

A few questions about Implementation of the EU public procurement directives

Parliamenti

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Overview

The public procurement market in the EU is huge. Every year more than a quarter of a million public institutions and authorities in the EU spend around 14% of GNP on acquiring services, construction works and goods of all kinds.¹

This is an important channel for public spending and provides a market for goods, services and construction works from both domestic and foreign companies.

In recent months, EU member states have stepped up their efforts to implement new procurement directives: Directive 2014/24/EU on public procurement (known as the 'classic directive'), Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors (the 'sector specific directive'), and

Directive 2014/23/EU on the award of concession contracts.

To give you a clear picture of the various public procurement markets in the EU, we provide brief overviews of the legal systems in the Czech Republic, France, Germany, Hungary, Italy, Poland, Romania, Slovakia, Spain and England, Wales & Northern Ireland. For each country, we answer four questions:

- Which pieces of legislation regulate public procurement in those countries?
- What thresholds trigger public procurement procedures and where to look for invitations to tender, both in EU tenders and those 'below the EU thresholds'?
- What legal protection can contractors expect in public procurement procedures?
- Have the said Directives been implemented into the local legal system and if so, when?



1. Figures based on: http://europa.eu/youreurope/business/public-tenders/rules-procedures/index_en.htm

Czech Republic

Have Directives 2014/24/EU, 2014/25/EU and 2014/23/EU been transposed, as at April 18, 2016, into Czech law? What regulations govern the public procurement system in the Czech Republic?

As at 18 April 2016, the EU Directives have not yet been fully transposed into Czech law. However, the legislative process has substantially progressed in this regard and technically, the Czech transposition law is valid but not yet effective.

On 29 April 2016, Act No. 134/2016 Coll., on Public Procurement (“**PPL**”), became the law of the Czech Republic, and will take effect on 1 October 2016 (“**Effective Date**”). PPL newly combines the regulation of both public procurement and concession projects. However, until the Effective Date, the current relevant national laws - specifically Act. No. 137/2006, on Public Procurement, as amended, and Act No. 139/2006 Coll., on Concession Agreements and Concessions, as amended - will continue being valid, effective and applicable.

PPL sets out the rules and manner of awarding public contracts, measures of legal protection, control over the procedure of awarding public procurement contracts and the authorities responsible for the supervision. Under both the currently applicable laws and (from the Effective Date) the PPL, the awarding entities are generally under obligation to award contracts according to the rules of fair competition, equal treatment and

non-discrimination of contractors, and must ensure impartiality and objectivity of persons preparing tender rules and carrying out the tender (procurement contract award) procedures.

What are the threshold levels for applying the procedures provided for public contracts in the Czech Republic?

Generally, the essential principles of PPL, such as transparency, equal treatment, non-discrimination and proportionality apply to all public contracts.

Above-the-threshold contracts:

Under PPL, the most stringent rules apply to any public contract, with a value which reaches or exceeds the limits set for the “above-the-threshold” public contracts. The Czech Cabinet sets out these thresholds in the Regulation on Establishing Financial Limits, which is likely to come into effect on the Effective Date along with the PPL. More specifically, the current limit for an “above-the-threshold” public contract is the CZK equivalent of €136,000² for goods and services if the awarding authority is the Czech Republic (except for certain defense and national security projects), the Czech National Bank or a state semi-budgetary organization (“*prispevkova organizace*”, in Czech). The limit is €211,000 if the awarding authority is a territorial self-governing unit (“*uzemni samospravny celek*”, in Czech) and its semi-budgetary organization, or other legal persons fulfilling the specific requirements and conditions under the PPL.

For utilities of the threshold is set at €422,000 for supplies of goods and services. The limits for the “above-the-threshold” contracts applicable to utilities also apply to defense and national security.

In case of construction works, the uniform value limit for the “above-the-threshold” public contracts is the CZK equivalent €5,284 million.

Below-the-threshold contracts:

The PPL sets somewhat simpler (less administratively burdensome, yet still formal and enforceable) procedural requirements for “below-the-threshold” public contracts. These are contracts with a value which does not reach the “above-the-threshold” limits, but which exceeds the CZK equivalent of €74,000 for goods or services, and €222,000 for construction works (which are the statutory caps for “small-scale public contracts”).

Where are notices concerning procedures for awarding public contracts published?

Notices about new tenders and other actions or milestones relating to public procurement procedures, are generally published in the Czech official Public Procurement Bulletin, which is currently available on the website of the Czech Ministry of Regional Development (<https://www.vestnikverejnychzakazek.cz/>).

Notices relating to tender procedures for the “above-the-threshold” public contracts are published in the Official Journal of the European Union.

2. For ease of conversion, we have used the exchange rate of EUR 1 = CZK 27.00 (although the official daily rates may slightly differ).

What are the measures of legal protection in the Czech Republic?

Measures and remedies of legal protection available under the PPL are composed of three consecutive parts:

First, suppliers which are threatened to sustain harm or which have already suffered harm due to certain actions or omissions of the awarding authority under PPL have the right to raise and file objections against such alleged misconduct of the awarding authority. The objections are filed directly with the awarding authority. Generally, the deadline for filing such objections is 15 days from learning about the awarding authority's violation of the PPL or from the publication by the awarding authority of a notice about its actions or decisions. However, objections

against the tender rules (and documentation) must be filed by the end of the applicable bid submission period. The awarding authority must resolve on the objections within 15 days and its decision must be reasonably justified (i.e. specific and substantiated).

