

Summary table of draft transposition of directive 2007/66/EC into Member States law

1-General features of review system (art.1)

1-1 Scope of the review system

BULGARIA

All contracts covered by Directives 2004/18/EC and 2004/17/EC, as well of works concessions as defined in Article 1 of Directive 2004/18/EC

CYPRUS

The Law for review procedures is applied for all contracts, above and below thresholds, awarded within the scope of the classical sector Law and for contracts fall within the scope of the utilities Law.

CZECH REPUBLIC

All contracts covered by the Act of public contracts and Act of concessions: works, services and supply contracts and concessions, both above and below the threshold, both in ordinary and special sectors.
 All contracting authorities.

DENMARK

All contracts covered by directive 2004/17/EC and 2004/18/EC: works, services and supply contracts and concessions, both above and below the threshold, both in ordinary and special sectors.
 All contracting authorities, including all bodies obliged to comply with EU or national rules concerning the competition procedure for the award of public works, supplies and services contracts.

FRANCE

All contracts covered by directives 2004/18/CE and 2004/17/CE and service concessions as defined in article 1 of directive 2004/18/EC

GERMANY

Public contracts equal to or greater than the European threshold amounts

IRELAND

All contracting authorities and contracts covered by Directive; as of now, standstill period will not apply to sub-threshold contracts or concessions

ITALY

All contracts covered by the Code of public contracts: works, services and supply contracts and concessions, both above and below the threshold, both in ordinary and special sectors.
 All contracting authorities, including all bodies obliged to comply with EU or national rules concerning the competition procedure for the award of public works, supplies and services contracts.

POLAND

All contracts covered by the *Public procurement law* : works, services and supply contracts, both above and below EU thresholds.
 Below EU thresholds appeal may be lodged only against following actions performed by the contracting authority in the course of the procedure:

- choice of the negotiated procedure without publication, single source procurement or request for quotation ;

<p>ROMANIA</p> <p>SLOVENIA</p> <p>SPAIN</p> <p>THE NETHERLAND</p> <p>UNITED KINGDOM</p>	<ul style="list-style-type: none"> • description of the method used for evaluation of fulfilment of conditions for participation in a contract award procedure ; • exclusion of the appellant from a contract award procedure • rejection of appellant's tender <p>All contracts covered by the Government Emergency Ordinance 34/2006 regarding the award of the public procurement contracts, public works concession contracts and services concession contracts (transposing Directive 2004/17/EC and Directive 2004/18/EC): works, services and supply contracts and concessions, both above and below the threshold, both in ordinary and special sectors.</p> <p>All contracting authorities, including all bodies obliged to comply with EU or national rules concerning the competition procedure for the award of public works, supplies and services contracts.</p> <p>All contract covered by the Public Procurement Act and by the Public procurement in water management, energy, transport and postal services area Act: supply, services and works contracts, above and below the threshold.</p> <p>All contracts covered by Act 30/2007 and by Act 31/2007, these being contracts covered by Directives 2004/18/CE and Directive 2004/17/CE, and other contracts falling outside their scope.</p> <p>All contracting authorities , including all bodies obliged to comply with EU or national ruiles concerning the competition procedure for the award of public works, supplies and services contracts</p> <p>All public contracts falling under directives 2004/18/EC and 2004/17/EC, unless the mentioned directives exclude certain contracts</p> <p>All contracts to which the Public Contracts Regulations 2006 and the Utilities Contracts Regulations 2006 (which transposed Directives 2004/18/EC and 2004/17/EC respectively) apply.</p> <p>Contracts include public contracts, utilities contracts, framework agreements and dynamic purchasing systems.</p>
<p>1-2 Obligation to notify the contracting authority of the intention to seek review</p> <p>BULGARIA</p> <p>CYPRUS</p> <p>CZECH REPUBLIC</p> <p>DENMARK</p> <p>FRANCE</p> <p>GERMANY</p>	<p>Not applicable</p> <p>Not applicable</p> <p>No mandatory notification (but person wishing to use a review procedure must send the same application to review body and to contracting authority)</p> <p>No later than when the complaint is brought before the National Complaint Board for Public Procurement the person submitting the complaint must notify the contracting authority about the complaint and whether the complaint is submitted in the standstill period. If the complaint is not submitted in the standstill period the person submitting the complaint must indicate whether he is seeking suspension.</p> <p>Not applicable</p> <p>The person wishing to use a review procedure has to notify the contracting authority of the alleged infringement as soon as the person is aware of it. Otherwise, the review will be dismissed as inadmissible.</p>

