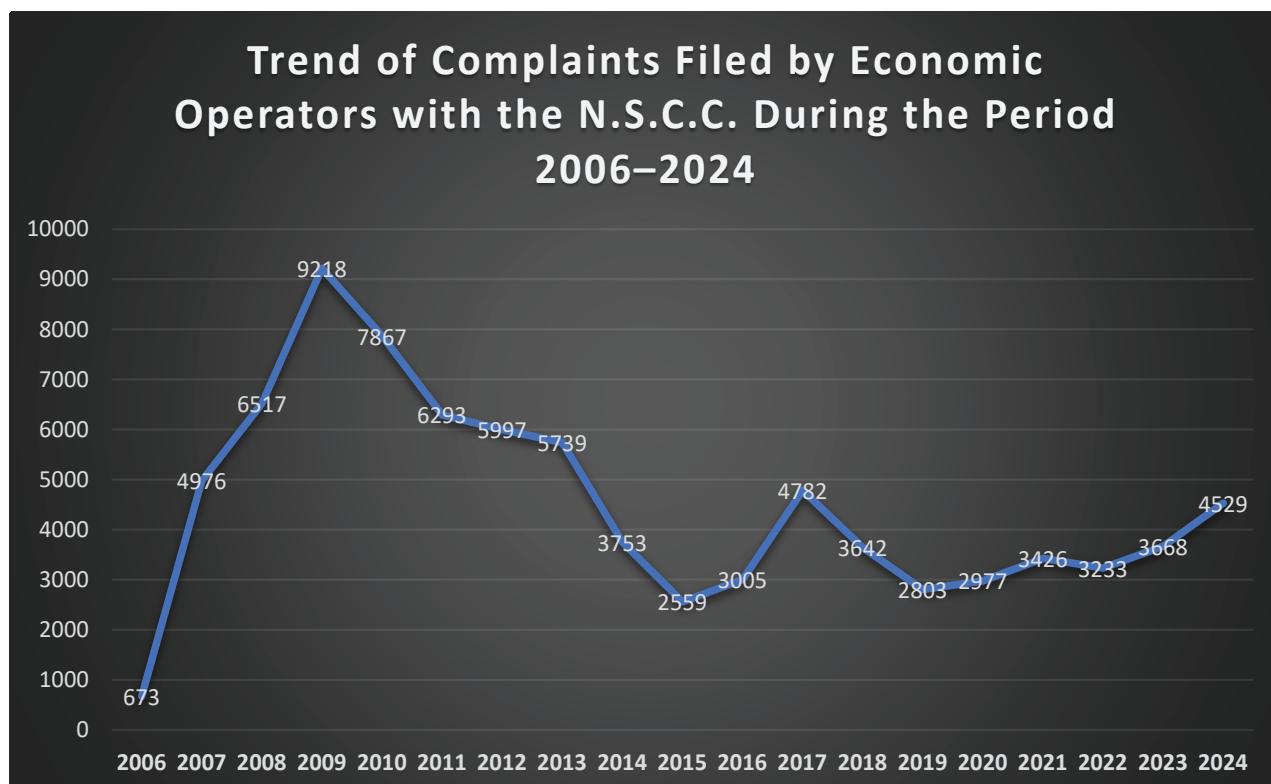
regarding the awarding procedures of public procurement contracts financed from national public funds (local budget/ state budget) evolved during

the period 2023–2024 as follows:

From a statistical point of view, since its establishment and up to December 31, 2024, the N.C.S.C. has registered a total of 85,657 complaints filed by economic operators, with the evolution shown in the graph below.



The annual evolution of complaints filed at the N.C.S.C. shows fluctuations from year to year. This fluctuation is directly related to the number of public procurement procedures initiated and conducted through the Electronic System for Public Procurement (S.E.A.P.), the legal framework governing pu-



blic procurement, the absorption rate of European funds, the level of investments financed from the national public budget, as well as the financial capacity of economic operators to comply with the legal provisions regarding the possibility to challenge procedures.

Focusing strictly on the year 2024, when the number of complaints reached or even exceeded those filed in 2018 (3,642 complaints), it can be concluded that public contracting authorities are experiencing a shortage of professionals in the field of public procurement. This has led to poor management of a large number of awarding procedures. This should serve as a serious warning signal in view of the implementation of projects included in the National Recovery and Resilience Plan (PNRR).

Moreover, the Council highlights that in 2024 there were numerous cases where public procurement procedures were effectively blocked by the contracting authorities themselves—the main entities directly interested (at least declaratively) in implementing projects funded from national public funds or European funds. Specifically, there were cases where contracting authorities refused to correctly and concretely implement the Council's decisions, resorting instead to unjustified appeals, which inexplicably

and unnecessarily delayed the completion of investment projects financed from European or national funds.

Thus, it was observed that in 2024 the number of appeals filed by contracting authorities with the superior court, where the Council's decisions that admitted the economic operators' complaints and ordered the reevaluation of offers were refused enforcement, was 159, representing a 9% increase compared to 2023.

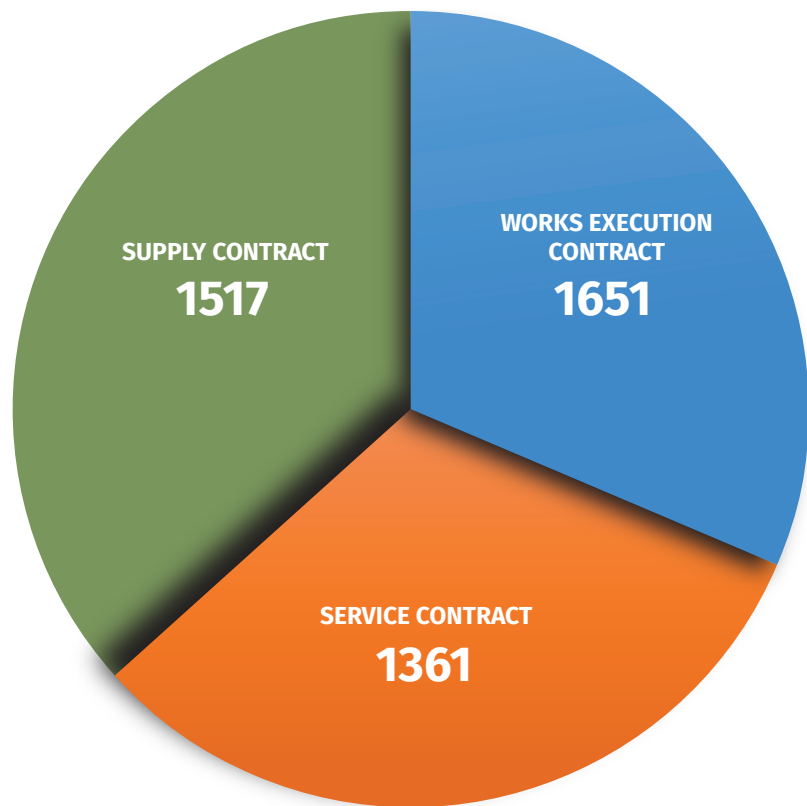
Returning to complaints filed by economic operators, an essential element in their analysis is the subject matter of the public procurement contract. Offi-

cial statistical data at the institutional level shows that in 2024, the object of complaints filed and registered at the Council concerned:

- Procurement procedures for contracts with the object of supplying products – 1,517 complaints (33.49%);
- Procurement procedures for contracts with the object of providing services – 1,361 complaints (30.05%);
- Procurement procedures for contracts with the object of carrying out works – 1,651 complaints (36.45%).

Analyzing the evolution of complaints filed during the period 2023–2024 based on the object of the public procurement contract, it is observed that over the last year there were increases compared to the previous year as follows: complaints related to procurement procedures for contracts involving the execution of works increased by 42.7%, complaints related to procurement procedures for contracts involving the supply of products increased by 13.63%, while complaints related to procurement procedures for contracts involving the provision of services increased by 16.52%.

Regarding the workload handled during 2024 by each of the complaints resolution panels, official statistics show that each of the 11 panels for-



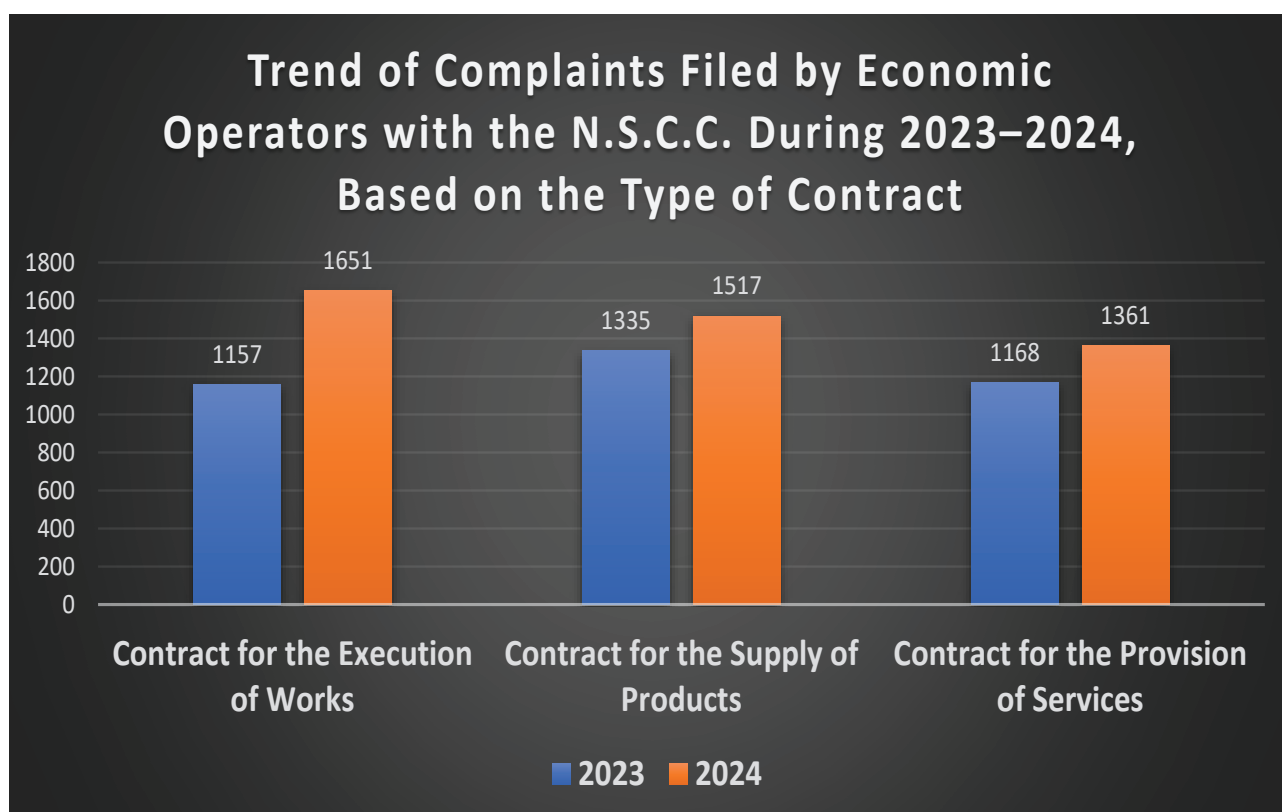
#### STATUS OF APPEALS FILED BY ECONOMIC OPERATORS TO THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS (C.N.S.C.) IN 2024, ACCORDING TO THE TYPE OF CONTRACT.

med within the Council was randomly (electronically) assigned an average of approximately 412 complaints (cases) annually, which translates to an average monthly workload of about 34 complaints (cases) per panel.

Comparing these figures to those recorded in 2023, when each panel resolved an average of 332 cases per year, it is observed that the average annual workload per panel increased by 24.1% (+80 complaints/cases) in 2024 compared to the previous year.

However, beyond resolving complaints, the panels also faced a significantly high volume of other activities, including issuing rulings, managing financial guarantees submitted by economic operators (the deposit and restitution of guarantees constituted for each contested public procurement procedure), and handling hundreds of thousands of pages of correspondence with economic operators, contracting authorities, and courts of appeal.

Thus, in 2024, besides issuing decisions, the 11 complaints resolution panels also issued 4,207 rulings, representing a 12.87%



increase (+480 rulings) compared to the previous year.

Concerning the workload faced by the complaints panels, it should also be noted that based on Article 17 of Law no. 101/2016, in 1,143 complaints, voluntary intervention requests were filed by economic operators interested in participating or already participating in the procurement procedure. This increased the complexity of these cases and required additional procedures to be carried out by each complaints panel.

To provide an overall picture of the workload and complexity of complaints handled by the institution in 2024, it must be emphasized that most procedures were contested at multiple stages, both regarding the tender documentation and the award decision. As a result, the Council was required to issue multiple decisions and numerous related documents for the same procurement procedure.

Despite the significant number of complaints and voluntary intervention requests assigned to each panel and the high complexity of cases, the 11 complaints panels within the Council respected the complaint resolution deadlines stipulated in Article 24, paragraph (1) of Law no. 101/2016. Due to the Council's activity, the complaint resolution timeframes in Romania have been among the shortest in the European Union, positioning Romania ahead of several countries with similar institutions.



## 2.2. OBJECT OF THE COMPLAINTS FILED BY ECONOMIC OPERATORS

According to public procurement legislation, each complaint filed by an economic operator within a public procurement procedure is individualized, thus becoming a process whose object consists of what the party requests to be resolved (i.e., what the procurement complaints adjudicators are asked to verify, assess, ascertain, and decide upon). It follows ipso facto that the resolution of each complaint raises not only factual issues but also legal questions that the procurement complaints adjudicators must address by issuing a Council decision, to ensure protection of the subjective right.

Therefore, the object of a complaint may consist of the total or partial annulment of an act issued by the contracting authority, or the obligation imposed on the contracting authority to issue an act.

