



Limitations to standing in review procedures under EU procurement law

Gergő Poszler
European Commission

Directorate General Internal Market and Services
Unit C/2 – Public Procurement Legislation I.

NB: The information in this presentation is not binding for the European Commission and does not present an official position of the European Commission

Structure

A) General considerations

1. The two channels of remedies
2. The EU framework for national remedies
3. The basic requirements under the directives
4. The 2007 reform

B) Standing

5. Definition
6. Interest / harm
7. Standing of other actors
8. Relevant recent or pending cases

A. General considerations:

- **Remedies at EU level**

Infringement proceedings against a Member State following a complaint lodged with the European Commission

- **Remedies at national level**

Case brought against awarding authority before national court or independent review body

2. EU framework for national remedies

- Remedies Directives 89/665/EEC and 92/13/EEC
- Key objective: ensuring that in area of public procurement effective and rapid remedies are in place at national level
- Requirements to be transposed into national law
- Both pre-contractual remedies and post-contractual remedies

3. Basic requirements under the directives

Availability of review procedures

- material scope
- personal scope,
- administrative barriers

Independent review body (administrative or judicial)

- Independence from contracting authorities/government
- Full independence regarding decision-taking

Minimum powers

- Interim measures
- Set aside unlawful decisions/render gravely illegal contracts ineffective
- Granting damages

4. The 2007 reform

Standstill period

- Allows for effective pre-contractual remedies
- Communication of both award decision and reasons
- Waiting period of 10 calendar days as a minimum
- Automatic suspension in case of application for review
- Sanctions for violation

Illegal direct awards

- Post-contractual remedies available (ineffectiveness)
- Application within time limits (30 days or 6 months)
- Sanctions for violation

B. Standing

- *Article 1(3): 'Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.'*
- *Broad definition, accompanied by a broad interpretation*
- *Principle elements: interest and harm*

6. Interest and harm

- Participation
- Chance of obtaining the contract?
- Contestation in time?
- Time limit for review?
- Obligation to refer to conciliation?
- Invalid tender

7. Standing of persons other than individual economic operators

- *Contracting authority*
- *Consortia*
- *Subcontractors*
- *Interest representatives*

8. Other relevant recent or pending cases

- *C-100/12 Fastweb*
- *'Hand towel' framework agreement case*



European
Commission

Thank you for your attention!