Second, if the objections are rejected by the awarding authority, suppliers have the right to file a formal request for an administrative review of the awarding authority's decision, by the Office for Protection of Competition. The deadline for filing such motion is 10 days from the supplier's receipt of the awarding authority's negative decision on its objections. A supplier filing this motion has to make a deposit in the amount of 1% of the tender bid price – with the minimum deposit being the CZK equivalent of €1,850 and the maximum being

€370,000. The review proceedings before the Office for Protection of Competition may also be initiated ex officio by the Office in reaction to a written notice of alleged misconduct. However, persons filing such a notice have to pay an administrative fee in the amount of CZK equivalent of €370.

Third, the final and enforceable administrative decisions of the Office for Protection of Competition in PPL matters are further subject to a court review carried out in special judicial review proceedings.

England, Wales And Northern Ireland

Have Directives 2014/24/EU, 2014/25/EU and 2014/23/EU been transposed, as at April 18, 2016, into England, Wales and Northern Ireland? What regulations govern the public procurement system in England, Wales and Northern Ireland?

Each of the Directives has been implemented by way of a separate Statutory Instrument, namely the: Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016.

The Public Contracts Regulations 2015 came into force in England, Wales and Northern Ireland on 26 January 2015. The Utilities Contracts Regulations and the Concession Contracts Regulations came into force on 18 April 2016, the final day for transposition under the Directives.

Each regulation takes a "copy out" approach to the text of the Statutory Instrument, that is to say, as far as possible the text in the regulations is the same as the Directive it implements.

Scotland is a separate jurisdiction and the relevant legislation is set out in the: Procurement

Reform (Scotland) Act 2014; The Procurement (Scotland) Regulations 2016; Public Contracts (Scotland) Regulations 2015; Utilities Contracts (Scotland) Regulations 2016 and the Concessions Contracts (Scotland) Regulations 2016. The new regulations came into effect on 18 April 2016.

What are the threshold levels for applying the procedures provided for public contracts in England, Wales and Northern Ireland?

The basic threshold for application of the Public Contracts Regulations 2015 is £10,000 in respect of central government contracting authorities

and £25,000 in respect of other sub-central contracting authorities. At this low level, authorities are obliged to carry a degree of advertising, on the UK Government Contracts Finder website.

The thresholds for the full application of the Public Contracts Regulations are as per the European Commission approved conversion rates for the Euro to pound sterling.

Where are notices concerning procedures for awarding public contracts published?

Notices about the launch of tender procedures specified in the Public Contracts Regulations 2016, which do not exceed the EU thresholds, are generally published in the Contracts Finder website: <https://www.gov.uk/contracts-finder>.

Notices about the procedures reaching the EU thresholds are published in the Official Journal of the European Union. There are also additional means of publishing the notices such as websites, newspapers and journals.

What are the measures of legal protection in England, Wales and Northern Ireland?

Public procurement in England and Wales falls within the jurisdiction of the High Court. In Scotland, most challenges are issued in the Court of Session, which is the highest civil court in Scotland. Challenges can be raised in the Sheriff Court (a lower tier of the court structure), but this is very rare. Unlike many Member States there is no special tribunal established to hear procurement cases in any jurisdiction within the UK.

In general, economic operators and other parties wishing to bring claims for damages or other injunctive relief have a period of 30 days to bring proceedings, starting on the date they knew or should have known that there are grounds for a claim. Although the court has the power to extend the deadline by a period of up to three months, that power is only likely to be exercised in limited circumstances (e.g. due to the illness or detention of a key person necessary to bring the claim).

The government agency with responsibility for procurement policy in England and Wales is the Crown Commercial Services. It prepares legislation in England, Wales and Northern Ireland, publishes guidance and establishes UK procurement policy.

France

Have Directives 2014/24/EU, 2014/25/EU and 2014/23/EU been transposed, as at April 18, 2016, into French law? What regulations govern the public procurement system in France?

As of April 1st 2016, Directives 2014/24/EU and 2014/25/EU (the **"Public Procurement Directives"**) as well as Directive 2014/23/EU (the **"Concessions Directive"**) (together the **"Directives"**) have been fully transposed into French law, before the deadline imposed by the European Union.

Before the transposition of the Directives

Public procurement in France has always been clearly divided into three types of contracts: public

procurement contracts, public-private partnership contracts (PPP) and concessions contracts. Until now, the French public procurement legal framework was governed by many different regulations which made it complex and hard to implement.

- Public procurement contracts were governed by the Public Procurement Code (2006) and Ordinance n°2005-649 of June 6th 2005 relating to procurement contracts concluded by certain public or private entities not submitted to the Public Procurement Code.
- PPPs were governed by Ordinance n°2004-559 of June 17th 2004 on partnership

contracts (contrats de partenariat) and by provisions of the General Public Entities Property Code on long-term lease contracts.

- French concessions contracts were governed by Law n° 93-122 of January 29th 1993, known as the "Sapin" law, governing public service contracts (délégations de service public) and Ordinance n° 2009-864 of July 15th 2009 on public works concession contracts.

