



Government Favouritism in Europe

The Anticorruption Report

Volume 3

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Abbreviations

ACR	Anticorruption Report
AKP	Adalet ve Kalkınma Partisi
ALB	Abnormally Low Bids
ANRMAP	National Authority for Regulating and Monitoring Public Procurement
ANTAC	Anti-corruption Action Centre
ANTICORRP	Anticorruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption
BCE	Corvinus University of Budapest
BDP	Bariş ve Demokrasi Partisi (Peace and Democracy Party)
BGN	Bulgarian Lev
BOT	Build, Operate, and Transfer
CAE	Identification Data for Contracting Authority
CCI	Commission for Conflict of Interest
CHP	Cumhuriyet Halk Partisi (People's Republican Party)
CPO	Central Procurement Officer
CPV	Common Procurement Vocabulary
CSD	Center for the Study of Democracy
CVM	Cooperation and Verification Mechanism
DNA	Romanian National Anticorruption Agency
DPPS	Directorate for the Public Procurement System
EC	European Commission
EFSI	European Fund for Strategic Investments
EPPP	Electronic Public Procurement Platform
EU	European Union
EUI	European University Institute
FOI	Freedom of Information
GDP	Gross Domestic Product
GVA	Gross Value Added
HDZ	Croatian Democratic Union
HRK	The Croatian Kuna
IKS	Kosovar Stability Initiative
IMF	International Monetary Fund
LPP	Law on Public Procurement
MHP	Milliyetçi Hareket Partisi (National Movement Party)
MP	Member of Parliament
MSZP	The Hungarian Socialist Party
NABU	National Anticorruption Bureau
NAO	National Audit Office
NGO	Non-Governmental Organisation
NSI	National Statistical Institute
NSRF	National Strategic Reference Framework
NUTS	The Nomenclature of Territorial Units for Statistics
OC	Organised Crime
OCC	Organised Crime and Corruption
OP	Operational Programs
PFIA	Public Financial Inspection Agency

PPA	Public Procurement Agency
PPB	Public Procurement Board
PPP	Public-Private Partnership
PPL	Public Procurement Law
PPR	Public Procurement Registry
PSD	Partnership for Social Development
QOG	Quality of Government Institute
RPR	Reanimation Package of Reforms
SAO	State Audit Office
SAR	Romanian Academic Society
SCSPPP	State Commission for Supervision of Public Procurement Procedure
SEAP	Electronic Public Procurement System
SEEs	State Economic Enterprises
SICAP	Romanian Electronic System for Public Procurement
SME	Small and Medium-sized Enterprises
TCA	Turkish Court of Accounts
TED	Tenders Electronic Daily
TPC	Turkish Penal Code
TGNA	Turkish Grand National Assembly
TMAC	Minister of Transport, Maritime Affairs, and Communications
UNCAC	The United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
USKOK	Croatia's Office for the Prevention of Corruption and Organised Crime
VAT	Value Added Tax

2. Corruption Risks in the Romanian Infrastructure Sector

MĂDĂLINA DOROFTEI AND VALENTINA DIMULESCU

Improving public infrastructure in Romania has been a significant policy goal in the past 25 years. Unfortunately, although large amounts of public funds were spent in the construction sector from 2007 to 2013 (an average of 6.6% of GDP), the end results in terms of project finalisation and quality did not match this investment. One of the main presumed explanations is that public contracts were awarded in a particularistic manner to companies enjoying government favouritism to such an extent that their high profits are gained to the detriment of quality in all impunity.

The present research brings significant statistical evidence to the existence of government favouritism in public infrastructure procurement. The practice of single bidding (where only the favourite company bids) and the awarding of contracts to politically connected companies seem to exist in the entire public procurement market. Nonetheless, non-EU funded contracts present a higher corruption risk. Only one out of seven contracts receiving European funding were awarded to a single bidder, as opposed to one out of four contracts financed by state budget. Still, one out of every three contracts won by a politically connected firm involved European funding. Government favouritism (its simplest and most obvious indicators are single bidding and the existence of a political connection for winners) involve about 40% of the contracts between 2007 and 2013. Favouritism in public procurement is the rule of the game at the regional level, widespread at the local level and quite frequent in state-owned companies. If we estimate the value of kickback conservatively at 10 per cent (it is always solicited in cash, according to prosecutors) the figures returned evolved under three different governments from a minimum of 144 million euro in 2007 to a maximum of 333 million euro in 2011 (maximal) and an average of over 200 million yearly. Out of a total of 6064 contracts examined, 15% went to firms that financed political parties through legal donations.

Introduction

The 2014 Cooperation and Verification Mechanism (CVM) report of the European Commission (EC COM (2014) 37 final) pointed out that Romania has made improvements over the years in fighting corruption, but that the public procurement sector is particularly vulnerable to such risks, especially at the local level where administrative capacity is weak. This reflects also the perception of business people, journalists and ordinary citizens interviewed by Eurobarometer, who identify high risks of corruption. In Romania, the construction sector is especially important since public spending in this particular domain accounts for 58% of total public procurement.

The present research uses Romanian public procurement data from 2007 to 2013 and it reviews national procurement patterns in procurement legislation and practice. Detecting

corruption risks in public procurement is achieved through descriptive and inferential data analysis, noting the differences between EU funded public procurement and nationally funded public procurement. To trace the particularistic links which may influence public resources allocation (Mungiu-Pippidi 2014) we use both statistical and qualitative methods. Finally, we list some options on how to tackle access to public procurement information and help limit corruption.