Following the analysis of the 4,529 complaints filed with the Council in 2024, it was found that 1,036 complaints targeted the

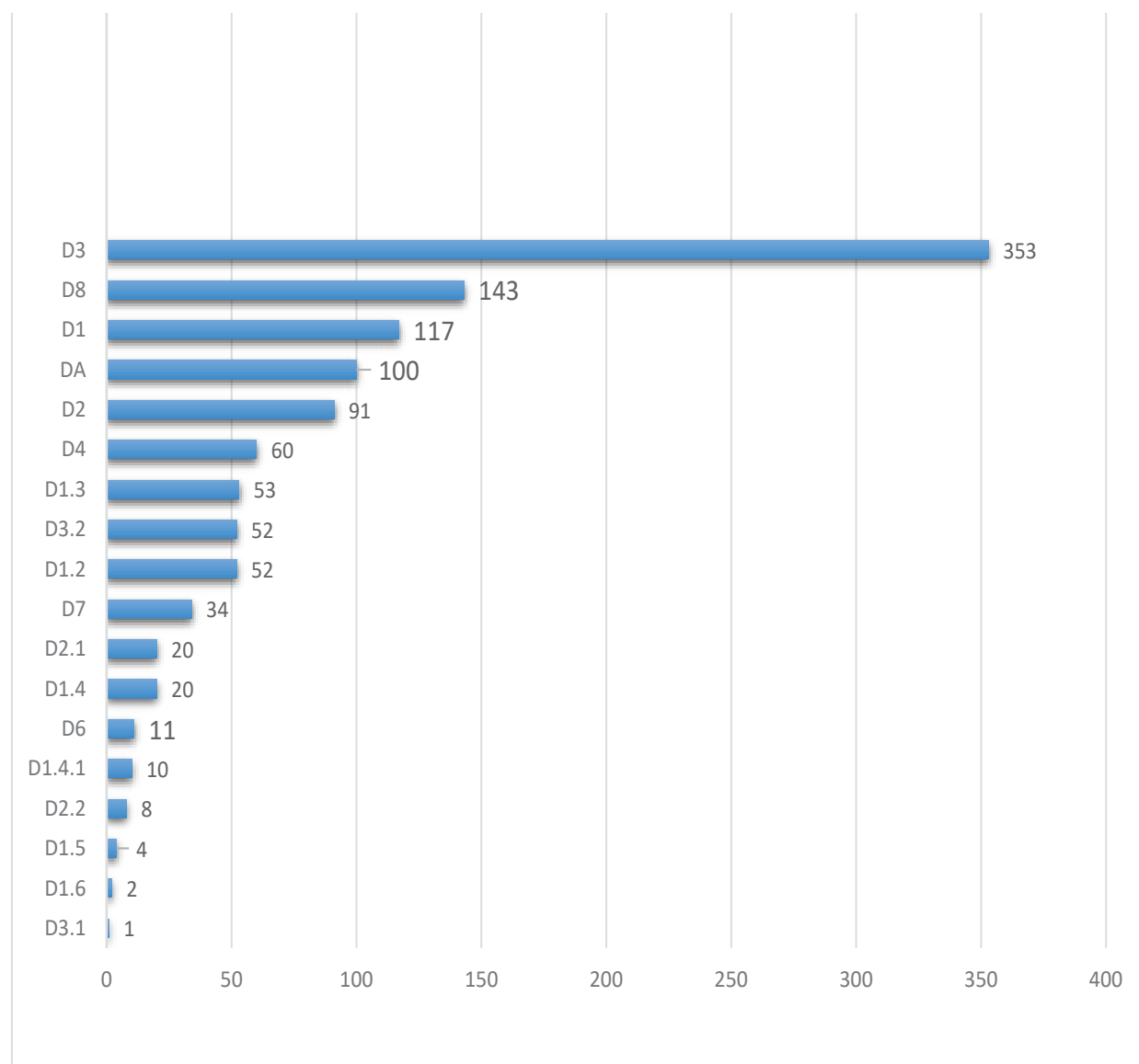
tender documentation, while 3,493 complaints targeted the outcome of the procedure.

Regarding the 1,036 complaints concerning the tender documentation, the most frequent criticisms related to the requirements imposed by contracting authorities concerned the following issues/requirements:

2024	DETALIERE	NUMĂR CRITICI
D1	Restrictive requirements regarding qualification criteria	117
D1.1	Restrictive requirements regarding personal situation of candidate or bidder	0
D1.2	Restrictive requirements regarding professional activity capacity	52
D1.3	Restrictive requirements regarding economic and financial situation	53
D1.4	Restrictive requirements regarding technical and/or professional capacity	20
D1.4.1	Restrictive requirements regarding similar experience	10
D1.5	Restrictive requirements regarding quality assurance standards	4
D1.6	Restrictive requirements regarding environmental protection standards	2
D2	Requirements regarding award criteria	91
D2.1	Irrelevant evaluation factors, lacking calculation algorithm, non-transparent or subjective algorithm	20
D2.2	Other requirements regarding award criteria	8
D3	Restrictive requirements regarding technical specifications	353
D3.1	Omission of the phrase "or equivalent," where legally required	1
D3.2	Other restrictive requirements regarding technical specifications	52
D4	Lack of a clear, complete, and unambiguous response from the contracting authority to requests for clarification concerning tender documentation provisions	60

D5	Form of participation guarantee constitution	0
D6	Imposition of unfair or excessive contractual clauses	11
D7	Failure to divide procurement into lots, in the case of similar products/works	34
D8	Other reasons concerning tender documentation	143
DA	Other Documentation Criticisms	100

### OBJECTIONS RAISED AGAINST THE REQUIREMENTS SET OUT IN THE AWARD DOCUMENTATION



To highlight the remarkable variety of cases handled by the Council, we will provide examples by presenting decisions issued throughout 2024 by the adjudication panels, alongside the decisions of the courts tasked with reviewing their legality.

## 1. N.C.S.C. DECISION

Regarding the issues raised by the complainant, the Council finds that, in the participation notice and the procurement data sheet, the contracting authority included the following:

**Evaluation Factor:** Experience held by the expert “Chief Designer/Head of the Design Team”  
**Weighting:** 30 (30.00%)

**Scoring Algorithm:** Participation of the proposed expert in the role of Chief Designer/Head of the Design Team in at least one contract for design services and/or works contract that includes design, with the subject matter being the development and/or updating and/or revision of technical-economic documentation (pre-feasibility study and/or feasibility study and/or design for works execution authorization and/or documentation for approval of intervention works and/or technical execution design) for construction/extension/rehabilitation/modernization works of water supply/sewerage networks and/or water adduction systems and/or fluid networks

ks and/or above-ground/underground utility technical networks. For participation in 1 (one) contract: 0 points; For participation in 2–10 contracts: 10 points; For participation in 11–29 contracts: 20 points; For participation in 30 or more contracts: 30 points.

To score this evaluation factor within the technical proposal, the bidder is required to demonstrate the relevant experience of the key expert, evidenced by the number of contracts in which they participated in the requested capacity of Chief Designer/Head of the Design Team. To this end, the following documents must be submitted:

- 1) Curriculum Vitae, signed and dated by the key expert; the bidder shall complete the CV in accordance with the requirements, specifying the expert’s role as Chief Designer/Head of the Design Team;
- 2) Recommendations with registration numbers, signed and stamped, issued by Beneficiaries, demonstrating the required experience and facilitating the application of the scoring algorithm for the evaluation factors;
- 3) Bachelor’s degree/diploma or equivalent – completed university studies in the specialization of water supply and sewerage systems construction (as per the Nomenclature of fields and specializations/university study programs of at least 4 years);
- 4) Employment contract/availability statement/Revisal extract.

**Evaluation Factor:** Project Manager (Contract)

**Weighting:** 30 (30.00%)

**Scoring Algorithm:** Specific experience of the Contract Manager/Project Manager, meaning participation in the requested capacity (contract manager/project manager/coordinator of all activities/contract director/contract head) in at least one contract with the subject matter being the design of construction/extension/rehabilitation/modernization works for water supply/sewerage networks and/or water adduction systems and/or fluid networks and/or above-ground/underground utility technical networks. For participation in 1 (one) contract: 0 points; For participation in 2–10 contracts: 10 points; For participation in 11–29 contracts: 20 points; For participation in 30 or more contracts: 30 points.

To score this evaluation factor within the technical proposal, the bidder is required to demonstrate the relevant experience of the key expert, evidenced by the number of contracts in which they participated in the requested capacity of Contract Manager/Project Manager. To this end, the following documents must be submitted:

- 1) Curriculum Vitae, signed and dated by the key expert; the bidder shall complete the CV in accordance with the requirements, specifying the expert’s role as Contract Manager/Project Manager;
- 2) Recommendations with registration numbers, signed and stamped,

ped, issued by Beneficiaries, demonstrating the required experience and facilitating the application of the scoring algorithm for the evaluation factors;

3) Bachelor's degree/diploma or equivalent – completed university studies in the specialization of water supply and sewerage systems construction (as per the Nomenclature of fields and specializations/university study programs of at least 4 years);

4) Employment contract/availability statement/Revisal extract.

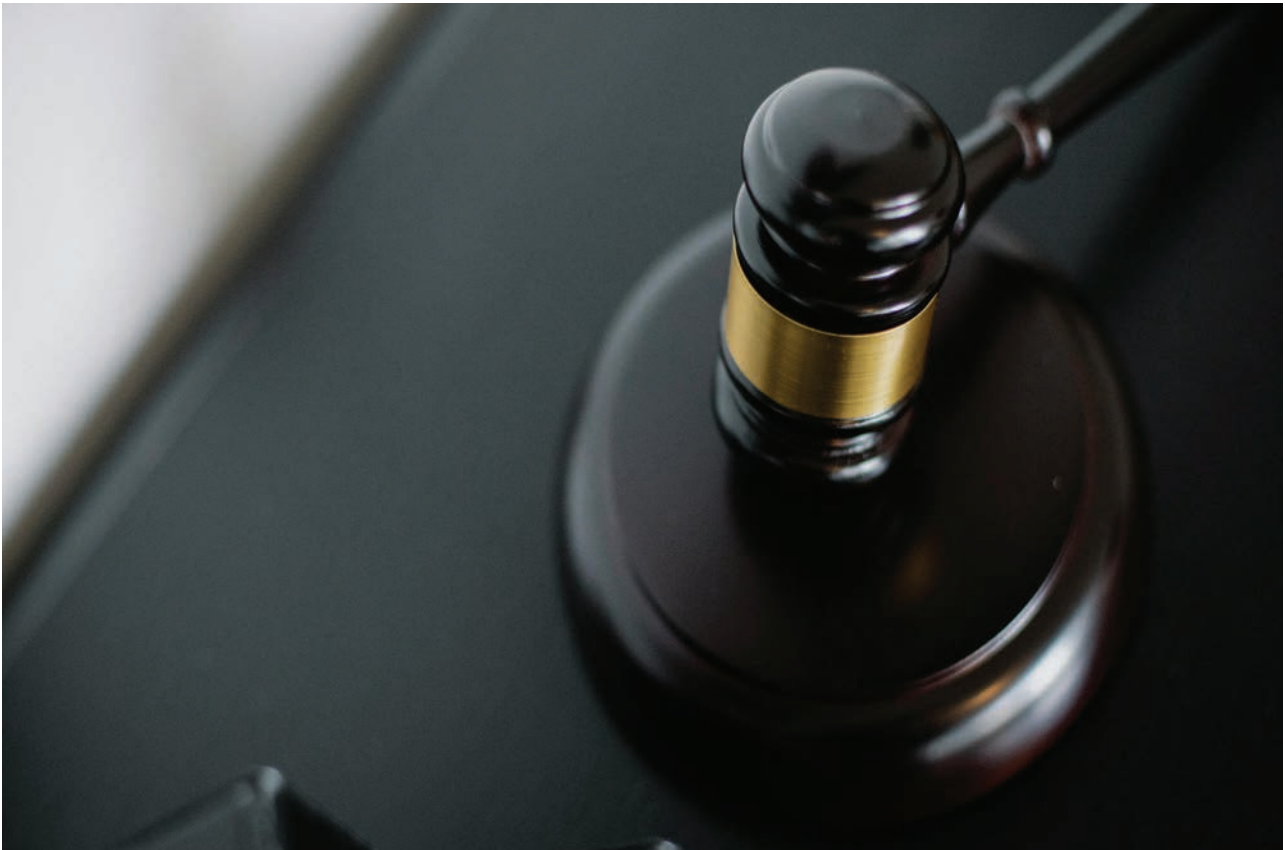
[...] SRL considers the minimum number of similar contracts required to obtain the maximum score, namely 30 contracts, to be excessive, as it would imply 20–30 years of professional activity. The Council agrees with the conclusions of the complaining company, particularly since the defendant authority failed to provide any plausible and credible defense to justify the extremely high number of contracts, which is unusual in award procedures. The only defense provided is of a general nature: “Considering the nature of the investment objective and the complexity of the services to be designed, the contracting authority established the scoring in accordance with the provisions of Law no. 98/2016, offering all interested economic operators equal and non-discriminatory treatment for participation in the procedure. Furthermore, the contracting authority acted in a transparent and proportional manner in establishing the minimum requirements and criteria, which were determined in relation to the nature, complexity, and scale of the contract's objective.”

The “nature, complexity, and scale of the contract's objective” are not substantiated anywhere, being mere attributes unsupported by the authority invoking them. In light of Article 10(2) of the Instruction of the President of the National Agency for Public Procurement no. 1/2017, issued in application of the provisions of Article 179(g) and Article 187(8)(a) of Law no. 98/2016 on public procurement, as well as Article 192(g) and Article 209(8) of Law no. 99/2016 on sectoral procurement, high-complexity activities are understood to mean intellectual services that involve:

- A high degree of customization and adaptation of activities to the specifics of the contract's objective and/or the needs of the contracting authority/entity;
- The combination of knowledge and expertise from multiple fields of activity; and/or
- The resolution of difficult issues related to the planning/implementation process of the project/contract.

Examples in this regard, as per the aforementioned instruction, include: the development of the technical design for the execution of highway construction works; consultancy for the remodeling of internal processes and the development of a new organizational architecture to enhance the efficiency of an entity with complex activities (e.g., market regulation and monitoring in a strategic field;





large investment budget).

In reality, the service contract in question is a standard one, involving design and technical assistance, with a relatively low value, thus not requiring experience at the level of 30 contracts for either the Chief Designer/Head of the Design Team or the Contract/Project Manager. In itself, the evaluation factors consisting of the experience of these experts and their 30% weightings are not unlawful; however, the algorithm that allows the maximum score to be obtained only if the experts have previously performed a minimum of 30 contracts is excessive and restrictive, significantly limiting access to the procedure and, implicitly, competition. The number of contracts cannot be set arbitrarily or to favor certain operators (to distort competition) but must have an objective, justifiable, and verifiable correspondence to the complexity of the tasks the experts will perform and, directly proportional, to the benefits that the authority gains from the experts' extremely high experience compared to lower experience. It should not be overlooked that the authority accepts experts with only one similar contract of experience in the "tender," and there is a vast, objectively unjustified gap between this minimum and the 30 contracts required for the maximum score. [...]

The threshold of 30 contracts as experience does not reflect any objective advantage for the authority, especially since the service contract does not appear to be of notable complexity, and, as noted above, the same authority accepts experts with minimal experience of a single contract in the procedure. Thus, the jurisdictional body confirms the authority's deviation from the principle of proportionality between the algorithm and the actual needs of the beneficiary authority, as well as from Article 32 of the methodological norms approved by Government Decision no. 395/2016.



## 2. N.C.S.C. DECISION

[...] SRL claims that the hospital should only admit into the competition disinfectants that are “classified” both as medical devices and as biocidal products. This request is deemed by the administrative jurisdiction body not only unfounded but also lacking in interest, as it would restrict access to the tender not only for the complainant but also for other interested economic operators. Contrary to Art. 10 para. (1), Art. 14 para. (2), and Art. 249 of the Civil Procedure Code, which require the parties to substantiate and support their claims before the Council with evidence, [...] SRL failed to provide any document from the National Agency for Medicines and Medical Devices of Romania indicating that “in the case of a disinfectant product intended for application on both surfaces and medical devices, it must have the legal authorizations for being placed on the market both as a medical device and as a biocidal product.” The company merely refers to something allegedly stated by the “N.A.M.D.R.” in an unidentified document, lacking a registration number and date.

The Council cannot limit the type of product to medical devices, as this would unjustifiably restrict competition, especially since there are also authorized biocidal disinfectants available on the market. The reverse is equally valid. The submission by bidders of a legal document granting them the right to market the disin-

fectant, equivalent to a market authorization in Romania or a sanitary endorsement, does not prejudice the contracting authority; on the contrary, it encourages broader competition and the potential for obtaining more favorable prices. The purpose of the new legislation in this field is to ensure access to procurement procedures for as many economic operators as possible, to promote competition among them, and to guarantee equal and non-discriminatory treatment.

In situations where the offered product meets the full range of effects required by the contracting authority, discriminating between those authorized as biocides and those notified as medical devices—or both—is unjustified, and all should



be accepted. In other words, the Council cannot impose on the authority an obligation to prefer medical devices over biocidal products or vice versa, or to require dual-classified products, but must instead allow the offering of any legally authorized disinfectant, according to how each supplier has registered and legally markets its product in Romania.

