

Romanian Public Procurement Project

Phare Project 2004/016 – 772.03.01.02.05

15 June 2007

Table of Comparison for the Romanian Implementation of EU Directives 89/665 and 92/13 on remedies for procurement in the Classical and Utilities Sectors

The comparison takes is based on Emergency Ordinance (GUO) No. 34/2006 regarding the award of the public procurement contracts, public works concession contracts and service concession contracts. The text has been modified and supplemented by the following acts:

- Law (L) No. 337/2006 for the approval of GUO No. 34/2006
- Government Decision (GD) No. 1660/2006 approving the implementing norms for the award of public procurement contracts via electronic means under GUO No. 34/2006

The acts have further been modified and supplemented by the following acts, which however do not relate to remedies:

- Government Decision (GD) No. 925/2006 approving implementing norms for GUO No. 34/2006
- Government Decision (GD) No. 1056/2006 modifying Article 102 of GD No. 925/2006
- Government Decision (GD) No. 1337/2006 completing Article 36 of GD No. 925/2006
- Government Order (O) No. 183/2006 regarding media advertising contracts under GUO No. 34/2006
- Emergency Ordinance (GUO) No. 54/2006 regarding the award of contracts for the concession of public property goods under GUO No. 34/2006
- GD 168/2007 on methodological norms for GUO No. 54/2006
- Law (L) No. 22/2007 approving and amending GUO No. 54/2006 regarding the award of contracts for the concession of public property goods
- Government Decision (GD) 71/2007 for the approval of implementing norms for the award of public works and public services concession contracts under GUO No. 34/2006

The table follows the outline of directive 89/665, with the similar provisions from directive 92/13 placed on the same line. Provisions special to directive 92/13 are inserted in separate rows at relevant points. Amendments are individually indicated by references and the use of italics. A comparison with the main procurement directives is performed in a separate table, and the in-depth analysis of concession legislation is likewise performed in a separate document.

Romanian Public Procurement Project

The following abbreviations are used:

- EUC: EU procurement legislation for the classical sector under directive 2004/18 as amended
- EEU: EU procurement legislation for the utilities sector under directive 2004/17 as amended
- RO: Romanian procurement legislation under GUO No. 34/2006 as amended
- 1.1.a.s1.p1: Article 1, Paragraph 1, Sub-paragraph a, Sentence 1, Part 1
- ~p: Last part
- bis: Inserted provision
- na: No provisions are found under the heading concerned.

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
1.1	<p>Article 1</p> <p>1. The Member States shall take the measures necessary to ensure that, as regards contract award procedures falling within the scope of Directives 71/305/EEC and 77/62/EEC, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles, and, in particular, Article 2 (7) on the grounds that such decisions have infringed Community law in the field of public procurement or national rules implementing that law.</p>	1.1	<p>CHAPTER I</p> <p>Remedies at national level</p> <p>Article 1</p> <p>1. The Member States shall take the measures necessary to ensure that decisions taken by contracting entities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles and, in particular, Article 2 (8), on the grounds that such decisions have infringed Community law in the field or procurement or national rules implementing that law as regards:</p> <p>(a) contract award procedures falling within the scope of Council Directive 90/531/EEC; and</p> <p>(b) compliance with Article 3 (2) (a) of that Directive in the case of the</p>	1 <i>(amended by L337/2006, point 1) & 257.1</i>	<p><i>Article 1</i></p> <p><i>The present law regulates the procedures for awarding the public procurement contracts, public works concession contracts, services concession contracts and the legal remedies related to these.</i></p> <p>Section 2</p> <p>National Council for Solving Legal Disputes in the field of Public Procurement</p> <p>Article 257</p> <p>(1) By the present law, The National Council for Solving Legal Disputes is set-up, hereinafter referred to as Council, administrative-jurisdictional body that functions besides the National Authority for Regulating and Monitoring Public Procurement.</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
			contracting entities to which that provision applies.		
na	na	na	na	257.2-4 <i>(amended by L337/2006, point 39)</i>	<p>(2) The Council functions on the basis of its own Regulation for organisation and functioning of the Council, approved according to the provisions of article 291 paragraph (1) – (3).</p> <p>(3) <i>In what regards the fulfilment of its activity, the Council shall obey only the law in force, the sessions of the Council are legally constituted with the majority of the members.</i></p> <p>(4) As regards its decisions, the Council is independent and it is not subordinated to the National Authority for Regulating and Monitoring Public Procurement</p>
na	na	na	na	258	<p>Article 258</p> <p>(1) The Council is lead by a president elected from the members of the Council.</p> <p>(2) By applying the provisions of paragraph (1), all the members of the Council will elect the president by secret vote, with simple majority.</p> <p>(3) The President of the Council will be elected for a period of three years, with the possibility of renewing this mandate only one time.</p> <p>(4) The competencies of the President of the Council are set up</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>by the regulation for organizing and functioning. In fulfilling his attributions, the president of the Council issues orders.</p> <p>(5) The President of the Council forwards to the Prime-Minister the proposals for appointing the members of the Council for those candidates that are declared as admitted after the examination, except for the cases provided at article 290 paragraph (4).</p>
na	na	na	na	259	<p>Article 259</p> <p>The President of the Council has the obligation to draw up an annual activity report which will be submitted to the Parliament by March, 31st of the next year.</p>
na	na	na	na	289	<p>Section 10</p> <p>Measures regarding the operationalisation of the Council</p> <p>Article 289</p> <p>(1) The council will become operational by the date of entering in force of the present law.</p> <p>(2) Until December. 31st, 2006 the Council shall function without being a legal person and the financing of the expenses of the Council will be ensured from the state budget, by the budget of the National Authority for Regulating and Monitoring Public Procurement.</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
na	na	na	na	290	<p>Article 290</p> <p>(1) Starting with the date of January, 1st, 2007, the Council will become legal person and its president will have the quality of credit ordonateur and the financing of the expenses of the Council will be ensured from the state budget by the budget of the Chancellery of the Prime-Minister.</p> <p>(2) For the functioning of the Council, the Government will transmit in its administration a proper building.</p> <p>(3) The Government, by government decision may elaborate norms for applying paragraph (1).</p> <p>(4) Until becoming a legal person, the proposal for appointing the Council's members will be forwarded to the Prime – Minister by the president of the National Authority for Regulating and Monitoring Public Procurement, for the candidates declared as admitted after the examination according to the provisions of article 261 paragraph (1) and (2).</p>
na	na	na	na	291	<p>Article 291</p> <p>(1) Within 60 days from the publishing of the present law, the government, by government decision shall approve, on the request of the president of National</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>Authority for Regulating and Monitoring Public Procurement, the Regulation for organisation and functioning of the Council.</p> <p>(2) After the date provided by article 289 paragraph (2), the Regulation for organisation and functioning of the Council shall be approved at the proposal of its members, by order of the president of the Council, that is to be published in the Official Journal of Romania, Part I.</p> <p>(3) On the date of entering into force of the Regulation for organisation and functioning approved according to the provisions of paragraph (2), the provisions of the Regulation for organisation and functioning of the Council approved according to paragraph (1) are no longer applicable.</p>
na	na	na	na	292	<p>Article 292</p> <p>(1) Until December 31st, 2006 the number of posts afferent to the Council is available within the number of total posts of the National Authority for Regulating and Monitoring Public Procurement.</p> <p>(2) The Government, by government decision, upon the proposal of the president of the Council and as a result of an</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					increased number of cases, shall approve the setting-up of Territorial Offices in cities of residence of the Courts of Appeal and/or the increase of the total number of the posts of the Council provided by article 260 paragraph (1) .
1.2	2. Member States shall ensure that there is no discrimination between undertakings claiming injury in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing Community law and other national rules.	1.2	2. Member States shall ensure that there is no discrimination between undertakings likely to make a claim for injury in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing Community law and other national rules.	287.1-2	Article 287 (1) Regarding the procedures provided by article 286 the provisions of the Law no. 554/2004 on administrative disputed claims shall be applied accordingly. (2) The provisions of the present law shall be completed with the provisions of Law no. 544/2004 on administrative disputed claims insofar these are not contrary.
1.3.s1	3. The Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular public supply or public works contract and who has been or risks being harmed by an alleged infringement.	1.3.s1	3. The Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.	255.1 (amended by L337/2006, point 38)	Chapter IX Means of legal dispute Section 1 General provisions Article 255 (1) Any person that considers itself as being harmed in its right or an legitimate interest, by an act of the contracting authority by infringing the legal provisions on public procurement, is entitled to contest that act either by administratively-jurisdictionally means, in the conditions of the