IRELAND	It will be necessary for complainant to inform Authority of intention to seek review and of the alleged infringement.
ITALY	The person wishing to use a review procedure has to notify the contracting authority of the alleged infringement and of his intention to seek review, provided that this does not affect the standstill period or time limits for applying for review or the conclusion of the award procedure.
POLAND	An appellant is obliged to send a copy of an appeal to the contracting authority before the expiry of the deadline for lodging an appeal.
ROMANIA	The person wishing to use a review procedure is encouraged to notify the contracting authority of the alleged infringement and of his intention to seek review, provided that this does not affect the standstill period or time limits for applying for review or the conclusion of the award procedure.
SLOVENIA	The person wishing to use a review procedure has to notify the contracting authority of the alleged infringement and of his intention to seek review as the pre-review procedure is obligatory and takes place before the contracting authority.
SPAIN	When the procedure concerns contracts covered by Directive 2004/18/CE and by Directive 2004/17/CE, the person wishing to use a review procedure has to notify the contracting authority of the alleged infringement and of his intention to seek review.
THE NETHERLAND	There is no obligation to notify the contracting authority of the intention to seek review
UNITED KINGDOM	Applications to the court may be filed <u>only</u> if the economic operator has informed the contracting authority of the breach or apprehended breach of the duty owed to it in accordance with the relevant Regulations by that contracting authority and of its intention to start proceedings in respect of that breach.

1-2 Prior application for review before the contracting authority

BULGARIA	There is no mandatory prior review before the contracting authority. Direct review before the review body while the claim is submitted to the court with a copy to the contracting authority. The claim for damages is submitted directly to the review body accompanied with a copy for the contracting authority
CYPRUS	Not applicable
CZECH REPUBLIC	Mandatory prior application for review before the contracting authority (“prior application”)
DENMARK	No mandatory prior application for review before the contracting authority
FRANCE	No mandatory prior application for review before the contracting authority. Mandatory prior application for damages before the contracting authority/entity
GERMANY	The contracting authority has the possibility to remedy the objection within 15 days after notification
IRELAND	As of present this will not be part of the review system
ITALY	No mandatory prior application for review before the contracting authority

POLAND	There is no prior application for review before contracting authority in the draft of the new Polish <i>Public procurement law</i> .
ROMANIA	No mandatory prior application for review before the contracting authority
SLOVENIA	No mandatory prior application for review before the contracting authority
SPAIN	There is mandatory prior application for review before the contracting authority.
THE NETHERLAND	An economic operator has to go directly to court for application for review, not to the contracting authority.
UNITED KINGDOM	This provision has not been implemented in UK

1-3 Review bodies

Nature of the review bodies	
BULGARIA	Judicial review before the administrative courts.
CYPRUS	Tenders Review Authority establish by the Tender Review Law.
CZECH REPUBLIC	Administrative review Office for the protection of Competition - <i>first instance</i> Chairman of the Office - <i>appeal</i>
DENMARK	A national complaint board for public procurement as first instance. The complaint board is an administrative quasi-judicial board.
FRANCE	Mere judicial review to devoted to ordinary courts
GERMANY	Judicial review
IRELAND	Judicial review
ITALY	Judicial review
POLAND	National Appeal Chamber – non judicial review body (appeals) Courts – judicial review bodies (complaints)
ROMANIA	Administrative-jurisdictional body The National Council for Solving Legal Disputes or judicial review
SLOVENIA	Special and independent review body
SPAIN	Firstly: an administrative review. Secondly: a judicial review.

THE NEDERLAND	Public contracts are reviewed for the civil court.
UNITED KINGDOM	Court proceedings
Nature of the judicial review bodies	
BULGARIA	Administrative courts: Regional Administrative Courts: first instance Supreme Administrative Court: second and final instance
CYPRUS	Supreme Court of Cyprus.
CZECH REPUBLIC	Administrative judiciary Regional administrative court - <i>first instance</i> Supreme administrative court - <i>appeal</i>
DENMARK	The appeal lies to the judiciary
FRANCE	Administrative and civil branches of justice depending on the nature of the contract: - administrative courts of first instance (administrative contracts) - civil courts of first instance (contracts under civil law)
GERMANY	Public Procurement Competition Board (first instance) State Council (appeal)
IRELAND	Civil Courts (High Court)
ITALY	Administrative branch of justice (sole jurisdiction) Regional administrative courts - <i>first instance</i> State Council - <i>appeal</i>
POLAND	Regional courts - complaints Supreme Court – cassation
ROMANIA	Administrative branch of justice the contentious-administrative section - the courts at the level of each county - Tribunal County - the Regional Appeal Courts- appeal - special procedure regarding the award of contracts in the infrastructure field – the Bucharest Appeal Court
SLOVENIA	Administrative branch of justice Administrative court Supreme court <i>-first instance</i> <i>-appeal</i> After the contract has been awarded: General Civil court High court <i>-first instance</i> <i>-appeal</i>
SPAIN	For contracts covered by EC Directives a first review is before an “ad hoc” administrative body whose members are qualified, appointed and ceased as if they were judges.
THE NETHERLAND	Civil court, Civil court of appeal, The Supreme Court
UNITED KINGDOM	The High Court.