After the transposition of the Directives

On April 1st 2016, all of these regulations were repealed and the new regulations transposed from the Directives came into force:

- Ordinance n° 2015-899 of July 23th 2015 relating to public procurement contracts and its implementing Decree n° 2016-360 of March 25th 2016 relating to public procurement transposed the Public Procurement Directives; and
- Ordinance n° 2016-62 of January 29th 2016 relating to concession agreements and its implementing Decree n° 2016-86 of February 1st 2016 relating to concession agreements transposed the Concession Directive.

The new French legal framework abides by the summa divisio operated by the Directives between public procurement contracts on one side and concession contracts on the other side. PPP contracts are no longer governed by specific laws but by the general rules applicable to public procurement contracts.

For the purposes of standardization and harmonization, these new regulations will be soon reassembled into a new single Public Procurement Code.

What are the threshold levels for applying the procedures provided for public contracts in France?

Regarding public procurement contracts

Ordinance n° 2015-899 of July 23th 2015 relating to public procurement contracts defines public procurement contracts as contracts concluded for pecuniary interest by one or more contracting authorities (submitted to the Ordinance) with one or more economic operators, to address their needs with regard to works, supplies or services.

According to Ordinance and its implementing decree:

- Below €25,000: A contract can be negotiated without prior advertising measures or competitive tendering;
- Between €25,000 euros and the EU thresholds³: Public contracts are awarded through proper procedures, which conditions are freely set by the buyer. However, these procedures must respect the principles set out in article 1 of the Ordinance, i.e. equal access to public procurement, equal treatment and transparency.
- Above the EU thresholds: The formalized public procurement procedures introduced by the Public Procurement Directives and transposed into French law apply (tendering procedure, competitive procedure with negotiation, negotiated procedure with a prior call for competition, competitive dialogue).
- **Regarding concessions contracts**
The scope of the Ordinance n° 2016-62 of January 29th 2016 relating to concession agreements is rather broad. It applies to written contracts in which one or more contracting authorities or entities (submitted to the Ordinance) entrust the execution of works or the operation of a service to one or more economic operators, to whom is transferred the operational risk, the consideration for which consists either solely in the right to exploit the works or services or in that right together with payment.

Its implementing decree provides for two types of procedures:

- Below the EU thresholds⁴: In order to keep a certain level of transparency for contracts excluded from the Concessions Directive's scope, a simplified procedure applies.
- Above the EU thresholds: The formalized public procurement procedure introduced by the Concessions Directive and transposed into French law applies.

Where are notices concerning procedures for awarding public contracts published?

Regarding public procurement contracts:

Below €25,000, a contract can be negotiated without any prior advertising measures.

Between €25,000 and the EU thresholds:

- State / local authorities / public establishments:
 - Between €25,000 and €90,000 advertising measures are freely decided;
 - Between €90,000 and the EU thresholds, contract notices must be published in the Bulletin Officiel des Annonces des Marchés Publics (BOAMP) (<http://www.boamp.fr/>) and in a publication entitled to receive legal announcements.
- Other buyers: Advertising measures are freely decided.

Above the EU thresholds:

- State / local authorities / public establishments: Contract notices must be published in the BOAMP and in the Official Journal of the European Union.

3. Public supply and public service contracts concluded by the State: €135,000 tax free; Public supply and public service contracts concluded by local authorities: €209,000 tax free; Public supply and public service contracts concluded by contracting entities: €418,000 tax free; Public works contracts: €5,225 million tax free.

4. €5,225 million tax free.

- Other buyers: Contract notices must be published in the Official Journal of the European Union.

Regarding concessions

Below the EU thresholds, contract notices must be published in the BOAMP or in a publication entitled to receive legal announcements. In addition, the buyer may consider publishing notices in a specialized publication or in the Official Journal of the European Union.

Above the EU thresholds, contract notices must be published in the Official Journal of the European Union, in the BOAMP or in a publication entitled to receive legal announcements, as well as in a specialized publication relating to the concerned economic sector.

What are the measures of legal protection in France?

Public procurement in France is a highly competitive area, and participants in tender procedures do not hesitate to challenge these procedures.

Pre-contractual and contractual summary procedure appeal (référé)

Before the contract is executed

An action may be brought by any third parties who had an interest in executing the contract (unsuccessful bidders, contractors which could have submitted a tender, or the State's local representative (préfet)) before the judge in summary proceedings for breach of the advertising and competitive bidding obligations to which the conclusion of the contracts are subject.

The appeal is filed before the administrative judge at any time during the tender procedure up to the execution of the contract. The proceedings are quick. The judge rules after a minimum of 16 days – 11

for a proper procedure – following the award decision. His decision can only be appealed before the Conseil d'Etat within 15 days.

The judge has wide-ranging powers of injunction and suspension. Depending on the nature of the offense, the contracting authority may be ordered to start the entire procedure or part of it over, to reintegrate an unsuccessful bidder or to communicate the grounds for refusal.

After the contract is executed

A contractual summary procedure appeal may be brought against the public contracts by any third party who had an interest in executing the contract (unsuccessful bidders, contractors which could have submitted a tender, or and the State's local representative (préfet)). The appeal must be lodged in the month following the publication of the award notice or within 6 months following the contract's execution if no award notice was published. The judge rules in the form of summary proceedings and has one month to do so. The judge's decision can only be appealed before the Conseil d'Etat. In practice, a final jurisdictional decision should therefore be obtained in less than a year.

The administrative judge may pronounce the suspension of the execution of the contract, its cancellation, termination, or even reduce its duration or impose a financial penalty.

