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DATA PROTECTION IN THE PUBLIC PROCUREMENT PROCESS

Irina ALEXE¹
Daniel-Mihail ȘANDRU²

Abstract:

Transparency is one of the fundamental principles in public procurement. At the same time, the General Data Protection Regulation (GDPR) requires all operators, whether public or private, to respect privacy and data protection. The study starts from the premise of avoiding sanctions and of complying with the obligations of the contracting authority by knowing the hierarchy of values protected by the regulations in force. An important role in ensuring compliance with the law is to correlate the activity of the data protection officer with the procurement department. The stages of the public procurement procedure will be analyzed in the most relevant aspects, from the publication in the Electronic Public Procurement System and the management of personal data submitted by bidders in the procurement procedures until the publication of the results. We will observe whether data protection can become an award criterion and the influence of bidding data breaches in procurement procedures. A sensitive issue is the protection of data transferred outside the European Union and, from the point of view of competition law, the consequences of the associations, and we will finally discuss some aspects regarding the corrective measures that the data protection authority may impose.

Keywords:

Public procurement; data protection; transparency; data protection officer; Electronic Public Procurement System; bidders data; award criterion; competition law; associations; corrective measures; data transfer.

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I. Introduction

This article intends to discuss an example of conflict of values that are protected, at the same time, by the lawmaker.³ The transparency of the procedure through which an agreement is concluded by a contracting authority might be conflicting with the personal data protection for which the controller has a duty towards the data subjects some involved in the public procurement process, or the obligations of the contracting for the product they intend to procure. Both data protection and public procurement (Alexe & Şandru, 2018; Şandru, 2018e) underwent through reform processes at the level of the European Union. These reform processes are based both on anterior legislation and on the case-law provided for by the Court of Justice of the European Union (CJEU).

II. General Data Protection Regulation – Obligations and Sanctions

The General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council, 2016) (GDPR for the purpose of this article) underlines that the right to data protection is not absolute (consideration 4). The controller, the natural or legal person establishing the purposes and means of the processing, is responsible for the measures implemented with regard to data security (art. 24 GDPR). In principle, if the context does not stipulate otherwise, in this article the controller is the same person with the contracting authority. The Regulation is in force since the 25th of May 2018 and provides several types of obligations for the controller: a) technical and organisational measures, designation of the data protection officer (Alexe, 2018), notification of the data subjects in the event of a data breach etc.; b) compliance with the general principles – lawfulness of processing, minimization, limitation with regard to the purpose, integrity of data, etc. (e.g., Şandru, 2018a; 2018b; 2018c) respect of the rights of the data subjects – right to object, right to erasure, right to data portability, right of access and rights of information (Şandru, 2018e) etc.; d) compliance with the conditions on the transfers of personal data to third countries (non-EU). The sanctions for the lack of compliance with these provisions are very strict,⁴ despite the fact that the Romanian law for the implementation of the GDPR reduced drastically the

³ The Romanian version was published in *Curierul judiciar*, no. 1/2020, p. 32-36. Since the publication of the Romanian version some information was updated on 26 November 2020. The authors would like to thank Mr. Bogdan Ţopan for the support offered in translating the article in English.

⁴ With regards to sanctions: Irina Alexe, *Regimul sancționator prevăzut de Regulamentul (UE) 2016/679 privind protecția datelor cu caracter personal*, *Revista Curierul Judiciar* nr.1/2018, p.36-42 (2018d); Irina Alexe, *Experiențe ale aplicării amenziilor administrative din România în domeniul GDPR*, *Pandectele române*, nr. 5/2019, p. 79-95 (2019).

upper limit of the administrative fines and introduced minimal limits of these fines for the controllers in the public sector (Law no. 190/2018 on implementing measures to Regulation (EU) 2016/679 of the European Parliament and of the Council, 2014).

