

Considerations on to the Law no. 184 of 17 October 2016 on setting up a mechanism to prevent conflicts of interest in the award procedure of public procurement agreements

Law no. 184 of 17 October 2016 on setting up a mechanism to prevent conflicts of interest in the award procedure of public procurement agreements (“**Law no. 184/2016**”) was published with the Official Gazette on October 20, 2016.

Law no. 184/2016 aims to prevent the conflict of interests in the award procedure of public procurement agreements by setting up an ex ante verification mechanism (based on forecasts) of the situation which may generate conflict of interests in the proceedings that were initiated through an electronic system of public procurement so that those can be removed without affecting said procedures.

According to the provisions of article 1, the scope of the Law no. 184/2016 extends over the Law no. 98/2016 on public procurement as well as on the Law no. 99/2016 on sectorial procurement. Therefore, the application of the Law no. 184/2016 is ample encompassing the entire area of public procurement.

To set up a mechanism to prevent the conflict of interest it was set up a system in the National Integrity Agency (in Romanian “**ANI**”), which shall control and enforce the legal provisions on conflicts of interest in the procedure of awarding public procurement agreements, namely the integrated system for preventing and identifying the potential conflicts of interest (“the **“Prevention System”**”).

The verification on such predictions is made through the Prevention System by the integrity inspectors.

The information are analysed and then are sent warnings by the integrity inspectors that are constituted in a distinct structure within ANI.

This prevention system operates on the basis of integrity data in the forms registered in the Electronic procurement system (in romanian “**SEAP**”) during the procedures for awarding public procurement agreements and thereafter processed by the integrity inspectors.

Integrity form is a part of the documentation for awarding public procurement agreements and features in electronic format. It is mandatory that this integrity form to be constantly updated by the authorities until the publication of the award public procurement agreements.

The prevention system takes information collected automatically in the integrity forms through the interconnection with SEAP and causes the issuance of notification regarding the potential conflict of interest.

If, after analyzing the integrity, the inspectors within A.N.I. detect elements of a potential conflict of interest, they must provide the integrity warning issued by the Prevention System, within 3 working days.

ANI shall communicate the integrity warning by electronic means to the responsible person that must immediately send to the person concerned by the potential conflict of interest, as well as to the head of the contracting authority

According to the Article 12 of the Law no. 184/2016, the activities within the prevention mechanism of the conflicts of mechanism that are performed in procedure of awarding public procurement agreements shall be conducted in compliance with the Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, as amended and supplemented. Therefore, all personal data shall be protected.

It shall aim to guarantee the fundamental rights and freedoms of individuals, especially the right to intimate, family and privacy.

Law no. 184/2016 includes an annex on the structure of the integrity form, including: data on the procurement procedure, decision factor, the evaluation committee, consultants and experts coopted; data tenderers / candidates and the measures of removing the potential conflicts of interest, performed following an integrity warning.

We appreciate that the necessity of the Law no. 184/2016 was imminent given that the issue of conflict of interest is a common problem for any state and the purpose of the law is the prevention and the avoidance of conflict of interest. Otherwise, the provision of the Law no 176/2010 regarding the integrity in exercising public functions and dignities shall apply.

Law no. 184/2016 shall come into force within 8 months from the date on which it was published with the Official Gazette, i.e. on June 20, 2017.