2 Precontractual phase

2-1 Standstill period (articles 2, 2 a, 2 b)

Contracts subject to the standstill period

BULGARIA

All contracts falling within the scope of review procedures, except for the exemptions to the mandatory standstill period under Article 2b.

CYPRUS

All contracts that fall within the Public Procurement Laws (Classical and Utilities).

CZECH REPUBLIC

Contracts in the scope of Directive 66/2007

DENMARK

All contracts covered by Directives 2004/18/EC and 2004/17/EC

FRANCE

Contracts in the scope of directive 2004/18/EC and directive 2004/17/EC above the thresholds, except for non priority services contracts

GERMANY

Contracts in the scope of Directive 66/2007

IRELAND

All contracting authorities and contracts covered by Directive; as of now, standstill period will not apply to sub-threshold contracts or concessions

ITALY

Contracts in the scope of Directive 66/2007

POLAND

All contracts covered by the *Public procurement law*: works, services and supply contracts, both above and below EU thresholds (see point 1-1)

ROMANIA

Contracts in the scope of Directive 66/2007
Contracts out of the scope of Directive 66/2007

SLOVENIA

All contract covered by the Public Procurement Act and by the Public procurement in water management, energy, transport and postal services area Act: supply, services and works contracts, above and below the threshold.

SPAIN

Contracts in the scope of Directive 66/2007.

THE NETHERLAND

All contracts which are according Directives 2004/18 and 2004/17 subject to a standstill period

UNITED KINGDOM

Contracts in the scope of Directive 66/2007.

Duration and calculation of the standstill period

BULGARIA

10 days from the date of the award decision receipt by the interested tenderers and candidates
(currently, an increase of the standstill period to **20** days is being discussed.)

<p>CYPRUS</p>	<p>10 calendar days from the date of which the contracting authority has sent a reply to the unsuccessful economic operators with effect from the day following the date on which the reply has been sent by fax or an electronic means of communication or 15 calendar days from the day following the date on which the contracting authority has sent a reply by other means of communication from above, or at least 10 calendar days with effect from the day following the date of the receipt of a reply.</p>
<p>CZECH REPUBLIC</p>	<p>15 days starting from the date of the receipt of the award decision. Then 45 days in case of the prior application and application the review body. The period can be prolonged by an interim measure</p>
<p>DENMARK</p>	<p>10 days starting from the time where the contracting authority sends the notification on the contract award procedure using fax or e-mail or 15 days starting from the time where the contracting authority sends the notification on the contract award procedure using regular letter.</p>
<p>FRANCE</p>	<p>16 days starting from the date the award decision is sent to the operators concerned in case of postal or mixed transmission (postal and electronic) 11 days starting from the date the award decision is sent to the operators concerned in case of electronic transmission used for all operators</p>
<p>GERMANY</p>	<p>15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days if fax or electronic means are used.</p>
<p>IRELAND</p>	<p>Minimum 14 days from notification by electronic means or 16 days if notification by non-electronic means</p>
<p>ITALY</p>	<p>40 days starting from the date the last communication of the contract award procedure has been sent to the operators concerned</p>
<p>POLAND</p>	<p>10 days starting from the day when a contract award decision is sent, if fax or electronic means are used or 15 days – if other means of communication are used.</p>
<p>ROMANIA</p>	<p>Contracts in the scope of Directive 66/2007: 11 days starting from the date the communication of the contract award procedure has been sent to the operators concerned by fax or by electronic means; in case the contracting authority doesn't transmit the communication also by fax or by electronic means - 16 days starting from the date the communication of the contract award procedure has been sent to the operators concerned . Contracts out of the scope of Directive 66/2007 : 5 days starting from the date the communication of the contract award procedure has been sent to the operators concerned by fax or by electronic means; in case the contracting authority doesn't transmit the communication also by fax or by electronic means - 10 days starting from the date the communication of the contract award procedure has been sent to the operators concerned .</p>

