

Your World First

C/M/S/

Law.Tax

E-public procurement

CEE

2018

CEE e-public procurement in a nutshell

Public procurement is not exempt from the trend towards electronic communication and contracting. The aim of the EU's Public Procurement Directive is to introduce electronic communications at all stages of public procurement procedures between contracting authorities and tenderers. The 30-month transition period given by the Directive is almost over, and all Member States are required to comply with e-public procurement obligations by 18 October 2018.

Although obligations relating to the introduction of e-public procurement are the same for all Member States, the Directive sets only goals and a framework. Therefore, the implementation and elaboration of detailed national legislation is up to Member States. As a result, the outcome of the implementation varies from country to country.

This document is a snapshot of how the implementation process is progressing in the different CEE countries and outlines the main characteristics of the national e-public procurement systems. The aim is to provide an interesting overview for economic operators that are interested in, or engaged with public procurement procedures in the CEE region.

If you need advice in any of these jurisdictions, please feel free to contact us or the relevant local procurement specialists as set out below.



Veronika Kovacs

Senior Associate, Coordinator of the
CEE Public Procurement Practice

T +36 1 483 4878

E veronika.kovacs@cms-cmno.com



Iain Batty

Partner, Head of CEE Commercial Practice

T +48 22 520 5505

E iain.batty@cms-cmno.com



17 offices, more than any other law firm in CEE



More M&A deals successfully completed than anyone else: first in the CEE M&A league tables by volume of deals



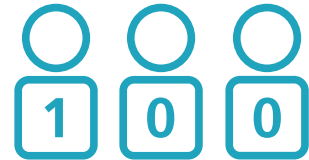
A history of landmark and first of their kind deals in CEE



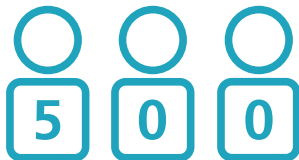
The only firm to be top ranked by Chambers Global for every category in CEE



26 languages spoken fluently



Over 100 partners, more than any other law firm in CEE



Over 500 lawyers, more than any other law firm in CEE



Bench strength and depth of resources to deliver legal specialists in commercial areas of law.



Established in CEE for over 25 years



More UK and US qualified lawyers than any other firm in CEE



Sector strength in energy, financial institutions, infrastructure, TMC, consumer products and life sciences & healthcare

Bulgaria



Kostadin Sirleshtov

Partner

T +359 2 921 9942

E kostadin.sirleshtov@cms-cmno.com

1) What is the timing of the implementation?	E-procurement is being introduced step-by-step in Bulgaria. While some tools are already operating, others have not been launched yet. The goal is for e-procurement to be fully implemented by 2020, whereas e-ESPD became mandatory as of 1 April 2018 and E-certis as of 1 July 2018. The main functionalities of the e-tendering platform will start operating as of 18 October 2018, whilst the ones, related to review, evaluation of offers, assigning, invoicing and payment will be available as of 1 January 2020 only.
2) How many platforms are available?	Bulgaria has chosen to have one centralised public e-tendering platform that will be operated by the Public Procurement Agency. The platform is intended to start operating as of 18 October 2018. However, the tender for the development and implementation of the platform was only awarded on 14 December 2017 and the contract has a 36-months time period, which could mean that launching of some of the functionalities of the platform might be delayed. The e-tendering platform will have a module for creating an e-ESPD but, as it has not been developed yet, there is still uncertainty how exactly it will function.
3) What kind of activities are covered by local e-procurement legislation?	The centralised platform should serve contracting authorities throughout the entire e-tendering process from planning, tendering, and ordering, through to invoicing and control. Thereby, e-procurement will cover all public procurement activities, from the publication of the tender notice, through the execution of the contract up to invoicing and payment.
4) Whether the use of e-signatures can be required by the contracting authority? If yes, what type?	As mentioned, use of e-ESPD is now mandatory and as per the instructions of the Public Procurement Agency it has to be either (i) signed with a qualified e-signature or (ii) made electronically available with an electronic time stamp, ensuring that it was prepared and submitted before the expiry of the term for submission of tenders. Furthermore, contracting authorities may in certain cases require advanced e-signatures for the sake of granting a relevant level of security to the transferred information.