In other words, if a biocidal product is authorized for disinfecting equipment, as long as the BIO authorization/endorsement has not been revoked, it must be accepted in the tender based on said legal authorization, without requiring the bidder to also have authorization as a medical device. The same reasoning applies to disinfectants for surfaces that are legally notified only as medical devices, which likewise should not require dual authorization to be accepted in the tender.

According to Art. 6 para. (3) of the Order of the Minister of Health no. 1.761/2021 approving the Technical Norms regarding cleaning, disinfection, and sterilization in public and private healthcare units, the assessment of the effectiveness of cleaning and disinfection procedures performed within them, the recommended hand disinfection procedures based on risk level, and the methods for evaluating sterilization processes and efficiency control, the mandatory condition for the



procurement of biocidal products, classified as medical devices, used in public and private healthcare units, is that the suppliers must provide:

a) a CE declaration of conformity in accordance with Council Directive 93/42/EEC of 14 June 1993 on medical devices, transposed through Government Decision no. 54/2009 on the conditions for placing medical devices on the market, as subsequently amended, or an EU declaration of conformity in accordance with Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) no. 178/2002 and Regulation (EC) no. 1.223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC;

b) the certificate or certificates of conformity issued by the notified body involved in the conformity assessment for the medical device referred to in the declarations mentioned in point a);

c) the manufacturer's recommendations regarding the product's effectiveness and usage instructions.

The technical norms regarding cleaning, disinfection, and sterilization in public and private healthcare units, provided in Annex no. 1 of the aforementioned order, state explicitly that chemical disinfection is carried out using disinfection products that are endorsed/authorized as biocides or notified as class IIa and IIb medical devices, in accordance with applicable legal provisions, and that are used on surfaces, objects requiring disinfection, medical, surgical, and dental instruments, medical equipment, medical devices, and soft materials. The same norms expressly acknowledge, in Art. 9, that biocidal products can be used not only for surface disinfection but also for disinfecting medical devices.



### 3. N.C.S.C. DECISION

It is noted that, primarily regarding the evaluation factors „Project Manager’s Experience” and „Software Developer with experience in implementing integrated solutions in the academic environment”, the objections concern the fact that these factors are not associated with an extension of the minimum mandatory requirements established in the tender specifications. Instead, they refer to an identical domain to the one targeted by the contract, specifically requiring experience in platforms designed for users such as students in the pre-university/academic environment.

(...)

Contrary to the contracting authority’s claims, the experience of the project manager and the software developer is not dependent on having implemented projects in an identical domain to the one covered by the contract (academic/pre-university). Therefore, awarding points in the evaluation criteria only for projects in this identical domain is disproportionate in relation to the intended purpose of the evaluation factors and lacks justification.

Indeed, the contracting authority extensively explained the re-

asoning behind selecting these two evaluation factors, but its argumentation is based on the mere fact that the subject of the contract involves implementing a platform/application in the academic environment. However, it did not demonstrate that the responsibilities/activities to be carried out by the project manager and software developer differ in any significant way from those performed in similar domains, so as to justify awarding additional points solely for experience gained in projects within the identical domain.

As rightly pointed out by the complaining company, although the minimum requirement in the

tender specifications referred to a similar domain (Project Manager – minimum 3 years of experience in implementing software development projects or similar application platforms; Software Developer – minimum 3 years of experience in developing functionalities), the evaluation factors require experience in an identical domain, i.e., academic/pre-university.

In this context, the provisions of Article 32 of the Methodological Norms approved by Government Decision no. 395/2016 are worth mentioning (...).

The advantage for the contracting authority in evaluating the experience of the project manager and software developer stems from their involvement in projects within similar domains where they performed comparable roles. Thus, it is not necessary to restrict the assessment to experience in an identical domain. The fact that these professionals participated in similar projects is a real benefit, and it is not necessary for them to have delivered services in projects specifically for platforms aimed at students in pre-university or academic settings.

As also pointed out by the complainant, with regard to the responsibilities of a project manager, regardless of the contract's field, what is relevant is the ability to demonstrate experience in contracts involving similar activities to those

required in the current project—not whether the previous contract specifically involved a “platform for students in the pre-university environment.”

Requiring, within the evaluation criteria, specific experience related to contracts that implemented a „platform for student users” in a specific domain such as „pre-university education” leads to an unjustified advantage for certain economic operators who have worked in that area, and conversely, unfairly disadvantages others who could offer the same benefits to the contracting authority. This results in the artificial restriction of competition in this procurement procedure.

What matters for the contracting authority is the ability to verify the experience of the project manager and developer, with the evaluation based on similar—not identical—domains.

(...)

Limiting the awarding of points to projects in the identical domain (academic) effectively excludes economic operators who are fully capable of delivering the required services, but who do not have a project manager or software developer in their team with experience specifically in academic/pre-university student platforms.

The options proposed by the contracting authority, such as allowing the association of economic operators or subcontracting certain services, do not resolve the restrictive nature of the evaluation criteria, especially since association and subcontracting are not mandatory. The contracting authority cannot condition the manner of participation in the procedure by imposing unjustified and disproportionate requirements in relation to the services being procured and the benefits intended by the evaluation.

In view of the above, the contracting authority must eliminate the specific requirements referring to experience in implementing platforms for student users in the pre-university environment or integrated solutions in the academic environment from the evaluation factors „Project Manager's Experience” and „Software Developer with experience in implementing integrated solutions in the academic environment”, and revise these two evaluation factors in accordance with the principles outlined above.

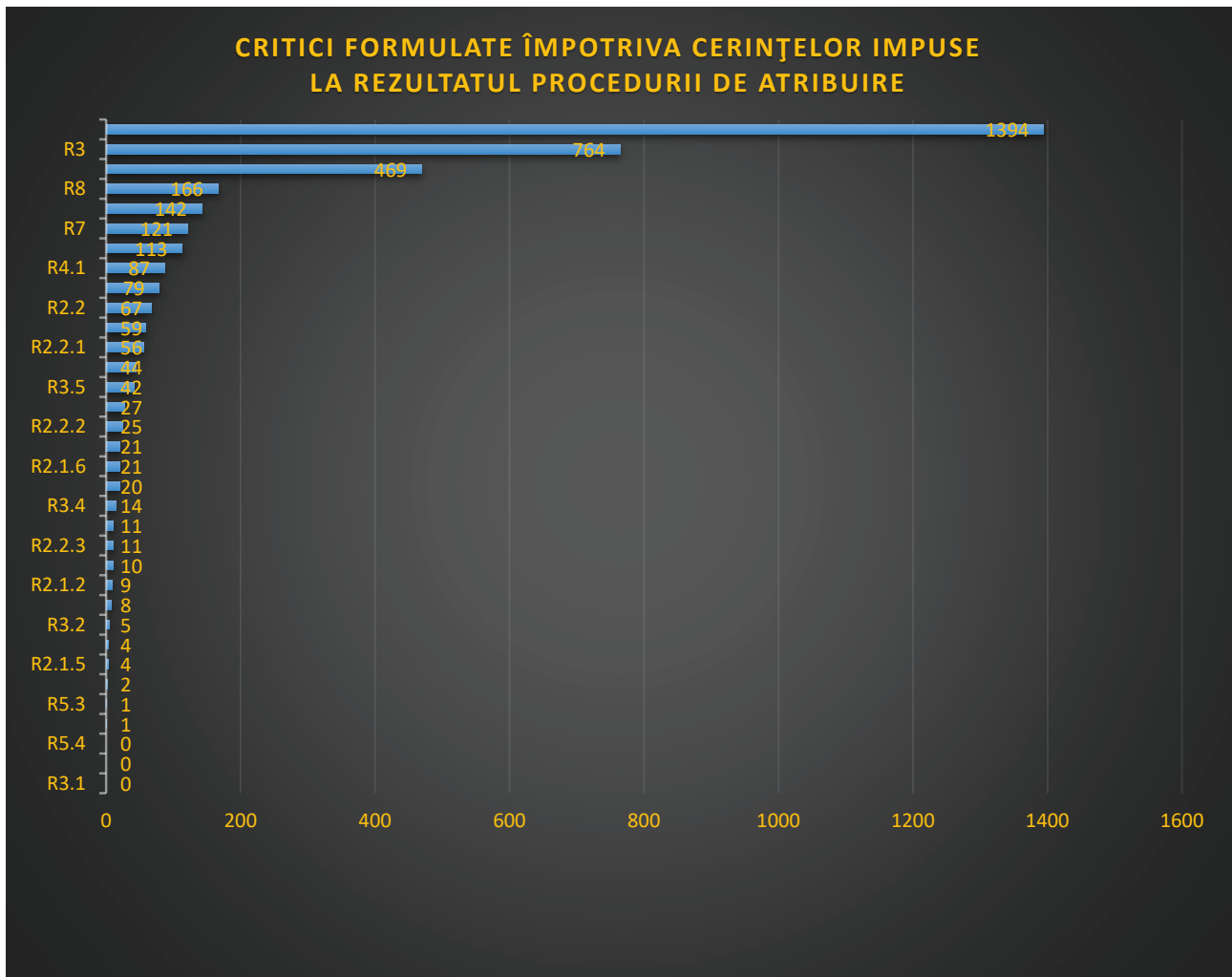
Regarding the objections raised by economic operators in the 4,529 complaints submitted to the Council in 2024 against the results of procurement procedures, it was observed that the most frequently contested requirements/motives included the following:



2024	DETALIERE	TOTAL
R1	objections against the minutes of the bid opening session (non-consideration of the bid bond, manner of conducting the bid opening session)	59
R2	rejection of the complainant's offer as non-compliant or unacceptable	1394
R2.1	rejection of the complainant's offer as unacceptable	113
R2.1.1	rejection of the complainant's offer as unacceptable, as it was submitted after the deadline or to an address other than those specified in the contract notice	2
R2.1.2	rejection of the complainant's offer as unacceptable, as it was not accompanied by the bid bond in the amount, form, and with the validity period required in the award documentation	9
R2.1.3	rejection of the complainant's offer as unacceptable, as it was submitted by a bidder who does not meet one or more of the qualification criteria	27
R2.1.4	rejection of the complainant's offer as unacceptable, as it has an abnormally low price	8
R2.1.5	rejection of the complainant's offer as unacceptable, as it was submitted in breach of the conflict of interest provisions	4
R2.1.6	rejection of the complainant's offer as unacceptable, for reasons other than those mentioned in R.2.1.1–5	21
R2.2	rejection of the complainant's offer as non-compliant	67
R2.2.1	rejection of the complainant's offer as non-compliant, as it does not properly meet the requirements of the specifications	56
R2.2.2	rejection of the complainant's offer as non-compliant, as the bidder did not submit the requested clarifications/responses within the period specified by the evaluation committee, or the explanations provided were unsatisfactory	25
R2.2.3	rejection of the complainant's offer as non-compliant, as the bidder modified the content of the technical proposal through the clarifications submitted	11
R2.2.4	rejection of the complainant's offer as non-compliant, as the bidder modified the content of the financial proposal through the clarifications submitted	10
R2.2.5	rejection of the complainant's offer as non-compliant, for reasons other than those mentioned in R.2.2.1–4	21
R3	unacceptability of offers submitted by other participants in the award procedure	764
R3.1	offers submitted by other participants in the award procedure were submitted after the deadline or to an address other than those specified in the contract notice	0
R3.2	offers submitted by other participants in the award procedure were not accompanied by the bid bond in the amount, form, and with the validity period required in the award documentation	5
R3.3	offers submitted by other participants in the award procedure were submitted by bidders who do not meet one or more of the qualification criteria	44
R3.4	offers submitted by other participants in the award procedure were submitted in breach of the conflict of interest provisions	14



R3.5	other reasons for the unacceptability of offers submitted by other participants in the award procedure	42
R4	non-compliance of offers submitted by other participants in the award procedure	469
R4.1	abnormally low price of offers submitted by other participants in the award procedure	87
R4.2	modification of the technical and/or financial proposal content through the clarifications submitted by other participants in the award procedure	11
R4.3	other reasons for the non-compliance of offers submitted by other participants in the award procedure	79
R5	the contracting authority failed to comply with the minimum content requirements provided by the applicable legal provisions in the communication of the award procedure result	4
R5.1	the contracting authority failed to communicate to each rejected candidate the specific reasons for the rejection of their application	0
R5.2	the contracting authority failed to communicate to each rejected bidder the specific reasons for the rejection of their bid	1
R5.3	the contracting authority failed to communicate to each bidder whose offer was admissible but not declared as winning the relevant characteristics and advantages of the winning offer	1
R5.4	the contracting authority failed to communicate to each rejected or unsuccessful candidate/bidder the deadline by which they may submit an appeal	0
R6	rejection of the offer without the contracting authority requesting clarifications regarding the technical/financial proposal or incorrect assessment of the clarifications submitted	20
R7	unjustified cancellation of the award procedure by the contracting authority	121
R8	other reasons regarding the outcome of the procedure	166
RA	Other Criticisms – Outcome	142
<b>TOTAL</b>		<b>3797</b>



## 1. N.C.S.C. DECISION (final and unappealable)

The dispute concerns the acceptance in the tender of the offer from [...] SRL, which, from the claimant's perspective, should have been rejected because the company did not declare in the European Single Procurement Document (ESPD) several "negative" certificatory documents proving its failure to fulfill contractual obligations.

As a preliminary note, it is appropriate to mention here that, in light of the case law of the Court of Justice of the European Union, a decision by a contracting authority to refuse, even implicitly, to exclude an economic operator from a public procurement procedure for one of the optional exclusion grounds provided in Article 57(4) of Directive 2014/24 must necessarily be subject to challenge by any person who has or has had an interest in obtaining

a particular contract and who has been or risks being harmed by a breach of that provision. It follows that a national court may, in the context of a dispute between a candidate or tenderer rejected from the award of the contract and a contracting authority, review the latter's assessment as to whether the conditions for applying one of the optional exclusion grounds set out in Article 57(4) of Directive 2014/24 were met in respect of the economic operator awarded the contract and, consequently, depart from that

assessment. Thus, depending on the case, the court may rule on the merits or refer the matter to the contracting authority for that purpose. – Judgment of 7 September 2021, Klaipėdos regiono atliekų tvarkymo centras, C-927/19, EU:C:2021:700, paragraphs 143 and 144.

Analyzing the aspects raised by the claimant, the judicial body notes that one of the undeniable requirements of the authority was that tenderers must not be in the situations provided for in Article 167(1) of Law no. 98/2016 [...].

By its action, the contesting party accuses [...] SRL of not declaring in the ESPD the negative certificatory documents concerning it, and accuses the contracting authority of failing to undertake checks regarding these documents.

Reviewing the standard form for the European Single Procurement Document (ESPD) submitted by [...] SRL reveals that, indeed, in Section C – “Grounds related to insolvency, conflict of interest or professional misconduct,” subsections “Guilty of serious professional misconduct” and “Early termination, damages or other comparable sanctions,” the answer “No” was indicated, meaning that [...] SRL did not declare such situations. Despite this declaration, the claimant identified in SEAP several negative certificatory documents concerning [...] SRL.

