


Experience of Denmark

Efficient public procurement complaints mechanism and the role of an independent review body: International good practices and roadmap for Lebanon
Webinar 10-11 March 2021



Legislation on Procurement

- Procurement Law 1564/2015
 - Transposes EU Directive 2014/24 (public sector)
- Executive Order 1624/2015
 - Implements EU Directive 2014/25 (utilities sector)
- Additional legislation
 - Concessions and defence procurement
 - Procurement not covered by the directives
- Complaint Board Law 593/2016 (recast)
 - Transposes EU Directive 2007/66 (remedies)
 - Supplemented by Executive Order 887/2011

Composition of the Board

- Presidency
 - Pool of 11 appeal court and municipal court justices
- Professional
 - Pool of 20 specialists (practitioners and lawyers)
- Appointed by the Minister of Economy
 - Term of office 4 years (part-time)
 - Professional members proposed by 9 public authorities and 11 trade associations



Location of the Board

- Originally attached to the Consumer and Competition Authority (Ministry of Economy)
 - Potential conflict of interest, as it is:
 - Responsible for procurement legislation
 - May give advisory opinions on procurement procedures
 - May bring challenges before the Complaint Board and the Courts
- Moved to Companies Registry
 - Neutral authority (also under Ministry of Economy)



Location of the Board

- Moved to House of Complaint Boards (Ministry of Economy)
 - Secretariat for 19 complaint boards
 - 3 on consumer issues
 - 8 on business issues (including procurement)
 - 5 on environmental issues
 - 3 on health issues
- Panels composed by
 - 2 members (1 justice and 1 professional, or more)
 - Secretarial staff only provides office functions



Jurisdiction of the Board

- Mandatory jurisdiction
 - Complaints submitted during standstill period
 - Automatic suspension of procurement
 - Until decision on interim measures
- Voluntary jurisdiction
 - Informal and speedy procedure
 - Use of lawyers is not required
 - Complaint fee may be reimbursed (1500 Euro)
 - Complainant will not bear risk of costs



Legal Standing

- Legal interest
 - Persons participating in the procurement
 - Persons with an interest in participating
 - Passivity in stages of procurement
- Consumer and Competition Authority
 - Rarely uses this competence
- Designated entities (Minister of Economy)
 - 67 trade associations
 - Similar associations in other Member States
 - Do not need to demonstrate legal interest



Preparation of the Case

- Information
 - Complainant must inform contacting entity
- Facts and legal issues
 - Contracting entity must submit report
 - Board may impose provision of information
- Pleadings
 - Submitted in writing
 - Oral hearing constitutes an exception
 - Board may recommend use of lawyers
 - Board may allow intervention by third parties



Powers of the Board

- Quasi-judicial powers
 - Suspend procurement procedure
 - Annul award decision (administrative law)
 - Impose obligation to make procedure legal
 - Award damages
 - Impose economic sanction
- No competence
 - Bid-rigging (competition law)
 - Contracts (contract law, except for ineffectiveness)



Ineffectiveness

- Standstill period
 - 10 days from contract award to signature
- Contract signed
 - Within the standstill period
 - Without any contract notice
 - May be declared ineffective
- Ineffectiveness may be prevented
 - Publication of voluntary notice
 - Observing standstill period after publication



Appeal of Decisions

- Decisions of the Board
 - May be appealed to the Courts within 8 weeks
 - Against the contracting entity or the Board
- Caseload 2019
 - 93 complaints
 - 46 cases decided on substance (45 written procedure)
 - 39 % success rate in the 46 cases (4 appealed)
 - 8 % award of interim measures (8 cases)
 - 5 month average procedure



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Complaint Board - Denmark

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- WTO
- European Court Litigation
- EU Sanctions
- EU Export Control
- International Trade
- Public Procurement
- Competition & State Aid
- Customs & Compliance
- Market Access



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