Croatia



Marija Mušec

Partner

T +385 1 4825600

E marija.musec@bmslegal.hr

1) What is the timing of the implementation?	Before the adoption of the new Public Procurement Act in January 2017, the submission on tenders by electronic means (e-procurement) was only an option in Croatia. Following a short introductory period, Croatia has introduced mandatory e-procurement, including ESPD from 18 April 2018 and E-Certis will be used as of 18 October 2018.
2) How many platforms are available?	Currently Croatia has one centralised electronic public procurement system operated by the National Gazette - Electronic Public Procurement Classifieds of the Republic of Croatia (EOJN). Private entities are not allowed to operate e-procurement systems.
3) What kind of activities are covered by local e-procurement legislation?	EOJN maintains records of registered subjects and manages the entire database of published public procurement notices and publishes the subject data in a machine readable format. EOJN enables tenderers to undertake the following activities: — viewing the list of all published public procurement notices; — downloading published documents; — submission of bids and submission of up-to-date supporting documents; — receiving information about any changes related to the procedures for which tender documents were downloaded and communication with the contracting authority. — submission of appeals and other activities in the appeal proceeding. EOJN enables the following activities to be undertaken by contracting authorities: — drawing up, editing, submitting to publication or withdrawal from publication of a public procurement notice and making available the relevant procurement documentation; — publishing public procurement information; — communication with tenderers.
4) Whether the use of e-signatures can be required by the contracting authority? If yes, what type?	Use of e-signatures may be required by the contracting authorities (e.g. for signing of ESPD) and the contracting authority is obliged to accept advanced electronic signatures with a qualified certificate. However, lack of e-signatures cannot result in rejection of a bid. This is because the Croatian Public Procurement Act expressly stipulates that a bid submitted through EOJN is binding regardless of whether it has a signature or not and contracting authorities are not allowed to reject bids lacking an e-signature solely on that basis.

Czech Republic



Tomas Matejovsky

Partner

T +420 296 798 852

E tomas.matejovsky@cms-cmno.com



Lenka Krutakova

Senior Associate

T +420 296 798 759

E lenka.krutakova@cms-cmno.com

1) What is the timing of the implementation?	The electronic conclusion of public procurement procedures has been mandatory since 18 April 2017 for tenders operated by the following contracting authorities: Czech Republic (the state as a contracting authority), the Czech National Bank and the central purchasing bodies. For remaining contracting entities (cities, bodies governed by public law etc.) e-public procurement will be mandatory from 18 October 2018.
2) How many platforms are available?	There are two types of platforms in the Czech Republic: — Platforms operated by private entities: these platforms are generally perceived to be well operated. Some platforms provide an option for the use of simplified documentation (e.g. up to 2000 MB of published data) for free. Further fees depend on the tool and option chosen by the contracting authority. The use of these platforms is free for tenderers. — A platform known as NEN (National Electronic Tool) is operated by the Ministry for Regional Development of the Czech Republic. Use of this platform is completely free. However, there is a widespread perception that it is not as user friendly as platforms operated by private entities. Therefore, it hasn't been as widely used by contracting authorities. However, as of 1 July 2018 state contracting authorities, such as ministries, have been obliged to use NEN for all public contracts with the estimated value above CZK 500,000 (approx. EUR 20,000). (Explanation: this will not be obligatory for cities, towns etc.)
3) What kind of activities are covered by local e-procurement legislation?	E-procurement activities apply to all forms of written communication between contracting authorities and bidders starting with publication of the tender notice and tender documentation up to conclusion of the procedure with either the (i) cancellation of the tender procedure, or (ii) conclusion of the contract (which is not required to be concluded electronically).
4) Whether the use of e-signatures can be required by the contracting authority? If yes, what type?	During the tender procedure, the contracting authority cannot generally ask for the originals of any documents apart from the documents expressly stated in the Public Procurement Act. This means that as a general rule, the contracting authority must accept plain copies of all documents. Therefore, the contracting authority cannot require tenderers to submit their bids or all other documents with e-signatures. Before the execution of a public contract, originals or certified copies would need to be submitted in electronic form. If a self-declaration (or other signed document) is to be submitted as an original, it would need to bear an advanced e-signature or it will need to be submitted in a copy with a special electronic conversion clause attached (in which case the document would be regarded as a certified photocopy).

Hungary



Tamás Tercsák
Of Counsel
T +36 1 505 4964
E tamas.tercsak@cms-cmno.com



Veronika Kovacs
Senior Associate
T +36 1 483 4878
E veronika.kovacs@cms-cmno.com

1) What is the timing of the implementation?	Following a short introductory period during which e-procurement was an option, Hungary introduced mandatory e-public procurement from 15 April 2018. Contracting authorities falling under the Public Procurement Act must conclude procurement processes through an electronic public procurement system, into which ESPD has been integrated.
2) How many platforms are available?	Currently Hungary has one centralised electronic public procurement system operated by the Cabinet of the Prime Minister through a fully state owned company (NEKSZT Kft.) In some special cases (e.g. design contests, e-catalogues, etc.) the regulation allows the use of information technology systems other than the centralised electronic public procurement system. However, no such service is available on the market for the time being.
3) What kind of activities are covered by local e-procurement legislation?	The electronic public procurement system is an information technology system that registers all public procurement procedures in a centralised manner and supports their electronic management. The system itself serves as a communication platform and covers communication between the contracting authorities and economic operators (tenderers, candidate tenderers, capacity providers) during the core public procurement procedure, i.e. from the publication of the tender notice, through the submission of bids, up to the award of the contract. Statements during the preparatory phase of the procedure, conclusion of the contract and (with some exceptions) all communications after the conclusion of the contract are out of scope and are not required to be communicated via the platform.
4) Whether the use of e-signatures can be required by the contracting authority? If yes, what type?	The electronic public procurement system enables the use of e-signatures. However, e-signatures cannot be required during the procedure and almost all documentation can be submitted without them. Use of e-signatures may only be prescribed by the contracting authorities in case of the serving of documents for the enforcement of claims directly, especially for statements of guarantee (bank guarantee) and statements of suretyship. In this case a qualified e-signature and time stamp must be used.