III. Right of information and data protection

Natural persons have the right to private life, regardless of the quality they hold, and the protection of personal data is enshrined as a distinct right from the right to private life in the Charter of Fundamental Rights of the European Union⁵. In the Romanian law, the main mean for exercising the right of information, excluding the transparency obligations provided for by the legislation in the field of public procurement⁶, is the Law no. 544/2001 on Free Access to Public Information. There is a well-known exception from this regulation, in its art. 12 para. (1) d), respectively “personal information under the terms of the law”. The case-law established that „the hypothesis of exception provided for by art. 12 para. (1) d) is not incidental, given that the information requested under the request 3572/24.03.2014 are not personal data, the names of the authorized A.N.E.V.A.R (The National Association of Authorized Romanian Valuers) valuers being public, whereas these are inscribed in the Tables of the Association, published on an annual basis in the Official Journal of Romania, according to provisions of art. 9 and 11 of the Rules for organizing and functioning of A.N.E.V.A.R. The court of first instance deemed as correct the fact that the defendant requested solely the communication of the names of the evaluators, which are already public, and not of other personal data”. Moreover, “the evaluation reports, and, implicitly, the names of the valuers that drafted them, are the basis of the findings reports containing information pertaining to the fulfilment of the contractual duties” and that “simply invoking a non-disclosure agreement, inserted in the findings reports, is not sufficient for breaking with defending the public character of the documents and the free access of the citizens to public interest information” (Bucharest Court of Appeal, Section VIII, Administrative and Fiscal Court, 2015). Therefore, the private life and the data protection were subjected to certain limitations for the people which exercise some functions, occupations or exercise their activity in a liberal

⁵ On the significance of this distinction, please refer to Adriana-Maria Șandru, *Privire critică asupra jurisprudenței Curții de Justiție a UE referitoare la interpretarea art. 8 privind protecția datelor cu caracter personal din Carta drepturilor fundamentale a Uniunii Europene (CDFUE)*, în *Pandectele Române*, nr. 1/2018, p. 26-33 (2018).

⁶ The principle of transparency as mentioned in art. 2 of the Law no. 98/2018 on public procurement and detailed in art. 142 and the following makes reference rather to the procedural transparency. Moreover, the other mentions, including acting in a transparent manner (art. 49) does not primarily refer to the disclosure of information but only to the legal regime of the agreement of this type of contract.

profession.⁷ In a recent decision of the Spanish Data protection authority (Agencia Española de Protección de Datos, 2021) it was found, at the request of a person, that the natural persons attending a public procurement procedure cannot request to Google the deindexation from the searching function of the searching engine. In a first step, Google dismissed the request for erasure of the URL addresses because it considered they are public interest data published on institutional web pages (Boletín Oficial del Estado). Although in principle this can constitute a prejudice to the private life and an illegal processing of personal data of a natural person on the Internet, the request for erasure should be directed against Boletín Oficial del Estado.⁸

In another case, the instance suggested that all personal data from contracts and bills can be rendered anonymous: “the applicant was not interested in obtaining of personal data related to the supplying company or to natural persons mentioned in contracts or bills or other data pertaining to the category of exception, that could have been erased from the copies of the documentary evidence communicated to the applicant. (...) This information related to the price, similar to the one concerning the name of the supplier, cannot be confidential, the award of a contract, even the direct one, from public funds requiring the compliance of the purpose and principle of public procurement (...), respectively the promotion of competition between economic operators, guaranteeing of equal treatment and non-discrimination of economic operators, ensuring transparency and integrity of the public procurement process, ensuring an efficient use of public funds, non-discrimination, equal treatment, mutual recognition, transparency, proportionality, efficiency of the use of funds,

⁷ The Court of Justice looks in the sense of its case law, even if in a different matter, concerning the right to erasure. In a case, the administrator of an Italian commercial undertaking requests his erasure from the Trade Registry whereas it affected his chances for being employed again, one of the companies managed by him being bankrupt.” With regard, inter alia, to the ground for legitimation provided for in Article 7(e) of Directive 95/46, it should be noted that the Court of Justice has already held that the activity of a public authority consisting in the storing, in a database, of data which undertakings are obliged to report on the basis of statutory obligations, permitting interested persons to search for that data and providing them with print-outs thereof, falls within the exercise of public powers (see judgment of 12 July 2012, *Compass-Datenbank*, C-138/11, EU:C:2012:449, paragraphs 40 and 41). Moreover, such an activity also constitutes a task carried out in the public interest within the meaning of that provision.” (point 43), moreover, „In view of this, it appears justified that natural persons who choose to participate in trade through such a company are required to disclose the data relating to their identity and functions within that company, especially since they are aware of that requirement when they decide to engage in such activity. (pct. 59) Please refer to *Manni* C-398/15, Judgement of the Court of 9 March 2017, ECLI:EU:C:2017:197. This last argument is also useful with regard some situations in which natural persons perform contracts or are agents of undertakings that performs contracts with contracting authorities.