I. Material Stake: Public Procurement in Romania

1. General View – the Public Procurement Market

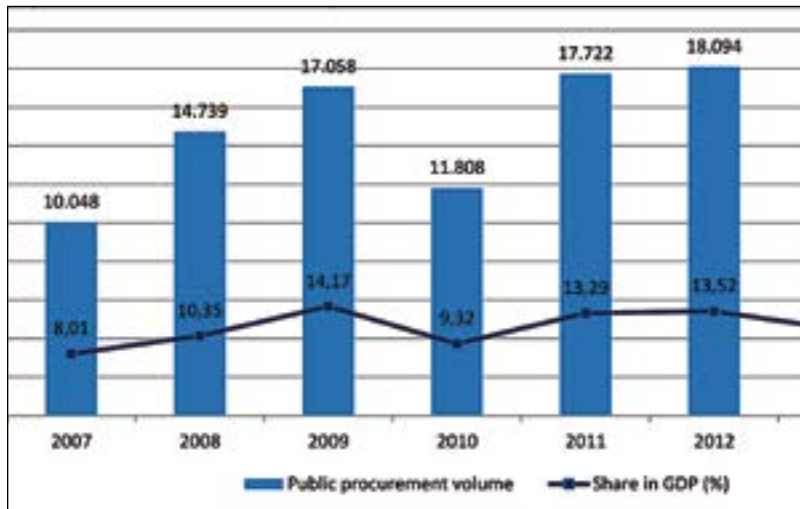
The necessary information on national level indicators was obtained through a freedom of information (FOI) request sent to the National Authority for Regulating and Monitoring Public Procurement (ANRMAP) and answered after more than 30 calendar days, the legal limit. The present report does not contain any information on Public-Private Partnerships (PPPs) because, although several projects had been publicly announced, no such partnerships were signed. In Romania, no PPP projects have been finalized since 2010, due to controversial legislation. Therefore, the following analysis of national level data on procurement relies entirely on the public procurement contracts registered in the Electronic Public Procurement System (SEAP). However, at least a third of public institutions did not use SEAP back in 2007 when it was set up. The number of users has gradually increased and, by the end of 2014, 14,721 contracting authorities were registered in SEAP (from 9,591 in 2007).

The existing official data shows that public spending increased continuously from 2002 until 2008. Only the world economic crisis, combined with the European debt crisis, put an end to its growth rate in terms of absolute value (million euros). As a percentage of GDP, total general government expenditure reached 40.6% in 2009, and slowly declined to 35.1% in 2013.

The three consecutive years that registered the highest government expenditure – 2007, 2008 and 2009 – were election years, in which the quality of governance decreased. For example, before each electoral campaign, the government decided to augment salaries and social expenditures above the state budget sustainability level (SAR 2010).

Government expenditure stabilised at around 50 billion euros in the last four years of the period under scrutiny. In contrast, public procurement (at least the volume declared in SEAP) reached a first peak of 17 billion euros in 2009 (14% of GDP), when the country was already facing economic crisis. While the Romanian economy contracted by 7.1% (negative GDP growth rate) in 2009, the augmentation in public procurement spending also coincided with a much higher total value of direct purchases. It may be that a new simplified procedure easing direct non-competitive purchases of goods, services and works, was used to help certain favourite firms face a more difficult economic environment. Another scenario suggests that public procurement at the time was greatly influenced by both the presidential and European elections in 2009 and by the need to finance companies that had contributed to these election campaigns.

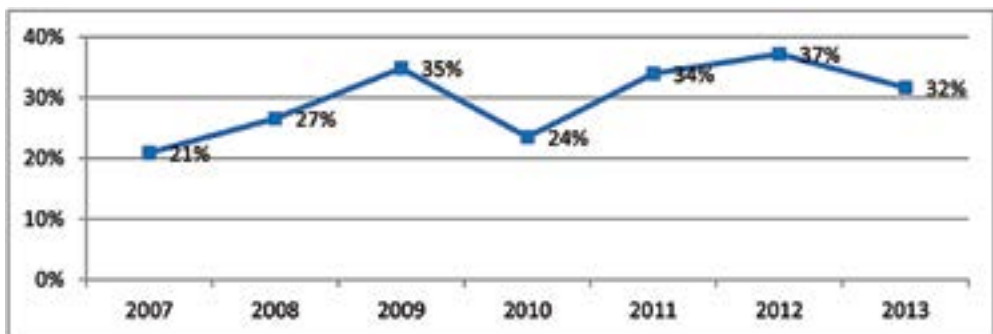
Figure 1. Total procurement volume and its share in GDP



Source: EUROSTAT, ANRMAP and own calculations

The declared value of public procurement contracts stalled in 2010 despite a growing number of contracts and direct purchases from year to year¹. One explanation for the phenomenon might be the impact of austerity measures combined with the end of the presidential and European electoral races (resulting in a smaller demand for public contracts from campaign sponsors). Romania signed a stand-by agreement with the International Monetary Fund (IMF) in 2009. At the time, government expenditure was slowly decreasing in absolute value, as public wages were being cut due to austerity measures. However, Romania barely implemented some of the IMF requirements and only mimicked economic reform during the period of 2009-2012 (SAR 2013). After 2010, public procurement returned to its 2009 share in total general government expenditure (Figure 2).

Figure 2. Share of public procurement in total general government expenditure (%)



Source: EUROSTAT, ANRMAP and own calculations

¹ The law was modified in 2009, when the threshold for direct purchases was raised to 15,000 euros from 10,000 euros.