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					present law, or in justice, in the conditions of Law no. 544/2004 on administrative disputed claims insofar these are not contrary.
na	na	na	na	255.3	(3) Whithin the meaning of paragraph (1) , a person that considers itself as being harmed is any person who cumulatively complies with the following conditions: a) he/she has a legitimate interest regarding to a certain public procurement contract falling under the scope of the present act; b) he/she has suffered, suffers or may be suffered a prejudice, as a consequence of an act of the contracting authority, capable of producing legal effects.
na	na	na	na	255.4	(4) A contracting authority's act means: a) any administrative act; b) the failure of issuing an administrative act or an any other act of the contracting authority or the refusal of issuing it; c) any other act of the contracting authority, other than those stipulated by letter a) or b), that produces or may produce legal effects.
1.3.s2	In particular, the Member States may require that the person seeking the review must have previously	1.3.s2	In particular, the Member States may require that the person seeking the review must have previously	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
	notified the contracting authority of the alleged infringement and of his intention to seek review.		notified the contracting entity of the alleged infringement and of his intention to seek review.		
2.1.a	<p>Article 2</p> <p>1. The Member States shall ensure that the measures taken concerning the review procedures specified in Article 1 include provision for the powers to:</p> <p>(a) take, at the earliest opportunity and by way of interlocutory procedures, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a public contract or the implementation of any decision taken by the contracting authority;</p>	2.1.1.a	<p>Article 2</p> <p>1. The Member States shall ensure that the measures taken concerning the review procedures specified in Article 1 include provision for the powers:</p> <p>either</p> <p>(a) to take, at the earliest opportunity and by way of interlocutory procedure, interim measures with the aim of correcting the alleged infringement or preventing further injury to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a contract or the implementation of any decision taken by the contracting entity; and</p>	277.1.p1 277.2, 284.1	<p>Section 5</p> <p>Provisionally measures</p> <p>Article 277</p> <p>(1) The submitting of the legal dispute to the Council, rightfully suspends the procedure of public procurement until the date of resolving the legal dispute by the Council.</p> <p>(2) The suspension period affects correspondingly any other period affected by the suspension, with the exception of the periods for exerting the means of legal dispute.</p> <p>Article 284</p> <p>(1) The court can render decision on provisional measures, according to the Law no. 554/2004 on administrative disputed claims until solving the complaint formulated against the Council' s decision.</p>
2.1.b	(b) either set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract	2.1.1.b	(b) to set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the notice of contract, the periodic indicative notice, the notice on the existence of a system of	255.5, 278.1 & 278.2.p1	(5) The object of the legal dispute can be, by case, the annulment of the act or obliging the contracting authority to issue an act or obliging the contracting authority to take any necessary measures needed for correcting the acts that affect the awarding procedure.

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
	award procedure;		qualification, the invitation to tender, the contract documents or in any other document relating to the contract award procedure in question;		<p>Section 6 The solutions that can be pronounced by the Council for solving the legal disputes</p> <p>Article 278 (1) The Council shall firstly render decision on the procedural incidents and ground exceptions and when deems that these are lawfully based the case will not be examined on the merits. (2) The Council examines the disputed act and may render decision that annuls in part or in full the respective act, forces the contracting authority to issue an act</p>
na	na	2.1.1.c.p1	or (c) to take, at the earliest opportunity, if possible by way of interlocutory procedures and if necessary by a final procedure on the substance, measures other than those provided for in points (a) and (b) with the aim of correcting any identified infringement and preventing injury to the interests concerned;	278.2.p2 or orders any other necessary corrective measures to remedy the aspects of unlawfulness or groundlessness that affect the acts within the procedure for public procurement.
na	na	2.1.1.c.p2 in particular, making an order for the payment of a particular sum, in cases where the infringement has not been corrected or prevented.	280.2 & 294	(2) In case where the time limit provided by article 278 paragraph (4) is not observed by the contracting authority the head of the

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>institution that has not carried out all the necessary steps for the enforcement of the Council's decision will be subject to a fine for each day of delay equivalent to 20% of the minimum monthly wage, if the interested party so requests.</p> <p>Section 2 Sanctioning the contraventions</p> <p>Article 294 (1) The contraventions provided for at Article 293 are sanctioned with a fine between 5000 RON and 10000 RON. (2) The fines provided as sanctions for committing the contraventions mentioned at Article 293 may be applied to physical persons as well as to legal persons.</p>
na	na	2.1.2.s1 (2.1 (c) 2nd paragraph ?)	Member States may take this choice either for all contracting entities or for categories of entities defined on the basis of objective criteria, in any event preserving the effectiveness of the measures laid down in order to prevent injury being caused to the interests concerned;	na	na
2.1.c	(c) award damages to persons harmed by an infringement.	2.1.2.d	(d) and, in both the above cases, to award damages to persons injured by the infringement.	na	na
na	na	na	na	278.3-8	(3) In the situation when the Council

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
				<p><i>(amended by L337/2006, point 41) (?)</i></p>	<p>deems that other infringements of the legal provisions regarding the disputed act exists, besides those invoked by the contestor, it may order ex-officio the remedy of the respective infringements.</p> <p>(4) In the case when the Council admits the legal dispute and orders a corrective measure for the disputed act, it will also establish the time limit which in the measure shall be accomplished. The National Authority for Regulating and Monitoring Public Procurement has the obligation to monitor the fulfilment of that measure.</p> <p>(5) The Council may reject the legal dispute by being ungrounded, late, with an obvious lack of interest or as being submitted by a person without having this quality or not being mandated to formulate the respective dispute, or on any other procedural incident or ground exception.</p> <p>(6) Depending on the decision rendered, the Council shall decide on the resuming or annulling the public procurement procedure.</p> <p>(7) The Council may take act, at anytime during the procedure of solving the legal dispute, of the withdrawal of the legal dispute by the contestor.</p>

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					(8) <i>The Council can force, by request of the contestor, the other part to pay for the judging expenses made during the procedure of solving the complaint.</i>
na	na	na	na	293 <i>(amended by L337/2006, point 47) (?)</i>	<p>CHAPTER X Contraventions and sanctions</p> <p>Section 1 Contraventions</p> <p>Article 293 The following deeds constitute contraventions and are sanctioned:</p> <ul style="list-style-type: none"> a) the incorrect application of the rules for estimating the value of the public procurement contract in order to infringe the provisions of Article 23; b) the infringement of provisions of Article 33 as well as of the rules for elaboration the technical specifications; c) the infringement of the provisions of Article 20 paragraph (2) and Article 251 paragraph (2); d) the application of other procedures for awarding that the ones allowed by the present law; e) the infringement the rules for transparency and advertising; f) the infringement of the special rules provided by article 58; g) incorrect application of the