According to Article 171(5)(b) of the public procurement law, exclusion of the tenderer is not applicable if a period of 3 years has elapsed from the date of occurrence of the situation, the commission of the act, or the production of the relevant event, meaning that the decisive date is not the issuance date of the certificatory document, but the “date of occurrence of the situation, commission of the act, or production of the relevant event.” Apparently, all five certificatory documents attached to the contestation relate to situations that occurred within the three-year period established by law (the tender notice being dated 12.08.2024), and could be hypothetically upheld, until proven otherwise, as grounds for exclusion. Therefore, the breaches of contractual obligations by [...] SRL occurring within these three years potentially reflect a certain pattern, a *modus operandi* capable of placing the tenderer within the exclusion situation under Article 167(1)(g) of Law no. 98/2016 – repeated breach of contractual obligations leading to payment of damages (delay penalties essentially being damages under the law, as also interpreted by the National Agency for Public Procurement in the notification concerning Article 167(1)(g), available at <https://anap.gov.ro/web/wp-content/uploads/2021/06/Notificare-motiv-excludere-art-167-alin-1-lit-g-FINAL.pdf> – “the application of penalties under contractual clauses [...] puts the concerned

economic operator in the exclusion situation [...] only insofar as the failure to meet those obligations/delays constitutes a serious breach or occurs in cases of repeated breaches/delays”). It is important to note that [...] SRL should not have concealed the existence of these breaches, but rather disclosed them in its own ESPD, possibly accompanied by corrective measures enabling it to remain in the procedure [under the subsection “Have you taken measures to demonstrate your reliability (self-correction)?”], since concealment itself may constitute a separate legal ground for exclusion, provided under letters (h) or (i), cited above. The Council neither agrees with nor tolerates the practice of tenderers hiding or incorrectly completing the ESPD regarding their non-compliance with previous contractual commitments, information that is determinative in identifying grounds for exclusion from the award procedure.

As also highlighted in the case law of the Court of Justice of the European Union, a tenderer cannot be excluded from the award procedure if it proves, to the satisfaction of the contracting authority, that the corrective measures adopted restore its reliability. Member States are obliged to comply with the principle of respect for the right of defense, which, as a fundamental principle of Union law including the right to be

heard in any procedure, applies when the administration intends to adopt an act prejudicial to a person, such as an exclusion decision from an award procedure (Judgment of 14 January 2021, *RTS infra and Aannemingsbedrijf Norré-Behaegel*, C-387/19, EU:C:2021:13). In that sense, Member States of the Union and, especially, contracting authorities must respect not only the principles applicable to procurement set out in Article 18 of Directive 2014/24, among which are the principles of equal treatment, transparency, and proportionality, but also the principle of respect for the right of defense, which as a fundamental principle of Union law including the right to be heard in any procedure, applies when the administration intends to adopt an act prejudicial to a person, such as an exclusion decision adopted in a procurement procedure. This is also confirmed by Judgment of 20 December 2017, *Prequ' Italia*, C-276/16, EU:C:2017:1010, paragraphs 45 and 46, and Judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 28, as well as the case law cited therein, which are relevant in the present case.

Therefore, based on the right of defense, which applies when the administration intends to adopt an act causing harm to a person, recipients of decisions that significantly affect their interests must be given the opportunity to meaningfully present their viewpoint on the elements on which the administration intends to base its decision (see, for example, Judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and others*, C-159/21, EU:C:2022:708, paragraph 45, Judgment of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 39, and Judgment of 3 June 2021, *Jumbocarry Trading*,

C-39/20, EU:C:2021:435, paragraph 31).

In this case, the Municipality of [...] did not request any explanation from the tenderer [...] SRL regarding the certificatory documents concerning it and showed a biased attitude towards it, failing to genuinely examine its specific situation from the perspective of the rejection grounds mentioned in Article 167(1)(g), (h), and (i) of Law no. 98/2016, regardless of how the tenderer completed its own ESPD.

Repeated breaches of contractual obligations exclude the hypothesis of a simple isolated episode in the economic operator's activity. The tenderer is required not only to indicate them in the ESPD but also to demonstrate to the authority that it has adopted corrective measures ensuring proper and timely performance of future contractual relationships, elements subject to competent verification by the evaluation committee appointed by the defendant municipality. Clearly, pursuant to Article 166(8) of the methodological norms approved by Government Decision no. 395/2016, when deciding to reject a tenderer based on a certificatory document, the committee has the obligation to analyze whether it reflects the cumulative conditions set out in Article 167(1)(g) of the law, an obligation that does not appear to have been fulfilled based on



the documents drafted by the committee.

Repeated cases of minor irregularities may cast doubt on the reliability of an economic operator that could justify its exclusion, as stated in recital (101) of Directive 2014/24/EU.

“In order to decide whether to exclude or not an economic operator based on Article 167(1)(g) of Law no. 98/2016, the contracting authority has the obligation to verify the fulfillment of all conditions imposed by law, to analyze all relevant aspects and documents in this regard and to take all necessary measures to clarify any uncertainties regarding the existence or non-existence of the exclusion situation,” it is affirmed at the end of the National Agency for Public Procurement notification cited above.

It is therefore noted that the evaluation of the offer from [...] SRL was conducted superficially and in breach of the applicable legal provisions regarding the careful clarification and verification by the contracting authority of the incidence of exclusion grounds and the demonstration of the tenderer’s reliability allowing it to remain in competition, for which reason the tender procedure must continue legally. In light of the above, without a minimal prior investigation of the situation of [...] SRL, the acceptance of the offer cannot be validated by the Council, and the claimant’s objections regarding the illegality of the acceptance are found to be well-founded. In all cases, the finding of the existence of a “serious breach” requires a concrete and individualized assessment of the operator’s conduct by the contracting authority.

## **2. N.C.S.C. DECISION**

### **(final and unappealable)**

Regarding the intervenor’s request to oblige the appellant to bear the expenses related to the preparation and support of the intervention, the request is subject to the provisions of Article 26(9) of the law – “The Council may, upon request, oblige the culpable party to pay the expenses incurred for resolving the complaint. The amount, breakdown, and supporting documents of the expenses incurred must be presented in the request, which must be submitted prior to the pronouncement of the decision resolving the complaint” – as well as the corresponding applicable provisions of the Code of Civil Procedure, Article 452 – “the party claiming court costs must, under the law, prove their existence and extent, at the latest by the closing date of the debates on the merits of the case.” [...] Ltd. attached to the written conclusions no. 1928/05.11.2024

a copy of invoice no. A-009008 dated 03.10.2024, issued by the professional civil law firm “[...]” for “Legal assistance according to Contract No. 2857545/25.06.2024,” and a copy of a bank statement, both copies being inadmissible as evidentiary documents in this case. On the one hand, they are not signed by anyone, flagrantly violating the Code of Civil Procedure, Article 150(2) – copies must be certified by the party as conforming to the original – and Article 292(1) – unless otherwise provided by law, each party has the right to submit documents it intends to use, in certified copies –, and on the other hand, they are unrelated to the present case. The complaint dates from 09.10.2024 and was posted on SEAP on 11.10.2024, whereas the invoice issued by the professional civil law firm “[...]” is dated 03.10.2024, at which time no complaint existed, so no request for intervention could have been drafted in a non-existent proceeding and, implicitly, no invoice for legal services could have been issued for such a procedure. It is unknown what legal assistance services the law firm provided to [...] Ltd. before the invoice date of 03.10.2024; however, it is indisputable that no complaint existed at that time.

The invoice no. A-009008 dated 03.10.2024 does not in-



clude the name of the appellant, the name of the awarding procedure, the name of the contracting authority, nor the case file number assigned by the Council. Under this last aspect, the reasoning of the High Court of Cassation and Justice, Civil Section II, expressed in decision no. 1919 of 4 October 2023 (which can be consulted at <https://www.scj.ro/736/Cautare-jurisprudenta>) is worth noting: “Given that the respondent submitted to the file invoice no. x/11.01.2023, accompanied by a bank statement, according to the document on page x, without indicating the case number related to the legal assistance provided, the supreme court notes that the court costs were not proven [...], pursuant to Article 452 of the Code of Civil Procedure.” Thus, from the perspective of the High Court, to which the Council adheres, the failure to indicate the case number on the fiscal invoice submitted by the lawyer is equivalent to failing to prove the court costs.

Moreover, Contract no. 2857545/25.06.2024 is evidently unrelated to this complaint, filed four months later. The Council was not even provided with a copy of this contract to verify its object. Consequently, the claim requesting to oblige the appellant to pay the expenses related to resolving the intervention request must be rejected.



### 3. N.C.S.C. DECISION

Analyzing the content of the complaint, the Council finds that the complaint, in relation to the factual situation described above, concerns the manner in which question no. 2 from clarification request no. 3 was formulated, which, in the appellant's opinion, unfairly favored the bidder ... Ltd. by allowing the possibility to obtain maximum points for the evaluation factor “commercial warranty.”

A violation of the provisions of Article 135(3) of the methodological norms approved by Government Decision no. 395/2016 is alleged, according to which (...).

In the context of the above and considering the evidence in the case file, it can be observed that the contracting authority's aim through the clarification request was not to improve the warranty offered by the winner, as the appellant claims, but to confirm that the warranty mentioned in the technical proposal (compliance matrix and warranty certificate) and in SEAP within the evaluation factors was the one assumed by the bidder.

Since the compliance matrix referred to the manufacturer's warranty, it was natural for the contracting authority to ensure that what the bidder declared in its technical proposal and SEAP, namely a 5-year warran-

ty, is what it commits to.

Indeed, the bidder's response highlights precisely that the warranty is the one offered by the company ... Ltd., as bidder and supplier of ISO 20 and ISO 10 containers, according to the technical proposal uploaded in the Technical Proposal section, being 5 years (60 months), attaching the warranty certificate model in support.

(...)

It is also worth mentioning that, in many cases, suppliers offer extended warranties, so that warranties offered by suppliers are greater than those of manufacturers, which, in fact, was not challenged in the case. The appellant did not bring any argument or evidence to demonstrate that ... Ltd., as supplier, could not offer a warranty greater than that of the manufacturer.

Furthermore, even in the description of the evaluation factor in question, it was mentioned that the technical proposal shall offer the commercial warranty conditions related to this evaluation factor, which must include at least the conditions provided in the legal warranty, thus implying acceptance of warranties exceeding the legal warranty.

Therefore, the complaint was based on the interpretation that the winning bidder was allowed to improve the score obtained for the evaluation factor "commercial warranty," but the evidence showed that the purpose of clarification request no. 3 was to ensure that the warranty granted through the technical proposal, higher than the manufacturer's, is assumed by the supplier ... Ltd.

Indeed, given that this is an evaluation factor, there must be a certain rigor in the commission's analysis and in how clarification requests are addressed, so as not to create an advantage for a particular economic operator. However, in this case, the supplier's warranty, indicated in the technical proposal (compliance matrix and warranty certificate) and entered in SEAP within the evaluation factors, was one and the same, namely 5 years. There were discrepancies between the manufacturer's warranty and the supplier's warranty, but ... Ltd. emphasized, in the response to clarifications, that what was offered in the technical proposal and SEAP was a 5-year warranty, confirmed by the response to clarifications and the warranty certificate model, with no discrepancies between them.

Considering the warranty offered by the economic operator, the evaluation committee calculated the score accordingly, so no deviations from the legal framework can be identified.

## 4. N.C.S.C. DECISION

It is noted that the dispute between the parties concerns the possibility of subcontracting the supply of materials/goods within a supply contract, the contracting authority considering that subcontracting the supply of goods can only be accepted in the case of service contracts and works execution.

The purchaser's decision was based on the provisions of Article 3(1)(yy) of Law no. 98/2016, according to which a subcontractor/subcontractor means any economic operator who is not a party to a public procurement contract and who performs certain parts or elements of the works/services, being responsible to the contracting party for organizing and carrying out all necessary stages for this purpose. The provision of machinery or supply of materials/goods within a public procurement contract is not considered subcontracting within the meaning of this law.

As noted by the contracting authority, from the qualification documents and the technical proposal submitted by ... SRL, it results that the subcontractor ... SRL will carry out under the contract: Delivery, installation, commissioning, testing, warranty, and service during the warranty period for the following equipment: Lead glass,

Radioprotection, Authorizations; the subcontractor ... SRL will carry out under the contract: Delivery, installation, commissioning, testing, warranty, and service during the warranty period for the following equipment: Sidam – Warm Line Incubator.

According to the technical sheet for lot 7, point 1.14 Accessories, the following are listed: Lead glass window of minimum 100 x 80 cm and minimum 3 mm Pb equivalent; incubator for contrast agent, three sets of protective equipment consisting of apron, skirt, thyroid protector.

From the above analysis, it can be seen that the reason for rejecting the offer of ... SRL is the declaration within the offer of two economic operators as subcontractors instead of suppliers, although they were to perform delivery activities within the contract.

Firstly, it can be observed that the two subcontractors will deliver accessories of the equipment, which they will also install, commission, and test.

As the contesting company also pointed out, in the case of subcontracting, there are a series of specific obligations for bidders and subcontractors, including: inclusion by the bidder of information regarding the part of the contract to be subcontracted; completion by the subcontractor of the ESPD form; conclusion of the subcontracting agreement; and also corresponding obligations on the contracting authority to verify the technical and professional capacity of the subcontractor for fulfilling the part of the contract; verification of non-inclusion in exclusion situations.

As explained by the contesting company, by the given definition of subcontract, the legislator's intention was that there is no obligation to declare as subcontractor every supplier of products/services, with all the related obligations imposed on the subcontractor under the legislation.

In the current definition of subcontractor in public procurement contracts, it is clearly specified that the supply of materials or goods under a contract is not considered subcontracting, however it is by no means stated that the supplier cannot be a subcontractor or that subcontracting cannot be accepted within a supply contract.

Moreover, from the analysis of the legislator's definition, we retain that any entity supplying products/services which is not a subcontractor may be a supplier; this, however, does not exclude that the supply of products and services may be subcontracted (Article 3(1)(w) of the law, supplier – the entity that provides products, including installation or placement services if applicable, or which provides services to the contracting party, which does not have the status of subcontractor).

The inclusion as subcontractor, and not as supplier, of an economic operator does not reflect any non-compliance of the offer and is not provided by legislation as a ground for rejection of the offer.