In terms of the number of public procurement contracts, starting with 2008 there were over 100,000 contracts signed almost every year: the SEAP platform recorded over 122,000 contracts in 2009 and 2010, while in 2013 the number dropped to 81,000. Declared direct purchases progressed from 38,710 awards in 2007 to over 1.1 million awards in 2013, following closely the growing number of contracting authorities that registered in SEAP: from 9,591 public entities at the beginning of 2008 to 14,721 in 2014.

2. Public Procurement in the Construction Sector

In this case, the definition of public procurement in the construction sector refers to three divisions (44, 45 and 71) present in the Common Procurement Vocabulary (CPV) that cover all products and activities (works and services) related to the construction sector in the European Union. Thus, the evaluation of public procurement in this particular sector includes all contracts falling under the abovementioned CPV divisions.

Public spending in construction reached nearly 7 billion euros in 2007, peaked at 11.6 billion euros in 2009 (the year of European and presidential elections) and one year later dropped to 6 billion euros. Afterwards it surged again to 10.6 billion euros (2011) and in the following two years it settled to around 9.1 billion euros. By comparing public procurement in the construction sector with total public procurement, one concludes that the general trends are closely followed at the sector level. Despite the economic crisis, 2009 represents the peak, both in absolute value and in percentage – share of GDP and share of total government expenditure.

Two explanations may arise. One is that maybe the additional number of contracting authorities registered in SEAP brought a relevant increase in the volume of declared procurement without more spending actually taking place. But it may also be that procurement spending was kept up by politically connected companies that were either in financial difficulties or in need of funding in electoral years and which found alleviation in public contracts. The increasing number of contracting authorities registered in SEAP and of direct purchases can hardly explain the huge value spent in the construction sector in 2009 only, over 3 billion euros, compared to all the other years (**Table 1**), which suggests that elections (presidential and European) taking place in that year might have played a role.

Table 1. Direct purchases volume – public procurement in the construction sector

YEAR	2007	2008	2009	2010	2011	2012	2013
EUR million	0.04	0.62	3043.5	106.96	168.24	175.38	251.04

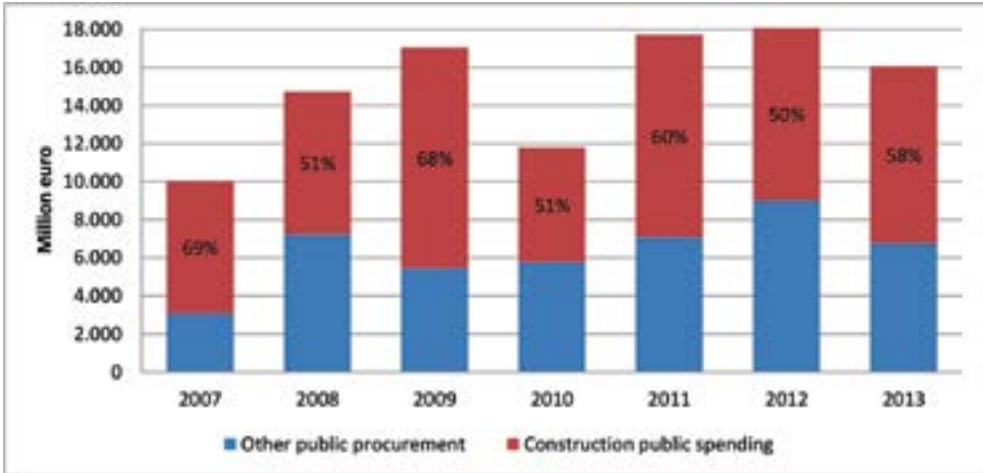
Source: ANRMAP

Although the number of contracting authorities registering in SEAP kept growing in subsequent years, the share of construction procurement in government expenditures or in GDP never returned to its 2009 level. Austerity measures had an impact on the 2010 construction related contracts, but as noted before, the IMF requirements became looser and looser in terms of public procurement. Also, the pressure of elections faded away until 2012.

Romania is well known especially for its serious problems with road infrastructure. The GGI – sub-index 2.02 *Quality of roads* ranks Romania even worse – from 100th place in 2006-2007 to 121st place in 2014-2015. According to EUROSTAT data, the length of motorways in use scarcely progressed from 113 km in 2003 to 550 km in 2012. Currently, the length of motor-

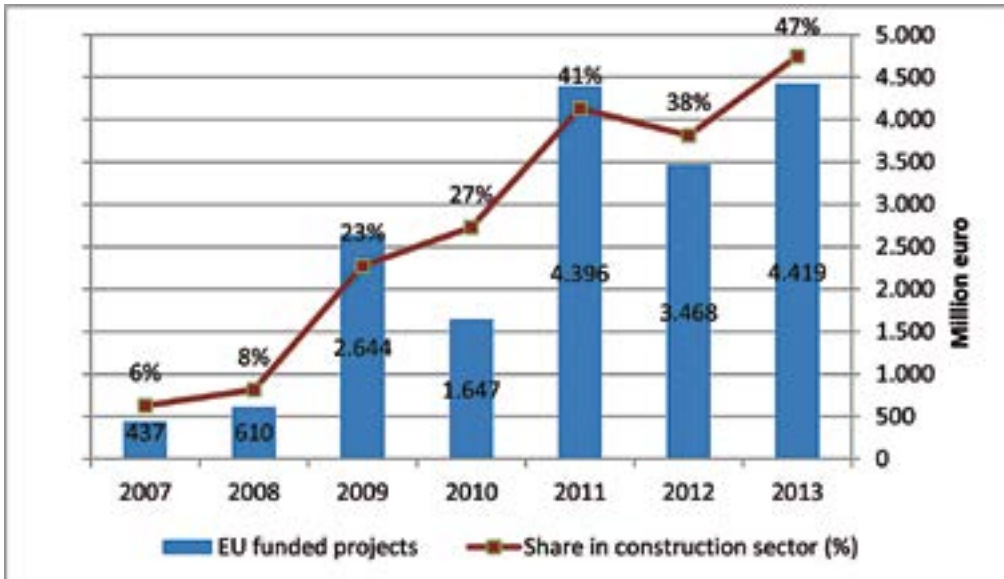
ways in use does not exceed 700 km. This is an extremely low number, compared to the length of national roads in Romania – around 17,000 km according to official Ministry of Transport (MT) statistics (Ministry of Transport, 2015). Thus, the important share of construction spending in total procurement, an average of 58% (Figure 3), is explained by the country’s need to modernise its infrastructure.