<p>SLOVENIA</p> <p>SPAIN</p> <p>THE NETHERLAND</p> <p>UNITED KINGDOM</p>	<p>10 days starting from the date of recipients undertake the decision of contracting authority</p> <p>Generally speaking, the standstill operates until a written resolution of the review is notified to the operators</p> <p>15 days, whether by e-mail, fax or by post</p> <p>10 days from the date of sending if the notice is sent electronically or 15 days from the date of sending, or 10 days from the date of receipt, if the notice is sent by other means. As minimum periods, contracting authorities are free to use periods that are longer.</p>
<p>Exemptions to the mandatory standstill period</p> <p>BULGARIA</p> <p>CYPRUS</p> <p>CZECH REPUBLIC</p> <p>DENMARK</p> <p>FRANCE</p> <p>GERMANY</p> <p>IRELAND</p> <p>ITALY</p>	<p>in case who is awarded the contract has been selected as a result of a negotiated procedure without prior publication of a notice and there is only one invited participant; in case who is awarded the contract is the only interested tenderer and there are no interested candidates; if the contract is concluded based on a framework agreement with only one participant.</p> <p>if the Public procurement Laws do not require prior publication of a contract notice in the Official Journal of the European Union and/or in the Official Gazette of Cyprus, if the only tenderer concerned is the one who is awarded the contract and there are no candidates concerned; in the case of a contract based on a framework agreement which is concluded with one economic operator.</p> <p>in case of a negotiation procedure without publication when contracting authority negotiates only with one tenderer and there are no candidates concerned; in case of a specific contract based of dynamic purchasing system.</p> <p>if the contract is awarded based on the procedure where the directive does not require prior publication of a contract notice. if the contract is awarded based on a framework agreement; if the contract is awarded based on a dynamic purchasing system; if the only tenderer concerned is the one who is awarded the contract and there are no other economic operator who is affected by the public procurement procedure.</p> <p>in case of award procedure with the participation of only one economic operator in case of award of a contract within a framework agreement or a dynamic purchasing system</p> <p>if public procurement procedure without prior notice is justified in cases of extreme urgency.</p> <p>Same instances as provided in Directive 66/2007</p> <p>if the only tenderer concerned is the one who is awarded the contract and no application for review of a notices or an invitation to tender has been made within the timelimits or if the application for review of a notices or an invitation to tender has been</p>

2-2 Precontractual review (artt. 2 , 2c)

Nature of the review procedure

BULGARIA

First instance: the respective Regional Administrative Court (one judge) under special rules, stipulated in the PPL.

CYPRUS

Application for review by the Tenders Review Authority.

CZECH REPUBLIC

Administrative review
Office for the protection of Competition - *first instance*
Chairman of the Office - *appeal*

DENMARK

A national complaint board for public procurement as first instance.
The appeal lies to the judiciary

FRANCE

Summary proceeding (single judge)

GERMANY

Public Procurement Competition Board (first instance)
State Council (appeal)
(In German law there is no division precontractual – contractual review)

IRELAND

Judicial Review by High Court

ITALY

Judicial review
administrative branch of justice (sole jurisdiction):
Regional administrative courts - *first instance*
State Council - *appeal*

POLAND

National Appeal Chamber

ROMANIA

Administrative-jurisdictional body:
the National Council for Solving Legal Disputes
or
Judicial review:
the contentious-administrative section – competence of each court

SLOVENIA

Special procedure, designed for review of public contract

SPAIN

First review: administrative body: administrative procedure
Second review: judicial body: judicial procedure

THE NETHERLAND

Civil court

UNITED KINGDOM

Court proceedings in the High Court.

<p><u>Time-limit for seeking review</u></p> <p>BULGARIA</p> <p>CYPRUS</p> <p>CZECH REPUBLIC</p> <p>DENMARK</p> <p>FRANCE</p> <p>GERMANY</p> <p>IRELAND</p> <p>ITALY</p> <p>POLAND</p> <p>ROMANIA</p>	<p>10 days following the notification or the coming to the knowledge. However, after the conclusion of the contract, claims for review may not be submitted under these rules.</p> <p>10calendar days from the date of which the contracting authority has sent a reply to the unsuccessful economic operators with effect from the day following the date on which the reply has been sent by fax or an electronic means of communication or 15 calendar days from the day following the date on which the contracting authority has sent a reply by other means of communication from above, or at least 10 calendar days with effect from the day following the date of the receipt of a reply; 10 calendar days from the date of the publication of notices, tender documents or addendums/clarifications.</p> <p>15 days starting from the date of the receipt of the decision about prior application</p> <p>30 days starting from when the contracting authority has notified the economic operators about the prequalification when using the restricted procedure (art. 2c).</p> <p>No predetermined time-limit. However, applications for review on the ground of this procedure are no more admissible after the conclusion of the contract</p> <p>No time limit but duty of tenderer to object an infringement immediately after knowledge. If the awarding authority is not willing to remedy: 15 days after rejection</p> <p>During standstill period for opportunity to have award decision reversed.</p> <p>30 days starting from the date of the receipt of the communication of the contract award procedure; 30 days starting from the date of publication of notices (if directly adversely affecting)</p> <p>10 days starting from: – the day when information concerning an action of the contracting authority is sent, if fax or electronic means are used or the day of publication of contract notice or day of publication of the specification of the essential terms of contract on the website or the date on which tenderer have become or with due diligence may have become aware of the circumstances constituting the basis of an appeal; 15 days starting from the day when information concerning an action of the contracting authority is sent, if other means of communication are used.</p> <p>10 days starting from the date the complainer took knowledge, according to the emergency ordinance, of a contracting authority’s act (including the communication of the contract award procedure) that it considered by him as illegal. 30 days starting from the date of publication of an awarding notice (if directly adversely affecting)</p>