In the decision (...), cited by the contesting party, it was held, among other things:

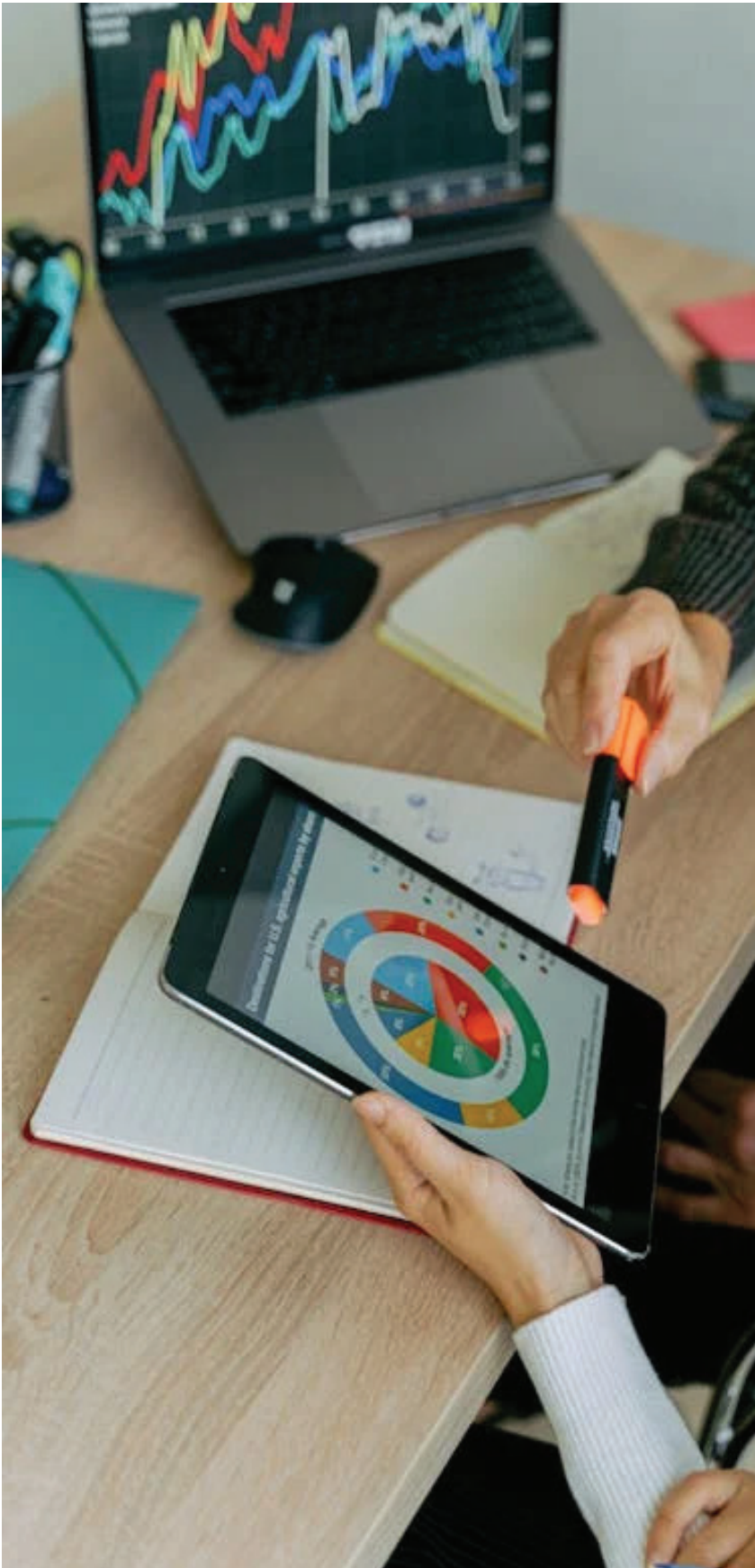
(...)

The choice of the economic operator to declare a subcontract for the supply, under a contract, of certain accessories, as is the case in this analysis, cannot lead to the rejection of the offer.

Furthermore, it does not result from the explanations of the contracting authority the reasons why the supply of the Lead glass of minimum 100x80 cm and minimum 3 mm Pb equivalent, three sets of radioprotection equipment consisting of apron, skirt and thyroid protector, and the incubator for contrast agent, through subcontractors, would affect the performance of the contract, advantages for the beneficiary not being evidenced, if the two economic operators had been contractors, associates of the bidder ... SRL, and not subcontractors.

The option to name a product supplier as subcontractor within a public procurement procedure is a right of the contractor and cannot be restricted or challenged by the contracting authority in the absence of





legal provisions justifying such action, as expressed by the claimant.

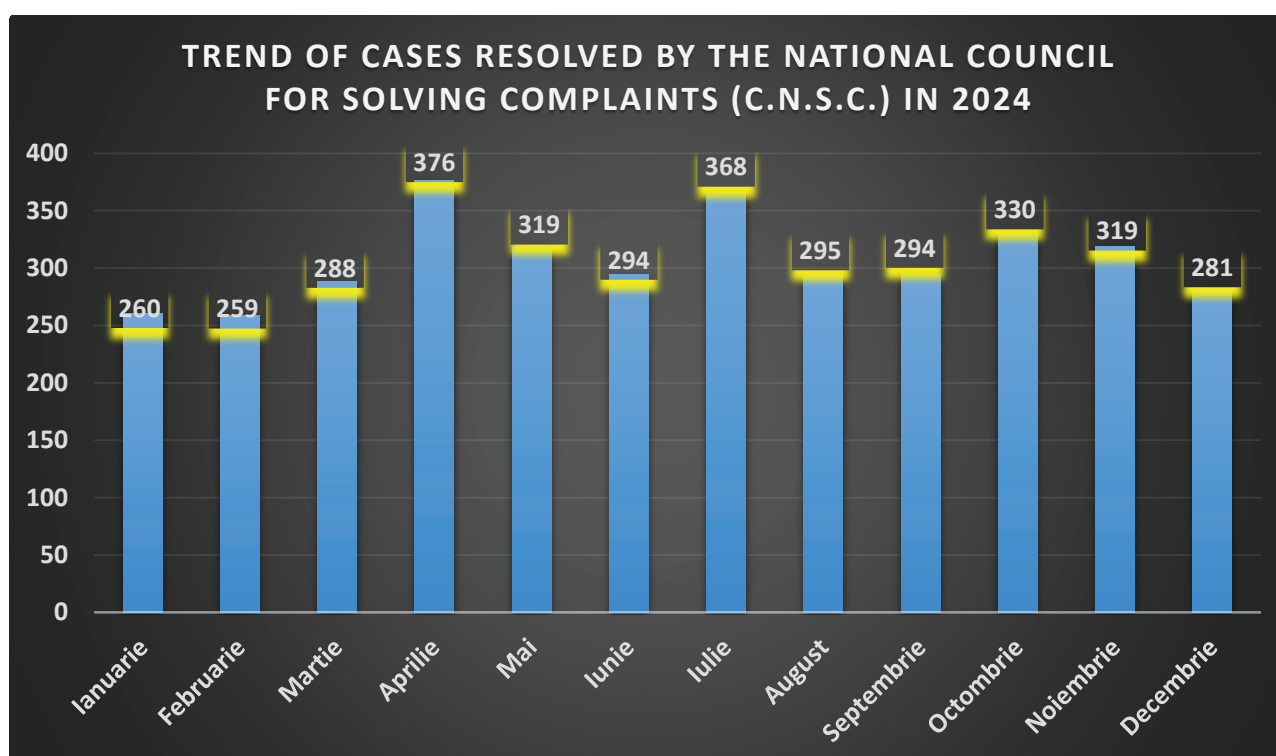
(...)

It is noted from the above that the only argument invoked by the contracting authority for rejecting the offer is the mention in Order no. 1554/2023 of the President of the National Agency for Public Procurement regarding the approval of the structure and content of the Standard Award Documentation for the public/sectoral procurement contract for products, that the supply activity cannot be subcontracted, without concretely explaining, with regard to the activities subcontracted to the two economic operators, how the contract's execution is hindered. Additionally, it cannot be ignored, as stated above, that the two subcontractors will deliver certain equipment accessories and will perform installation and commissioning services thereof.

## 2.3. EVOLUTION OF CASES RESOLVED BY N.C.S.C.

At the level of the CNSC, in the year 2024, a total of 4,211 cases were resolved, of which 528 originated from the year 2023, with a total of 3,683 decisions issued.

Thus, the monthly evolution of cases resolved by the panels within the Council for the period January – December 2024 was as follows:



Official statistics show that since the establishment of the Council and up to December 31, 2024, the total number of cases resolved by the complaint resolution panels within the institution reached 85,189, which means an average monthly resolution rate of approximately 351 cases, or a daily average of about 18 cases resolved.







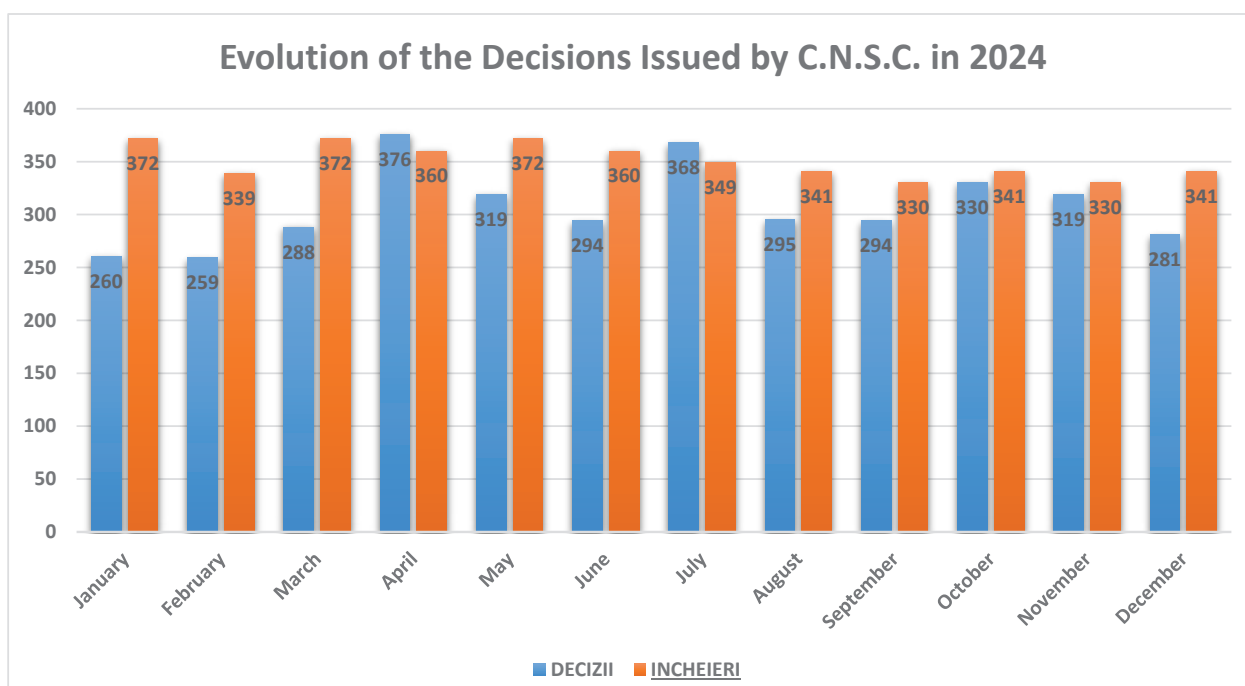
## 2.4. DECISIONS ISSUED BY THE N.C.S.C.

As previously mentioned, besides resolving complaints, the activity of the panels within the Council also includes issuing rulings, including those related to the management of financial guarantees (depositing and returning) established by economic operators for each contested public procurement procedure.

Thus, regarding the decisions issued by the Council, official data show that during the period from January 1 to December 31, 2024, the 11 complaint resolution panels issued a total of 3,683 decisions and 4,207 rulings.

Overall, throughout 2024, the Council issued a total of 7,890 rulings, representing an increase of 16.3% compared to the previous year, when 6,149 rulings were issued.

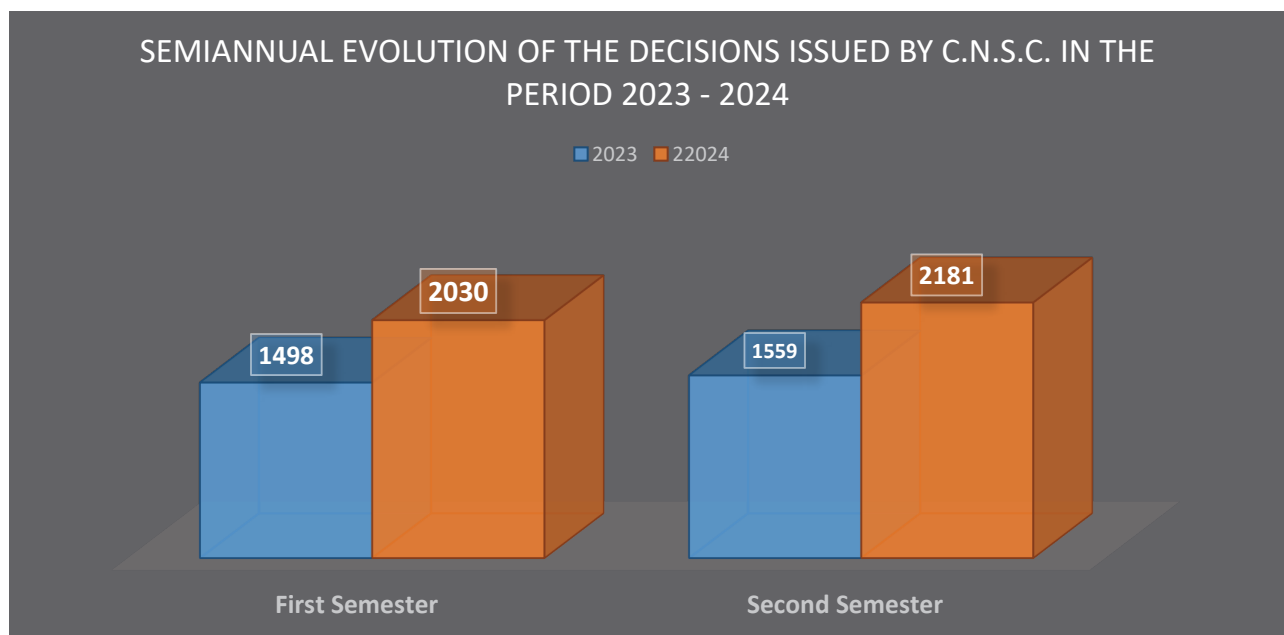
Broken down by month, the situation of decisions and rulings issued by the Council in 2024 evolved as follows:



In this context, we specify that according to the relevant legislation, all complaints filed with the Council within a public procurement procedure are joined in order to ensure the issuance of a unified solution. At the same time, there is the possibility that within each public procurement procedure in which complaints have been filed, one or more requests for intervention from other economic operators may be introduced. Thus, in all such cases, the Council issues a single decision following the joining of complaints and voluntary intervention requests into a single case file.

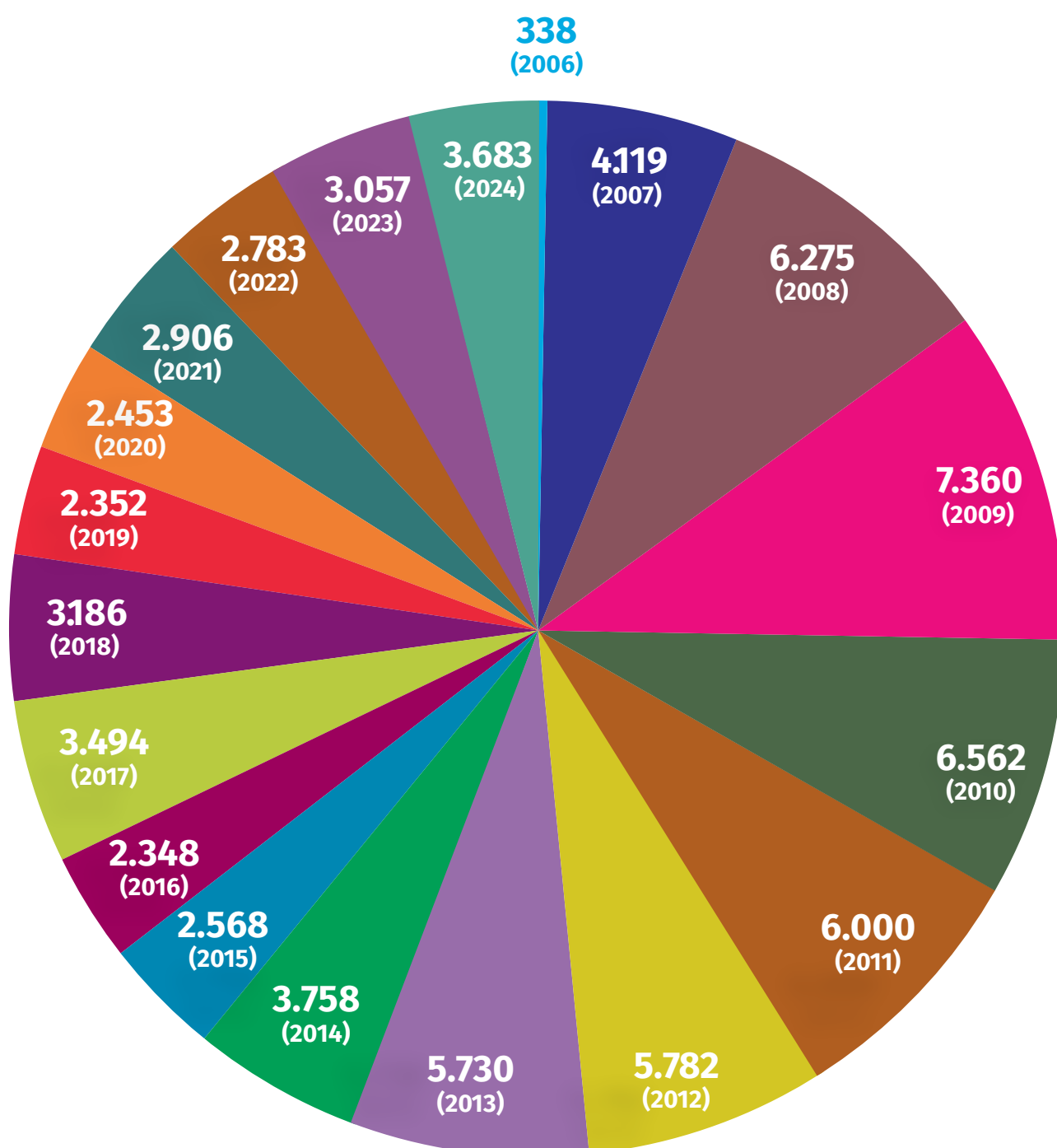
A comparison of the number of decisions issued in 2024 with those issued in the previous year shows that over the past year, their number increased by 20.47% (an increase of 626 decisions).