Figure 3. Share of construction spending in total procurement (%)



Source: ANRMAP and own calculations

Figure 4. Public procurement in the construction sector – European funding



Source: ANRMAP and own calculations

The state budget allocations for road infrastructure are insufficient to build all the necessary motorways. Many infrastructure projects thus received a boost along with the infusion of European funding. The share of EU funded contracts in the overall construction sector grew from 6% in 2007 to over 47% in 2013 (**Figure 4**). Romania had problems in accessing and spending EU funds in the first years of membership (2007 and 2008). It had to gradually accelerate its absorption rate so as not to lose the allocated money for the 2007-2013 programming period. The small number of EU funded procurement contracts in construction is illustrative of the state's poor capacity in absorbing EU funds earmarked for this sector – from a couple of hundred at the beginning of the programming period to over 1300 in the last years. One explanation may be that regulations and controls are stricter for this category of funds.

3. Firm Level Analysis of the Construction Sector

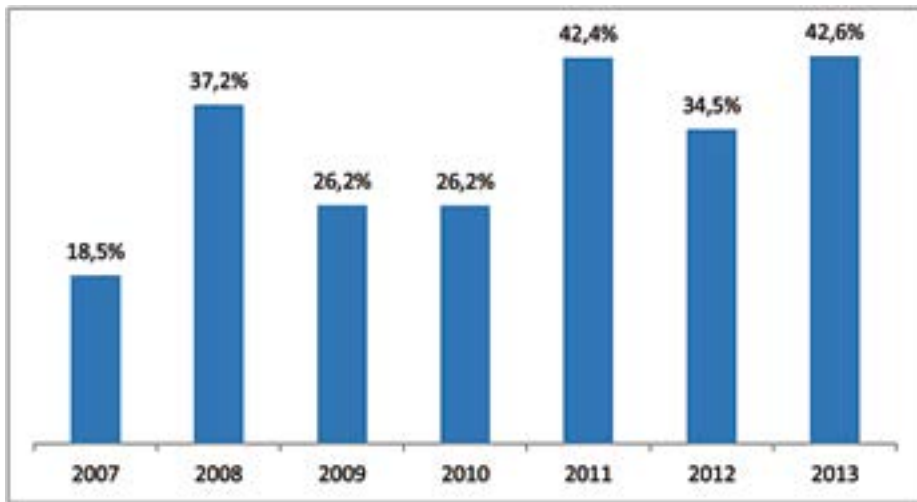
Romania's construction sector seems at first glance a non-concentrated market divided between many domestic companies and an important number of international companies. From 2009 to 2013, the number of international companies in the Romanian top 100 construction firms grew from 27 to 35, and their profits surged. In 2009 multinational firms made up 16% of the total profit and in 2013 the figure reached almost 65%. At the same time, Romanian companies' average turnover for these five years was close to 68.3%, ranging from 70.9% in 2009 to 59.8% in 2013. This is a sign of low efficiency in activities run by domestic companies compared to international companies. All in all, national firms prevail in the overall construction sector (private and public markets combined), which is not surprising. Nevertheless, the number of international companies and their profits indicate fierce competition on the market.

The database used in the analysis contains 1484 winning companies for the period January 1st 2007 – December 31st 2013, out of which 145 are international firms (9.8% out of total number of firms). Over 46.5% of all firms won an EU funded project in the construction sector in the researched period. Out of the 691 companies that participated in public procurement in the construction sector and won EU funded contracts over 1 million euros, 107 were international companies (over 15% of all companies).

More than 73% of the international companies present on the public procurement construction market² compete with national firms for EU funds. For the entire 2007-2013 period, EU contracts account for 37.1% of total public procurement, with international companies holding a high share on this specific market segment (almost a third on average). In the same year, 2011, when one of the highest shares in EU funded public procurement contracts won by international companies was recorded, the largest number of international companies was active on the market (see **Figure 5**).

² In this context, the public procurement market consists of contracts over 1 million Euros.

Figure 5. EU funded public procurement projects in the construction sector - share of contracts (by value) won by international companies



Source: own calculations

A large number of firms with very small market shares make up the public procurement construction market involving contracts with a value of over 1 million euros. The number of companies that compete in the public procurement sector involving EU funded projects increased as the market became more transparent and the absorption rate of European funds had to be augmented. Interestingly enough, domestic firms more than doubled their numbers in 2009, when international firms' market share in EU funded projects in the construction sector dropped from 37.2% in 2008 to 26.2% in 2009 (Figure 5).

Does public funding matter for the average construction company? A brief investigation of relevant top 45 construction companies in terms of total turnover (in 2013) that won EU funded contracts in the researched period shows that roughly one fifth of their yearly turnover depends on public funding. A small number of firms, around 6, make over 50% of their revenues in connection with public procurement contracts. Almost 15 companies present in the top 45 companies do not depend at all on public contracts above 1 million euro (average for the period 2008-2013).