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>rules for communication and transmission of data, having as effect the restriction of access of the economic operators to the awarding procedure, breaching the equal treatment or the transparency principle;</p> <p>h) using other qualification and selection criteria than the ones provided for in the present law;</p> <p>i) infringement of the principle of proportionality by using the qualification and selection criteria as a mean to restrict the competition;</p> <p>j) using other criteria for awarding the public procurement contract than the ones provided for in the present law;</p> <p>k) infringement of the principle of efficiency of the utilisation of funds by using evaluation factors which do not reflect advantages of economic nature for the benefit of the contracting authority or which have a evident disproportionate weight in the total score in relation to their quantifiable economic advantages;</p> <p>l) incorrect application, within the selection and/or evaluation process, of the criteria established through the documentation for awarding the contract or application of other</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					criteria that those established through the documentation; <i>m) Refusal to transmit to National Authority for Regulating and Monitoring the Public Procurement the information/data regarding the award of public procurement contracts, information/data that NARMPP is entitled to request in accordance with the legal provisions in force.</i>
na	na	na	na	295.2	(2) Applying the sanctions regarding the fine are prescribed in a time limit of 12 months from the date of committing the infringement.
na	na	na	na	296	Article 296 The contraventions provided by article 293 are subjected to the provisions of the Government Ordinance no. 2/2001 regarding the juridical regime of the contraventions, approved with modifications and completions by Law no. 180/2002 with subsequent modifications and completions.
2.2	2. The powers specified in paragraph 1 may be conferred on separate bodies responsible for different aspects of the review procedure.	2.2	2. The powers referred to in paragraph 1 may be conferred on separate bodies responsible for different aspects of the review procedure.	255.2, 256, 266, 286.1, 286.3, 295.1 & 295.4 (amended by L337/2006,	(2) The damages are requested only by legal action in court, in accordance with the provisions of the legislation on administrative legal disputes. Article 256 For solving disputes the party may address the National Council

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
				point 40)	<p>for Solving Legal Disputes.</p> <p>Section 4 Procedure of solving legal disputes before the Council</p> <p>Article 266 (1) The Council has the competency to:</p> <ul style="list-style-type: none"> a) solve legal disputes formulated during the awarding procedure that precede the signing of the contract, through the specialized panels, established in accordance with the Regulation for organisation and functioning, according to the provisions of article 291; b) decide on the legality of the applied procedures and operations carried out by the contracting authority when awarding a public procurement contract in accordance with the provisions of the present law; c) to issue an opinion regarding the legal actions that are to be solved in Court, at the request of the Court as provided in article 287 paragraph (4). <p>(2) In fulfilling its attributions, the Council issues decisions.</p> <p>Section 9 Solving complaints in Court</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>Article 286</p> <p>(1) For solving legal disputes in order to award damages, only the Court is competent.</p> <p>.....</p> <p>(3) For solving the disputes regarding the awarding procedure submitted after the conclusion of the public procurement contract, the competent authority is only the Court.</p> <p>Article 295</p> <p>(1) The ascertainment of the contraventions and application of fines is carried out by the representatives of the National Authority for Regulating and Monitoring Public Procurement.</p> <p>.....</p> <p>(4) Any person has the right to inform the National Authority for Regulating and Monitoring Public Procurement regarding an infringement of the provisions in the present law.</p>
na	na	na	na	286.2 (amended by L337/2006, point 45) (?)	<p>(2) <i>In the case when the person that considers itself as being harmed, then it will have to prove:</i></p> <p><i>a) that the provisions of the present law were breached; and</i></p> <p><i>b) that it had a real chance to win</i></p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<i>the contract and this chance was compromised as a consequence of breaching the provisions of the present law that chance has been prejudiced.</i>
na	na	na	na	287.3.p2 & 287.4	(3) The parties cannot address any legal dispute both in front of the Council and in front of the Court. In the case when more than one party address simultaneously the Council and the Court, the Court will suspend the judgement until the silving of the case by administrative – jurisdictional means. (4) The Court can request to the Council to express its opinion regarding the infringement of the public procurement legislation.
na	na	na	na	288 <i>(amended by L337/2006, point 46)</i>	Na
2.3	3. Review procedures need not in themselves have an automatic suspensive effect on the contract award procedures to which they relate.	2.3	3. Review procedures need not in themselves have an automatic suspensive effect on the contract award procedures to which they relate.	see 277.1-2	Na
2.4	4. The Member States may provide that when considering whether to order interim measures the body responsible may take into account the probable consequences of the measures for all interests likely to be harmed, as well as the public	2.4	4. The Member States may provide that, when considering whether to order interim measures, the body responsible may take into account the probable consequences of the measures for all interests likely to be harmed, as well as the public	277.3	(3) In solid justified cases, and at the request of a party, the Council can decide to resume the awarding procedure.

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
	interest, and may decide not to grant such measures where their negative consequences could exceed their benefits. A decision not to grant interim measures shall not prejudice any other claim of the person seeking these measures.		interest, and may decide not to grant such measures where their negative consequences could exceed their benefits. A decision not to grant interim measures shall not prejudice any other claim of the person seeking these measures.		
na	na	2.5	5. The sum to be paid in accordance with paragraph 1(c) must be set at a level high enough to dissuade the contracting entity from committing or persisting in an infringement. The payment of that sum may be made to depend upon a final decision that the infringement has in fact taken place.	na	na
2.5	5. The Member States may provide that where damages are claimed on the grounds that a decision was taken unlawfully, the contested decision must first be set aside by a body having the necessary powers.	2.1.3	Where damages are claimed on the grounds that a decision has been taken unlawfully, Member States may, where their system of internal law so requires and provides bodies having the necessary powers for that purpose, provide that the contested decision must first be set aside or declared illegal.	na	na
2.6.1	6. The effects of the exercise of the powers referred to in paragraph 1 on a contract concluded subsequent to its award shall be determined by national law.	2.6.s1	6. The effects of the exercise of the powers referred to in paragraph 1 on a contract concluded subsequent to its award shall be determined by national law.	na	na
2.6.2	Furthermore, except where a decision must be set aside prior to the award of damages, a Member State may provide that, after the	2.6.s2	Furthermore, except where a decision must be set aside prior to the award of damages, a Member State may provide that, after the	277.1.p2, 284.2 The contract concluded in the period of suspension of the awarding procedure is null and void.