Appeal against the contract

Since a 2007 decision of the Conseil d'Etat known by the name *Tropic Travaux*⁵, the unsuccessful bidders in the award procedure of an administrative contract can lodge an appeal against the contract. This possibility has been extended to third

parties by the *Department du Tarn et de la Garonne*⁶ case that entitles third parties with sufficient interest to directly challenge all public contracts.

Appeals must be lodged within the two months following publication.

The judge has a broad range of powers when he observes the presence of irregularities. He can terminate the contract for the future, wholly or partially, order readjustments, award indemnities or even cancel the contract with retroactive effect.

Previously, third parties could not directly challenge contracts but had to request the cancellation of separable acts. Although the cancellation of a separable act did not necessarily imply the cancellation of such contract, it could lead to it after a complex contentious route. The *Département du Tarn et Garonne* case law allows third parties to challenge the contract directly. In turn, the *acte détachable* route is closed: third parties are no longer allowed to challenge those separable acts taken prior or simultaneously to the execution of the contract.

However, third parties retain the ability to challenge separable acts that occur after the execution of contracts.

5. CE, July 16, 2007, *Sté Tropic travaux signalisation*, appl. No.291545.

6. CE, April 4, 2014, *Département du Tarn et de la Garonne*, appl. No 358994.

Germany

Have Directives 2014/24/EU, 2014/25/EU and 2014/23/EU been transposed, as at April 18, 2016, into German law? What regulations govern the public procurement system in Germany?

Germany implemented the European Directives on Public Procurement in Part IV of the German Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen – GWB), which contains the core rules for the award of public contracts above the EU value thresholds. The details of the procurement procedures are laid down in five procurement regulations. Services and supply contracts of contracting authorities are governed by the Regulation on the Award of Public Contracts (Vergabeverordnung – VgV), while public works contracts are covered by separate Procurement Rules for Public Works (Vergabe- und Vertragsordnung für Bauleistungen – VOB/A). Utilities contracts concluded by contracting entities operating in the transport, water and energy sectors are regulated by the Utilities Regulation (Sektorenverordnung – SektVO). The award of concession contracts is subject to the Concessions Regulation (Konzessionsvergabeverordnung – KonzVgV). Finally, the Defence and Security Regulation covers public contracts in defence and security. The new legal framework became effective on April 18, 2016.

For public contracts below the EU thresholds, the GWB and the VgV do not apply. Instead, contracting authorities are bound by state

budget law to apply standardised procedures set forth in the Procurement Rules for Supplies and Services (Vergabe- und Vertragsordnung für Leistungen – VOL/A) and – for public works – the VOB/A. In addition, all 16 states have enacted their own public procurement law. These laws apply to procurement procedures above and below the EU thresholds and frequently cover social and environmental aspects such as sustainability, minimum wages, family-friendly working conditions and gender equality as well as promotion of SMEs.

What are the threshold levels for applying the procedures provided for public contracts in Germany?

The GWB and the procurement regulations only apply to contracts exceeding the EU value thresholds. For contracts below these thresholds, the relevant state procurement rules apply regardless of contract value. However, these rules provide for simplified procedures for contracts below certain levels, varying from state to state and the nature of the contract and ranging from € 10,000 to € 100,000.

Where are notices concerning procedures for awarding public contracts published?

Notices concerning procedures above the EU thresholds are published in the Official Journal of the European Union. On a national level, contract notices are published on www.bund.de. Due to the federal structure of Germany, several other contract databases exist at state level, such

as the Hessian Announcement Database “HAD” (www.had.de) and “Vergabemarktplatz Nordrhein-Westfalen” (www.evergabe.nrw.de).

What are the measures of legal protection in Germany?

For public contracts above the EU thresholds, judicial review is primarily granted by a public procurement tribunal (Vergabekammer). Public procurement tribunals are administrative bodies set up both at federal and state level. They operate similarly to a court, exercising their functions independently and subject only to the rule of law. Public procurement tribunals are obliged to fully investigate the complaints brought before them in an adversarial procedure, usually including an oral hearing. A key feature of the review process is that it involves an automatic suspension of the award procedure; once the tribunal has opened the review, the contracting authority may no longer award the contract until the tribunal has rendered its decision. Another important feature of the review process is the claimant’s right to inspect, within certain limits, the files of the contracting authority. If the public procurement tribunal finds a breach of procurement law, it may order any suitable measure to remedy the breach. It may, in particular, order a re-evaluation of bids or an entirely new bidding process.

Decisions of the public procurement tribunals can be challenged before the Higher Regional Court (Oberlandesgericht – OLG). The OLG can overrule or confirm the public procurement tribunal’s decision, or

remand the case to the procurement tribunal for further review. During the OLG procedure, the suspensive effect of the application for review will persist upon an interim order of the court.

Review proceedings require a prior complaint by the applicant to the contracting authority within certain time limits, and are subject to fees depending on the value of the contract.

Hungary

Have Directives 2014/24/EU, 2014/25/EU and 2014/23/EU been transposed, as at April 18, 2016, into Hungarian law? What regulations govern the public procurement system in Hungary?

The current procurement system in Hungary is based on Act CXLIII of 2015 on Public Procurement (the “**Public Procurement Act**”) that came into force on 1 November, 2015. The Public Procurement Act contains detailed rules of procedures for awarding public contracts, mandatory elements of public procurement contracts and the legal remedies relating to public procurements.