Regarding the semi-annual evolution of the decisions issued by the Council in 2024, compared to the same periods in 2023, the following chart shows that in the first half of the last year, the number of decisions increased by 35.51% compared to the first half of the previous year (+532 decisions), while in the second half, the increase was 39.89% (+622 decisions).



Overall, from its establishment until December 31, 2024, the Council has issued a total of 74,754 decisions.

## EVOLUTION OF DECISIONS ISSUED BY N.C.S.C. IN THE PERIOD 2006 - 2024



## 2.5. DECISIONS ISSUED BY N.C.S.C. REGARDING THE APPEALS REGISTERED ON ITS DOCKET

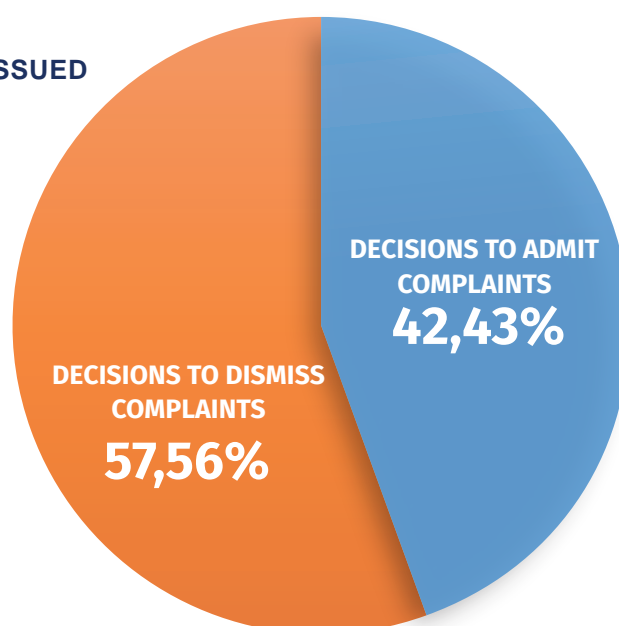
As mentioned in the previous chapter, appeals filed with the Council within a public procurement procedure are consolidated to ensure the issuance of a single, unified decision. Thus, between January 1 and December 31, 2024, through the 3,683 decisions issued by the 11 appeals resolution panels, the Council resolved a total of 4,211 cases.

Out of the total 3,683 decisions issued, in 1,563 cases the Council ruled in favor of the appeals, meaning that the solution requested by the appellant and adopted by the deliberating panel corresponded to the need to defend, through administrative-judicial means, the subjective right that was violated or unrecognized, restoring the economic operator's rights and advantages granted by public procurement legislation.

Through the remaining 2,120 decisions, the Council dismissed the appeals filed by economic operators for various reasons:

- either the appellant failed to provide the required guarantee in accordance with Article 611 of Law no. 101/2016, as amended;
- or the Council found, regarding the merits of the appeal, in favor of the contracting authority, considering that the substance of the appeal filed by the economic operator was unfounded or baseless;
- or the Council did not rule on the merits, motivated by the fact that a substantive or procedural exception was invoked by the parties or ex officio (e.g., the appeal was submitted late, became moot, was inadmissible, lacked object or interest, or was filed by persons without standing);
- or the appellant exercised their right to withdraw the appeal, thereby terminating the litigation. The mere request to withdraw the appeal by the initiator of the litigation immediately results in the closure of the file.

**STATUS OF SOLUTIONS ISSUED  
BY C.N.S.C. IN 2024**



The evolution highlights two important aspects: economic operators who filed appeals demonstrated a better understanding and interpretation of the public procurement legislation, while contracting authorities showed a lack of transparency, efficiency, effectiveness, and, above all, professionalism in the public procurement function. This has increasingly led to erroneous interpretations of the legislation. Recent case law shows that contracting authorities have adopted a strictly formal approach to the legislation, focusing on the mechanical application of the existing regulations without paying sufficient attention to whether a public procurement procedure respects best practices, pursues investment efficiency, properly manages public resources, upholds the principles of equal treatment and transparency, or addresses potential conflicts of interest.

As previously mentioned, in 2024, out of the 4,529 appeals registered with the Council, 1,036 (22.87%) challenged the tender documentation. Comparing this percentage with those recorded in previous years — 19.70% in 2021, 25.30% in 2022, and 21.73% in 2023 — it is clear that the preparatory phase of any public procurement procedure has been increasingly contested. This demonstrates that for many contracting authorities, this phase has not been an essential step to ensure the smooth unfolding of subsequent stages in a procurement procedure.

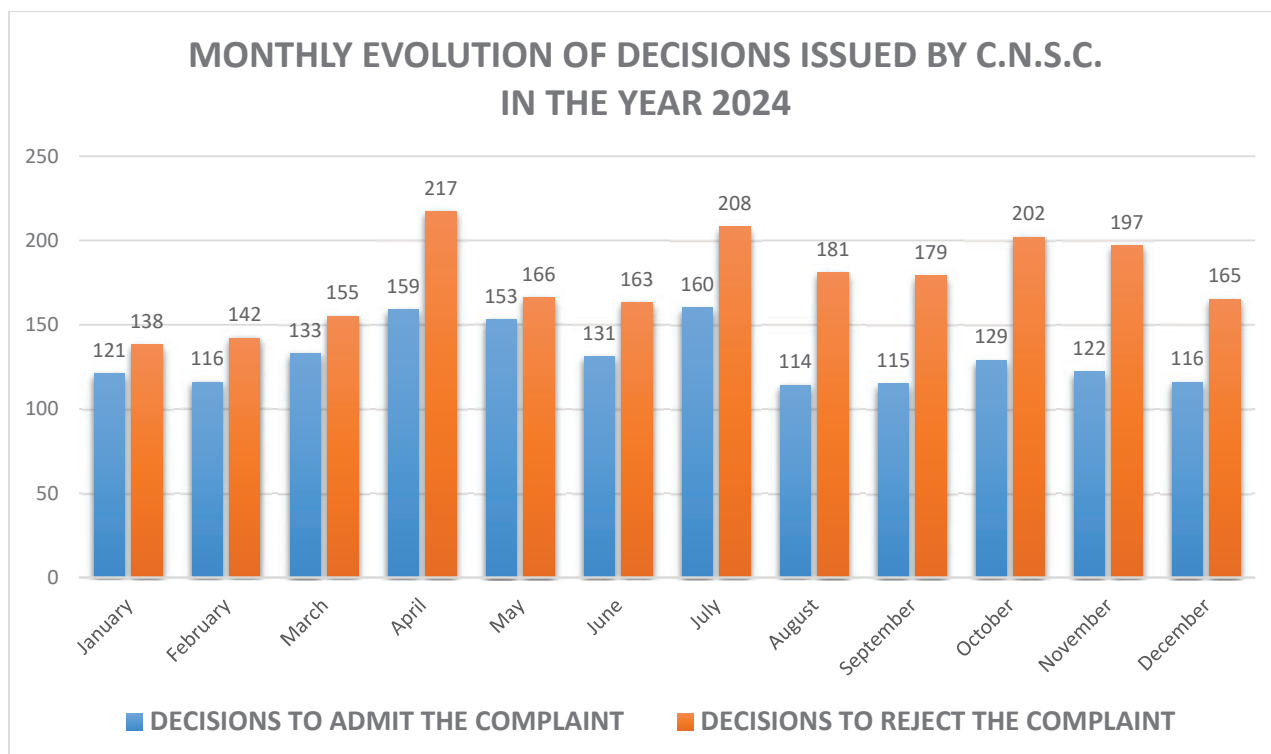
Over the years, the Council has warned contracting authorities to ensure that any public procurement contract has well-established

qualification criteria and technical specifications, with exact weighting and award criteria defined at the stage of preparing the procurement documentation. Moreover, these requirements must be rigorously checked during the evaluation phase. Nevertheless, many contracting authorities have continued to underestimate the Council's warnings and have not paid adequate attention to the planning stage of the procurement procedure, which has resulted in a significant increase in appeals filed against the tender documentation.

To give you an overview of the decisions issued by the Council in 2024, we present the comparative monthly evolution of appeals resolved by economic operators:







Thus, as previously mentioned, throughout 2024, the Council issued 1,569 decisions admitting the appeals filed by economic operators, representing 42.6% of the total, while 2,113 appeals (57.37%) were dismissed.

Of the 1,569 decisions admitting the appeals, 59 decisions (3.76%) ordered the annulment of the award procedure, whereas 1,510 decisions (96.24%) upheld the appeals and mandated the rectification of the award procedures.

If we refer to the total number of decisions issued by the Council during 2024 (3,683 decisions), the percentage of decisions ordering the annulment of award procedures was only 3.76%. This demonstrates that in 2024 the Council was not

**MEASURES ORDERED BY THE NCSC FOLLOWING THE ADMISSION OF COMPLAINTS IN 2024**



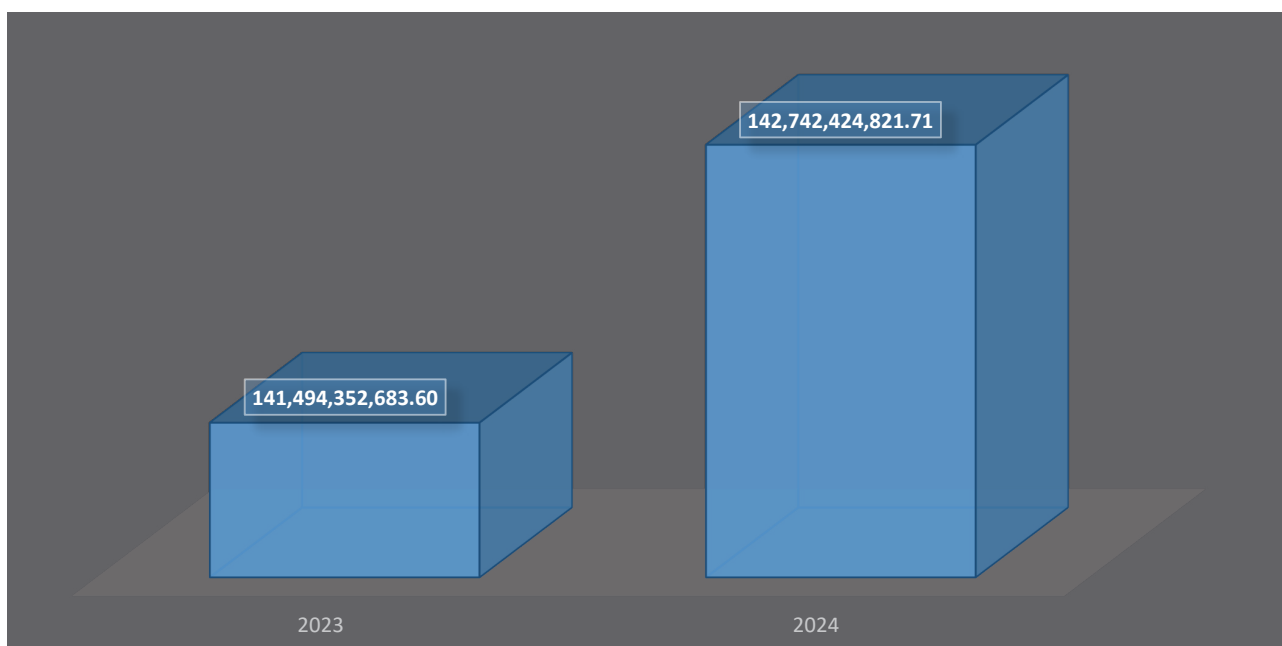
an obstacle in the public procurement market; on the contrary, it played a decisive role in remedying award procedures so that they could continue in compliance with legal provisions.

## 2.6. ACTIVITY OF N.C.S.C. FROM THE PERSPECTIVE OF THE ESTIMATED VALUE OF THE CONTESTED AND RESOLVED AWARD PROCEDURES

### 2.6.1. ESTIMATED VALUE OF THE AWARD PROCEDURES IN WHICH N.C.S.C. ISSUED DECISIONS

In 2024, the total estimated value of the award procedures for which the Council issued decisions was 142,742,424,821.71 RON (equivalent to 28,548,484,964.34 Euros<sup>18</sup>). Compared to 2023, when the total estimated value of award procedures for which N.C.S.C. issued decisions was 141,494,352,683.60 RON (equivalent to 28,604,943,431.44 Euros<sup>18</sup>), it can be observed that in 2024 the total estimated value of award procedures increased by 0.88%.

#### EVOLUTION OF DECISIONS ISSUED BY THE NCSC IN THE PERIOD 2023–2024 IN RELATION TO THE ESTIMATED VALUE OF THE PROCEDURES



Regarding the total estimated value of the award procedures in which the N.C.S.C. issued decisions admitting the appeals filed by economic operators during the year 2024, this amounted to RON 61,550,402,457.8 (equivalent to EUR 12,310,080,491.56 Euro<sup>15</sup>).

At the same time, the total estimated value of the procedures in which the N.C.S.C. issued decisions rejecting the appeals filed by economic operators amounted to RON 79,134,207,245.2 (equivalent to EUR 15,826,841,449.04 Euro<sup>15</sup>).