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
	conclusion of a contract following its award, the powers of the body responsible for the review procedures shall be limited to awarding damages to any person harmed by an infringement.		conclusion of a contract following its award, the powers of the body responsible for the review procedures shall be limited to awarding damages to any person harmed by an infringement.		(2) The contract concluded in the suspension period is null and void.
na	na	2.7	7. Where a claim is made for damages representing the costs of preparing a bid or of participating in an award procedure, the person making the claim shall be required only to prove an infringement of Community law in the field of procurement or national rules implementing that law and that he would have had a real chance of winning the contract and that, as a consequence of that infringement, that chance was adversely affected.	286.2	(2) In the case when the person that considers itself as being harmed, then it will have to prove: a) that the provisions of the present law were breached; and b) that it had a real chance to win the contract; and c) that as a consequence of breaching the provisions of the present law that chance has been prejudiced.
2.7	7. The Member States shall ensure that decisions taken by bodies responsible for review procedures can be effectively enforced.	2.8	8. The Member States shall ensure that decisions taken by bodies responsible for review procedures can be effectively enforced.	275.2, 280.1, 280.4 & 295.3 <i>(amended by L337/2006, point 48)</i>	(2) The decision of the Council on the fine, unappealed in due time, represents a writ of execution and is enforced by the competent bodies, according to the legal provisions regarding the forcible execution of fiscal debts and to the procedure stipulated within this article. Article 280 (1) The decision of the Council by which it annuls in part or entirely the disputed act or by which it forces the contracting authority to issue an act or to order any other corrective

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>measure in order to remedy the aspects of groundlessness or of unlawfulness that affect the awarding procedure has the power of a writ of execution (its fulfilment is mandatory).</p> <p>.....</p> <p>(4) The decision of the Council on the fine, unappealed in due time, represents a writ of execution and is enforced by the competent bodies, according to the legal provisions regarding the forcible execution of fiscal debts and to the procedure stipulated within this article.</p>
2.8.1.s1	8. Where bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given.	2.9.1.s1	9. Whereas bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given.	279 <i>(amended by L337/2006, point 42)</i>	<p>Article 279</p> <p><i>(1) The decision of the panel rendered for solving the dispute shall be taken with the simple majority of all the members of the panel, without possibility to abstain.</i></p> <p><i>(2) After rendering decision, the panel will draft a minute which shall be signed, by all the members of the panel and shall be entered in a special register kept by the Council.</i></p> <p><i>(3) The decision of the Council, adopted according to the paragraph 1, will be substantiated and communicated in writing to the parties within 5 days from the issuing date. The decision shall be published on the Council's web site.</i></p>
2.8.1.s2	Furthermore, in such a case,	2.9.1.s2	Furthermore, in such a case,	283	Section 8

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
	<p>provision must be made to guarantee procedures whereby any allegedly illegal measure taken by the review body or any alleged defect in the exercise of the powers conferred on it can be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 177 of the EEC Treaty and independent of both the contracting authority and the review body.</p>		<p>provision must be made to guarantee procedures whereby any allegedly illegal measures taken by the review body or any alleged defect in the exercise of the powers conferred on it can be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 177 of the Treaty and independent of both the contracting entity and the review body.</p>	<p><i>(amended by L337/2006, point 44)</i></p>	<p>Means of appeal against the decisions of the Council</p> <p>Article 283</p> <p>(1) The competent court to solve the complaint is the section of administrative and fiscal disputes of the Court of Appeal under which jurisdiction is placed the headquarters of the contracting authority.</p> <p>(2) <i>The complaint will be judged by a panel of 3 judges.</i></p> <p>(3) The complaint formulated against the decisions of the Council shall be judged in emergency procedure and with priority.</p> <p>(4) The party cannot request, except for the situation provided at article 118 paragraph (3) from the Civil procedure Code, the postponement of the judging session for preparing the defence or to acknowledge the demands or the communicated documents, if the proof for subpoenaing (citation) or communication is submitted before the Court with at least 5 days before the date of judging.</p> <p>(5) By exception for subpoenaing at the first judging session, any part may request the approval of the Court to fulfil, by the means of a Court executor, the procedure of</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					citing or the communication of documents to the other party. (6) The procedure of solving the complaint is the recourse, according to the provisions of article 304, point 1 of the Civil procedure Code .
na	na	na	na	277.4	(4) The decision of the Council regarding the proposed provisionally measures can be appealed against before the Court of Appeal which is competent to solve the appeal according to the provisions of article 283 paragraph (1) , within 5 days from the communication of the measure.
na	na	na	na	280.5 (amended by L337/2006, point 43)	(5) <i>The decision of the Council regarding the solving of the legal dispute and the decision to pay penalties can be attacked by complaint, within 10 days from the communication on the reason of unlawfulness or groundlessness, according to the provisions of article 283.</i>
na	na	na	na	281	Article 281 (1) The complaint will be submitted at the premises of the Council. The Council shall forward the file to the competent Court, in a time limit no longer than 3 days from the fulfilment of the time period for exerting the means of appeal. (2) The complaint shall be in written and motivated; the provisions of

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>Article 270 paragraph (1) of the present law shall be applied accordingly.</p> <p>(2) The party formulating the complaint has the obligation to notify, within the time limit provided by article 280 paragraph (5), the other party a copy of the complaint as well as the evidence that accompany it, having also the obligation to present before the Court on the occasion of the first hearing the proof of its communication.</p>
na	na	na	na	285	<p>Article 285</p> <p>(1) By admitting the complaint, the Court will be able to modify the Council's decision ordering, by case, for the correction of the aspects of unlawfulness and groundlessness that affect the acts issued:</p> <ul style="list-style-type: none"> a) the annulment in full or in part of the act of the contracting authority; b) the obligation of issuing the act by the contracting authority; c) the fulfilment of an obligation by the contracting authority; d) any other necessary measures. <p>(2) In the case when the Council wrongfully has solved the case by invoking procedural exceptions, the Court shall break the Council's decision and will render decision on</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>the merit of the case.</p> <p>(3) In the case when the Court admits the complaint, modifies the decision of the Council and finds that the act of the contracting authority has infringed the provisions of the public procurement legislation and the contract has been concluded before disposing the suspension of the awarding procedure according to article 284 paragraph (1), the harmed party is entitled to compensations (damages).</p> <p>(4) The Court is able to reject the complaint on its merit.</p> <p>(5) The decision of the Court is irrevocable.</p>
2.8.2.s1-2	<p>The members of such an independent body shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority responsible for their appointment, their period of office, and their removal. At least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary.</p>	2.9.2.s1-2	<p>The members of the independent body referred to in the first paragraph shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority responsible for their appointment, their period of office, and their removal. At least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary.</p>	260 & 261.1-2	<p>Section 3</p> <p>The statute of the staff of the National Council for Solving Legal Disputes</p> <p>Article 260</p> <p>(1) The Council has 21 members and 16 employees as technical-administrative staff, totalizing 37 posts.</p> <p>(2) At least half of the Council's members must have a law degree.</p> <p>Article 261</p> <p>(1) The members of the Council are selected on the basis of a</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>competitive examination and are appointed in their post by the Prime-Minister, in the conditions of the law.</p> <p>(2) The members of the Council shall be selected based on their professional skills and good will. The candidates shall have graduate studies and at least 5 years of experience in law, economy or technical fields, having relevant experience of 2 years in public procurement and/or competition.</p>
na	na	na	na	261.3	(3) The technical-administrative staff is employed by examination, in the conditions of the law.
na	na	na	na	262	<p>Article 262</p> <p>(1) The Members of the Council have the statute of a special public servant, having the name of counselor for solving public procurement complaints. These are assimilated as regards their salaries to the level of the superior counselor, first level, from the apparatus of the Government.</p> <p>(2) The members of the Council benefit from salaries increased by 40% than those provided by the law.</p> <p>(3) The technical-administrative staff of the Council has the statute of a contractual staff and benefits from the salaries applicable to the</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					contractual staff from the apparatus of the National Authority for Regulating and Monitoring the Public Procurement. (4) The provisions of the present law shall be completed with the provisions of the Law no. 188/1999 regarding the statute for the public servants and the Law no. 52/2003 regarding the Labour Code, with the subsequent modifications and completions, insofar they do not countervail the present law.
na	na	na	na	263	Article 263 (1) The members of the Council have as main task to fulfil the competencies given to the Council by this law. (2) The evaluation of the individual professional performances of the Council's members is effected by the College of the Council. (3) At the sessions of the College shall participate also representatives of other institutions, which will be indicated by Government Decision. The vote of these representatives will be consultative.
na	na	na	na	264	Article 264 (1) The members of the Council are not allowed to: a) carry out commercial activities,