Poland



Malgorzata Urbanska

Partner

T +48 22 520 55 97

E malgorzata.urbanska@cms-cmno.com



Magdalena Wyszynska

Associate

T +48 22 520 84 71

E magdalena.wyszynska@cms-cmno.com

1) What is the timing of the implementation?	Regulations governing electronic communications between contracting authorities and tenderers in the course of public procurement proceedings will fully come into force on 18 October 2018. Before that happens, for proceedings commencing on or after 18 April 2018, an ESPD will only be valid if executed and submitted in electronic form. These dates do not apply to proceedings carried out by central purchasing bodies, as the obligation to solely use electronic communication already applies to them.
2) How many platforms are available?	As a general rule, a contracting authority is obliged to provide the tools and devices to be used for communicating with contractors and to ensure that those tools and devices, as well as their technical characteristics, meet all the legal requirements. The government is currently creating a central electronic public procurement platform, but it is not certain whether the platform will be available on time.
3) What kind of activities are covered by local e-procurement legislation?	From the date indicated above, all communications between a contracting authority and tenderers in a contract award procedure – in particular submission of tenders, requests to participate in a procedure and declarations – must be electronic. The obligation to use electronic means of communication will apply from the publication of the contract notice until the end of the proceedings, i.e. the choice of the most advantageous offer or the cancellation. However, parties will not be obliged to sign the public procurement contract electronically. Contracting authorities will be entitled to waive the requirement to use electronic communication in a tender submission process only on an exceptional basis (e.g. if the use of electronic communication requires specific tools, devices, or file formats that are not generally available or supported by generally available applications, or where the submission of physical or scale models or specimens which cannot be transmitted electronically is required).
4) Whether the use of e-signatures can be required by the contracting authority? If yes, what type?	After the regulations come into force, tenders, requests to participate in a procedure and all other declarations submitted by tenderers, including the ESPD, will have to be drawn up in an electronic format and signed with a qualified electronic signature to be valid.

Romania



Gabriel Sidere

Partner

T +40 21 407 3813

E gabriel.sidere@cms-cmno.com



Cristina Popescu

Senior Associate

T +40 21 407 3811

E cristina.popescu@cms-cmno.com

1) What is the timing of the implementation?	A new electronic procurement system went live on 2 April 2018, replacing the previous Electronic System for Public Procurement ("SEAP"). The new Collaborative Information System for a Performing Environment for Carrying Out Public Procurement ("SICAP") was developed by the Agency for Romania's Digital Agenda. A demo version has been available for testing since May 2017. Contracting authorities must initiate all new public award procedures through SICAP. However, ongoing procedures (initiated before 02 April 2018) must be completed through the previous SEAP application.
2) How many platforms are available?	As time goes on, SICAP will replace SEAP, the latter will continue to be partially functional in order to allow completion of ongoing award procedures. The main facilities offered by SICAP are claimed to be: (i) a user-friendly and intuitive interface; (ii) advance search criteria and information reporting forms; (iii) a contract module that will allow for administering all contracts and addenda; (iv) a mobile terminal interface; (v) integration with key institutions/stakeholders in the public procurement area; (iv) extensive reporting options for institutions which monitor, regulate and control public procurement.
3) What kind of activities are covered by local e-procurement legislation?	E-procurement rules cover both the preparatory stages of award procedures (e.g. publication of the annual procurement programme), as well as ongoing procedures (e.g. publication of notices, award documentation, clarifications throughout award procedures) and related activities subsequent to the completion of the award procedure (e.g. publication of the contract award notice publication of changes to contracts, publication of documents certifying due performance by contractors).
4) Whether the use of e-signatures can be required by the contracting authority? If yes, what type?	Tenderers are legally required to submit their bidding documentation in electronic form and to sign them by electronic signature – failure to comply with this requirement results in the rejection of the bid. Similarly, contracting authorities are also required to submit the award documentation in SICAP accompanied by an electronic signature.