⁸ There is an important literature showing that art. 17 of GDPR is more restrictive than the ruling of Google Spain (Google Spain and Google, 2014; Ausloos, 2020).

accountability.” (Bucharest Court, Section II, Administrative and Fiscal Court, Civil Sentence no. 3903/2015, 2015).

From the point of view of data protection, the publication of personal data of employees in any public procurement document has a legal ground, respectively the employment contract with the employee, or the contract through which the service was outsourced. Sometimes, the legitimate interest of the employer also represents a sufficient ground for publishing the contacts if this action cannot be realized in an impersonal manner.

The name of the members of the evaluation committee will be public (Case T-437/05, Brink's Security Luxembourg SA v Commission of the European Communities, 2009), from the moment of the filing of the public procurement file, even if the decision of the contracting authority/award is not public. The name of these persons, as well as of the members that were summoned, are not protected by the GDPR. According to art. 217 para. 4 “following the end of the award procedure, the public procurement file is public”.⁹

A recent article¹⁰, from which we already extracted two of the main ideas, underlined the main amendments imposed by G.E.O 114/2020 (Government Emergency Ordinance no. 114/2020, 2020):

- “the categories of information which can be rendered confidential by the economic operators have been clarified” by “replacing the laxer previous form (“information”) with a particularization of the information categories that can have a confidential character”, respectively, “information from the technical proposal, elements of financial proposal and/or cost substantiations/justifications”.”

- modification of art. 57 para. (1) of the Law no. 98/2016: “the confidential character applies *only* on the data/information shown and proven as being personal data, technical or commercial secrets or are protected by an intellectual property right”.

Electronic invoicing in the field of public procurement. It must nevertheless be underlined that, a direct reference to the data protection regime is realized through the adoption of the Law no. 199/2020 *on electronic invoicing in the field of*

⁹ Institution of some exceptions, in para. 4 and 5 makes reference rather to commercial data and not personal data. “The access of persons to the public procurement file is made with the compliance of the terms and procedures provided for by the legal regulations concerning free access to public information and cannot be restricted if the information is not confidential, classified or protected by intellectual property rights, according to the law” (para. 4). Moreover, it has been shown that the exceptions must be duly documented and not solely claimed.

¹⁰ Please refer to the following article for details and pertinent interpretations in the field of the new regulations: Andreea Micu, Yolanda Beșleagă, Angelica Alecu, *Confidențialitatea informațiilor în materia achizițiilor publice în lumina O.U.G nr. 114/2020*, JURIDICE.ro, 17.09.2020 (2020).

*public procurement*¹¹. Its article 8, having the nomen juris “data protection”, rules as a general principle that the law “does not infringe the legislation on personal data protection.¹²”. This would imply that the data protection legislation prevails, being considered a special law. Para. (2) exposes that “personal data obtained for electronic invoicing might be exclusively used for this purpose or in purposes compatible with this, with compliance to the legislation in the field of data protection Hence, the principle of purpose limitation is respected (art. 5, para. 1 (b) from the General Data Protection Regulation), although the formulation “in legitimate purposes” is confuse. This article needs to be corroborated with (d) of art. 3 concerning the use of standard on electronic invoicing in the field of public procurement. Hence, the law assumes an obligation from the directive according to which: “the semantic data of the main elements adjacent to a registered electronic invoice must comply the following criterion: “to take into account the need for personal data protection according to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), a data protection approach by design and the principle of proportionality, minimizing the processing of personal data and purpose limitation.” This formulation (“to take into account the necessity”) is also vague, with three principles being stated in this regard. Except for the purpose limitation, the principle of proportionality and the principle of minimizing the processing of personal data are mentioned. In fine, para. 3 of art. 8 of the law refers to the principle of transparency (transparency of public procurement) of “collected” data (“processed” would have been the correct form, the collection being the procedure): “the means for publication, for ensuring transparency and accountability of personal data that have been collected in electronic invoicing need to be in accordance with the purpose of publication and the protection of privacy”.

Finally, it needs to be mentioned that for the adoption of Directive 2014/55/EU the European Data Protection Supervisor has been consulted,

¹¹ The law transposes integrally the Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement, OJ, L, 133 of 6 May 2014 (2014).