The awarding entities are required to award contracts according to the general principles of fair competition, equal treatment of tenderers, national treatment of tenderers, and impartiality and objectivity on the part of persons participating in awarding procedures.

As at April 18, 2016 the EU Directives have been transposed into Hungarian law, through the Public Procurement Act.

What are the threshold levels for applying the procedures provided for public contracts in Hungary?

Specific provisions apply to procurements where EU thresholds are reached (as set out in EU regulations).

The national thresholds are set in the annual budget of Hungary each year. For the year 2016 the national thresholds, exclusive of value added tax, are as follows:

Thresholds applicable to all contracting entities, except public utility service providers:

- Public supplies: HUF equivalent of approximately €25,570;
- Public works: HUF equivalent of approximately €47,940;
- Public works concessions: HUF equivalent of approximately €319,625;
- Public services: HUF equivalent of approximately €25,570;
- Service concessions: HUF equivalent of approximately €79,904.

Thresholds applicable to public utility service providers:

- Public supplies: HUF equivalent of approximately €159,809;
- Public works: HUF equivalent of approximately €319,625;
- Public services: HUF equivalent of approximately €159,809;
- Public works concessions: HUF equivalent of approximately €639,236;
- Service concessions: HUF equivalent of approximately €319,625.

Where are notices concerning procedures for awarding public contracts published?

Pursuant to the Public Procurement Act, procedures for awarding public contracts are public and transparent. Accordingly, contracting entities are required to publish calls for tenders. As a general rule, calls for tenders are published in the Public Procurement Database operated by the Hungarian Public Procurement Authority⁷. In specific cases, contracting entities are required to publish calls for tenders on their own websites.

Notices in respect of procedures reaching the EU thresholds are published in the Official Journal of the European Union.

7. The Public Procurement Database is available via the following link:
<http://kba.kozbeszerzes.hu/apex/f?p=103:35:4427985298881344>

What are the measures of legal protection in Hungary?

Should an alleged infringement arise, the tenderers and the contracting entity may initiate a procedure for a pre-contractual remedy before seeking formal legal remedies. The aim of the pre-contractual remedy procedure is to settle the dispute between the parties to the public procurement procedure in a quick and cost-efficient manner.

Tenderers have the right to appeal against the decision of the contracting entity. The appellate body is the Public Procurement Arbitration Board (Board) which may proceed upon the request

of interested parties or ex officio. The petition is required to be filed within 15 days of the petitioner gaining knowledge of the alleged infringement, or within 10 days of an unlawful decision in a public procurement procedure. The

Board may issue interim measures during its procedure, if an infringement is likely.

Tenderers have the right to appeal against a broad range of actions or omissions on the part of the contracting authority. The Board may (i) reject the request; or (ii) establish that there was no violation of law; or (iii) establish that there was an

infringement. In the event of the establishment of an infringement, the Board may impose a fine on the contracting entity and also prohibit the infringing tenderer from entering into a public procurement procedure again.

The decision of the Board may be challenged before the competent court within 8 days of delivery.

The Public Procurement Authority plays a policy-making and coordinating role for the whole public procurement system. Additionally, it operates the information database for public procurement and has a role in the publishing of notices, as mentioned above.

Italy

Have Directives 2014/24/EU, 2014/25/EU and 2014/23/EU been transposed, as at April 18, 2016, into Italian law?

What regulations govern the public procurement system in Italy?

The European Directives have been transposed into Italian law by Legislative Decree no. 50/2016 (the “**Public Contracts Code**”) published in the Italian Official Journal of Italian Republic (“Gazzetta Ufficiale della Repubblica Italiana”) on April, 18, 2016. According to article 220 of the Public Contracts Code, it is immediately in force and as a general rule, regulates the public tender procedures called after its entering into force.

What are the threshold levels for applying the procedures provided for public contracts in Italy?

Pursuant to article 35 of the Public Contracts Code, the procedural provisions apply only after EU thresholds are reached (as set out in EU regulations). Public purchases

with an estimated value below the aforementioned thresholds shall be conducted with due observance of general principles of fair competition. Moreover, pursuant to article 36 of the Public Contracts Code, contracts with a value lower than €40,000 may be directly awarded without any public tender procedure (so called “affidamento diretto”).

Where are notices concerning procedures for awarding public contracts published?

Notices in respect of procedures reaching the EU thresholds are published in the Official Journal of the European Union. Notices about launching procedures specified in the Public Contracts Code which do not exceed the EU thresholds, are generally published in the website of the tender authority and will soon be published in the tender notices section on the website of the National Anti-Corruption Authority (www.anticorruzione.it). As this digital platform is currently under construction, the tender notices

shall also be published in the Official Journal of Italian Republic.

What are the measures of legal protection in Italy?

Public procurement in Italy is a highly competitive area, and participants of tender procedures frequently take advantage of available measures of legal protection (approximately 5,000 appeal cases per year).

In practice, contractors have the right to appeal against every action or omission of the awarding authority. The appeal is filed with the Tribunale Amministrativo Regionale, an administrative judicial body seated in each Region designed to resolve disputes with public administration including public procurement disputes. In general, the deadline for filing an appeal is 30 days and the proceedings are quick. They usually take a couple of weeks for an interim measure and 1 year for the decision (but it depends on the concrete case). The registration fee ranges from ca. €2,000 to €6,000

depending on the value of the public tender procedure appealed.

