

**LAW no. 184/2016 of 17 October 2016**  
**to establish a mechanism to prevent conflict of interests in public procurement contract awarding**

ISSUED BY: PARLIAMENT OF ROMANIA  
PUBLISHED IN: OFFICIAL JOURNAL no. 831 OF 20 OCTOBER 2016

**The Parliament of Romania** hereby adopts this Law.

CHAPTER I

**General stipulations. Establishing mechanism to prevent conflict of interests in public procurement contract awarding**

ART. 1

(1) This Law is designed to prevent conflict of interests in public procurement contract awarding by establishing an ex-ante control mechanism that will look into situations likely to generate conflicts of interests as part of procedures initiated in the electronic public procurement system, and will thus remove such conflicts without the procurement itself being impacted.

(2) The notion of public procurement includes both the type regulated by Law no. 98/2016 on Public Procurement and the type regulated by Law no. 99/2016 on sectoral public procurement.

ART. 2

The Integrated Computer System for the Prevention and Identification of Potential Conflicts of Interests, hereinafter referred to as the Prevent System shall be established under this Law as part of the National Integrity Agency, hereinafter referred to as A.N.I.

ART. 3

For the purposes of this Law the following meaning is used for the terms and notions below:

a) the contracting authorities/entities: authorities listed in Art. 4 and entities listed in Art. 6 par. (1) and par. (3) in Law no. 98/2016 on Public Procurement, as well as entities listed in Art. 4 par. (1) letters a), b) and d) in Law no. 99/2016 on sectoral procurement;

b) Electronic Public Procurement System – SEAP: the public-utility computer system regulated under Art. 3 par. (1) letter nn) in Law no. 98/2016 on Public Procurement, as well as in Art. 3 par. (1) letter qq) in Law no. 99/2016 on sectoral procurement;

c) public procurement contract award procedure: all public procurement a contracting authority or entity engages in using SEAP.

ART. 4

(1) The ex-ante control mechanism shall be exercised by A.N.I., using the Prevent System and the specialist work of the integrity inspectors, exclusively as concerning the persons described in Art. 1 of Law no. 176/2010 on Integrity in the Exercise of Public positions and Office, amending and supplementing Law no. 144/2007 to establish, organize and operate the National Integrity Agency, and also amending and supplementing other regulatory acts, as subsequently amended.

(2) Analysis of the information provided by the Prevent System and sending out integrity warnings shall be the task of integrity inspectors, set up as a distinct structure within A.N.I. and organized as required by the Rules for the Organization and Operation of A.N.I. The integrity inspectors' responsibilities, tasks and obligations are regulated under Law no. 144/2007 to establish, organize and operate the National Integrity Agency, as republished with subsequent amendments and supplements.

(3) The Prevent System shall work with data that was filled in the Integrity Forms recorded in SEAP on the occasion of public procurement contract awards; the data shall be processed by the integrity inspectors as under the Law.

#### ART. 5

(1) The Integrity Form, filled in as part of the mechanism to prevent conflict of interests, is part of the award documentation for public procurement contracts and has 3 Sections: Section I – Data on the procurement procedure, the decision-maker, the assessment committee, consultants and co-opted experts; Section II – Data on the bidders/candidates; Section III – Steps to remove a potential conflict of interests, ordered as a result of an integrity warning.

(2) The contracting authorities are under an obligation to make sure the Integrity Form is filled in and kept updated, beginning when the award documentation is posted in SEAP and throughout the procedure until the posting of the decision to award the public procurement contracts. The Integrity Form shall be available to the contracting authorities in electronic format and shall be posted in SEAP.

(3) The Integrity Form shall be filled in as per the Appendix, that is an integral part of this Law, and shall contain data and information about the award procedure initiated in SEAP; such information shall be updated, as the case may be, throughout the procedure and in compliance with the mentions in the Appendix.

(4) Every contracting authority is under an obligation to appoint, by administrative order, one or several persons in charge or developing and updating the Integrity Forms pertaining to the public procurement procedures undertaken by that authority.

#### ART. 6

(1) In the case where, at the time of filling in the Integrity Form, the assessment committee has not yet been appointed or in the case where, after the Form has been filled in, changes have occurred in the transmitted data, the person in charge stipulated at Art. 5 para. (4) shall perform the appropriate changes within a maximum of 2 days of the appointment of the assessment committee or the occurrence of the changes, but no later than the moment the tenders are opened.

(2) Within 5 days of the opening of the tenders submitted in the public procurement procedure the person in charge stipulated at Art. 5 para. (4) shall proceed to fill in Section II of the Integrity Form.