II. Detecting Corruption Risk in Public Procurement

1. Public Procurement Contracts: Observations

Around 440,000 award notices were extracted from SEAP resulting in a database consisting of 6064³ contracts above the 1 million euro⁴ threshold won by 1484 companies in the period 2007-2013. Contracts with missing data were excluded. We focussed on all public procurement under 44, 45 and 71 CPV divisions, 557 framework contracts included. Most of the contracts (94.7%) imply works, while 5.3% are public procurement contracts for the

³ The discrepancy between the high number of award notices and the contracts included in the database resides in the fact that most of the awarded contracts do not exceed 1 million Euros.

⁴ The contract values have been converted into EUR using an average monthly exchange rate. Inflation was not taken into account.

supply of goods or services. The final database comprises 53% of the overall value of public procurement in the construction sector and over 68% of overall value of EU funded public procurement in the construction sector⁵.

Almost a third of all contracts won in the public construction sector also received external EU financing (1905 out of 6064 contracts, see **Table 2**). It must be noted that the award notices contain unstructured information (filled in heterogeneously) regarding types of EU funding which had not been processed. Still, one could observe that besides the Structural Funds and the Cohesion Funds, other sources of financing included the European Bank for Reconstruction and Development, the European Investment Bank, the Schengen Facility or the pre-accession instruments (PHARE, ISPA and SAPARD).

The award criterion for all procedures was in 46.3% of the cases “the lowest price”. Instead, contracts receiving European funding were awarded at “the lowest price” in 37.4% of the cases, the rest being awarded based on “the most economically advantageous” criterion. Also, 1 out of every 31 contracts was awarded at a price exceeding the estimated value of the contract and 1 out of every 19 contracts were awarded exactly at the estimated price⁶.

Table 2. Database description

	2007	2008	2009	2010	2011	2012	2013	All years
Total no. of contracts	823	847	765	773	1124	881	851	6064
Total no. of EU funded contracts	45	76	195	298	548	414	329	1905
Total no. of contracts with single bidder	230	224	152	175	267	156	93	1297
Total no. of EU funded contracts with single bidder	13	16	21	52	105	34	18	259
Combined value of awarded contracts (EUR million)	2998	4374	4094	3744	7644	5044	4518	32 417
Combined value of awarded contracts that received EU funding (EUR million)	282.8	523.6	951.5	1321.2	3699	2653	2598	12 029.6

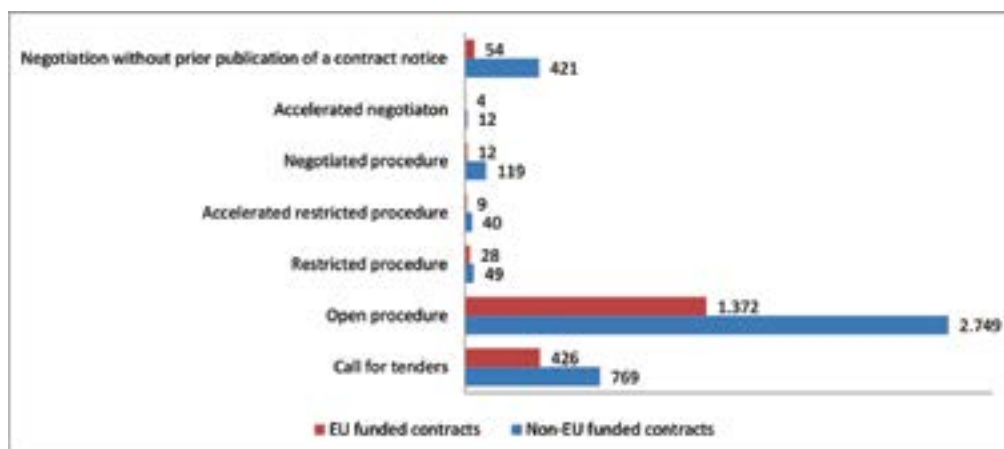
Source: own calculations

Most of the contracts have been awarded through an open procedure – any company fulfilling the criteria stated in the SEAP notice could submit an offer. This is the case for EU funded contracts as well. However, non-competitive procedures such as types of negotiation or restricted accelerated procedure are less frequent in the awarding of contracts that receive European financing, as opposed to nationally funded contracts (**Figure 6**).

⁵ The percentages are probably even greater, as we operated downwards corrections on the value of contracts.

⁶ There were 4883 contracts and framework contracts for which the estimated value was filled in.

Figure 6. Procedures used in awarding PP contracts



Source: own calculations

2. Market Shares, Single Bidding and Politically Connected Private Firms

Firstly, we investigated if there is market concentration indicating non-competitive contract awarding. In computing yearly market shares for each of the unique winners we excluded the framework contracts – as they are signed for long periods of time, they involve large values and they do not imply that the whole amount be used up by the end of the period. We did not have access to subsequent contracts with full information, therefore the SEAP database was reduced to 5507 contracts above 1 million euros.

For each year of the researched period, the four-firm concentration index was under 25%, while the Herfindahl-Hirschman Index⁷ registered extremely small values – under 227 out of a maximum of 10,000. Therefore, we conclude that there is no market concentration in the Romanian public procurement construction sector.

Secondly, we needed to establish how widespread single (non-competitive) bidding is and under what circumstances it occurs. The practice of single bidding was found in around 21.4% of the cases, meaning one out of every five contracts was won by single bidders. Also, one out of every 7 contracts was awarded to official donors of political parties (averaging 13% of the entire awarded value, and 12% of the total value of European funded contracts). Although international firms have not won many contracts over the years (under 8%), on average, they were awarded a third of the total value of EU funded contracts during the researched period, reaching a share of 42.6% in 2013 (see **Figure 5**).