15. Average annual exchange rate reported by the NBR for 2023 - 4.9465 RON/Euro

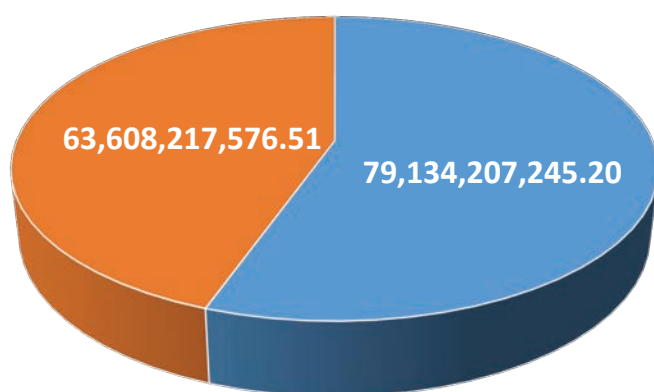
18. Average annual exchange rate reported by the NBR for 2022 - 4.9315 RON/Euro



### **TOTAL ESTIMATED VALUE OF THE AWARD PROCEDURES IN WHICH THE CNSC ISSUED DECISIONS IN 2024**

Regarding the total estimated value of the award procedures in which the Council admitted the appeals filed by economic operators and ordered the annulment of the award procedures, this amounted to RON 2,057,815,118.71 (equivalent to EUR 411,563,023.742 Euro<sup>15</sup>), while the estimated value of the award procedures in which the Council admitted the appeals and ordered remedial measures amounted to RON 61,550,402,457.80 (equivalent to EUR 7,693,800,307.225 Euro<sup>15</sup>).

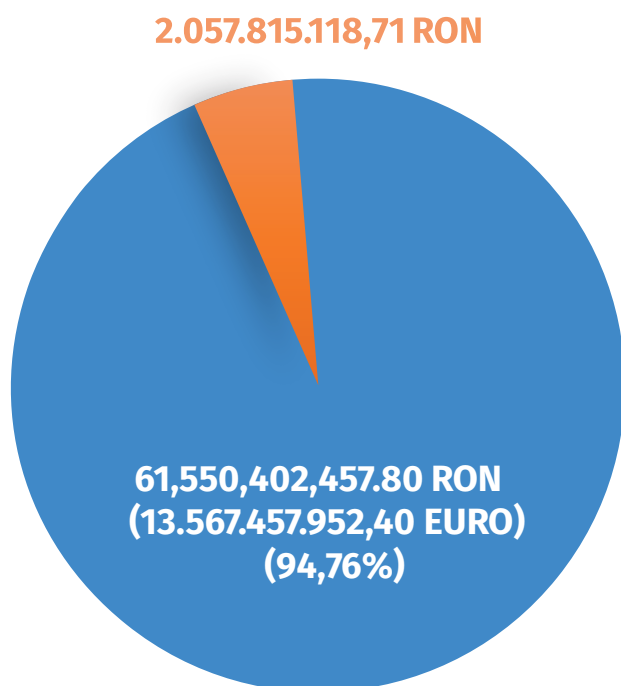
The total estimated value of the award procedures in which the Council rejected the appeals filed by economic operators and ordered the continuation of the award procedures amounted to RON 79,134,207,245.20.



**TOTAL ESTIMATED VALUE OF AWARD  
PROCEDURES  
IN WHICH N.C.S.C. ISSUED DECISIONS IN  
2024**

**TOTAL ESTIMATED VALUE OF  
PROCEDURES  
IN WHICH N.C.S.C. REJECTED APPEALS**

**TOTAL ESTIMATED VALUE OF  
PROCEDURES  
IN WHICH N.C.S.C. ADMITTED APPEALS**



**TOTAL ESTIMATED VALUE OF AWARD  
PROCEDURES  
IN WHICH C.N.S.C. ISSUED DECISIONS IN  
2024**

**TOTAL ESTIMATED VALUE OF  
PROCEDURES  
IN WHICH C.N.S.C. ADMITTED APPEALS  
AND ORDERED REMEDIAL MEASURES**

**TOTAL ESTIMATED VALUE OF  
PROCEDURES  
IN WHICH C.N.S.C. ADMITTED APPEALS  
AND ORDERED CANCELLATION OF THE  
PROCEDURE**

Total admitted: RON 63,608,217,576.51

If we compare the total estimated value of the award procedures in which the Council admitted appeals and ordered remedial measures for public procurement procedures in 2024, amounting to RON 63,608,217,576.51 (equivalent to EUR 12,721,643,515.302 Euro<sup>15</sup>), with that of the previous year (RON 67,111,430,761.54, equivalent to EUR 13,422,286,152.308 Euro<sup>18</sup>), it can be observed that this value increased by 5.51%.

These figures reiterate the fact that the National Council for Solving Complaints (N.C.S.C.) does not represent an obstacle to the conduct of public procurement procedures initiated at the national level; on the contrary, the institution has served as an effective

filter to prevent a significant number of irregularities within public procurement procedures carried out during 2024, both in the case of procedures financed from national funds and from European funds. This essential role of the Council has been frequently emphasized in documents issued by the European Commission.

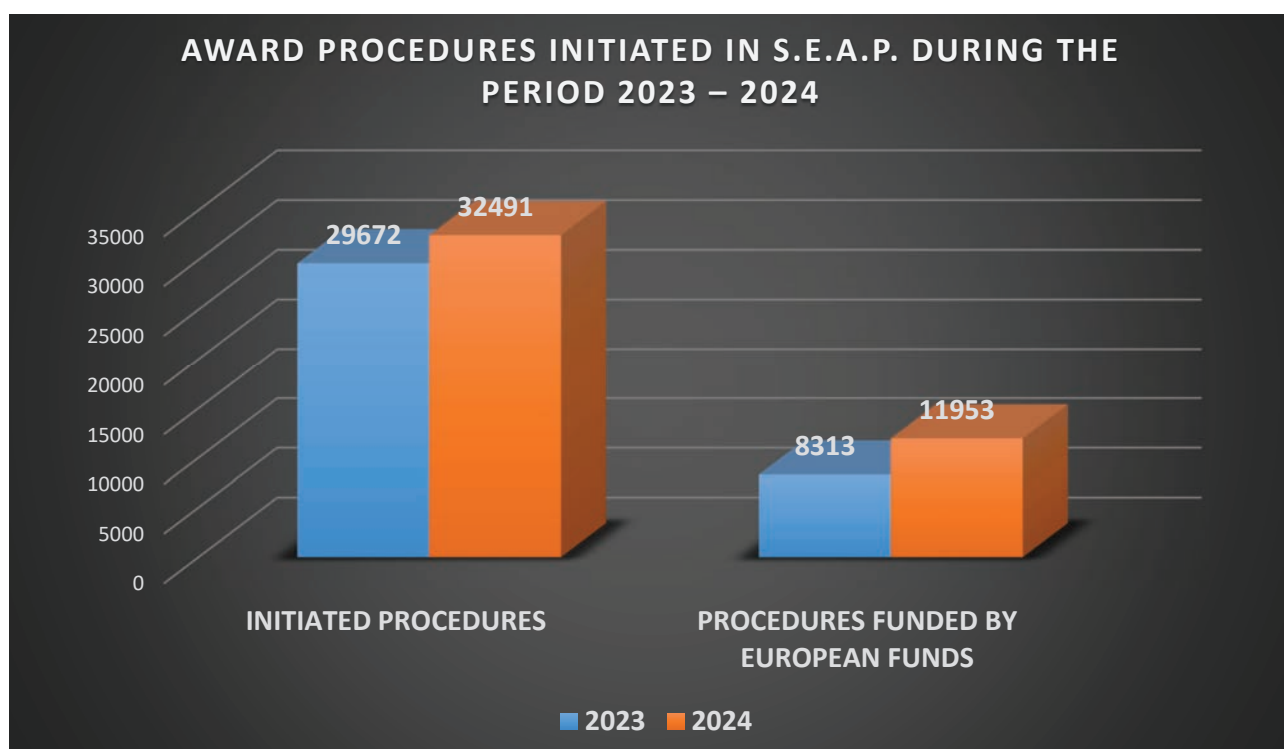


## 2.6.2. TOTAL ESTIMATED VALUE OF PROCEDURES IN WHICH N.C.S.C. ISSUED DECISIONS TO ADMIT APPEALS, IN COMPARISON WITH THE TOTAL ESTIMATED VALUE OF PROCEDURES INITIATED IN S.E.A.P.

Official data provided by the Electronic Public Procurement System (S.E.A.P.) indicate that in 2024, a total of 32,491 award procedures were initiated on the communication platform used in the public procurement contracting process, through participation announcements and invitations to participate, with a total estimated value of 840,245,354,000 RON (equivalent to 168,049,069,000 EURO<sup>15</sup>).

Out of the total number of award procedures initiated in S.E.A.P. through participation announcements and invitations to participate (32,491), 11,953 procedures, representing 36.8%, were financed from European funds, with an estimated value of 253,405,189,000 RON (equivalent to 50,681,037,800 EURO<sup>15</sup>).

To provide an overview of the evolution in the number of award procedures initiated in S.E.A.P. during the period 2023–2024, it should be noted that in the last year the number of initiated procedures increased by 9.5% (2,819 procedures), while the number of procedures financed from European funds grew by 43.8% (3,640 procedures) compared to the previous year.





Regarding the estimated value of procedures initiated in S.E.A.P. in 2024, it amounted to 840,245,354,000 RON (equivalent to 168,049,070,800 Euro<sup>15</sup>).

Data provided by S.E.A.P. also reveal that out of the total procedures initiated in S.E.A.P. (32,491) in 2024, by the end of the year a number of 25,359 procedures (78.05%) with a total estimated value of 151,987,837,000 RON (equivalent to 30,397,567,400 Euro<sup>15</sup>) were recorded as awarded, while 6,120 procedures (18.84%) with a total estimated value of 44,411,995,000 RON

(equivalent to 8,882,399,000 Euro<sup>15</sup>) were recorded as canceled (either by contracting authorities, administrative courts, or by decision of the N.C.S.C.).



## CHAPTER 3

# QUALITY OF N.C.S.C.'S ACTIVITY IN THE YEAR 2024

### 3.1. STATUS OF DECISIONS ISSUED BY N.C.S.C. AND MODIFIED BY THE COURTS OF APPEAL FOLLOWING FILED COMPLAINTS

According to the legislation governing public procurement, in order to comply with the constitutional principle of access to justice, the decisions issued by the Council following the settlement of each complaint submitted by an economic operator through the administrative-jurisdictional procedure may be reviewed by the Courts of Appeal within the territorial jurisdiction of the contracting authority's registered office, or by the Bucharest Court of Appeal (in the case of procedures related to the awarding of services and/or works pertaining to nationally significant transport infrastructure) if a complaint is filed by the contracting authority and/or by one or more economic operators participating in the procurement procedure who consider themselves harmed by the measures ordered by the Council.

The purpose of such review is to remedy any potential errors committed in the first-instance settlement. This institutional filter also serves as an incentive for the adjudicating counsellors within N.C.S.C. to fulfil their legal duties with diligence and thoroughness.

It should be noted that the legislation allows for the possibility that more than one complaint may be filed with the competent Courts of Appeal against a single decision issued by the Council, depending on the administrative-territorial jurisdiction of the contracting authority's registered office.

Throughout 2024, out of the total of 3,683 decisions issued by the complaint adjudication panels within N.C.S.C., a number of 995 were challenged through complaints. Among these, 159 complaints were filed, as previously mentioned, by various contracting authorities that refused to implement the Council's decisions by which the complaints filed by economic operators were upheld and the reevaluation of tenders was ordered.

As a result of the complaints submitted to the competent Courts of Appeal, as of December 31, 2024, a total of 104 decisions issued by the Council were fully quashed/modified/annulled (2.55%),

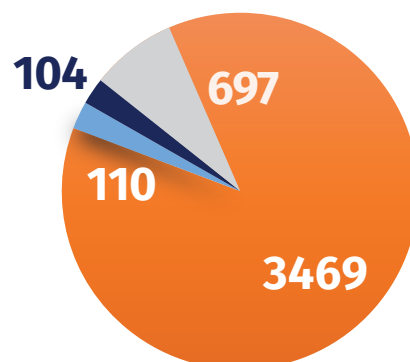
110 were partially quashed/modified/annulled (2.65%), while 679 remained final and irrevocable in the form issued by our institution (note: a number of 102 complaints were still pending resolution before the competent Courts of Appeal at the end of 2024 and are expected to be resolved in 2025).

Regarding the decisions partially modified by the competent Courts of Appeal, it must be specified that in almost all cases, the courts granted economic operators the right to recover legal costs.

Therefore, official data shows that by the end of 2024, out of the 3,683 decisions issued by the Council, 3,004 (81.6%) remained final and irrevocable in the form originally issued.

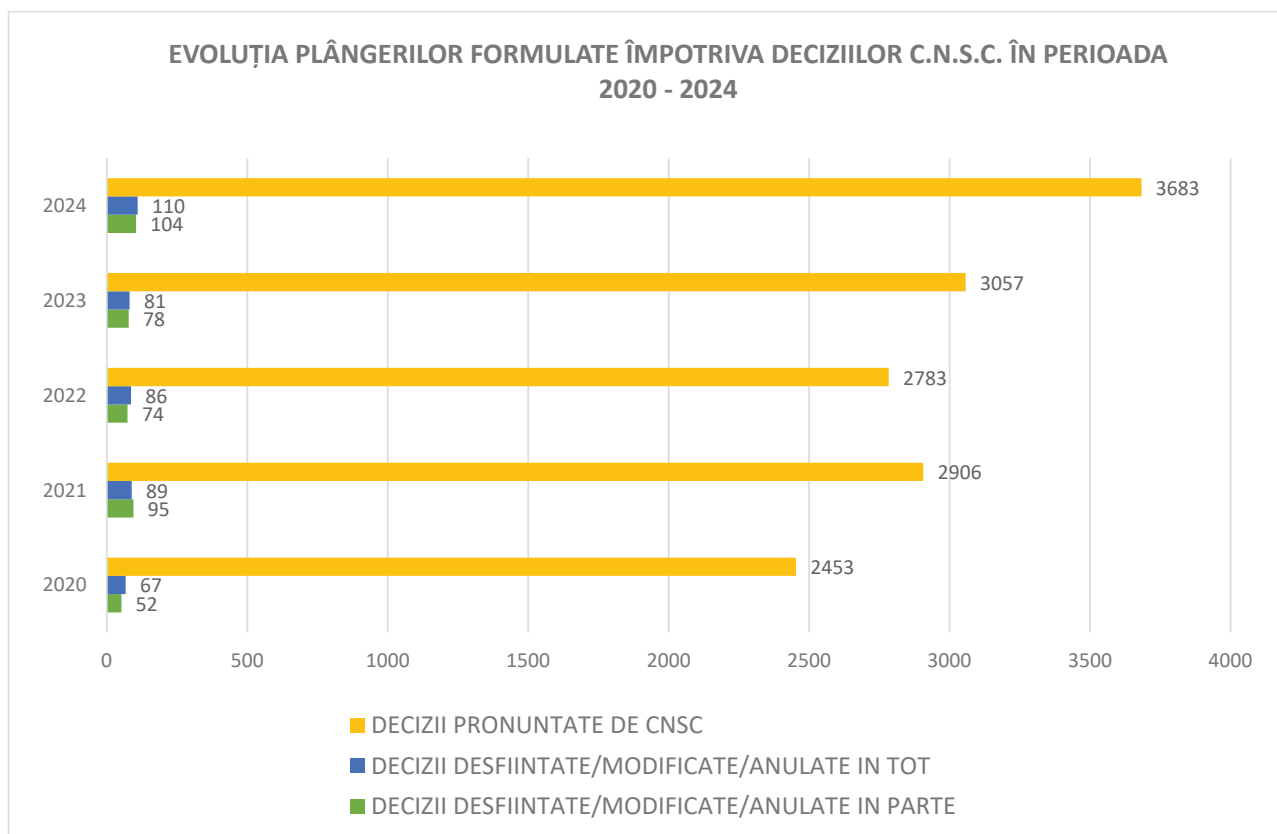
The official statistical records from the last five years of the Council's activity show that the percentage of decisions modified/quashed/annulled in part or in whole by the Courts of Appeal following complaints has remained extremely low compared to the percentage of decisions that remained final and irrevocable in the form issued by the Council.

