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CEE Public Procurement toolbox of remedies

2017

Toolbox of remedies in CEE public procurements

In each CEE jurisdiction there are various remedies available in public procurement cases to ensure that related infringements may be reviewed as rapidly as possible. Accordingly, in public procurement cases it is crucial to react quickly and not miss any deadlines in order to successfully challenge the tender and address any questions. Therefore, we have compiled a comprehensive chart setting out the deadlines applicable in CEE jurisdictions.





Hungary

Available remedy	Type of infringement	Deadline for submission
Request for clarification (not a formal remedy but useful to draw attention to infringements in a friendly manner).	Unclear or unlawful content of the contract notice or the procurement documents.	10 (open) / 8 (restricted procedures, entry phase) / 7 (accelerated procedure) / 6 (negotiated procedure without prior publication of a contract notice) days before tender application deadline. The deadline may change depending on the procedure, always check the procurement documents!
Review with the contracting authority: preliminary dispute settlement.	Unlawful content of the contract notice or the procurement documents.	10 days before tender application deadline. Exception: in accelerated or negotiated procedures without prior publication of a contract notice until the application deadline.
	Other.	3 business days after becoming aware of the infringement.
Review before body responsible for review procedures: Public Procurement Dispute Board ('PPDB').	Unlawful contract award decision.	10 / 5 ('5-party' national procedures) days after becoming aware of the infringement.
	Unlawful content of the contract notice or procurement documents.	5 days before tender application deadline.
	Other.	15 days after becoming aware of the infringement.
Judicial review: Ordinary courts.	Unlawful final decision of the PPDB.	15 days after receiving the final decision of the PPDB.
	Other unlawful decision of the PPDB if permitted by law.	8 days after receiving the decision of the PPDB.



Bulgaria

Available remedy	Type of infringement	Deadline for submission
Request for clarification (not a formal remedy but useful to draw attention to infringements in a friendly manner).	Unclear or unlawful content of the contract notice or the procurement documents.	10 / 7 (shortened terms in open procedures) days before the tender application deadline. Further short terms may apply in certain low-cost and short-track procedures, always check the procurement documents!
Review with the contracting authority: <i>suggest changes to the procurement terms and condition.</i>	No need to establish infringement. Contracting authority has discretion whether to introduce the suggested changes.	10 days after announcement of the public procurement.
Review before body responsible for review procedures: <i>appeal before the Competition Protection Commission (CPC).</i>	Unlawful decisions, actions or omissions of the contracting authority.	10 days – the starting date from which the deadline is calculated varies depending on what is challenged.
Judicial review: <i>The Supreme Administrative Court.</i>	Unlawful final decision of the CPC.	14 days after receiving the final decision of the CPC.



Czech Republic¹

Available remedy	Type of infringement	Deadline for submission
Request for clarification (not a formal remedy but useful to draw attention to infringements in a friendly manner).	Unclear or unlawful content in the contract notice or the procurement documents.	8 / 7 (emergency procedures) business days before the tender application deadline. <i>(6 / 5 (emergency procedures) business days before the tender application deadline).</i>
Review with the contracting authority: <i>Objections (preliminary dispute settlement).</i>	Unlawful content in the contract notice or the procurement documents.	Until the tender application deadline. <i>(5 days after the tender application deadline).</i>
	Unlawful decisions which are published or delivered to complainants.	15 days after publication or delivery to complainants.
Review before body responsible for review procedures: <i>Office for Protection of Competition (the 'Office').</i>	Unlawful conclusion of a public procurement contract.	The earlier of 1 month after the publication of the contract award notice and 6 months after the conclusion of the public procurement contract. <i>(The earlier of 30 days after the publication of the contract award notice and 6 months after the conclusion of the public procurement contract).</i>
	Other infringements.	10 days after receiving a decision of the contracting authority rejecting the objections or, if no response is received from the contracting authority, 25 days after objections have been submitted.
Judicial review: <i>Administrative court.</i>	Unlawful final decision of the Office.	2 months after receiving the final decision of the Office.

¹ In italics: Rules applicable for public procurement contracts award procedures commenced prior to 1 October 2016