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>directly or conducted by other persons;</p> <p>b) be associates or members in the executive, management or control bodies in civil companies, trading companies, including banks or other credit institutions, insurance or financial institutions, national companies, national associations or state enterprises;</p> <p>c) be members of economic interest groups;</p> <p>d) be members of political parties and carry out political activities or participate in political activities.</p> <p>e) held any public or private function, with the exception of the didactic activities, of scientific research and of literary-artistic creation;</p> <p>f) carry on any other professional activity or of consultancy.</p> <p>(2) The members of the Council have the obligation to submit the declarations of wealth and interests in line with Law no. 161/2003 regarding some measures for ensuring transparency in carrying out public dignity functions, public functions and functions in the business environment, preventing and sanctioning corruption, with the subsequent amendments and completions.</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>(3) Under the sanction of nullity of the rendered decision, the members of the Council are not allowed to participate in solving a legal dispute if they are subject to one of the following situations:</p> <ul style="list-style-type: none"> a) when he/she, the husband/wife, their ascendants or descendents have a particular interest in solving the legal dispute or when he/she is married, related or in-law, up to the forth grade, with any party involved; b) if he/she was under criminal trial with any of the parties involved up to 5 years prior to the legal dispute in process; c) if he/she issued a public position on the legal dispute in process; d) if he/she received goods or promises to receive goods or any other advantages from any of the parties involved.
na	na	na	na		<p>Article 265</p> <p>(1) The responsibility for ascertaining disciplinary violations belongs to the Discipline Committee, set-up within the Council.</p> <p>(2) The Discipline-Committee has a total number of 5 members, out of which 2 appointed by the President of the Council and 3 selected from</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					the members of the Council by vote with simple majority.
2.8.2.s3	The independent body shall take its decisions following a procedure in which both sides are heard, and these decisions shall, by means determined by each Member State, be legally binding.	2.9.2.s3	The independent body shall take its decisions following a procedure in which both sides are heard, and these decisions shall, by means determined by each Member State, be legally binding.	269	Article 269 The procedure before the Council shall respect the principles of law, celerity, contradiction and right to defence
na	na	na	na	267	Article 267 (1) The legal dispute shall be solved by a panel formed by 3 members of the Council, out of which one of them has the statute of the president of the panel. (2) Within each panel, at least its president has to hold a degree in law.
na	na	na	na	268	Article 268 The cases regarding the legal disputes shall be randomly distributed to the panels.
na	na	na	na	270	Article 270 (1) The legal dispute shall be in written form and include the following elements: a) the name, address and residence of the complainant, or, for legal persons, the name and premises, as well as, according to each case, the registry number in the register of companies and the fiscal code. For legal persons, the representatives and their positions shall be pointed out.

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>b) the name and premises of the contracting authority;</p> <p>c) the name of the subject matter of the contract and the procedure applied;</p> <p>d) the subject-matter of legal dispute;</p> <p>e) the factual and legal justification of the request;</p> <p>f) if available, evidence to support the request;</p> <p>g) the signature of the part or of its legal representative;</p> <p>h) the copy of the notification made to the contracting authority regarding the submission of the legal dispute.</p> <p>(2) The subject-matter of the legal dispute is constituted by the acts issued during the public procurement procedure, the failure of issuing or the refusal of issuing it. The provisions of article 255 are being applied accordingly.</p> <p>(3) In the case when the Council considers that not all the data provided by paragraph (1) is included in the submitted legal dispute, it will require the person that submitted the legal dispute to supplement it within 5 days. In the case when the person does not respect this, the legal dispute shall be rejected.</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
na	na	na	na	271	<p>Article 271</p> <p>(1) The legal dispute shall be submitted to the Council and the contestator will attach to its legal dispute also the copy of the challenged act, insofar this act has been issued, as well as copies of the documents provided by article 270, paragraph (1), if these are available.</p> <p>(2) When submitting a legal dispute to the Council, the contestator has the obligation to notify it as soon as possible also to the contracting authority and shall send to it a copy of the legal dispute and of the documents provided by paragraph (1) if these are available.</p> <p>(3) In a time limit of 5 days from receiving the notification regarding legal dispute, the contracting authority has the obligation to inform about it also the other participants in awarding procedure.</p> <p>(4) All the notifications or communications of the procedural acts shall be made with confirmation of receiving. The provisions of article 60 paragraph (1) are applied accordingly.</p>
na	na	na	na	272	<p>Article 272</p> <p>(1) The legal dispute can be submitted in all the phases of the public procurement procedure and</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>against any act of the contracting authority as defined in article 255 paragraph (4).</p> <p>(2) In the case the estimated value of the contract which is to be awarded is higher than the thresholds provided for in article 124, the legal dispute can be submitted within 10 days from the date of receiving knowledge, by the contester, of the act of the contracting authority which is considered to be illegal.</p> <p>(3) In the case the estimated value of the contract which is to be awarded is equal or lower than the thresholds provided for in article 124, the legal dispute can be submitted within 5 days from the date of receiving knowledge, by the contester, of the act of the contracting authority which is considered to be illegal.</p>
na	na	na	na	273	<p>Article 273</p> <p>(1) The legal disputes against the same awarding procedure will be treated as connected in order that a unitary solution is rendered. For these legal disputes the continuity of the same panel will be ensured.</p> <p>(2) Until the solving of the legal dispute by the Council, the participants within the same</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					awarding procedure can associate themselves by an own request that has to contain all the elements provided within article 270 paragraph (1) .
na	na	na	na	274	<p>Article 274</p> <p>(1) Within 5 days from receiving the notification on the legal dispute, the contracting authority shall transmit to the Council its own point of view regarding the respective legal dispute. The absence of this information does not impede the solving of the legal dispute, if the communication of the legal dispute is proven.</p> <p>(2) The contracting authority will notify his point of view to the contester, within the same period of time as provided at paragraph 1.</p>
na	na	na	na	275.1	<p>Article 275</p> <p>(1) When receiving the legal dispute, the Council may request to the contracting authority to provide within 5 days from this date all the documents from the public procurement file, subject to a fine for each day of delay equivalent to 20% of the minimum monthly wage, applied to the head of the unit which did not take all necessary measures for completing the task.</p>
na	na	na	na	275.3-6	(3) For solving the case, the Council may ask the parties for explanations

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>and may administrate evidence and may request any other data in order to determine the real situation. Also, the Council has the right to ask for any other needed information from other natural or legal persons, in order to demonstrate the actual situation.</p> <p>(4) The Council has the right to ask for an independent expert opinion for technical and financial aspects. The duration available for completing the expertise shall be within the time limit available for the Council in order to solve the dispute. The cost of the expertise shall be supported by the part that formulated the request for performing it.</p> <p>(5) The procedure is written and the parties shall be audited if the panel finds it necessary for solving the legal dispute.</p> <p>(6) The parties may be represented by lawyers and can submit written conclusions during the procedure. Also, the parties may ask for the submission of verbal conclusions in front of the panel, without prejudicing the time limits provided by article 276.</p>
na	na	na	na	276	<p>Article 276</p> <p>(1) The Council will solve the legal dispute in a period of 10 days</p>