(3) In case the person in charge stipulated at Art. 5 para. (4) does not fill in Section II of the Integrity Form within the deadline stipulated at para.(2) above, SEAP will generate an alert that will be sent simultaneously to the contracting authority and A.N.I.

(4) If following reception of an integrity warning steps are taken to remove the potential conflict of interests, the person in charge shall perform the required amendments to Sections I and II of the Integrity Form, as the case may be, and shall also fill in Section III of the form, within 3 days of the steps being ordered.

(5) In the case where the data and information in the warning is not current, person in charge stipulated at Art. 5 para. (4) can transmit the documents that demonstrate this to the integrity inspector, within 3 days of the warning's having been posted in SEAP. After receiving this communication the integrity inspector shall validate or invalidate the integrity warning within 2 days of receiving the communication.

### CHAPTER II

#### **The integrity warning**

#### ART. 7

(1) The Prevent System takes the information that was collected automatically in the Integrity Forms from inter-connection with SEAP and causes notifications to be sent out concerning potential conflicts of interests.

(2) For the goals of para. (1), to identify potential conflicts of interests and validate notifications issued by the system, ANI's integrity inspectors shall perform analysis of data and information in the Prevent System and monitor the system, on the basis of all regulations specifically applicable to each award procedure and the individuals specified in the Form and who are in the categories described in Art.1 of Law no. 176/2010, as subsequently amended.

(3) In case the specific case analysis causes ANI's integrity inspectors to detect elements of a potential conflict of interests, they shall transmit the integrity warning issued by the Prevent System, within no more than 3 working days of the date of receiving the filled-in Section II of the Form.

(4) The absence of an integrity warning or absence of a step ordered by the leader of the contracting authority following issuance of an integrity warning shall not preclude the performance of the procedure to identify, assess,

investigate and file civil, disciplinary, administrative, infraction or criminal action against individuals found in violation of the legal requirements.

#### ART. 8

(1) The integrity warning issued by A.N.I. shall be available in SEAP to contracting authorities, A.N.I. and authorities with responsibilities in control, monitoring and inspection of the public procurement procedure. A.N.I. shall also send the integrity warning, using electronic communication, to the person in charge stipulated at Art. 5 para. (4), who in turn shall immediately transmit it to the person who is subject to the potential conflict of interests, as well as to the leader of the contracting authority/entity.

(2) The leader of the contracting authority/entity that receives the integrity warning shall order all necessary steps to avoid the conflict of interests, such as replacing the member on the assessment committee who is in a potential conflict of interests or excluding the bidder, candidate, associate bidder, subcontractor or third-party sponsor who are in a potential conflict of interests as per applicable law.

(3) The National Agency for Public Procurement shall verify that all necessary steps have been taken to eliminate the situation of conflict of interests, according to its specific authority.

(4) Every six months, A.N.I. shall issue a report on the number of integrity warnings generated in relation to procurement procedures from European funds and send it to the Ministry of Regional Development and Public Administration, Ministry of Agriculture and Rural development, Ministry of European Funds and other entities that work with European funds.

#### ART. 9

Failure to take steps following reception of an integrity warning or to fill in an Integrity Form as under Art. 6 para. (4), triggers an ex officio procedure to assess the conflict of interests, after completion of the award procedure, exclusively concerning the persons who come under the stipulations of Law no. 176/2010, as subsequently amended.

#### ART. 10

Judicial bodies, persons with oversight authority, persons with responsibilities in checking compliance as under specific applicable procedures in the case of every European fund, bodies with supervisory, prevention and inspection authority into irregularities or fraud in European funds, as well as persons with oversight authority in the matter of lawfulness of procedures to award public procurement contracts, contracts to lease public works and contracts to lease services, shall have access to the necessary data and information according to their legal authority, data that is included in the Prevent System, based on cooperation agreements signed by A.N.I. and the co-opted entities

### CHAPTER III

#### **Final and temporary stipulations**

#### ART. 11

Without harm to the other stipulations in this Law, the contracting authority/entity shall comply with Art. 57 in Law no. 98/2016 on Public Procurement, and Art. 70 in Law no. 99/2016 on sectoral public procurement.

#### ART. 12

The activities in the mechanism to prevent conflict of interests, performed during the procedure to award public procurement contracts, shall comply with Law no. 677/2001 on the protection of individuals in terms of personal information processing and on unrestricted circulation of such information, as subsequently amended and supplemented.

#### ART. 13

In applying Chapter I, the President of A.N.I. and the leaders of contracting authorities/entities can issue their own administrative orders.