Poland

Available remedy	Type of infringement	Deadline for submission
Request for clarification (not a formal remedy but useful to draw attention to infringements in a friendly manner).	Unclear or unlawful content of the contract notice or the procurement documents.	The last day of the first half of the application deadline.
Review with the contracting authority: (not a formal remedy) suggest changes to the procurement terms and condition.	Contracting authority has discretion whether to introduce the suggested changes.	In practice the last day of the first half of the application deadline.
Review before body responsible for review procedures: <i>National Appeal Chamber.</i>	Unlawful content of the contract notice or the procurement documents.	10 / 5 days after publication (depending on the procurement value - always check the procurement documents!).
	Unlawful action of the contracting authority, of which the tender participant has been notified.	Basic deadline: 10 / 5 days after receiving the notification from the contracting authority (depending on the procurement value – always check the procurement documents!). Extended deadline: 15 / 10 days if the notification was not sent electronically.
	Unlawful contract award without prior publication of a contract notice.	Various deadlines apply, depending on the exact circumstances: from 15 days after publishing the contract award notice up to 6 months after the conclusion of the contract.
	Other.	10 / 5 days after the date the tender participant becomes aware or should have reasonably become aware of the infringement (depending on the procurement value – always check the procurement documents!).
Judicial review: <i>Ordinary courts.</i>	Unlawful decision of the National Appeal Chamber.	7 days after receiving the final decision of the National Appeal Chamber.



Romania

Available remedy	Type of infringement	Deadline for submission
Request for clarification (not a formal remedy but useful to draw attention to infringements in a friendly manner).	Unclear or unlawful content of the contract notice or the procurement documents.	As provided in the procurement documents, 6 / 4 (emergency procedures) days from access to the tender documentation but not later than 3 business days before tender application deadline. Always check the procurement documents!
Review with the contracting authority: Prior notification – mandatory dispute resolution mechanism.	Any unlawful act of the contracting authority.	10 (EU procedures) / 5 (national procedures) days after becoming aware of the infringement.
Review before body responsible for review procedures: National Council for Solving Complaints (the 'Council') (Consiliul National de Solutionare a Contestatiilor).	Unlawful / no response of the contracting authority to the prior notification.	10 (EU procedures) / 5 (national procedures) days , the starting date of the deadline varies depending on the outcome of the prior notification.
	Unlawful / no response of the contracting authority to the prior notification: Request to join a pending complaint before the Council.	10 days after the publication in the electronic public procurement system of a notice indicating that a complaint before the Council has been lodged.
Judicial review: Ordinary courts.	Unlawful decision of the Council.	10 days after receiving the decision of the Council.
	Unlawful / no response of the contracting authority to the prior notification: Direct appeal to court (without recourse to Council resolution).	10 (EU procedures) / 5 (national procedures) days , the starting date of the deadline varies depending on the outcome of the prior notification.



Slovakia

Available remedy	Type of infringement	Deadline for submission
Request for clarification (not a formal remedy but useful to draw attention to infringements in a friendly manner).	Unclear or unlawful content of the contract notice or the procurement documents.	6 / 4 (emergency procedures) days before tender application deadline, however, reasonably in advance. Always check the procurement documents!
Review with the contracting authority: Mandatory dispute resolution mechanism.	Unlawful content in the announcement of the public procurement or contract notice.	10 days after announcement of the public procurement or notice on the intention to sign the contract.
	Unlawful content in the procurement documents	10 days after receiving procurement documents.
Review before body responsible for review procedures: Office for Public procurement (the 'Office').	Unlawful decisions, actions or omissions of the contracting authority or other infringements.	10 days after receiving a rejecting decision of the contracting authority (or 10 days after fruitless lapse of the period for decision of the contracting authority) or 10 days from the infringement.
Judicial review: Administrative court.	Unlawful decision of the Office on discontinuance of the proceedings or unlawful final decision of the Office.	30 days after receiving the decision of the Office.



Ukraine

Available remedy	Type of infringement	Deadline for submission
Request for clarification or request to remedy an infringement.	Unclear or unlawful content of the procurement documents, other infringements which occurred before the tender application deadline.	10 days before tender application deadline.
Review before body responsible for review procedures: <i>Permanent Administrative Board of the Antimonopoly Committee of Ukraine (the 'Board').</i>	Unlawful content of the procurement documents and unlawful decisions, actions or omissions of the contracting authority which occurred before the tender application deadline.	4 days before tender application deadline.
	Unlawful decisions, actions or omissions of the contracting authority which occurred after the evaluation of bids.	10 days after the publication of notice on the intention to sign the contract.
	Unlawful decisions, actions or omissions of the contracting authority which occurred after the examination of bids.	5 days after the publication of minutes on examination of bids.
Judicial review: Administrative courts.	Unlawful final decision of the Board.	30 days after the publication of the final decision of the Board in the electronic procurement system.
	Any complaints with regard to the public procurement contracts already executed.	3 years after the conclusion of the contract.



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Chambers Europe 2016

Disclaimer: The purpose of the charts shown on the previous pages is to provide a CEE-wide overview of the deadlines for review procedures in each jurisdiction. It cannot be deemed as generally prevailing legal advice. Any review case shall be decided on case-by-case basis, in light of all circumstances and is subject to thorough legal assessment under local law. Potential changes in the law applicable to the case shall also be taken into consideration. Accordingly, CMS does not take any responsibility for the use or misuse of these charts. For detailed legal advice, please contact your local CMS contact, indicated overleaf.

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