<p>SLOVENIA</p> <p>SPAIN</p> <p>THE NETHERLAND</p> <p>UNITED KINGDOM</p>	<p>10 days starting from the date of recipients undertake the decision of contracting authority.</p> <p>10 days from the notification to the operators of the act subject to review</p> <p>15 days (standstill period)</p> <p>Proceedings must be started promptly and in any event within 3 months from the date when the grounds for starting proceedings first arose, unless the Court considers there are good reasons for extending the period. The requirement to start proceedings promptly never requires them to be started in less than the minimum periods in article 2c</p>
<p><u>Suspension of the conclusion of the contract</u> (art. 2, par. 3)</p> <p>BULGARIA</p> <p>CYPRUS</p> <p>CZECH REPUBLIC</p> <p>DENMARK</p> <p>GERMANY</p> <p>ITALY</p> <p>POLAND</p> <p>ROMANIA</p>	<p>The contracting authority may conclude the contract after the expiry of the stand still period and in case a review of its decision is made, but no imposition of an interim measure ‘suspension of the procedure’ is requested. Where in the review application there is a request for «suspension of the procedure», the contracting authority can not conclude the contract not only during the stand still period, but until the last judicial instance, in particular, the Supreme Administrative Court has pronounced that it does not impose the interim measure of «suspension of the procedure».</p> <p>The time limits for seeking review plus 5 for a preliminary examination by the Tenders Review Authority plus any interim or suspension measures taken by the Tenders Review Authority.</p> <p>45 days starting from the date of the receipt of prior application</p> <p>When a complaint is brought before the complaint board the complaint board will decide whether there are special grounds for suspension of the conclusion of the contract. An automatically suspension of the conclusion of the contract will occur when a complaint is brought before the complaint board in the standstill period and the complaint board will then decide if they will maintain the suspension.</p> <p>Suspension ends with the decision of the Public Procurement Competition Board and another two weeks (deadline for appeal)</p> <p>In case of application for interim measures, provided that an application for review of the award decision has been included. The suspension shall end when the definitive decision on interim measures has been published or when the judgement in first instance has been published, in case the decision on the application for review can be made at the hearing scheduled for the exam of the application for interim measures</p> <p>In case of lodging an appeal contracting authority is not allowed to conclude the contract until the final decision of the National Appeal Chamber</p> <p>In the case of application for review of the acts issued by the contracting authority during the award procedure. The suspension shall end when the decision of the review body is definitive/final, provided that this does not affect the standstill period.</p>

SLOVENIA	In case of application for interim measures, provided than an application for review of the award decision has been included.
SPAIN	Generally speaking, the standstill operates until a written resolution of the review is notified to the operators.
THE NEDERLAND	Until the judge has made its decision
UNITED KINGDOM	The contracting authority is obliged to suspend the procurement <u>automatically</u> when a review of the contract award decision is sought.

Time-limit imposed to the review body for returning a decision

Competencies devoted to the review body	
BULGARIA	Imposition of the interim measure 'suspension of the award procedure'. Confirmation or annulment of the award decision and a possibility to give obligatory instructions for the application of the law. A possibility to impose a sanction the contracting authority for specific infringements.
CYPRUS	Take interim or suspension measures. Annulment of acts or decisions taken unlawfully by the contracting authorities, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure. Award damages
CZECH REPUBLIC	Interim measures, Cancellation of decisions related to the award procedure
DENMARK	Interim measures, setting aside of decisions taken unlawfully and award damages to persons harmed by an infringement and so on (art. 2, par. 1). Ineffective (art. 2d). Alternative penalties (art. 2e). Suspension (art. 2, par. 3).
FRANCE	Suspension and cancellation of decisions related to the award procedure (contracts covered by directive 2004/18/CE) Orders to modify decisions or documents related to the award procedure or to take measures related to the award procedure (contracts covered by directive 2004/18/CE) under financial constraints (contracts under directive 2004/17/CE) Imposition of financial penalties in case the infringement has not been corrected (contracts under directive 2004/17/CE)
GERMANY	Board may take "appropriate measures"; once a tender is effectively accepted, the board cannot rescind the award
IRELAND	Declare ineffectiveness in appropriate circumstances or impose alternative penalties, amend or modify terms of a contract, award compensation for loss or damages or costs to harmed parties
ITALY	Suspension and cancellation of decisions related to the award procedure