Moreover, according to the Public Contracts Code (see article 211), the bidder and the tender authority are entitled to ask the National

Anti-Corruption Authority for an opinion on any issue related to the tender procedure. The opinion is binding upon the parties that have previously agreed to comply with it. The National Anti-Corruption Authority submits its opinion within

30 days from the request inviting the tender authority to annul the acts that eventually appeared unlawful within 60 days under penalty of an administrative sanction (for an amount from €250 to €25,000).

Poland

Have Directives 2014/24/EU, 2014/25/EU and 2014/23/EU been transposed, as at April 18, 2016, into Polish law? What regulations govern the public procurement system in Poland?

The current public procurement system of Poland is based on the Act of Public Procurement Law (PPL) adopted on 29 January 2004, as amended, and a number of statutory instruments. Concession projects and public-private partnerships are governed by the Act of January 9, 2009 on Concession for Building Works or Services and the Act of December 19, 2008 on Public-Private Partnership. PPL sets out the rules and manner of awarding public contracts, measures of legal protection, control over the procedure of awarding public procurement contracts and the authorities relevant for the matters regulated by the Act. The awarding entities following these Acts are generally under obligation to award contracts according to the rules of fair competition and equal treatment of contractors, and the impartiality and objectivity of persons preparing and conducting the procedures.

As at June 2, 2016, parliamentary works on amending the PPL in respect of transposition of the EU Directives into Polish law are very advanced.

What are the threshold levels for applying the procedures provided for public contracts in Poland?

The basic threshold for application of the PPL is the PLN equivalent of €30,000. In specific situations the procedural provisions apply only after EU thresholds are reached (as set out in EU regulations). This refers in particular to the utilities contract (sector specifics), where the threshold for application of the PPL is €418,000 for supplies or services and €5,225 million for building works. In defense and security contracts, the threshold is €418,000 for supplies or services. For certain public contracts relating to culture, education, science and development, as a rule the binding thresholds are €135,000 or €209,000. Special principles refer to services under the light touch regime, including services concerning railway and waterway transport, social, health, legal and other services. Public purchases with an estimated value below these thresholds are usually conducted with due observance of general principles of fair competition.

Where are notices concerning procedures for awarding public contracts published?

Notices about launching procedures specified in the PPL, which do not exceed the EU thresholds, are generally published in the Public Procurement Bulletin, which is available on the website of the Polish

Public Procurement Office (www.uzp.gov.pl).

Notices about the procedures reaching the EU thresholds are published in the Official Journal of the European Union. There are also additional means of publishing the notices such as websites, newspapers and journals.

What are the measures of legal protection in Poland?

Public procurement in Poland is a highly competitive area, and participants of tender procedures frequently take advantage of available measures of legal protection (approximately 3,000 appeals cases per year).

In practice, contractors have the right to appeal against every action or omission of the awarding authority. The appeal is filed with the National Appeals Chamber, a special quasi-judicial body seated in Warsaw designed to resolve public procurement disputes. (For certain procedures below EU thresholds and concession projects, a different system of legal protection measures applies). In general, the deadline for filing an appeal is 10 days (5 days in the procedure below EU thresholds). The proceedings are quick - the appeal is usually recognized within 15 days of the filing date, The process is effective and adversarial - being based on procedural principles, including in particular the obligation

to prove one's allegations. The registration fee ranges from approximately €1,700 to €4,600 depending on the type of procedure.

The participants of the appeal may complain to the court against the Chamber's ruling within 7 days of delivery of the ruling. The fee for the complaint ranges from ca. €8,700 to €23,255 (depending on the type of procedure) and the complaint

should in general be recognized within 1 month of the filing date. Nevertheless, appellate proceedings most frequently end at the stage of the ruling handed down by the National Appeals Chamber.

In Poland, the Public Procurement Office plays a policy-making and coordinating role for the whole public procurement system. The key duties of Public Procurement

Office are to prepare draft legislation on public procurement, arrange appeal proceedings under the PPL, check the conformity of conducted procedures, organize training events in the field of public procurement, and maintain international cooperation on issues relating to public procurement.

Romania

Have Directives 2014/24/EU, 2014/25/EU and 2014/23/EU been transposed, as at April 18, 2016, into Romanian law? What regulations govern the public procurement system in Romania?

As at 18 April 2016, the EU Directives had not been fully transposed into Romanian law. The Parliament approved on 10 May 2016 four new laws regulating the public procurement framework in Romania and transposing the EU Directives ("New Laws"). The New Laws entered into force 26 May 2016.

The public procurement system of Romania is currently regulated by Government Emergency Ordinance no. 34/2006 on awarding public procurement contracts and works and services concession contracts, as amended ("**Ordinance**"), and secondary legislation implementing the provisions of the Ordinance. Public-private partnerships are governed by Law no. 178/2010, as amended.

The Ordinance sets out the rules and means of awarding public contracts, thresholds that trigger its applicability, measures of

legal protection, control over the procedure of awarding public procurement contracts and the authorities responsible for such matters. Under the Ordinance, the awarding entities are obliged to award contracts according to the rules of fair competition and equal treatment of contractors, and the impartiality and objectivity of persons preparing and conducting the procedures.

What are the threshold levels for applying the procedures provided for public contracts in Romania?