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					beginning from the moment it has received the file from the contracting authority. (2) In solid justified cases, the time limit for solving the legal dispute may be prolonged with another 20 days.
na	na	3	CHAPTER 2 Attestation Article 3 The Member States shall give contracting entities the possibility of having recourse to an attestation system in accordance with Articles 4 [5, 6] to 7.	282.1	Section 7 The procedure of verifying the lawfulness Article 282 (1) The contracting authority has the right to request the Council in order that it shall pronounce itself on the rightfulness of the acts and operations carried out during the awarding procedure. (2) The contracting authority will forward to the Council the justified request accompanied by the documentation afferent to the awarding procedure. (3) The Council may admit the request and notice the legality of the acts concluded by the contracting authority as well as to attest the rightfulness of the operations and procedures carried out by the contracting authority. (4) In the case when the attestation of the carried out procedures need a speciality expertise, the procedure will be laid

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					down according to the provisions of article 275 paragraph (4) . (5) Insofar the breaking of the legal provisions within the procedures carried out by the contracting authority is noticed, the Council shall notify it in order to take the correction measures provided by the present law.
na	na	4	Article 4 Contracting entities may have their contract award procedures and practices which fall within the scope of Directive 90/531/EEC examined periodically with a view to obtaining an attestation that, at that time, those procedures and practices are in conformity with Community law concerning the award of contracts and the national rules implementing the law.	na	na
na	na	5.1	Article 5 1. Attestors shall report to the contracting entity, in writing, on the results of their examination. They shall satisfy themselves, before delivering to the contracting entity the attestation referred to in Article 4 , that any irregularities identified in the contracting entity's award procedures and practices have been corrected and measures have been taken to ensure that those irregularities are not repeated.	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
na	na	5.2	2. Contracting entities having obtained that attestation may include the following statement in notice published in the Official Journal of the European Communities pursuant to Articles 16 to 18 of Directive 90/531/EEC : 'The contracting entity has obtained an attestation in accordance with Council Directive 92/13/EEC that, on....., its contract award procedures and practices were in conformity with Community law and the national rules implementing that law.'	na	na
na	na	6.1	Article 6 1. Attestors shall be independent of the contracting entities and must be completely objective in carrying out their duties. They shall offer appropriate guarantees of relevant professional qualifications and experience.	na	na
na	na	6.2	2. Member States may identify any persons, professions or institutions whose staff, called upon the act as attestors, they regard as fulfilling the requirements of paragraph 1. For these purposes, Member States may require professional qualifications, at least at the level of a higher education diploma within the meaning of Directive		

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
			89/48/EEC , which they regard as relevant, or provide that particular examinations of professional competence organized or recognized by the State offer such guarantees.		
na	na	7	Article 7 The provisions of Articles 4, 5 and 6 shall be considered as essential requirements for the development of European standards on attestation.	na	na
3.1	Article 3 1. The Commission may invoke the procedure for which this Article provides when, prior to a contract being concluded, it considers that a clear and manifest infringement of Community provisions in the field of public procurement has been committed during a contract award procedure falling within the scope of Directives 71/305/EEC and 77/62/EEC .	8.1	CHAPTER 3 Corrective mechanism Article 8 1. The Commission may invoke the procedures for which this Article provides when, prior to a contract being concluded, it considers that a clear and manifest infringement of Community provisions in the field of procurement has been committed during a contract award procedure fallig within the scope of Directive 90/531/EEC or in relation to Article 3 (2) (a) of that Directive in the case of the contracting entities to which that provision applies.	na	na
3.2	2. The Commission shall notify the Member State and the contracting authority concerned of the reasons which have led it to conclude that a clear and manifest infringement has	8.2	2. The Commission shall notify the Member States and the contracting entity concerned of the reasons which have led it to conclude that a clear and manifest infringement has	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
	been committed and request its correction.		been committed and request its correction by appropriate means.		
3.3	3. Within 21 days of receipt of the notification referred to in paragraph 2 , the Member State concerned shall communicate to the Commission: (a) its confirmation that the infringement has been corrected; or (b) a reasoned submission as to why no correction has been made; or (c) a notice to the effect that the contract award procedure has been suspended either by the contracting authority on its own initiative or on the basis of the powers specified in Article 2 (1) (a) .	8.3	3. Within 30 days of receipt of the notification referred to in paragraph 2 , the Member States concerned shall communicate to the Commission: (a) its confirmation that the infringement has been corrected; or (b) a reasoned submission as to why no correction has been made; or (c) a notice to the effect that the contract award procedure has been suspended either by the contracting entity on its own initiative or on the basis of the powers specified in Article 2 (1) (a) .	na	na
3.4	4. A reasoned submission in accordance with paragraph 3 (b) may rely among other matters on the fact that the alleged infringement is already the subject of judicial or other review proceedings or of a review as referred to in Article 2 (8) . In such a case, the Member State shall inform the Commission of the result of those proceedings as soon as it becomes known.	8.4	4. A reasoned submission in accordance with paragraph 3 (b) may rely among other matters on the fact that the alleged infringement is already the subject of judicial review proceedings or of a review as referred to in Article 2 (9). In such a case, the Member State shall inform the Commission of the result of those proceedings as soon as it becomes known.	na	na
3.5	5. Where notice has been given that a contract award procedure has been suspended in accordance with paragraph 3 (c) , the Member State	8.5	5. Where notice has been given that a contract award procedure has been suspended in accordance with paragraph 3 (c) , the Member State	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
	shall notify the Commission when the suspension is lifted or another contract procedure relating in whole or in part to the same subject matter is begun. That notification shall confirm that the alleged infringement has been corrected or include a reasoned submission as to why no correction has been made.		concerned shall notify the Commission when the suspension is lifted or another contract procedure relating in whole or in part to the same subject matter is begun. That new notification shall confirm that the alleged infringement has been corrected or include a reasoned submission as to why no correction has been made.		
na	na	9.1	CHAPTER 4 Conciliation Article 9 1. Any person having or having had an interest in obtaining a particular contract falling within the scope of Directive 90/531/EEC and who, in relation to the procedure for the award of that contract, considers that he has been or risks being harmed by an alleged infringement of Community law in the field of procurement or national rules implementing that law may request the application of the conciliation procedure provided for in Articles 10 and 11 .	na	na
na	na	9.2	2. The request referred to in paragraph 1 shall be addressed in writing to the Commission or to the national authorities listed in the Annex. These authorities shall forward requests to the Commission	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
			as quickly as possible.		
na	na	10.1	<p>Article 10</p> <p>1. Where the Commission considers, on the basis of the request referred to in Article 9, that the dispute concerns the correct application of Community law, it shall ask the contracting entity to state whether it is willing to take part in the conciliation procedure. If the contracting entity declines to take part, the Commission shall inform the person who made the request that the procedure cannot be initiated. If the contracting entity agrees, paragraphs 2 [3, 4, 5, 6] to 7 shall apply.</p>	na	na
na	na	10.2	<p>2. The Commission shall propose, as quickly as possible, a conciliator drawn from a list of independent persons accredited for this purpose. This list shall be drawn up by the Commission, following consultation of the Advisory Committee for Public Contracts or, in the case of contracting entities the activities of which are defined in Article 2 (2) (d) of Directive 90/531/EEC, following consultation of the Advisory Committee on Telecommunications Procurement.</p> <p>Each party to the conciliation procedure shall declare whether it accepts the conciliator, and shall</p>	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
			designate an additional conciliator. The conciliators may invite not more than two other persons as experts to advise them in their work. The parties to the conciliation procedure and the Commission may reject any expert invited by the conciliators.		
na	na	10.3	3. The conciliators shall give the person requesting the application of the conciliation procedure, the contracting entity and any other candidate or tenderer participating in the relevant contract award procedure the opportunity to make representations on the matter either orally or in writing.	na	na
na	na	10.4	4. The conciliators shall endeavour as quickly as possible to reach an agreement between the parties which is in accordance with Community law.	na	na
na	na	10.5	5. The conciliators shall report to the Commission on their findings and on any result achieved.	na	na
na	na	10.6	6. The person requesting the application of the conciliation procedure and the contracting entity shall have the right to terminate the procedure at any time.	na	na
na	na	10.7	7. Unless the parties decide otherwise, the person requesting the application of the conciliation procedure and the contracting entity shall be responsible for their own	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
			costs. In addition, they shall each bear half of the costs of the procedure, excluding the costs of intervening parties.		
na	na	11.1	<p>Article 11</p> <p>1. Where, in relation to a particular contract award procedure, an interested person within the meaning of Article 9, other than the person requesting the conciliation procedure, is pursuing judicial review proceedings or other proceedings for review within the meaning of this Directive, the contracting entity shall inform the conciliators. These shall inform that person that a request has been made to apply the conciliation procedure and shall invite that person to indicate within a given time limit whether he agrees to participate in that procedure. If that person refuses to participate, the conciliators may decide, acting if necessary by a majority, to terminate the conciliation procedure if they consider that the participation of this person is necessary to resolve the dispute. They shall notify their decision to the Committee and give the reasons for it.</p>	na	na
na	na	11.2	2. Action taken pursuant to this Chapter shall be without prejudice	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
			to: (a) any action that the Commission or any Member State might take pursuant to Articles 169 or 170 of the Treaty or pursuant to Chapter 3 of this Directive; (b) the rights of the persons requesting the conciliation procedure, of the contracting entity or of any other person.		
na	na	na	na	(Article 48-51 of the Annex to GD-1660/2006)	<p>CHAPTER VI Contestation settlement</p> <p>Art. 48 Contestations filed in relation to the awarding procedures and methods enforced by using electronic means shall be settled in accordance with Chapter IV in the emergency ordinance.</p> <p>Art. 49 In case of contestations pointing to documents of the contracting authority in relation to an awarding procedure implemented entirely by electronic means, the contracting authority is bound to communicate within the SEAP, by using the technical facilities made available by the system and no later than the term provided in art. 271 paragraph (3) in the emergency ordinance, the fact that the awarding procedure is</p>