EU funded contracts recorded a much smaller number of single bids, although the year 2011 is a notable exception. Almost half of the contracts in this category received European funding in the respective year. Thus, **one out seven EU funded contracts was awarded non-competitively through single bidding, as compared to one out of four in the case of nationally funded contracts**. Also, the combined value of awarded contracts that received EU funding is quite large, exceeding one third of the total value of all contracts in the database (**Table 2**).

⁷ The Herfindahl-Hirschman Index is used in assessing the level of concentration on a certain market. It aggregates the squared market shares expressed as a percentage (not in absolute value). Thus zero means perfect competition while 10,000 indicates a monopoly.

Single bidding is encountered both at local level and at national level (**Table 3**). The practice has been declining for the past few years (see **Table 2**). Consequently, the number of single bidders has decreased, from 153 in 2007 to 69 in 2013. An exception is the year 2011 when the highest number of single bidders was recorded – 183.

In 283 of the cases stretching from 2007 to 2013, single bidder contracts were awarded to politically connected companies (political donors and firms with other political ties), accounting for 21.8% of the total number of single bidding contracts. In contrast, party donors and politically connected firms won on average 167 contracts per year. The year 2011 is yet again an exception since 221 such contracts were awarded.

Table 3: Single bidding contracts as share of the total number of contracts awarded by different types of contracting authorities

	AR	Comp.	CH&LC	County C.	Deconc.	Central G.	CNADNR	Road D.
Share of single bidding	33.3%	21.4%	20.9%	21%	17%	22.2%	22.3%	26.8%
Out of a total no. of contracts	114	1962	2248	548	441	126	444	71

Legend: AR: autonomous regions Comp.: fully or partially state-owned companies CH&LC: city/town halls and local councils County C.: county councils Deconc.: deconcentrated public service departments Central G.: central government CNADNR: Romanian National Company of Motorways and National Roads Road D.: road and bridges departments awarding contracts in the road infrastructure sector at local and county level. Source: own calculations

In order to explain the occurrence of single bidding, we ran some simple logistic regressions. Model (1) and (2) in the regression table below (**Table 4**) draw upon the database containing information on over 1 million euro contracts extracted from SEAP. Model (3) draws upon a manually constructed database which includes road infrastructure contracts that have different values, above and below 1 million euros. Statistical analysis indicates that single bidding is negatively and significantly associated with EU funded projects in both models (1) and (3). In the first case, winning a contract with European funding is associated with a decrease of 52.7% in the probability of having won by single bidding. **Therefore, the results point to the fact that single bids are more common in winning Romanian public budget contracts. EU funded contracts, in contrast, are awarded on a more competitive basis.** Moreover, being a politically connected firm leads to a 21.2% higher probability that the firm in question won via single bidding – there is a significant association between having a political connection and winning through a single bid.

Table 4. Logistic analysis for single bidding with different constraints as explaining variables

Independent variables	Dependent variable: Single bidding					
	(1)		(2)		(3)	
	Coeff.	Exponentiated coeff.	Coeff.	Exponentiated coeff.	Coeff.	Exponentiated coeff.
EU Funding	-0.748***	0.473***			-0.480*	0.618*
	(-9.87)	(-9.87)			(-2.20)	(-2.20)
Political Connection			0.192*	1.212*		
			(2.51)	(2.51)		
Constant	-1.100***		-1.340***		-0.487***	
	(-30.72)		(-38.01)		(-11.44)	
Observations	6064		6064		2448	
pseudo R-sq.	0.0170		0.0010		0.0016	
Logit estimations; z statistics in parentheses; * p<0.05, ** p<0.01, *** p<0.001; Note: Exponentiated coefficients give de odds ratio (the ratio by which the dependent variable changes for a unit change in an independent variable).						

Source: own calculations

Thirdly, we looked for evidence of favouritism in patterns of allocation. The data shows some “lucky” private firms, which win far too many contracts compared to the average. Such companies are also political party donors or some political connection can be established in relation to them (Delta ACM 93, Hidroconstructia, Tel Drum, Cast, Selina, Tehnodomus, Tmucb, Tehnic Asist, Victor Construct, Deltacons, Pa&CO or Romstrade). Other frequent winners include Top 55 companies, such as Confort, Vega’93, Tehnologica Radion, Tancrad, Spedition Umb, Strabag, Straco Grup, Inspet, Condmag, Dafora, Technocer, Constructii Erbasu, Iasicon etc.

Privileged firms are awarded mainly nationally funded contracts (two out of three contracts are non-EU funded, from a total of 1175 contracts from 2007 to 2013). Nevertheless, the number of awarded contracts is significantly associated with the existence of political connections irrespective of the funding origin, be it national or European. Even more interesting, international companies are significantly negatively associated with the number of non-EU funded contracts, while being significantly associated with the number of EU funded contracts. International companies are more active on the EU funded public procurement market and seem to be either discriminated against or not competing on the nationally funded procurement market. Finally, **the number of contracts won can be explained by political connections and the frequency of single bidding in pre-electoral years in almost 45% of the cases** (see Table 5).

To document ‘political connections’ a list of all firms which officially donated to political parties between 2007 and 2013 was compiled. Firms signalled by investigative journalists to have political connections were also added (a full list documenting such ties is available upon request⁸). National and local media reports were also used to document less apparent connection types (more distant relatives, former colleagues of award givers who are shareholders in privileged companies).