<p>POLAND</p> <p>ROMANIA</p> <p>SLOVENIA</p> <p>SPAIN</p> <p>THE NETHERLAND</p> <p>UNITED KINGDOM</p>	<p>The Chamber may: demand performance, repetition or cancellation of action by the awarding entity</p> <p>Suspension and cancellation of decisions related to the award procedure</p> <p>Suspension and cancellation of decisions the contracting authority adopts in the award procedure</p> <p>Suspension and cancelation of decisions related to the award procedure. Also damages</p> <p>Precontractual review is limited to summary proceedings in order to prevent an unsatisfied economic operator to take a contracting authority to court on the merits of a case, which can take several years. This is not in the interest of both parties.</p> <p>The Court may make an interim order:</p> <ul style="list-style-type: none"> • Bringing the suspension to an end; • Restoring or modifying the suspension • Suspending the procedure leading to the award of the contract or the determination of the design contest; • Suspending the implementation of any decision or action taken by the contracting authority. <p>Where the Court is satisfied the contracting authority is in breach of the duty owed to the economic operator, the Court may impose one or more of the following remedies:</p> <ul style="list-style-type: none"> • Order the setting aside of the decision or action that caused the breach; • Order the contracting authority to amend any document; • Award damages to the economic operator which has suffered loss or damage as a consequence of the breach.
<p>Maximum Time-limit</p> <p>BULGARIA</p> <p>CYPRUS</p> <p>CZECH REPUBLIC</p> <p>DENMARK</p> <p>FRANCE</p> <p>IRELAND</p> <p>ITALY</p>	<p>Up to two months from the date of submission of the application to the respective regional administrative court (first instance)</p> <p>45 days from the date of the filling an application for review</p> <p>10 days for decision about interim measure 30 days in ordinary, 60 days in difficult cases; the same in case of appeal</p> <p>There are no maximum time-limit imposed to the review body However the review body must advice the entity about a possible suspension within 30 days from the reception of the complaint.</p> <p>The judge shall return its decision before the expiry of a 21 days-period, starting from the reception of the application for review.</p> <p>No limit</p> <p>(first instance)</p> <ul style="list-style-type: none"> • ordinary protection normally granted within 80 days (unless additional time is required due to application for an

<p>POLAND</p>	<p>incidental review, added argument or further inquiry);</p> <ul style="list-style-type: none"> • decision on an interim measure: normally granted within 45 days; • application for an emergency ruling to obviate the risk of damage to the applicant during the period falling between the date the application is filed and the date on which the decision on an interim measure is issued: normally granted by 5 days. <p>The Chamber examines the appeal within 15 days from the date of its submission to the Chairman of the Chamber. The Chairman of the Chamber may order a combined examination by the Chamber of all the appeals, which were lodged in the course of the same contract award procedure or refer to the same actions of the awarding entity.</p>
<p>ROMANIA</p>	<p>The National Council for Solving Legal Disputes- has the obligation to solve the application for review in no more than 30 days (as from the reception of the public procurement folder from the contracting authority).</p> <p>The contentious-administrative section have the obligation to solve the application for review with celerity, meaning that normally the decisions are granted in no more than 30 days.</p>
<p>SLOVENIA</p>	<p>35 days</p>
<p>SPAIN</p>	<p>The review body should return a decision, if favourable to the operator, in less than 20 days from the notification of the act subject to review. Otherwise, after 20 days without an express resolution the operator should take silence as a negative.</p>
<p>THE NETHERLAND</p>	<p>Since usually cases concerning a public procurement dispute are discussed in summary proceedings, the time-limit for a returning decision is short. The judge decides after the summary proceedings when he is doing a decision on the case (usually between two weeks to three months).</p>
<p>UNITED KINGDOM</p>	<p>None. The proceedings continue until the Court makes an interim order or the proceedings are determined, discontinued or otherwise disposed of.</p>