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
					<p>suspended de jure.</p> <p>Art. 50 (1) The liability of decisions and steps taken during the implementation of the awarding procedure by using electronic means shall be incumbent upon the contracting authority. (2) The responsibility for the accurate functioning of the SEAP shall be incumbent upon the operator of this system.</p> <p>Art. 51 In case where the opposition points to documents issued in relation to an awarding procedure implemented entirely by electronic means, the contracting authority is bound to send the SEAP operator all the decisions made by the National Council of Contestations Settlement referring to the relevant contestation, as well as the enacting terms of the judicial rulings in the event where there have been suits filed in court according to the provisions of the emergency ordinance.</p>
4.1	<p>Article 4 1. Not later than four years after the implementation of this Directive, the Commission, in consultation with</p>	12.1	<p>CHAPTER 5 Final provisions</p> <p>Article 12</p>	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
	the Advisory Committee for Public Contracts, shall review the manner in which the provisions of this Directive have been implemented and, if necessary, make proposals for amendments.		1. Not later than four years after the application of this Directive, the Commission, in consultation with the Advisory Committee for Public Contracts, shall review the manner in which the provisions of this Directive have been implemented and, in particular, the use of the European Standards and, if necessary, make proposals for amendments.		
4.2	2. By 1 March each year the Member States shall communicate to the Commission information on the operation of their national review procedures during the preceding calendar year. The nature of the information shall be determined by the Commission in consultation with the Advisory Committee for Public Contracts.	12.2	2. Before 1 March each year the Member States shall communicate to the Commission information on the operation of their national review procedures during the preceding calendar year. The nature of the information shall be determined by the Commission in consultation with the Advisory Committee for Public Contracts.	na	na
na	na	12.3	3. In the case of matters relating to contracting entities the activities of which are defined in Article 2 (2) (d) of Directive 90/531/EEC , the Commission shall also consult the Advisory Committee on Telecommunications Procurement.	na	na
5.s1	Article 5 Member States shall bring into force, before 1 December 1991, the measures necessary to comply with this Directive.	13.1.1.s1	Article 13 1. Member States shall take, before 1 January 1993, the measures necessary to comply with this Directive.	na	na
na	na	13.1.1.s2-4	The Kingdom of Spain shall take	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
			these measures not later than 30 June 1995. The Hellenic Republic and the Portuguese Republic shall take these measures not later than 30 June 1997. They shall forthwith inform the Commission thereof.		
na	na	13.1.2	When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.	na	na
na	na	13.2	2. Member States shall bring into force the measures referred to in paragraph 1 on the same dates as those (laid down in Directive 90/531/EEC).	na	na
5.s2	They shall communicate to the Commission the texts of the main national laws, regulations and administrative provisions which they adopt in the field governed by this Directive.	13.3	3. Member States shall communicate to the Commission the texts of the main provisions of domestic law which they adopt in the field governed by this Directive.	na	na
6	Article 6 This Directive is addressed to the Member States.	14	Article 14 This Directive is addressed to the Member States.	na	na
na	na	Annex	ANNEX National authorities to which requests for application of the conciliation procedure referred to in Article 9 may be addressed Belgium	na	na

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
			Services du Premier Ministre, Diensten Van de Eerste Minister Ministère des Affaires économiques, Ministerie van Economische Zaken Denmark Industri- og Handelsstyrelsen (supply contracts) Boligsministeriet (works contracts) Germany Bundesministerium fuer Wirtschaft Greece Ypoyrgeio Viomichanias, Energeias kai Technologias Ypoyrgeio Emporioy Ypoyrgeio Perivallontos, Chorotaxias kai Dimosion Ergon Spain Ministerio de Economía y Hacienda France Commission centrale des marchés Ireland Department of Finance Italy Presidenza del Consiglio dei Ministri Politiche Comunitarie Luxembourg Ministère des travaux publics Netherlands Ministerie van Economische		

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
			<p>Zaken Portugal Conselho de mercados de obras publicas e particulares United Kingdom HM Treasury</p> <p>Modified by 11994NN01/11/E, Annex I, Part XI, Section E, Point 4 (Austria et. al. accession):</p> <p>The following is added to the Annex 'National authorities to which requests for application of the conciliation procedure referred to in Article 9 may be addressed':</p> <p>AUSTRIA Bundesministerium fuer wirtschaftliche Angelegenheiten FINLAND Kauppa- ja teollisuusministerioe/Handels- och industriministeriet NORWAY Naerings- og energidepartementet SWEDEN Naemnden foer offentlig upphandling</p> <p>Amended by 12003TN02/01/I, Annex II, Part 2, Section I, Point 1 (Czech et. Al. accession):</p>		