The basic thresholds for applying the provisions of the Ordinance are the RON equivalent of €30,000 for products or services, and €100,000 for construction works. Public acquisitions with an estimated value below the aforementioned basic thresholds are usually conducted with due observance of general principles of fair competition and equal treatment of contractors.

The New Laws establish several exemptions from its applicability. The main criteria used by the New Laws in order to categorize these exemptions are the thresholds and the type of contracts. For example, the basic

thresholds that trigger the New Laws' applicability are the RON equivalent of approx. €5 million for each acquisition of works, €130,000 for each acquisition of products and services, and €735,000 for each acquisition of social services and other specific services, such as health, educational and cultural services. There is a special light touch regime, for energy, transport, social, health, legal and other services.

Where are notices concerning procedures for awarding public contracts published?

Notices about launching procedures specified in the Ordinance, which do not exceed the EU thresholds, are published online on the Electronic System of Public Procurements (SEAP) at www.e-licitatie.ro. The publication of such notices in the Official Gazette of Romania is not mandatory. Notices about procedures reaching the EU thresholds are published in the Official Journal of the European Union, at the initiative of the SEAP operator.

These basic rules are maintained by the New Laws, which also introduce a new requirement that the notices may not be published at the national

level before publishing in the Official Journal of the European Union.

What are the measures of legal protection in Romania?

Public procurement in Romania is highly competitive and participants to tender procedures frequently take advantage of available measures of legal protection (approximately 3,000 appeals cases per year).

In practice, contractors have the right to challenge every action / omission of the awarding authority. The appeal is filed with the National Council for Solving Complaints ("**Council**"), an independent body with administrative-judicial activity seated in Bucharest, designed to resolve public procurement disputes. The term for filing a challenge is 10 days (5 days in the procedures below EU thresholds). In general, the Ordinance establishes effective,

adversarial and quick proceedings. For example, it issues a decision within 20 days from the date when the awarding authority sends the public procurement file to the Council. The appellant must deposit a guarantee of 1% of the value of the contract. The Council's resolutions may be appealed with the court within 10 days from the delivery date of the resolutions to the parties. The fees for submitting the challenges to the court are insignificant, i.e., less than €1.

In Romania, there is a National Agency for Public Procurement ("**Agency**") which plays a policy-making and coordinating role for the whole public procurement system. The key duties of the Agency are to prepare and analyse draft legislation on public procurement, elaborate the national strategy in public procurement field, check the conformity of conducted

procedures, cooperate with other institutions engaged in public procurement activities and maintain international cooperation on issues relating to public procurement.

The New Laws regulating the remedies and appeals pursued by contractors introduce a new rule that challenges may be filed with the Council or directly with the court. Also, they establish the appellants' obligation to notify the awarding authority before filing an appeal with the Council or the court; otherwise, the appeal will be rejected. The appellants are entitled to ask the Council or the court to suspend the awarding procedure. However, this suspension request is free of charge only when it is registered with the Council. The court may suspend the awarding procedures if the appellant secures the payment of a bail in amount of 2% of the contract value.

Slovakia

Have Directives 2014/24/EU, 2014/25/EU and 2014/23/EU been transposed, as at April 18, 2016, into Slovak law?

What regulations govern the public procurement system in Slovakia?

The EU public procurement directives have been transposed into the Slovak law through a new Act on Public Procurement (the "**Act**") adopted on 18 November 2015 and effective as of 18 April 2016. The Act sets out the rules and manner of awarding public contracts, concessions and design contests, measures of legal protection, control over the public procurement procedure and the authorities responsible for the matters regulated by the Act. The awarding entities following the Act are generally under obligation to award contracts

according to the rules of equal treatment, non-discrimination, transparency, proportionality and principle of economy and efficiency.

What are the threshold levels for applying the procedures provided for public contracts in Slovakia?

Under the Act, the limits are divided into EU thresholds (as set out by EU regulations) and national thresholds (limits below EU thresholds where the national public procurement procedure applies). The general limit for application of the national thresholds is €5,000 for commonly available and €20,000 for other than commonly available supplies, services and works (with exception of €40,000 for food supplies, €70,000 for work contracts and €20,000 for social services). In general, a doubled

increase of these limits applies to subsidies contracts. A special national regime is set out for defense and security contracts, with a threshold of €70,000 for supplies or services and €800,000 for work contracts.

In specific situations, the procedural provisions apply only after EU thresholds are reached. This refers in particular to utilities contracts, where the threshold for application is €418,000 for supplies or services, €1 million for social services and €5,225 million for work contracts. Social services such as health, education, community and cultural services have a "light touch" regime since they by their nature have a limited cross-border dimension and, therefore, a higher threshold.

Public purchases with an estimated value below the aforementioned thresholds shall be conducted so that expenditures for their fulfillment are adequate to the quality / price ratio.

Where are notices concerning procedures for awarding public contracts published?

Notices about launching tender procedures specified in the Act, which do not exceed the EU thresholds, are published in the Public Procurement Bulletin on the website of the Slovak Office for Public Procurement (the "Office") (www.uvo.gov.sk).

Notices about procurement procedures reaching the EU thresholds are also published in the Official Journal of the European Union. The additional means of publishing includes the Office website (information can be found under the buyer's profile) or, optionally, other websites.

A special simplified regime applies to supplies, services and work contracts commonly available on the market. The notices for awarding such contracts are published on an "electronic market" platform

(www.eks.sk) through which the entire procedure for awarding public contract is completed.