<p>3 - Contractual review (articles 2 d , 2 e, 2 f)</p>	
<p>3-1 Review procedure</p>	
<p>Nature of the review procedure</p> <p>BULGARIA</p> <p>CYPRUS</p> <p>CZECH REPUBLIC</p> <p>DENMARK</p>	<p>Special proceedings under the PPL brought before an administrative court (one judge)</p> <p>Application for review by the Tenders Review Authority.</p> <p>Administrative review Office for the protection of Competition - <i>first instance</i> Chairman of the Office - <i>appeal</i></p> <p>A national complaint board for public procurement as first instance. The appeal lies to the judiciary.</p>

FRANCE	Summary proceeding (single judge returning alone its decision)
GERMANY	Public Procurement Competition Board (first instance) State Council (appeal)
IRELAND	Judicial review by Civil Court (High Court)
ITALY	Judicial review administrative branch of justice (sole and substantive jurisdiction): Regional administrative courts - <i>first instance</i> State Council - <i>appeal</i>
POLAND	National Appeal Chamber
ROMANIA	Judicial review Administrative branch of justice (sole and substantive jurisdiction) - the contentious-administrative section : - the courts at the level of each county - Tribunal County - the Regional Appeal Courts- appeal - special procedure regarding the award of contracts in the infrastructure field – the Bucharest Appeal Court
SLOVENIA	Judicial review, taking place at the general civil courts (local or district courts)
SPAIN	First review: administrative body: administrative procedure Second review: judicial body: judicial procedure
THE NETHERLAND	Civil
UNITED KINGDOM	Court proceedings in the High Court.
Time-limit for seeking review	
BULGARIA	<u>Ex post transparency</u> Up to 2 months from the date of publication of the contract award notice <u>Others cases</u> Up to 1 year from the date of conclusion of the contract
CYPRUS	art. 2 f, par. 1, a): 30 days art. 2 f, par. 1, b): six months
CZECH REPUBLIC	art. 2 f, par. 1, a): 30 days art. 2 f, par. 1, b): six months
DENMARK	No later than 30 days after the authority has published that they intend to concluded a contract when the contract is awarded without prior publication of a contract notice (art. 2f, par. 1, a) No later than 30 days after the authority has published that the contract is concluded based on a framework agreement or a dynamic purchasing system (art. 2f, par. 1, a). No later than 6 months after the authority has published that the contract is concluded (art. 2f, par. 1, b). No later than 30 days after the authority has published that the contract is concluded, when the authority is a governing entities exploiting a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels

<p>FRANCE</p> <p>GERMANY</p> <p>IRELAND</p> <p>ITALY</p> <p>POLAND</p> <p>ROMANIA</p> <p>SLOVENIA</p> <p>SPAIN</p> <p>THE NETHERLAND</p> <p>UNITED KINGDOM</p>	<p>Ex post transparency :</p> <p>31 days starting from the date the award notice is published or the decision to concluded is notified to operators concerned</p> <p>Other cases:</p> <p>6 months starting from the day the contract is concluded</p> <p>In the case of ineffectiveness: 30 day after knowledge of infringement, but not later than 6 month after conclusion of contract; if the sourcing decision was published in the Official Journal of the European Communities: 30 days after publication.</p> <p>3 months, which can be extended if Court considers there is good reason to do so. Ineffectiveness can be applied (in the case of serious infringement) within the timeframes and circumstances as set out in Directive. However, the six month period for ineffectiveness after conclusion of contract in cases of no notification or publication of contract notice, may require a change to the standard three month period (not clear at this stage if the Courts discretion to extend id sufficient to meet Directive requirements).</p> <p>art. 2 f, par. 1, a): 30 days art. 2 f, par. 1, b): six months</p> <p>art. 2 f, par. 1, a): 30 days art. 2 f, par. 1, b): six months</p> <p>art. 2 f, par. 1, a): 30 days art. 2 f, par. 1, b): six months</p> <p>6 months, starting from signing of contract</p> <p>10 days from the notification to the operators of the act subject to review</p> <p>According to the national system: 5 years.</p> <p>For ineffectiveness claims, 30 days where contract award is publicised, 6 months otherwise.</p> <p>For other claims, proceedings must be started promptly and in any event within 3 months from the date when the grounds for starting proceedings first arose, unless the Court considers there are good reasons for extending the period. The requirement to start proceedings promptly never requires them to be started in less than the minimum periods in Article 2c.</p>	
<p>Competencies devoted to the review body</p> <p>BULGARIA</p> <p>CYPRUS</p>	<p><u>Infringements mentioned in art. 2d</u></p> <ul style="list-style-type: none"> • Ineffectiveness • In case of overriding reasons of general interest: alternative penalty: fine <p>• Ineffectiveness</p> <ul style="list-style-type: none"> • In case of overriding reasons of general 	<p><u>Infringements mentioned in art. 2e</u></p> <ul style="list-style-type: none"> • Alternative penalty: fine <ul style="list-style-type: none"> • Ineffectiveness • alternative penalties