¹²The transposition of para. 2 and 3 and art. 8 of the Directive 2014/55/EU is at least interesting, the directive making express reference to the exceptions and restrictions provided by art. 13 of the Directive on protection of personal data (Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1995)), OJ L 281, 23.11.1995, p. 31, at the current time art. 23 of the General Data Protection Regulation. Although at this point the transposition is lacunary, in the event of litigations the provisions of the directive pertaining to art. 23 of GDPR will be applied.

which issued an opinion on 11 November 2013 (Executive Summary of the Opinion of the European Data Protection Supervisor, 2014). According to the opinion, reiterated into consideration 36 of the Directive, the necessity of ensuring data protection in applying the directive was underlined. “In particular, it should be made clear that existing data protection laws also apply in the area of electronic invoicing and that the publication of personal data for transparency and accountability purposes must be in keeping with the protection of privacy.”

Prevent is a program undertaken by the National Integrity Agency¹³ that “operates with data processed through the integrity forms in SEAP (Public Procurement Electronic System) and with the required information managed, according to the law, by the Directorate for Persons Record and Databases Management within the Ministry of Internal Affairs and by the National Trade Register Office” (art. 14). According to art. 12 of the law, the activity of the National Integrity Agency is undertaken in accordance with the legislation in the field of personal data protection, with regard to the processing and limitation of purpose for which they are processed (Cârlan, 2017, Farca, 2018). The processing of data in the PREVENT system is done according to the law, under the art. 6, para. 1 (b) of the GDPR. It is underlined that the rationale for processing could be (to a limited extent) art. 6, para. 1 (c) – the contract – and most often art. 6, para. 1 (f) – legitimate interest. Regardless of the situation, the processing involves high risks with regard to private life (Maxim & Bălănuță, 2019).

The access of persons to the public procurement file accord to para. (4) is realized with the compliance of the terms and procedures provided for by the regulations regarding free access to public interest information and cannot be restricted if the aforementioned information is not confidential, classified or protected by an intellectual property right, according to the law.

The management of the personal data submitted by the tenders in public procurement procedures must also be realized by the contracting authority. These must ensure access to the tender file, both to personal data and to commercial data, that can be confidential, secret, etc (Popa, 2018). Personal data, for example CVs or even sensitive data, such as biometric data, must be processed with the consent or information of the data subject. The consent might be granted only in the situation in which the data subject can withdraw it at all time. In consequence, the contracting authority must be prepared to inform the data subjects, in accordance with art. 13 or 14 of GDPR, as applicable.

¹³ The Law 184/2016 to establish a mechanism to prevent conflict of interests in public procurement contract awarding, *Official Journal of Romania*, 831 (2016). The PREVENT system – section regarding informing the persons with attributions in implementing the provisions of the Law no 184/2016, details at <https://www.integritate.eu/PREVENT.aspx>. The results of the PREVENT system are available on a trimestrial basis at the aforementioned web address.

In some situations, the contracting authority must conclude distinct contracts that can comply with art. 27 of the GDPR, the relationship between representatives of controllers or processors (Alexe, 2018a).

The General Data Protection Regulation must be implemented since 25 May 2018 in all contracts, inclusively the contracts in force.¹⁴ In fact, de lege ferenda, the obligation of complying with the data protection regime must be introduced in the implementing rules and especially in model contracts (Government Decision no. 395/2016, 2016).

With regard to data processing by institutions, we need to stipulate that one of these – the National Council for Solving Complaints (CNSC) is, by the point of view of the law of the European Union, assimilated to the court (in the meaning of art. 267 TFEU)¹⁵ and, consequently, the processing of personal data of the parties and of third parties involved in solving complaints will follow the same rules as in a court of law, the consent of the parties being unnecessary for processing the data. The National Public Procurement Agency (ANAP) published, on its website, the policies regarding personal data protection (Agenția Națională pentru Achiziții Publice, n.d.).

IV. The Data Protection Officer (DPO) and the public procurement department

The controller must take all appropriate technical and organisational measures for enforcing the General Data Protection Regulation. In most situations, persons performing the Data Protection Officer task have been designated, professional which are “involved, properly and in a timely manner, in all issues which relate to the protection of personal data” (art. 38 para. 1) (Alexe, 2018b; Alexe & Șandru, 2019; Alexe, 2018c). In consequence, the public procurement department or the person belonging to the department in charge of public procurement, if these services were outsourced, must discuss with the DPO in order to instate procedures that lead to the compliance with the GDPR.