⁸ Best investigative journalism sources in Romania are Rise Project (<https://www.riseproject.ro/>) and Clean Romania (www.romaniacurata.ro).

Table 5. OLS analysis for number of awarded contracts

	Only non-EU funded			Only EU funded			All contracts
	Dependent variable:			number of awarded contracts			
Independent variables	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Political connection	0.359*** (3.75)			0.281*** (3.68)			0.282* (2.10)
International company			-0.602*** (-10.02)			0.415*** (6.19)	
Single bidding frequency							1.286*** (13.89)
Constant	1.112*** (47.16)	0.801*** (24.49)	1.217*** (46.56)	0.573*** (30.16)	0.518*** (24.67)	0.581*** (28.22)	1.169*** (24.82)
Observations	3090	3090	3090	3090	3090	3090	1377
R-sq.	0.0089	0.297	0.015	0.0084	0.0331	0.0111	0.4486

Robust OLS regression estimations; t statistics in parentheses; * p<0.05, ** p<0.01, *** p<0.001; *Note: the OLS regression for all contracts takes into account the pre-electoral years 2007, 2008 and 2011. Source: own calculations*

3. Evidence of Agency Capture

Corruption is abuse of authority resulting in a preferential (particularistic) social allocation (Mungiu-Pippidi 2013). In order to trace it, we investigated whether or not one private contractor obtained a disproportionate share of contracts from a public agency⁹. We aggregated the yearly total value of contracts awarded by contracting authorities and computed the share of each winner in relationship with the respective contracting authority per year. **Agency capture was defined as being the case when the share of the total value awarded by one contracting authority during a year to only one company surpasses 50%, if the contracting authority awarded at least three contracts in the respective year.**

In accordance with this definition, the resulting database recorded, from 2007 to 2013, a number of 211 capture situations (cases when a contracting authority gave more than 50% of its total awarded budget to only one company) which involved 435 captured contracts. At least one fifth of the capturing involved restrictive awarding procedures. Although the captured contracts accounted for only 7.9% of the total number of analysed contracts, the value of captured contracts rounded up to over 17% of the entire value investigated in the researched period: 4.7 billion euros out of 27.5 billion euros. The pre-electoral year 2011 was again a notable exception in the average annual captured contracts in terms of total values, with a share of 21.7%.

When referring to the total captured value (4.7 billion euros), both national and international firms won large portions of public procurement contracts (22 international companies account for 36.3% of the total captured value). Party donors and other politically connected firms (a total of 22 different companies) accounted for 28.1% of the total captured value.

Most of the captured agencies are contracting authorities at sub-national level: a total of 77 capture cases were registered at local level and 69 at county level, amounting to almost 70% of all captures. In terms of contract value, the same sub-national capture makes up to 46.1% of the

⁹ Framework contracts were omitted, leaving a total number of 5507 contracts under scrutiny. As in the case of market shares, they would have distorted the information regarding yearly total volumes.

total value of capture (or 2.16 billion euros). State companies, however, award **the highest total value** (over 45% of the total captured contracts or 2.1 billion euros) since they account for a large portion of the 2007-2013 awarded contracts (46% or 12.7 billion euros). Still, **the highest rate of capture** (reflected in the share of captured contracts out of the total value of contracts awarded by one type of agency) manifests itself at the central government level (37.1%) which accounts for only 6% of the total awarded contracts but those are contracts with high value. The central government awards more valuable contracts since it disposes of the most resources.

County councils, however, trade openly with favourite firms. Nearly two thirds can be considered as being captured (27 of 42, Bucharest City Hall included) and hold the second place in terms of rate of capture (26.3% of the awarded value is captured). Canvassing all statements of assets and interests of county presidents, nicknamed ‘local barons’ in the Romanian jargon (59 County Council Presidents who held office from 2008 to 2013) plus the 215 public procurement award committee presidents – considered as being the main award givers – at county level in the same interval we found an insignificant number of direct conflict of interest cases. Favourite companies at county levels do not directly belong to politicians or bureaucrats in charge of procurement, as in the early transition years: connections are more subtle and can only be found by researching early business associations (or memberships in various select clubs, such as masonry) to find those business people who are trusted by politicians. In many such cases, now under official corruption investigations, a kickback of 10-20% is the rule (in cash). Favourite companies are needed also because of the trust factor necessary for such transactions.

Logistic regression analysis indicates that agency capture is significantly associated with both single bidding and with politically connected firms. Instead, **the same association is not significant in cases of agency capture involving only contracts funded by the European Union** (see **Table 6**). The more demanding rules related to EU funding thus prevent open particularistic allocation. However, since we know that politically connected companies are more likely to win also EU funds (**Table 5**), there are probably other, less obvious ways than open capture to stream these funds to favourite companies.