What are the measures of legal protection in Slovakia?

The main measures of legal protection are divided into four stages: (i) request for remedy, filed to the contracting authority, (ii) objections, filed to the Office, (iii) appeal against objections, filed to the Council of the Office, and (iv) administrative claim against the appeal, filed with the Slovak court (that might be also reviewed under appellate proceedings).

The request for remedy may be filed under the circumstances defined by the Act and is a pre-requisite for a potential second stage, the objection proceedings. For the requests for remedy and objection must both be filed within 10 days from the day when the bidder could have become aware of the objected act or omission. The Office has 30 days to decide on objections. The date of commencement of the objection proceedings, however, depends on the stage of public procurement process in which the objection was filed.

Appeals against objections shall be delivered to the Council of the Office within 10 of the Office's decision on objections. The Council has 45 days to decide on the appeal. A party to the appeal procedure may further initiate a court review of the Council's decision, by filing a submission with the court within 30 days of the delivery of the decision. Unless the court decides otherwise, the petition does not have suspensory effect. The court does not have a statutory deadline for reviewing the case. Generally, it takes approximately two years for the court to decide.

Fees for review proceedings differ. Whereas the request for remedy is not subject to an administrative fee, the deposit for an objection proceeding depends on the value of the public contract and could amount up to €150,000 (in general, fees are substantially lower if the objections are filed in early stages of the bidding process, i.e. before the prices are disclosed). As for the appeal proceedings, the fees amount to a lump sum of up to €6,000. For a court proceedings, a court fee of €70 is payable with the submission.

Spain

Have Directives 2014/24/EU, 2014/25/EU and 2014/23/EU been transposed, as at April 18, 2016, into Spanish law? What regulations govern the public procurement system in Spain?

The current public procurement system of Spain is set out mainly in (i) "Royal Decree-Law 3/2011", dated 14 November, in which the Revised Text of the Law on Public Sector Contracts (hereinafter, "TRLCSP") is approved, as amended; (ii) the

"Royal Decree 1098/2001", dated 12 October, that develops the former public contract law but is now in force in the parts that it does not oppose to TRLCSP; (iii) and also, the "Royal Decree 817/2009", dated 8 May, that partially develops TRLCSP.

The "31/2007 Act", dated 30 October, provides specific rules for public procurement within the water, energy, transport, and postal services sectors.

TRLCSP sets out the rules and manner of awarding public contracts, measures of legal protection, control over the procedure of awarding public procurement contracts and the competent authority for the matters regulated by the Act. The principles of freedom of access, transparency, public exposure, and equal treatment without discrimination are the underlying principles of the regulatory standards concerning public procurement. These principles appear in all stages

of contracting, from the preparatory state of contracts, through to their execution.

As at June 2, 2016 the EU Directives have not been fully transposed into Spanish law, but parliamentary works on a new bill in this respect are very advanced.

Spanish Parliament is currently dissolved because of the new elections that are going to take place at on June 26th. These will be the second elections in six months in Spain. For that reason, it is unlikely that Spain will transpose the EU Directives in the short term.

What are the threshold levels for applying the procedures provided for public contracts in Spain?

The basic threshold for application of the TRLCSP is €18,000. In specific situations the procedural provisions apply only after EU thresholds are reached (as set out in EU regulations). This refer in particular to utilities contracts, where the threshold for application is €209,000 for supplies or services and €5,225 million for building works.

Regarding the 31/2007 Act, the basic thresholds for application are €418,000 for supplies or services contracts and €5,225 million for building works.

These thresholds can change depending on the new EU regulation

and the Spanish development of that regulation.

Where are notices concerning procedures for awarding public contracts published?

Notices about the launch of tender procedures, are generally published in the Public Procurement Platform, which is available on the following website:

<https://contrataciondelestado.es/wps/portal/plataforma>

Those procedures reaching the EU thresholds are also published in the Official Journal of the European Union. If this is not the case, the procedures should be published in the Official Spanish Gazette (“BOE” Boletín Oficial del Estado), or depending on the territorial scope of the Public Authority, in the specific Official Gazette for that region.

There are also additional means of publishing the notices such as websites with a specific contractor’s profile for different bodies (“**Perfil del Contratante**”).

What are the measures of legal protection in Spain?

Public Procurement in Spain is highly efficient with regard to dispute resolution, and participants of tender procedures frequently take advantage of available measures of legal protection.

Within the tender procedure phase, tenderers have the right to appeal

against almost every action or omission of the Contract Authority (based on substantial reasons). The appeal (depending on the contract) can be filed with the Administrative Central Court of Contractual Appeals (“**Tribunal Administrativo Central de Recursos Contractuales**” or “**TACRC**”), a special quasi-judicial body seated in Madrid and designed to resolve public procurement disputes (each Region of Spain has its equivalent body).

The deadline for filing an appeal is 15 days and the proceedings are quick. The TACRC shall reach a decision within 15 days of the filing date. The proceedings are also effective and adversarial, being based on procedural principles, including in particular the obligation to prove one’s allegations.

The participants of the appeal procedure may complain to the jurisdictional court against the TACRC’s ruling within 2 months of delivery of the ruling. The fee for the complaint depends on the procedure, and there is no specified term in which the court shall reach a ruling (the general term is 20 days after the trial is finished).

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