¹⁴ In Great Britain help was provided to contracting authorities with explanations and notification models for the enforcement of GDPR [În Marea Britanie s-a venit în ajutorul autorităților contractante cu explicații și modele de notificări pentru punerea în practică a GDPR]. For more detail, please refer to: <https://www.gov.uk/government/publications/procurement-policy-note-0218-changes-to-data-protection-legislation-general-data-protection-regulation> (Gov, 2018).

¹⁵ We underlined this since 2013. Please refer to Mihai Șandru, Mihai Banu, Dragoș Călin, *Procedura trimiterii preliminare. Principii de drept al Uniunii Europene și experiențe ale sistemului român de drept*, C.H.Beck, București (2013), Meanwhile, CNSC formulated preliminary rulings to the Court of Justice of the European Union. On the website of the Council (<http://www.cnsc.ro/>), we failed to identify the policy or procedure on processing of personal data. Moreover, on SEAM as well only terms and conditions were identified (<https://sicap-prod.e-licitatie.ro/pub/staticpages/TermsAndConditions>).

For the public procurement department, it is important to refer to the Guidelines on Data Protection Officers (2016), especially in the event of tenders containing products that might involve private lives of employees (for example, procurement of a software for monitoring the efficiency of the work of employees) (Şandru, 2017).

Art. 164 of Law no. 98/2016 represents a real challenge for the Data Protection Officer designated by a contracting authority whereas it might exclude from the “awarding procedure of the public procurement contract/framework contract any economic operator regarding which it established, following the analysis of information and document presented by this, or gained knowledge by any other mean that it was convicted by a final judgement by a court of law”, this is to say inclusively natural persons, and taking into account data which comply with the regime provided for by art. 10 of the GDPR.

VI. Special issues

Privacy by design – award criteria. In this case the GDPR provisions are the ones influencing public procurement in the sense in which the contracting authority might request for a product or service to be realised in such a way that data protection is ensured by design and by default (art. 25 GDPR) (Nechimiş, 2017; Case C-532/06, Lianakis and others, 2008). Moreover, European projects are aimed by the application of the GDPR by an Instruction concerning general aspects that need to be complied with by beneficiaries and specific aspects that require verification (Instruction no. 28 of 29 August 2019, 2019).

Influence of data breaches of tenderers in public procurement procedures. The tenderers might be excluded from the public procurement procedure for serious infringements of their professional obligations, including for infringements to the data protection regime (Nechimiş, 2017, pp. 180-181).¹⁶ According to art. 164 of the Law no. 96/2018 the infringement of the data protection regime does not constitute an exclusion clause (Bickerstaff, 2018; Roşu, 2017). However, according to art. 167 para. 1 (c) “the contracting authority excludes from the awarding procedure of the public procurement contract/framework agreement any economic operator that is in one of the following situations: (...) committed a serious professional misconduct that cast a doubt on its integrity, and the contracting authority can prove this by any adequate evidence, such as the decision of a court of law or of an administrative authority. Is the infringement of the legal regime and of the security of personal data a serious misconduct that casts a doubt on its integrity? The law also offers a possible list of sanctioning

¹⁶ The author discusses the exclusion criteria, as well as the relevant case law such as *C-465/11, Forposta and ABC Direct Contact* (2012), Judgement of the Court of 13 December 2012, ECLI:EU:C:2012:801, *Case C-368/10, European Commission v Kingdom of the Netherlands* (2012), Judgement of the Court of 10 May 2012, ECLI:EU:C:2012:284.

situations: „by serious misconduct might be understood any misconduct committed by the economic operator affecting its professional reputation, such as infringements of intellectual property rights, committed with intentional fault or from gross negligence” (art. 167 para. 3). The use of the expression “such as” denotes a certain liberty for the evaluation of the contracting authority in the sense of interpreting for making the infringement of the security of personal data sanctionable. Moreover, art. 178 provides that „economic operators possess the human and technical resources and the required experience for performing the public procurement contract/framework agreement at an appropriate quality standard”. Therefore, this represents an additional reason for paying attention to the sanctions issued by the National Authority for Personal Data Processing and to the existence of a national registry of the actions disposed by the authority. Moreover, the decision to exclude an economic operator for the aforementioned reason must convey, in our opinion, the elements afferent to the category of juridical responsibility in which this could be assimilated. From the perspective of the legal relations arising from the case at hand, we might consider that these are in the field of administrative law, aspect which entails the need for establishing exactly of an illicit fact (infringement of provisions from the field of data protection), the observation of a clear intent of the one who is at fault, and the socially perilous result which can be found at the level of the effects produced by the result of unrightful revealing of these data protected by the law.