Table 6. Logistic analysis for Agency capture with different constraints as explaining variables

	Full sample of unique captures/ non-captures		Only EU funds	
	(1)	(2)	(3)	(4)
	Dependent variable:		agency capture	
Independent variables	(1)	(2)	(3)	(4)
Single bidding	0.666***		0.1325	
	(4.16)		(0.47)	
Political connections		0.344*		0.336
		(1.98)		(1.31)
Constant	-3.245***	-3.127***	-2.936***	-2.993***
	(-32.57)	(-32.48)	(-24.61)	(-23.72)
Observations	4679	4679	1713	1713
pseudo R-sq.	0.011	0.0024	0.0003	0.0025
Logit estimations; z statistics in parentheses * p<0.05, ** p<0.01, *** p<0.001; std. errors are clustered by agency Source: own calculations				

CONCLUSIONS AND RECOMMENDATIONS

The present analysis of public spending in the Romanian construction sector shows patterns of systematic particularism in the allocation of public contracts. **Out of a total of 6064 contracts, 15% go to firms that financed political parties through legal donations.** If we take into account all contracts (excluding framework contracts) that were **awarded through single bidding, politically connected companies or capture** (according to the abovementioned definition), then for the entire 2007-2013 period **almost 42% of transactions are particularistic, amounting to 46% of the total awarded values.** A recent avalanche of cases opened by National Anticorruption Agency (DNA) in 2014 and 2015 involve all three major political parties which governed in the same time interval. These investigations also show that the kickback for privileged companies has become a rule. If we estimate the kickback value at 10 per cent conservatively (it is always solicited in cash, DNA 2015), **under three different governments from a minimum of 144 million euro in 2007 to a maximum of 333 million euro in 2011 (maximal) and an average of over 200 million yearly.** The true value is probably higher, as the contracts excluded from our sample are those not advertised on public portals or/and smaller than one million euros. Those are more prone to be granted via connections.

The agency-capture analysis indicated that corruption risk in public procurement occurs frequently at sub-national and in state-owned companies- this being a less frequent practice at the central government level, unfortunately counterbalanced by higher values of particularistic contracts. The research results on county councils are corroborated by the recent investigations and indictments filed by the anti-corruption and national prosecuting agency, DNA, whereby more than half (22 out of 41) of county council presidents are being charged with acts of corruption. Most of the companies that “captured” contracting authorities are politically connected firms. Moreover, following the analysis above, **one out of ten contracting authorities has been captured by a single company.** However, there is no guarantee that particularism does not present itself in a situation of non-capture, in the more subtle forms of collusion, shadow bidders and others.

European funded contracts, compared to non-EU public contracts, are less prone to corruption, as the rules are more strictly implemented and the controls are more frequent. The EU funded public procurement market is competitive, with a strong international presence. **Only one out of seven EU financed contracts were awarded by single bids, as opposed to one out of four contracts financed by the state budget.** The practice of single bidding and the tendency to establish political connections exist in the entire public procurement market. Nonetheless, the non-EU funded contracts present a higher corruption risk as single bidding is negatively associated with EU funding, but positively associated with political connections. Agency capture is significantly associated with both single bidding and with politically connected firms, but not in the case concerning strictly EU funded contracts. Still, one out of every three contracts won by a politically connected firm received European funding. Data analysis concluded also that the number of awarded contracts per company can be explained by single bidding and the existence of a political connection in 44% of the cases in pre-electoral years.

One of the main requirements for detecting corruption is access to data and information. The Romanian government’s commitment to increase transparency in the public procurement sector is currently not evident and the tools in place do not favour deep analyses of corruption risks. More troubling is the fact that not even the state has the right instruments to perform a correct statistical evaluation. Resources exist in the already committed budgetary allocations

(such as those for open government), but are not spent and implemented or could be covered by European funding. Political will, and not funding, seems to be the problem. Thus, our recommendations are the following:

1. The new electronic system for public procurement (SICAP) should enable information to be extracted in a functioning unitary database which would contain several verification and selection filters (the system should, first and foremost, not allow crucial information to be missing). Omitting a contract must automatically be penalized with administrative fines. Plus, the data export module from SICAP to CSV format should allot greater attention to diacritic symbols.
2. According to the National Anticorruption Strategy 2012-2015, Specific Objective 6 titled “Increasing Efficiency of Corruption Preventing Mechanisms in the Area of Public Procurement”, “assembling a database of companies that have carried out contracts with public funding inappropriately” is being considered. However, its implementation has been trailing for a while. It would be useful for this “black list” of companies to be instantly available to all actors involved in public procurement, at least in the future, through SICAP. For EU funded projects, a similar system is the so-called ARACHNE tool whereby public servants within contracting authorities have the possibility of accessing an extensive amount of information on companies. Contracting authorities would be most advantaged, as they would have access to the names of business operators towards which they should exercise caution when awarding both nationally funded and European funded contracts. Contracting authorities could be encouraged, in the bid evaluation stage, to seek out the names of bidding companies in this database, and ignoring potential alarming signs could be considered evidence of intended fraud. Also, ANRMAP or its successor agency could publish regular reports on this issue and make these available to the general public.
3. The annual report of each public authority or company should include a chapter on the effectiveness of procurement (‘value for money’). This report should be published no later than February of the following year. The methodological rules of FOI Law 544/2001 already specify that the report needs to contain a justification of the authority’s budget (how objectives are met through spending) and can additionally contain a template for a chapter on public procurement. Unfortunately, at this time there is no department in the Romanian Government to monitor the completion of this report, and the Court of Accounts is limited to procedures and cannot make the necessary connection between how much tax-payers pay and how much they get for their money. A system of administrative sanctions for omitting to fill in this report is also necessary.
4. The practice of single bidding and that of the “lowest price” criterion should be legally limited.
5. The Romanian government should give up its intention of subordinating the future national procurement agency to the government through the Ministry of Finance and work with EU Commission assistance instead to depoliticize and professionalize the agency’s personnel.

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The fundamental purpose of ANTICORRP is to investigate and explain the factors that promote or hinder the development of effective anti-corruption policies and impartial government institutions. A central issue is how policy responses can be tailored to deal effectively with various forms of corruption. Through this approach ANTICORRP seeks to advance the knowledge on how corruption can be curbed in Europe and elsewhere. Special emphasis is laid on the agency of different state and non-state actors to contribute to building good governance.

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