Referring to the total number of decisions issued by the N.C.S.C. from its establishment until the end of 2024, we observe that, out of the 74,754 decisions rendered by our institution during the mentioned period, only 2,139 decisions — representing merely 2.86% — were modified/overturned/annulled in whole or in part by the



**SITUATION OF COMPLAINTS  
FILED AGAINST DECISIONS  
ISSUED BY C.N.S.C. IN 2024**

DECISIONS PARTIALLY QUASHED/  
MODIFIED/ANNULLED  
DECISIONS FULLY QUASHED/  
MODIFIED/ANNULLED  
DECISIONS UNCHANGED BY THE  
COURT FROM THE TOTAL NUMBER  
OF DECISIONS CHALLENGED BY  
COMPLAINT  
FINAL AND IRREVOCABLE  
DECISIONS



competent Courts of Appeal.

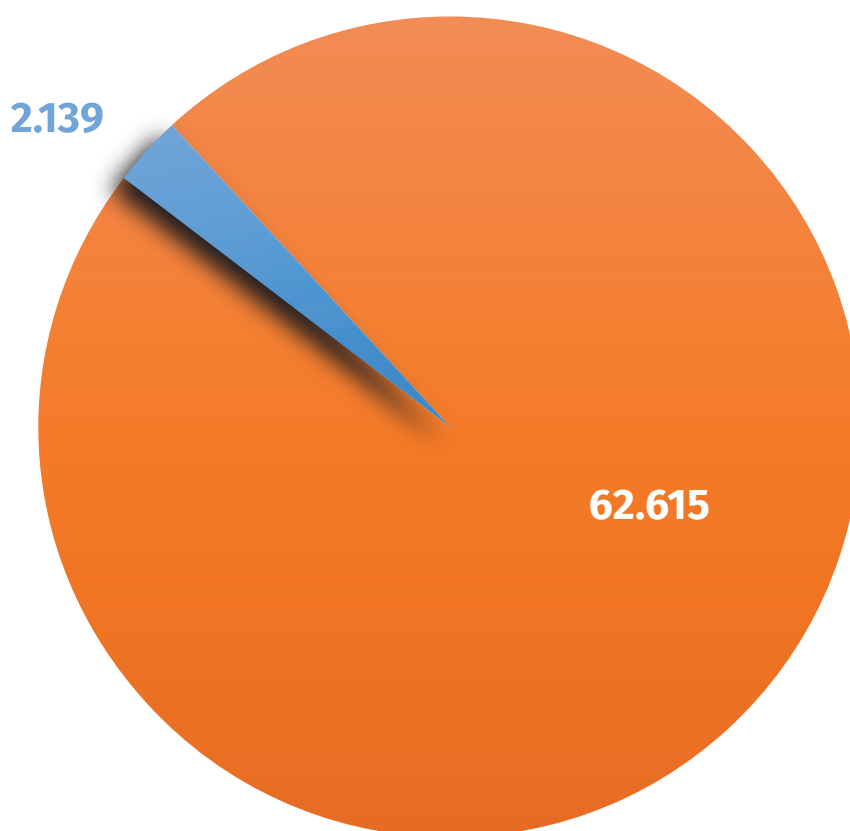
It thus results that, within the specified timeframe, the total number of decisions that remained final after being challenged through complaints before the competent Courts of Appeal was 72,615, which means that 97.13% of the total decisions issued remained in the form adopted by the Council.

For professionals in the field

of public procurement, these figures confirm not only the role of the Council as a guarantor of the rule of law within its area of competence, but also the high quality of the institution's activity.

Consistently focused on strengthening and refining its institutional capacity to ensure the transparent and impartial settlement of the complaints it is entrusted to resolve, the Council will continue in 2025 to address the complaints submitted by economic operators with celerity. At the same time, it will act as a promoter of European best practices, contributing to the efficiency and streamlining of public procurement procedures and, most importantly, to the reduction of potential acts and deeds of corruption.

#### SITUATION OF C.N.S.C. DECISIONS THAT REMAINED FINAL DURING THE PERIOD 2006 – 2024



**DECISIONS THAT REMAINED FINAL IN THE FORM ISSUED BY THE COUNCIL**  
**DECISIONS MODIFIED/REVOKED/ANNULLED IN WHOLE OR IN PART**



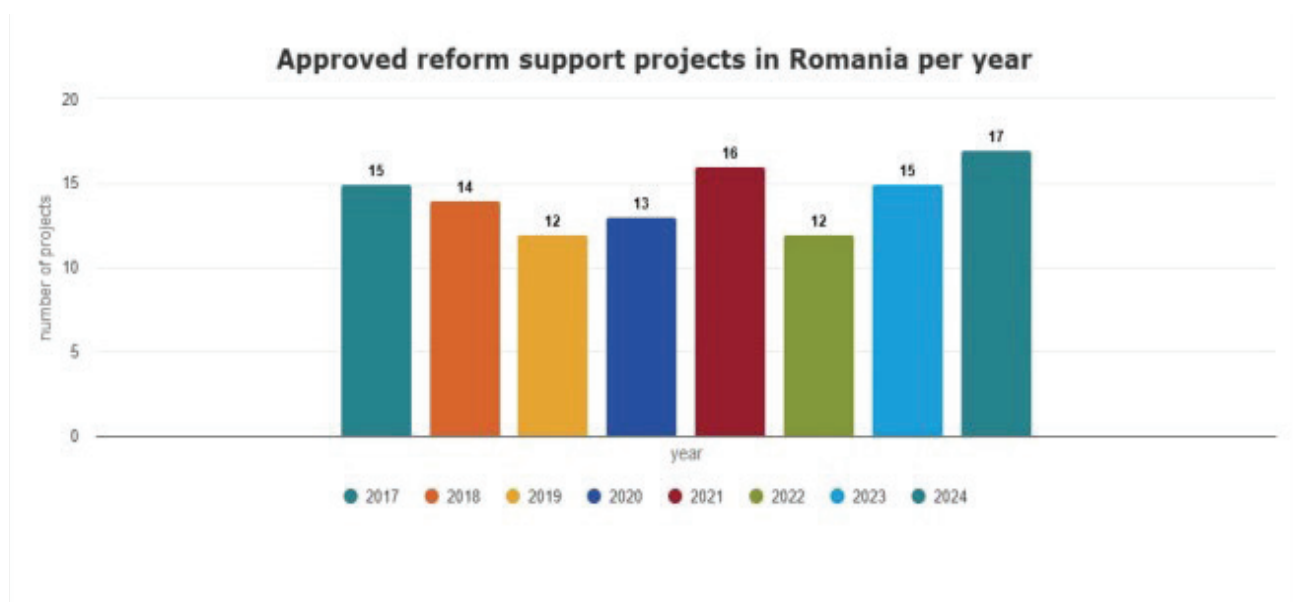
**CHAPTER 4**

# PROJECTS AND INITIATIVES

## 4.1. INTERNATIONAL EXCHANGES

In 2024, the National Council for Solving Complaints (N.C.S.C.) continued the project initiated the previous year, focused on improving operational capacity and efficiency in resolving complaints. This project is part of the European initiative “Public Administration Cooperation Exchange (PACE),” which aims to promote best practices among public officials in Member States to strengthen administrative capacity and implementation skills.

The funding for the project initiated by the Council was fully provided through European funds, via the Technical Support Instrument managed by the Directorate-General for Structural Reform Support (DG REFORM).



Within the project, the appeals resolution counselors met with their counterparts from Greece (Hellenic Public Procurement Authority) and Ireland (Department of Public Expenditure), thus having the opportunity to analyze and compare different systems.

#### DUBLIN 2024



Also, during 2024, the National Council for Solving Complaints participated in the meetings of the European Union network of experts within the remedy institutions, which took place in Zagreb and Luxembourg.

During 2024, in its capacity as a member of the Southeast Europe Public Procurement Remedies Network, the Council was invited to and participated in a series of events, as follows:

- March 4, 2024, in Ankara, Turkey – Workshop on “Legal Protection in International Construction and Public Procurement Projects,” organized by the Public Procurement Authority of Turkey. The Council’s representative presented the material titled “Bid Compliance from the Perspective of Award Documentation vs. Contract Execution Requirements for Works.”



- On September 12–13, 2024, at the invitation of the Italian National Anti-Corruption Authority, the Council participated in the “Next Generation Procurement” Conference, where topics discussed included the sustainability of the procurement system in Europe, opportunities and challenges, aspects related to the digitalization of procurement procedures, as well as issues concerning the impact of artificial intelligence use in the public procurement system.





- On October 7, 2024, in Tirana, Albania, at the invitation of the Albanian counterparts, the Council participated in the workshop titled “Integrity Risks: The Albanian Case and European Practice,” organized by the Albanian Public Procurement Commission. The Council’s representative presented how the decisions of the European Court of Justice are implemented within the Romanian administrative-jurisdictional system. Additionally, during the workshop, a representative from the Bucharest Court of Appeal provided an analysis of judicial practice in the field of public procurement.



- Between October 10-11, 2024, the Council’s representative participated in the Conference organized by the Remedies Body of Bosnia and Herzegovina, where new perspectives and challenges regarding remedy procedures were discussed. The Council’s representative highlighted the CJEU case 403/2021 to the participants.



In December 2024, representatives of N.C.S.C. participated in the international conference on public procurement organized by the Public Procurement Office of the Slovak Republic.



## 4.2. UNIFICATION OF ADMINISTRATIVE-JURISDICTIONAL PRACTICE

Since its establishment, the Council has been committed to unifying administrative-jurisdictional practice. According to Article 62 of Law no. 101/2016, monthly plenary sessions are held at the institution's headquarters, during which each panel presents at least one practical case they encountered in resolving complaints. Following these plenary meetings, when there is sufficient relevant court practice on the issue under discussion, a binding decision to unify administrative-jurisdictional practice is adopted, which applies to all members.

Furthermore, the Council organizes annual seminars attended by judges from the Courts of Appeal and representatives of institutions with responsibilities in public procurement. During these seminars, inconsistent decisions from both the Council and the courts are presented and debated, aiming to establish a uniform solution. If inconsistent judicial decisions are identified, the High Court of Cassation and Justice is notified through the procedure of a "recourse in the interest of the law," as provided in Article 63 of the law.

One of the major challenges to uniform practice is the legal landscape, which frequently undergoes changes, causing confusion and divergent practice.

Based on the provisions of Article 62 paragraph (3) of Law no. 101/2016, the Council organized a seminar during the year 2024 held in Mamaia from May 31 to June 2, 2024.

The seminar was attended by complaint resolution counselors from the Council and judges from the Courts of Appeal in Ploiești, Constanța, Galați, Pitești, Bucharest, and Craiova.

The seminar aimed both to unify administrative-jurisdictional practice and to harmonize the Council's decisions with those of the courts, in order to eliminate jurisprudential obstacles in procurement procedures, thus responding to the urgent imperative of conducting the administrative-jurisdictional phase of procurement procedures efficiently.

The legal issues debated during the seminar included:

- The financial auditor of the participant in the award procedure – a person with a control function under Article 164 paragraph (2) of Law no. 98/2016;
- Awarding legal fees analyzed under the following aspects:

1. When the contracting authority adopted remedial measures following the submission of a complaint;
  2. Awarding fees to the intervening company in the event of an admitted intervention request;
  3. Reduction of the amount of these fees;
- Ensuring access to the procurement file at the Council or at the contracting authority. How to handle additions to complaints submitted through written conclusions;
  - Is subcontracting allowed in supply contracts?;
  - Justification of an abnormally low offer price through supplier offers. The case where the offered price does not correspond to the purchase price;
  - The Council's competence regarding bidders' requests to obligate contracting authorities to provide access to the procurement file, especially regarding competing offers;
  - Discussions about granting access through electronic means.

Additionally, topics proposed by judges from the Constanța and Craiova Courts of Appeal were discussed, regarding the confidential nature of documents in



bids: regulations and case law; limits of proving confidentiality; and amendments to procurement contracts — principles derived from the case law of the Court of Justice of the European Union (CJEU).

Participants expressed their views on the topics discussed/analyzed, with the final part of the seminar dedicated to conclusions and the detailed presentation of the ideas formed.



Another seminar organized by the Council took place in Covasna from October 18 to 20, 2024.

During this seminar, issues related to site visits were debated—specifically whether they constitute a bidding condition or a quality requirement—with several cases being presented that had been handled inconsistently.

The topic of confidentiality of bids was also addressed, focusing on requests from complainants/interveners to review the case files submitted to the Council and their access to the procurement file at the level of the contracting authority/entity.

Another subject discussed was the issue of reinstatement of the complaint deadline following the review of the case file at the Council.

Additionally, the seminar analyzed the rejection of certain bids based on the findings of a report issued by the contracting authority, as well as the matter of the interest of a bidder who was definitively excluded in filing a complaint.

The final part of the seminar was dedicated to conclusions and the clear presentation of the ideas shaped during the debates.



## CHAPTER 5

# INSTITUTIONAL TRANSPARENCY

The activity carried out by the National Council for Solving Complaints (N.C.S.C.) throughout the year 2024 was based on full respect for the principle of total transparency in its relations with economic operators, contracting authorities, governmental and non-governmental institutions involved in public procurement, as well as with the media.

In collaboration with the Technical, Administrative, and IT Department of the Council, special importance was given to the continuous dissemination of statistical data. The Council's portal ([www.cnsc.ro](http://www.cnsc.ro)) was regularly updated and developed to ensure that any individual or legal entity can easily and unrestrictedly access online information about the institution's activities. This allows real-time dissemination of the Council's issued decisions, the history of ongoing or completed cases, legislative changes, and other relevant and useful information promoting best practices.



## CHAPTER 6

THE BUDGET OF  
N.C.S.C.

The N.C.S.C. budget for the year 2024 amounted to 20,065 thousand RON and was allocated as follows:

- ✓ Budget provision for current expenses: 20,065 thousand RON, of which::
  - Personnel expenses: 16,965 thousand RON
  - Goods and services: 3,100 thousand RON

The detailed budget of N.C.S.C., broken down by titles and budget chapters, is presented below and is also published on the institution's portal ([www.cnsc.ro](http://www.cnsc.ro)).

Chapter	GROUP/ TITLE	Name	PROGRAM 2024	Q I	Q II	Q III	Q IV
5000		TOTAL BUDGET	20.065	5.188	5.070	4.845	4.962
	01	CURRENT EXPENSES	19.965	5.148	5.030	4.825	4.962
	10	TITLE I PERSONNEL EXPENSES	16.884	4.220	4.300	4.220	4.144
	20	TITLE II GOODS AND SERVICES	3.000	900	700	594	806
	59	TITLE IX OTHER EXPENSES	81	28	30	11	12
	70	CAPITAL EXPENSES	100	40	40	20	0
	71	TITLE XII NON-FINANCIAL ASSETS	100	40	40	20	0
5001		STATE BUDGET EXPENSES	20.065	5.188	5.070	4.845	4.962
	01	CURRENT EXPENSES	19.965	5.148	5.030	4.825	4.962
	10	TITLE I PERSONNEL EXPENSES	16.884	4.220	4.300	4.220	4.144
	20	TITLE II GOODS AND SERVICES	3.000	900	700	594	806
	59	TITLE IX OTHER EXPENSES	81	28	30	11	12
	70	CAPITAL EXPENSES	100	40	40	20	0
	71	TITLE XII NON-FINANCIAL ASSETS	100	40	40	20	0