Joint controllers and data protection. Joint controllers or joint contracting authorities must jointly determine, from the point of view of data protection, the quality in which they act (Joint Controllers – art. 26 GDPR, controller – processor – art. 28 GDPR). It is a mandatory step for avoiding random processing (case in which every participant would be controller, but there are, of course, other issues concerning the transfer of data, etc.).

Big data and public procurement analysis. Big data is increasingly present, given the huge amount of data processed by public authorities and some private (commercial) companies. Big data is present in multiple acquisition fields, precisely in the field of verification of integrity, analysed in a previous section of this work, but also in the guidelines provided by a control authority. In the Guidelines for verification of public procurement and sectoral procurement (2016) the Court of Accounts makes reference to the use of Big data.¹⁷ The rules

¹⁷By way of exception, economic operators are not required to provide supporting documents or other evidence in support of the information declared in the DUAE if and to the extent that the contracting authority has the possibility to obtain the relevant certificates or information directly by accessing a national database. any Member State, available free of charge, such as a national public procurement register, a virtual company file, an electronic document storage system or a pre - selection system.

of big data are gaining traction in the context of the Administrative Code (Government Emergency Ordinance no. 57/2019, 2019) that will, in the context of art. 77, with its *nomen juris* “rules for the decentralization process” which enshrines the possibility of transfer of competence to the Government, ministries and other specialized organisms of the central public administration to the local public administration at the level of communes, cities, municipalities or counties. With regards to databases, the current regulation establishes the property of these databases at the central level: if within the public service there is will stay in the public or private property of the state and under the management of the Government, ministries or other specialized organisms of central public administration, as the case, that transferred the competences, for the competences exercised by public central authorities (art. 77 para. 2). Given that it was disposed that only through the transfer of competencies will be realized only through the law, and this will be only undertaken if it is substantiated by impact analyses and of monitoring indicators, it is to be seen which will be the impact on the contracting authorities in the field of public procurement.

V. Conclusions

The application of the General Data Protection Regulation in Romania is still at its inception, but we consider that its impact in the field of public procurement will increase and will be significant. This will apply both with regard to the direct application, regarding the data protection of natural persons involved in the procedures, the legal persons not being subjects of law in this case, but also indirectly through the impact of the exclusion from the procedure, for example. The courts of law have an important role in the interpretation and application of the provisions, but before the occurrence of such litigations, the professional in the field of procurement must establish their own interpretations of the provisions of GDPR interfering with the procedure. Such best practices, codes of conduct are recommended by the Regulation for a consistent interpretation and for avoiding confusion and lack of unity in applying the public procurement legislation.

ANAP makes available to the European Commission and updates in e-Certis, the complete list of databases containing relevant information on economic operators established in Romania, which applies throughout the period of validity of the dynamic procurement system.

REFERENCES

- Agencia Española de Protección de Datos. (2021). Resolución No. R/00032/2021. <https://www.aepd.es/es/documento/td-00206-2020.pdf>
- Agencia Națională pentru Achiziții Publice. (n.d.). Protecția datelor cu caracter personal. <http://anap.gov.ro/web/protectia-datelor-cu-caracter-personal/>
- Alexe, I. (2018d). Regimul sancționator prevăzut de Regulamentul (UE) 2016/679 privind protecția datelor cu caracter personal. *Revista Curierul Judiciar*, 1, 36-42.
- Alexe, I. (2018a). Relația dintre operator și persoana împuternicită, în domeniul protecției datelor personale. *Revista Pandectele Române*, 2, 71-79.
- Alexe, I. (2018b). Principalele noutăți privind responsabilul cu protecția datelor, incluse în GDPR. *Revista Pandectele Române*, 1.
- Alexe, I. (2018c). Responsabilul cu protecția datelor (DPO) - funcționar public sau personal contractual? *Revista Română de Dreptul Muncii*, 2, 53-65.
- Alexe, I. (2019). Experiențe ale aplicării amenzilor administrative din România în domeniul GDPR. *Pandectele române*, 5, 79-95.
- Alexe, I., & Șandru, D. -M. (2018). Considerații privind modificările aduse în anul 2017 legislației achizițiilor publice din România (pp. 9-31), In I. Alexe, & D. -M. Sandru (Eds.), *Legislația achizițiilor publice în România*. Editura Universitară.
- Alexe, I., Șandru, D. -M. (2019). Desemnarea unui responsabil cu protecția datelor unic de către mai multe autorități sau organisme publice. *Revista de drept public*, 2, 47-56.
- Ausloos, J. (2020). *The Right to Erasure in EU Data Protection Law*. Oxford University Press.
- Bickerstaff, R. (2018). *Effects of the new Data Protection Regulation on public procurement procedures. Practical examples*. April 2018, EMEA Conferences. Communication for the conference Bid exclusion risks in Public Procurement Procedures. With focus on Competition and new Data Protection rules related breaches. <https://emeaconferences.com/wp-content/uploads/2017/05/Roger-Bickerstaff-presentation-EMEA-Conferences-11April2017.pptx>
- Bucharest Court of Appeal, Section VIII, Administrative and Fiscal Court. (2015). Decision no. 4538/2015. <http://rolii.ro/hotarari/58a021c7e4900948100013cf>