Romanian Public Procurement Project

Art	Directive 1989/665	Art	Directive 1992/13	Art	GUO No. 34/2006
			<p>In the Annex, the following is added:</p> <p>CZECH REPUBLIC Úřad pro ochranu hospodářské soutěže</p> <p>ESTONIA Riigihangete Amet (Public Procurement Office)</p> <p>CYPRUS Γενικό Λογιστήριο της Δημοκρατίας (Treasury of the Republic)</p> <p>LATVIA Iepirkumu uzraudzības birojs (Procurement Monitoring Bureau)</p> <p>LITHUANIA Viešųjų pirkimų tarnyba prie Lietuvos Respublikos Vyriausybės (Public Procurement Office under the Government of the Republic of Lithuania)</p> <p>HUNGARY Közbeszerzések Tanácsa (Public Procurement Council)</p> <p>MALTA Dipartiment tal-Kuntratti fil-Ministeru tal-Finanzi</p> <p>POLAND Urząd Zamówień Publicznych (Office of Public Procurement)</p> <p>SLOVENIA Državna revizijska komisija</p> <p>SLOVAKIA Úrad pre verejné obstarávanie</p>		

Art	Directive 1989/665	Art	Directive 1992/13 (Office for Public Procurement)	Art	GUO No. 34/2006

References:

Directive 71/305 is replaced by directive 2004/18

Directive 77/62 is replaced by directive 2004/18

Directive 89/48

[not available here]

Directive 90/531 is replaced by directive 2004/17

Directive 90/531, article 2.2.d has been suppressed

Directive 90/531, article 3.2.a is replaced by directive 2004/17, article 27.a:

Article 27

Contracts subject to special arrangements

Without prejudice to Article 30 the Kingdom of the Netherlands, the United Kingdom, the Republic of Austria and the Federal Republic of Germany shall ensure, by way of the conditions of authorisation or other appropriate measures, that any entity operating in the sectors mentioned in Decisions 93/676/EEC, 97/367/EEC, 2002/205/EC and 2004/73/EC:

(a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions;

Directive 90/531, article 16-18 are replaced by directive 2004/17, article 21-24:

Article 21

Contracts which are secret or require special security measures

This Directive shall not apply to contracts when they are declared to be secret by a Member State, when their performance must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned, or when the protection of the basic security interests of that Member State so requires.

Article 22

Contracts awarded pursuant to international rules

This Directive shall not apply to contracts governed by different procedural rules and awarded:

(a) pursuant to an international agreement concluded in accordance with the Treaty between a Member State and one or more third countries and covering supplies, works, services or design contests intended for the joint implementation or exploitation of a project by the signatory States; all agreements shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 68;

(b) pursuant to a concluded international agreement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;

(c) pursuant to the particular procedure of an international organisation.

Article 23

Contracts awarded to an affiliated undertaking, to a joint venture or to a contracting entity forming part of a joint venture

1. For the purposes of this Article, "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 44(2)(g) of the Treaty on consolidated accounts(27)(28), or, in the case of entities not subject to that Directive, any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence within the meaning of Article 2(1)(b) hereof or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

2. Provided that the conditions in paragraph 3 are met, this Directive shall not apply to contracts awarded:

(a) by a contracting entity to an affiliated undertaking, or

(b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 3 to 7, to an undertaking which is affiliated with one of these contracting entities.

3. Paragraph 2 shall apply:

(a) to service contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to services for the preceding three years derives from the provision of such services to undertakings with which it is affiliated;

(b) to supplies contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to supplies for the preceding three years derives from the provision of such supplies to undertakings with which it is affiliated;

(c) to works contracts provided that at least 80 % of the average turnover of the affiliated undertaking with respect to works for the preceding three years derives from the provision of such works to undertakings with which it is affiliated.

When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in points (a), (b) or (c) is credible, particularly by means of business projections.

Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

4. This Directive shall not apply to contracts awarded:

(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 3 to 7, to one of these contracting entities, or

(b) by a contracting entity to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period.

5. Contracting entities shall notify to the Commission, at its request, the following information regarding the application of paragraphs 2, 3 and 4:

(a) the names of the undertakings or joint ventures concerned,

(b) the nature and value of the contracts involved,

(c) such proof as may be deemed necessary by the Commission that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting entity complies with the requirements of this Article.

SUBSECTION 3

Exclusions applicable to all contracting entities, but to service contracts only

Article 24

Contracts relating to certain services excluded from the scope of this Directive

This Directive shall not apply to service contracts for:

(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;

(b) arbitration and conciliation services;

(c) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting entities to raise money or capital;

(d) employment contracts;

(e) research and development services other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity.

GUO-06-34, article 20.2:

(2) By exception to provisions of paragraph (1), the contracting authority has the right to apply the other procedures provided by art. 18 paragraph (1) only in specific circumstances provided by art. 94, art. 110 paragraph (1), art. 122 or art. 124.

GUO-06-34, article 23:

Article 23

The contracting authority does not have the right to divide the public procurement contract in more distinct contracts with lower value, nor to use methods for calculating the estimated value of the contracts for obtaining an under-evaluation of the estimated value of the contract, with the purpose to avoid the application of the provisions of the present law.

GUO-06-34, article 33:

Article 33

(1) The contracting authority has the obligation to state accurately within the tender documentation any request, rule, criteria, and other necessary information, in order to ensure that the tenderer/candidate is completely, justly and explicitly informed regarding the way of conducting the awarding procedure.

(2) The tender documentation shall contain, but not be limited by it, at least the following:

a) general information regarding the contracting authority, particularly regarding the address – inclusive telephone no., fax no., e-mail – contact persons, communication means, etc;

b) instructions regarding the mandatory deadlines and necessary formalities for participating to the awarding procedure;

c) if requested, the minimum qualifications requirements and documents that shall be submitted by the tenderers/candidates in order to fulfil the selection and qualification criteria;

d) the terms of references or, in the case of applying the competitive dialogue or negotiation procedure, the descriptive documentation;

e) instructions regarding the elaboration and submission of the technical and financial proposal;

f) detailed and complete information regarding the awarding criteria applicable for establishing the winning tender in line with the provisions of Chapter V – Section 3;

g) instructions regarding the use of the means of legal dispute;
information regarding the compulsory clauses of the contract.

GUO-06-34, article 60.1:

Article 60

(1) The written documents shall be sent by any of the following means:

a) by post;

b) fax;

c) electronic means;

d) a combination of the means provided at let. a) – c).

GUO-06-34, article 124:

Section 7

Request for tenders

Article 124

The contracting authority has the right to apply the request for tender procedure only if the estimated value of the public procurement contract, net of VAT, is lower than the equivalent in RON of the following threshold:

a) for the supply contract: 40.000 euro

b) for the services contract: 40.000 euro

c) for the works contract: 250.000 euro

GUO-06-34, article 251.2:

(2) By exception from paragraph (1) provisions, the contracting authority has the right to apply the other procedures provided for by article 250 paragraph (1), only in specific circumstances provided for by article 252 or article 124.

Civil Procedure Code

[not available here]

Law no. 188/1999 regarding the statute for the public servants

[not available here]

Government Ordinance no. 2/2001 regarding the juridical regime of the contraventions

[not available here]

Law no. 180/2002 with subsequent modifications and completions, approving Government Ordinance no. 2/2001

[not available here]

Law no. 52/2003 regarding the Labour Code

[not available here]

Law no. 161/2003 regarding some measures for ensuring transparency in carrying out public dignity functions, public functions and functions in the business environment, preventing and sanctioning corruption, with the subsequent amendments and completions

[not available here]

Law no. 554/2004 on administrative disputed claims:

[not available here]