#### ART. 14

(1) Every quarter A.N.I. shall post on its website analyses and statistics on the results of the mechanism to prevent conflict of interests in public procurement procedures.

(2) The Prevent System shall operate with data collected from the Integrity Forms in SEAP and with the necessary information which is in the legal possession of the Department for Population Records and Database Management of the Ministry of the Interior, and that of the National Trade Registry Office.

(3) The entities stipulated in para. (2) shall establish the concrete avenues of cooperation and to that effect enter into cooperation agreements with A.N.I., within no more than 30 days of this Law's entry into force, as under Art. 17.

(4) The Agency for Romania's Digital Agenda shall allow the connection between the Prevent System and SEAP.

#### ART. 15

The Government shall grant A.N.I. and, as the case may be, the entities described at Art.14 para. (2), the financial, material and logistical resources for the Prevent System to operate within A.N.I.

#### ART. 16

(1) This Law applies exclusively to the procedures to award public procurement contracts that start after its entry into force, as per Art.17.

(2) The procedures to inspect public procurement from European funding, as well as the awarding of public procurement contracts, contracts to lease public works and contracts to lease services, are and shall remain applicable.

(3) This Law shall not harm the applicability of other legal stipulations concerning prevention of conflict of interests in the case of persons who are not in the categories described in Art.1 of Law no. 176/2010, as subsequently amended.

#### ART. 17

This Law shall enter into force 8 months after its publication in the Official Journal of Romania, Part I, except for Art. 13, Art. 14 paras. (3) and (4) and Art. 15, which shall enter into force 3 days after publication in the Official Journal of Romania, Part I.

This Law was adopted by the parliament of Romania in compliance with Art. 75 and Art. 76 par. (1) in the Constitution of Romania as republished.

## APPENDIX

### **INTEGRITY FORM<sup>1</sup>**

#### SECTION I

#### **Data concerning the procurement procedure, decision-maker, assessment committee, co-opted consultants and experts**

##### **I. Data concerning the procurement procedure**

1. Name of the procurement procedure
2. Procedure code/ Number of announcement/ participation invitation
3. Source for procurement funding: National/ own budget/ European funds
4. Contracting authority<sup>2</sup>: identification – name, tax code, legal representative, contact person and contact information
5. Type of contracting authority
  - public entity/authority
  - private legal entity

6. Category/ subcategory of contracting authority – only for the case where the contracting authority is a public entity / authority
7. Date of posting in SEAP<sup>3</sup>
8. Name of procurement procedure
9. Type of announcement
  - participation announcement
  - participation invitation
  - announcement of competing solutions, or
  - leasing announcement
10. Type of procurement procedure
  - open bid
  - request for offer
  - negotiation without participation announcement
  - competitive dialog, etc.
11. Type of contract
  - supply
  - services, or
  - works
12. Estimated value
13. Data concerning the European-funded project the procurement procedure is part of
  - which EU Fund
  - program name
  - axis
  - domain of intervention and
  - SMIS Code
14. How the procedure will unfold
  - online
  - offline
15. Date the offers will be opened<sup>4</sup>
16. Date the procedure report will be released<sup>5</sup>
17. Date the contract will be awarded<sup>6</sup>

## **II. Data concerning the decision-maker<sup>7</sup>**

1. Surname
2. First name
3. Sex
4. Citizenship
5. CNP (Personal Numeric Code)
6. Domicile address
7. Town/City
8. County
9. Is under obligation to file asset and interests disclosure statements under Law no. 176/ 2010 as subsequently amended: YES / NO.
10. Category/ subcategory of position – only for the case where the decision-maker is under the obligation to file asset and interests disclosure statements under Law no 176/ 2010 as subsequently amended.
11. Do labor relations exist with any of the bidders<sup>8</sup>? YES / NO
12. List of bidders – only if labor relations exist with any of the bidders<sup>9</sup>
13. Are they a member of any association or foundation? YES / NO
14. Name of the association / foundation – only if they a member of any association / foundation.
15. Signs Procedure Report? YES / NO
16. Signs Procurement Contract? YES / NO

17. Active/Inactive

**III. Data concerning consultants used in developing the procurement documentation:** economic operator, individual or legal entity, as the case may be, or N/A

1. Capacity of the consultant: private legal entity or individual (consultant co-opted from another public entity).
2. Name of the consultant: name of economic operator or name of employer
3. Consultant identification information – economic operator
  - Tax Code
  - Head office address
  - Town/City
  - County
4. Consultant identification information – individual (employee)
  - surname
  - first name
  - sex
  - citizenship
  - CNP (Personal Numeric Code)
  - address
  - town/city
  - county