Slovakia



Petra Čorba Stark

Counsel

T +421 222 111 501

E petra.corbastark@cms-cmno.com



Martin Balaz

Associate

T +421 2221 115 04

E martin.balaz@cms-cmno.com

1) What is the timing of the implementation?	Complete use of e-procurement procedures including electronic communication will be mandatory in Slovakia from 18 October 2018. However, public contracting authorities are already obliged to use electronic procedures in certain situations.
2) How many platforms are available?	In Slovakia, there are two main national e-procurement systems: IS EVO operated by the Public Procurement Office and EKS operated by the Ministry of Interior via an appointed service provider. Contracting authorities are generally free to choose the platform for their procurement and besides these two national platforms, certified and electronic auction systems operated by private companies are available for use as well.
3) What kind of activities are covered by local e-procurement legislation?	As a general rule, e-procurement will apply from the publication of the tender notice until the announcement of tender results. However, prior electronic (internet based) consultation is also possible through the platforms mentioned above. The contracts are typically executed in paper format. However, the law also provides the possibility for electronic conclusion of a contract if all parties sign the document with their qualified e-signatures.
4) Whether the use of e-signatures can be required by the contracting authority? If yes, what type?	E-signatures can be required by the contracting authorities if necessary in relation to the level of potential risk. Usually an authentication in the e-procurement system allowing electronic identification of the person will suffice. The public procurement act does not specify the type of e-signature that the contracting authority might ask for. However, practical considerations mean that in most cases qualified electronic signatures can be used.

Slovenia



Dunja Jandl

Partner

T +386 1 620 5210

E dunja.jandl@cms-rrh.com



Vesna Tišler

Attorney-at-Law

T +386 1 620 5213

E vesna.tisler@cms-rrh.com

1) What is the timing of the implementation?	After the adoption of a new Public Procurement Act in April 2016, e-procurement was only an option in Slovenia. However from 1 April 2018, the use of e-public procurement systems is mandatory.
2) How many platforms are available?	The Slovenian Ministry of Public Administration created an electronic public procurement platform ("e-JN"), which can be used free of charge. Contracting authorities are not obliged to use the e-JN platform and are free to use other e-public procurement system including those operated by the private sector, but they have to ensure that such system complies with the provisions of the Public Procurement Act. Currently, besides the e-JN a number of other electronic public procurement platforms are available to contracting authorities in Slovenia (e.g. https://eponudbe.si/, http://www.ejn.si/). The platforms to be used in e-public procurement procedures have to be non-discriminatory, generally available and interoperable with the information-technology products in general use and should not restrict economic operators' access to procurement procedures.
3) What kind of activities are covered by local e-procurement legislation?	Electronic public procurement platforms that are currently available for use to contracting authorities in Slovenia support the electronic management of all phases of electronic public procurement procedures (i.e. from the publication of the tender notice, through the submission of bids, up to the award of the contract). However, the conclusion of the contract and all communication after the conclusion of contract cannot be carried out through e-public procurement platforms. In addition, non-electronic means of communication can be used also for communication related to non-essential elements of public procurement procedures and in the case of prescribed exemptions (e.g. if procurement documents require submission of physical models that cannot be submitted by electronic means or if the use of electronic communication would require specialised office equipment that is not generally available etc.).
4) Whether the use of e-signatures can be required by the contracting authority? If yes, what type?	The electronic public procurement platforms require the use of a qualified e-signature for the submission of tender (to ensure a sufficient level of security) and for signing of e-ESPD; however, an e-signature is not required for the submission of other documentation and communication with contracting authority.



Law . Tax

Your free online legal information service.

A subscription service for legal articles
on a variety of topics delivered by email.
cms-lawnow.com



Law . Tax

Your expert legal publications online.

In-depth international legal research
and insights that can be personalised.
eguides.cmslegal.com

CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 (0)20 7367 3000
F +44 (0)20 7367 2000

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Cameron McKenna Nabarro Olswang LLP is a limited liability partnership registered in England and Wales with registration number OC310335. It is a body corporate which uses the word "partner" to refer to a member, or an employee or consultant with equivalent standing and qualifications. It is authorised and regulated by the Solicitors Regulation Authority of England and Wales with SRA number 423370 and by the Law Society of Scotland with registered number 47313. It is able to provide international legal services to clients utilising, where appropriate, the services of its associated international offices. The associated international offices of CMS Cameron McKenna Nabarro Olswang LLP are separate and distinct from it. A list of members and their professional qualifications is open to inspection at the registered office, Cannon Place, 78 Cannon Street, London EC4N 6AF. Members are either solicitors or registered foreign lawyers. VAT registration number: 974 899 925. Further information about the firm can be found at cms.law

© CMS Cameron McKenna Nabarro Olswang LLP

CMS Cameron McKenna Nabarro Olswang LLP is a member of CMS Legal Services EEIG (CMS EEIG), a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices. Further information can be found at cms.law