

**Detsaridis Christos,
Ass.Professor at the Law
School of Democritus
University of Thrace :**

**CHALLENGES FOR A
MEMBER STATE ON
TRANSPOSING AND
IMPLEMENTING EU
DIRECTIVES ON PUBLIC
PROCUREMENT**



INCORPORATION OF THE NEW DIRECTIVES

- The state-members had 24 months in order to incorporate the provisions of the new directives in their national law, as well as 30 more months especially for those incorporating the provisions over the process of conclusion of contracts with the use of electronic means.
- This lead to the fact that Greece was obliged to harmonize its regulation of the internal legal order with the ones of the new Directives of E.U. up to April the 18th 2016.

CONSULTATION SECTIONS

Consultation documents were published for the following sections:

- General issues of the transposition way and methodology
- Defining central government authorities and registries (Annexes I & XI Directive 2014/24/EU)
- Subcontracting
- ESPD, evidence, e- Certis, economic operators official lists
- Social-environmental parameters / New special regime for social, health, educational and cultural services
- CPB, cross-border contract award, division of contracts into lots
- e-procurement
- Award criteria
- Procedures-Tools
- Exclusion grounds / Conflict of interest
- Nomenclature –Labels

CONSOLIDATION

- Substantive and procedural provisions
- Contracts of the classic sector and excluded sectors and concessions
- Contracting authorities and contracting entities
- Contracts above and below thresholds
- Award and performance
- Works, supplies and services contracts
- Union and national law
- Maintaining specific rules per type of contract where necessary! Exclusion of defense and security contracts!

PUBLIC PROCUREMENT LAW

I Directive 2014/24/EU and national implementing provisions for the award and performance

II Directive 2014/25/EU and reference to the national provisions of I

III Governance -Directives 2014/24/EU and 2014/25/EU

IV Judicial protection for I and II

V Final provisions for I-IV

GOALS & PROVISIONS IN THE NEW LAW

- Simplification / consolidation
- Enhancing transparency / anti-corruption
- Improve access of SMEs
- Smart growth -ICT
- Promoting social reference contracts
- Promoting green public procurement
- Speed and flexibility

CONSOLIDATION – IMPLEMENTATION RULES- REDUCTION OF ADMINISTRATIVE BURDEN - FLEXIBILITY –COMPLETION OF MINOR ERRORS

- Abolition of a large number of existing fragmented, exceptional laws.
- Extension of implementation field of the directives also to the contracts below the thresholds (with variations for greater flexibility)
- Simplified rules for non-central government authorities
- Using all possibilities offered by EU law for:
 - use of the negotiated procedure and
 - modification of contracts during their term
- Reversal evaluation stages in open procedure (for public work contracts/studies)
- Existence and operation of official lists of approved economic operators
- The potentiality for clarifications and the completion of minor errors is provided

TRANSPARENCY / ANTI-CORRUPTION

- Strengthening transparency – Fight against corruption
- Obligation of the prime contractor to provide information about subcontractors for all contracts across the subcontracting chain
- Mandatory grounds for exclusion
- Clarification of the concept of conflict of interest
- Procedural rules for consultation with the market in order to ensure compliance with the principles of transparency and equal treatment
- Mandatory declaration of subcontractors

IMPROVED ACCESS OF SMEs

- Option for mandatory contract division into lots for Greek CPBs **BUT** option of justified divergence of the contract division into lots for Greek CAs
- Restriction of the demands for a certain level of financial characteristics in order to submit an offer, in the sense that the minimum of the OC must not exceed twice the estimated value of the contract
- Option of CAs to pay directly subcontractors of the primary contractor **BUT** freedom of the Greek CAs to combine some or part of the lots
- Calculation of the cost of the participation guarantee based only on the estimated value of the section offered.

SMART GROWTH – ICT

- Optional use of e-catalogues
- Full electronic communication for public contracts above EUR 60,000
- Exclusive use of ESPD in electronic form
- Postponement of mandatory use of e-certis for all types of contracts
- Use of a self-declaration document for contracts below the thresholds

SOCIAL CLAUSE CONTRACTS

Adoption of measures to ensure compliance with the horizontal social clause:

- Compliance with labor law
- Mandatory exclusion is a breach of the obligation
- Clarification of award criteria with social features
- Contracts awarded exclusively to EUR if over 30% of workers are disabled or disadvantaged.