- Bucharest Court, Section II, Administrative and Fiscal Court, Civil Sentence no. 3903/2015 (2015).
<http://rolii.ro/hotarari/587d2d5ce490093c24001fee>
- C-465/11, *Forposta and ABC Direct Contact*. (2012). Judgement of the Court of 13 December 2012, ECLI:EU:C:2012:801.
- Cârlan, V. C. (2017). Riscuri ce pot apărea pe parcursul derulării procedurii de achiziție publice și măsuri de prevenire a acestora. In D. -M. Șandru, I. Alexe, & R. -F. Hodoș (Coord.), *Achizițiile publice în România. Aplicarea și interpretarea noii legislații europene*. Editura Universitară. p. 250.
- Case C-368/10, *European Commission v Kingdom of the Netherlands*. (2012). Judgement of the Court of 10 May 2012, ECLI:EU:C:2012:284
- Case C-532/06, *Lianakis and others*. (2008). Judgement of the Court of 24 January 2008, ECR 2008 p. I-251, ECLI:EU:C:2008:40 and the amendment of the European legislation according to which there might be superposition between the selection and qualification requests and the awarding criteria.
- Case T-437/05, *Brink's Security Luxembourg SA v Commission of the European Communities*, Judgement of 9.09.2009, points 215 and 216, ECR, p. II-3233. (2009). ECLI:EU:T:2009:318.
- Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement, OJ, L, 133 of 6 May 2014 (2014).
- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995. (1995). On the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- Executive Summary of the Opinion of the European Data Protection Supervisor on the Commission Proposal for a Directive of the European Parliament and the Council on electronic invoicing in public procurement, OJ, 2014/C 038/5. (2014).
- Farca, L. (2018). Conflict of interests under Romanian public procurement rules. Pros and Cons of the PREVENT. In C. M. Hîntea, B. A. Moldovan, B. V. Radu, & R. M. Suci, *Transylvanian International Conference in Public Administration, Cluj-Napoca 2 nd November, 2017*. Ed. Accent.
- Google Spain and Google*, Judgement of the Court of 13 May 2014, C-131/12. (2014). ECLI:EU:C:2014:317.
- Gov. (2018). Procurement Policy Note 02/18: Changes to Data Protection Legislation & General Data Protection Regulation.

<https://www.gov.uk/government/publications/procurement-policy-note-0218-changes-to-data-protection-legislation-general-data-protection-regulation>

- Government Decision no. 395/2016. (2016). On the approval of methodological norms concerning the award of public procurement contract/framework agreement of the Law no. 98/2016 on public procurement. *Official Journal of Romania*, 423.
- Government Emergency Ordinance no. 114/2020. (2020). On the modification and completion of normative acts with impact in the field of public procurement. *Official Journal of Romania*, 614.
- Government Emergency Ordinance no. 57/2019. (2019). On the Administrative Code, *Official Journal of Romania*, 555.
- Guidelines on Data Protection Officers ('DPOs'). (2016). 16/EN, WP 243 rev.01, adopted on 13 December 2016 at last Revised and Adopted on 5 April 2017.
- Instruction no. 28 of 29 August 2019. (2019). of the Chief of the Managing Authority of the Competitiveness Operational Programme regarding the enforcement of the General Data Protection Regulation. <http://mfe.gov.ro/wp-content/uploads/2019/08/b153da563961c2a18631ec663286e6c6.pdf>
- Judgment of 12 July 2012, Compass-Datenbank (2012), C-138/11, EU:C:2012:449, para. 40-41.
- Law no. 190/2018 on implementing measures to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *Official Journal of Romanian*. nr. 651/2018. According to art. 14 of the law, the maximum amount of the fine is RON 200.000. (2014).
- Manni C-398/15, Judgement of the Court of 9 March 2017 (2017), ECLI:EU:C:2017:197.
- Maxim, M., & Bălănuță, A. (2019). Prelucrarea datelor cu caracter personal în scopul evitării și gestionării situațiilor de conflict de interese. *Dreptul* 7, 36.
- Micu, A., Beșleagă, Y., & Alecu, A. (2020). *Confidențialitatea informațiilor în materia achizițiilor publice în lumina O.U.G nr. 114/2020*. JURIDICE.ro.
- Nechimiș, R. (2017). Impactul reglementărilor privind prelucrarea datelor cu caracter personal – inclusiv al noului Regulament nr. 679 din 27 aprilie 2016 privind protecția persoanelor fizice în ceea ce privește prelucrarea