**IV. Data concerning the assessment committee<sup>10</sup>**

1. Surname
2. First name
3. Sex
4. Citizenship
5. CNP (Personal Numeric Code)
6. Domicile address
7. Town/City
8. County
9. Is under the obligation to file asset and interests disclosure statements under no. 176/ 2010 as subsequently amended?
  - yes
  - no
10. Category/ subcategory of position – only in case the decision-maker is under the obligation to file asset and interests disclosure statements under Law no. 176/ 2010 as subsequently amended.
11. Capacity in assessment committee
  - Voting chairperson of the committee
  - Non-voting chairperson of the committee
  - Member
  - Reserve member
12. Do labor relationships exist with any of the bidders<sup>11</sup>?
  - yes
  - no
13. List of bidders – only if labor relationships exist with any of the bidders<sup>12</sup>.
14. Is a member of any association / foundation?
  - yes
  - no
15. Name of association / foundation – only if they are a member of any association / foundation.
16. Participant in Offer Opening Procedure?
  - yes

- no
- 17. Signs Procedure Report?
  - yes
  - no
- 18. Signs Procurement Contract?
  - yes
  - no
- 19. Active/Inactive

**V. Co-opted expert<sup>13</sup>**

- a) Identification of employer
  - Name
  - Tax Code
  - Head office address
  - Town/City
  - County
- b) Identification of expert
  - surname
  - first name
  - sex
  - citizenship
  - CNP (Personal Numeric Code)
- c) Capacity in assessment committee
  - voting
  - non-voting

**SECTION II<sup>14</sup>**

**Data concerning bidders/candidates<sup>15</sup>**

- 1. Capacity of economic operator
  - Single bidder
  - Leader of consortium
  - Associate
  - Subcontractor
  - Third-party sponsor
- 2. Identification of economic operator
  - name of economic operator
  - Tax Code
  - Address
  - Town/City
  - County
- 3. Data concerning bidder
  - Economic operators constituting one bidder
  - Economic operator representing the bidder
- 4. Winning bidder<sup>16</sup>
  - yes
  - no
- 5. Has the contract been awarded to them<sup>17</sup>
  - yes
  - no
- 6. Active/Inactive

## SECTION III<sup>18</sup>

### **Steps to remove the potential conflict of interests, ordered on the basis of an integrity warning**

1. The integrity warning issued: identification number (code of integrity warning)
2. Steps ordered – description

---

<sup>1</sup> Some information will be downloaded into the form automatically / generated automatically by SEAP, other information shall be typed in separately

<sup>2</sup> According to the data in the SEAP authorization certificate of the contracting authority (tax code, AC name, address, person in charge of legal representation, e-mail, contact person, etc.)

<sup>3</sup> Automatically downloaded from SEAP

<sup>4</sup> Shall be filled in by the contracting authority on the date of filling in the Offers Opening Report, in the case of online procedures. For offline procedures this field will be automatically downloaded from the participation invitation / announcement

<sup>5</sup> Shall be filled in by the contracting authority on the date the Procedure Report is approved / signed.

<sup>6</sup> Shall be filled in by the contracting authority on the date the public procurement contract is signed.

<sup>7</sup> Can take multiple entries. Shall be filled in according to specific award procedures.

<sup>8</sup> Shall be filled in by the contracting authority after the offers are opened, when the full list is known with all economic operators that took part in the public procurement procedure.

<sup>9</sup> In case the decision-maker states that they are in a labor relationship with any of the bidders it will be necessary to state which one of the bidders in the public procurement procedure they are in that relationship with

<sup>10</sup> Shall be filled in no later than the date the offers are opened.

<sup>11</sup> Shall be filled in by the contracting authority on the date the offers are opened and all bidders are known.

<sup>12</sup> In case the member of the assessment committee states that they are in a labor relationship with any of the bidders it will be necessary to state which one of the bidders in the public procurement procedure they are in that relationship.

<sup>13</sup> Shall be filled in, if the case warrants it, after the date the offers are opened and no later than the date the award report is released, as under the law.

<sup>14</sup> Shall be filled in as required in Art. 6 para. (2) in this Law.

<sup>15</sup> Multiple entries are possible for each offer.

<sup>16</sup> Shall be filled in on the date the Procedure Report is approved, based on the Procedure Report.

<sup>17</sup> Shall be filled in on the date the contract is signed.

<sup>18</sup> Shall be filled in after the offers are opened.