THE REFORM OF THE NATIONAL PRE AWARD REMEDIES SYSTEM IN GREECE

- The public procurement review and remedies systems of EU Member States have to be established and developed on the basis of the specific requirements of the EU Public Procurement Remedies Directive 89/665/EEC and the Directive 2007/66/EC .
- The main aim of the European Union's procedural directives is the regulation of more effective and faster means of appeal against the decisions from the contracting authorities which violate the European law while contract awarding.

THE REMEDIES MUST BE

- **Rapid**
- **Effective**
- **Transparent**
- **Non-discriminatory**

REMEDIES' SYSTEMS

- To **Regular Courts** which is provided by the legislation of Belgium, France, Ireland, Lithuania, the Netherlands, Portugal, Sweden and the United Kingdom, where the review of public procurement decisions is the task of regular courts exclusively.
- To **specialized administrative bodies** which is provided by the legislation of Austria, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Belarus, Malta, Poland, Romania, Slovakia, and Slovenia
- To a **combination** of the two

HELLENIC PUBLIC PROCUREMENT AUTHORITY ON REMEDIES' REVIEW

- issuance of justified decisions that are subjected to a judicial review
- the members of the Authority, are independent in relation to the contracting authorities, the candidate tenderers and the Government
- the Authority is not supervised by a minister and is not integrated in the administrative hierarchy.
- independent from other bodies that are related to public procurement procedures
- financially independent
- The terms of hiring as well as the terms of firing of its members should be regulated by specific rules
- it is specially regulated and it is staffed by qualified personnel with specific remuneration
- it functions in several departments for a faster resolution of the cases

HELLENIC PUBLIC PROCUREMENT AUTHORITY ON REMEDIES' REVIEW

Administrative Review Body (ARB) characteristics :

- Non judicial character
- Established by law
- Permanent (for a full 5 year term of office)
- Independent
- Impartial
- Specialised
- Centralised
- Compulsory jurisdiction

Extent of power

- Imposes interim measures
- Sets aside the unlawful decision (action or omission of CA)
- Declares the ineffectiveness of public contracts

HELLENIC PUBLIC PROCUREMENT AUTHORITY ON REMEDIES' REVIEW

Proceedings

- Deadline for the complaint 10 days and 15 days in case of omission of the CA
- Standstill (signature of the contract is forbidden)
- Obligation of the CA to prepare and submit to the RB a file of the case with the proper documentation. If omitted a presumption of acceptance of the complaint can be established
- “inter partes” procedure
- The general adversarial rules are observed in all cases
- Rapidity of the proceedings: the case is adjudicated within 40 days

Decision

- The decision of the RB is final: within 20 days from the date of the hearings (in camera)
- Written reasons for the decision are always to be given
- Revocation or modification of the decision is forbidden
- The decision is subject only to judicial review before the Council of State (action for annulment and action for suspension) or to the Administrative Court of Appeal)

THE SUCCESS OF THE NEW REMEDIES' SYSTEM

- **Simple and fast procedure**
- **The members of the specialized review body gain very quickly specialized expertise**
- **The cost involved is quite low**

JUDICIAL REVIEW BODY

- **The 4412/2016 law provides the procedure before the Court, establishing a judicial review body following the procedure of the new remedies system.**
- **The interim measures against the wrong decision of the Review Body within a deadline of 10 days**
- **An action of annulment of the wrong decision of the Review Body within 10 days from the issuance of the decision from the Court that grants temporary legal protection**

REVIEW OF THE REGULATION

- **Increasing the effectiveness**
- **Providing transparency and impartiality**
- **Acceleration of the dispute resolution procedures**
- **Reducing Bureaucracy**
- **Fight against corruption**



© Getty Images



Thank you, Obrigado, Grazie, Merci,
Danke, хвала, Dziękuję, Kiitos paljon,
спасибо !