datelor cu caracter personal (“Regulamentul”) - asupra procedurilor de achiziții publice. In D. -M. Șandru, I. Alexe, & R. -F. Hodoș (Coord.), *Achizițiile publice în România. Aplicarea și interpretarea noii legislații europene* (pp. 183-184). Editura Universitară.

Popa, A. (2018). *Protecția confidențialității documentelor depuse de operatorii economici în cadrul procedurilor de atribuire a unor contracte de achiziție publică*. Hotnews.ro. https://www.hotnews.ro/stiri-specialisti_tuca_zbarcea_asociatii-22542411-protoc-confiden-ialit-documentelor-depuse-operatorii-economici-cadrul-procedurilor-atribuire-unor-contracte-achizi-public.htm

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016, L 119, p. 1. (2016).

Roșu, A. (2017). Excluderea din procedura de atribuire a contractelor de achiziție publică a candidatului / ofertantului condamnat / investigat pentru săvârșirea unei infracțiuni, In D. -M. Șandru, I. Alexe, & R. -F. Hodoș (Coord.), *Achizițiile publice în România. Aplicarea și interpretarea noii legislații europene* (p. 149 and the following). Editura Universitară.

Șandru, A. -M. (2018). Privire critică asupra jurisprudenței Curții de Justiție a UE referitoare la interpretarea art. 8 privind protecția datelor cu caracter personal din Carta drepturilor fundamentale a Uniunii Europene (CDFUE). *Pandectele Române*, 1, 26-33.

Șandru, A. -M. (2018d). Inovări și reevaluări în privința drepturilor persoanei vizate în Regulamentul 2016/679. *Revista română de drept al afacerilor*, 4, 42-48.

Șandru, D. -M. (2017). Curtea de Justiție a Uniunii Europene și protecția datelor personale ale angajaților în relațiile de muncă. *Revista română de drept european*, 4, 92-101.

Șandru, D. -M. (2018a). *La vremuri noi, principii vechi. Observații critice privind două expresii nou introduse în art. 5 al Regulamentului General privind Protecția Datelor*, în R.R.D.A., nr. 1/2018, p. 79-84 ;

Șandru, D. -M. (2018b). Principiile protecției datelor – de la teorie la practică. *Curierul Judiciar*, 6, 364-366.

Șandru, D. -M. (2018c). Principiul transparenței în protecția datelor cu caracter personal. *Pandectele române*, 4, 59-69. The list of articles concerning the principles is available at mihaisandru.ro

Șandru, D. -M. (2018e). Reflectarea izvoarelor dreptului european al achizițiilor publice în practica administrativă și jurisdicțională din România. In D. - M. Sandru, & I. Alexe (Eds.), *Legislația Uniunii Europene în materia achizițiilor publice* (pp. 7-24). Ed. Universitară.

Șandru, M., Banu, M., & Călin, D. (2013). *Procedura trimerii preliminare. Principii de drept al Uniunii Europene și experiențe ale sistemului român de drept*. C. H. Beck.

The author discusses the exclusion criteria, as well as the relevant case law such as *C-465/11, Forposta and ABC Direct Contact*, Judgement of the Court of 13 December 2012, ECLI:EU:C:2012:801, case C-368/10, *European Commission v Kingdom of the Netherlands*, Judgement of the Court of 10 May 2012, ECLI:EU:C:2012:284.

The Law 184/2016 to establish a mechanism top prevent conflict of interests in public procurement contract awarding. (2016). *Official Journal of Romania*, 831.