	interest penalties	alternative penalties
CZECH REPUBLIC	<ul style="list-style-type: none"> • Ineffectiveness • In case of overriding reasons of general interest: alternative penalties 	<ul style="list-style-type: none"> • Ineffectiveness: infringement of art. 2e and simultaneously serious infringement of Directive 2004/18 or 2004/17 • alternative penalties: in other cases or in case of overriding reasons of general interest
DENMARK	<ul style="list-style-type: none"> • Ineffectiveness unless the situation is covered by art. 2d, par. 4 and 5. • Alternative penalties when overriding reasons relating to a general interest require that the effects of the contract should be maintained. 	<ul style="list-style-type: none"> • Financial penalties • Shortening of the duration of the contract
FRANCE	<ul style="list-style-type: none"> • Ineffectiveness • In case of overriding reasons of general interest : alternatives sanctions with the discretion to opt between all alternative sanctions available 	<ul style="list-style-type: none"> • Ineffectiveness • Alternative penalties with the discretion to opt between all alternative sanctions available
GERMANY	<ul style="list-style-type: none"> • Ineffectiveness • Appropriate measures 	<ul style="list-style-type: none"> • Ineffectiveness • Appropriate measures
IRELAND	<ul style="list-style-type: none"> • Ineffectiveness • in case of overriding reasons of general interest: alternative penalties 	<ul style="list-style-type: none"> • Ineffectiveness • alternative penalties
ITALY	<ul style="list-style-type: none"> • Ineffectiveness • in case of overriding reasons of general interest: alternative penalties 	<ul style="list-style-type: none"> • Ineffectiveness • alternative penalties
POLAND	<p>The Chamber may:</p> <ul style="list-style-type: none"> • take a decision on invalidity of a contract or • take a decision on invalidity of a part of the contract which has not been performed yet and 	<ul style="list-style-type: none"> • Financial penalties

<p>ROMANIA</p> <p>SLOVENIA</p> <p>SPAIN</p> <p>THE NETHERLAND</p> <p>UNITED KINGDOM</p>	<p>impose a penalty or</p> <ul style="list-style-type: none"> impose penalty or decide on the shortening of the duration of the contract, if it decides that the contract should not be considered invalid because of important public interest Ineffectiveness in case of overriding reasons of general interest: alternative penalties <p>The judge may opt between:</p> <ul style="list-style-type: none"> ineffectiveness <i>ex tunc</i> ineffectiveness <i>ex nunc</i> in combination with financial penalties <p>Suspension and cancelation of decisions related to the award procedure. Also damages.</p> <p>Ineffectiveness through retroactive cancellation/ nullification of the contract.</p> <p>Ineffectiveness plus a fine. The Court has flexibility not to apply ineffectiveness where there are overriding reasons relating to a general interest.</p>	<ul style="list-style-type: none"> Ineffectiveness alternative penalties (2-15%) <p>The judge may opt between:</p> <ul style="list-style-type: none"> ineffectiveness <i>ex nunc</i> in combination with financial penalties financial penalties. <p>Suspension and cancelation of decisions related to the award procedure. Also damages.</p> <p>Ineffectiveness through retroactive cancellation or when the judge so decides leaving the contract as it is, and imposing a shortening of the contract. Automatically, the judgement needs to go to the Competition Authority. They will have to decide if a penalty should be imposed of a mx of 15% of the contractual amount.</p> <p>Alternative penalties: contract shortening, or a fine, or both.</p>
<p>Meaning of ineffectiveness</p> <p>BULGARIA</p> <p>CYPRUS</p> <p>CZECH REPUBLIC</p> <p>DENMARK</p> <p>FRANCE</p> <p>GERMANY</p>	<p>In all cases, <i>ex tunc</i> ineffectiveness</p> <p>Cancellation of the contract</p> <p><i>Ex nunc</i> ineffectiveness</p> <p>The complaint board may decide between <i>ex tunc</i> or <i>ex nunc</i> ineffectiveness</p> <p>In all cases, <i>ex tunc</i> ineffectiveness</p> <p><i>Ex tunc</i> ineffectiveness</p>	

<p>ITALY</p> <p>POLAND</p> <p>ROMANIA</p> <p>SLOVENIA</p> <p>SPAIN</p> <p>THE NETHERLAND</p> <p>UNITED KINGDOM</p>	<p>The judge may opt between <i>ex tunc</i> or <i>ex nunc</i> ineffectiveness</p> <p>The judge may opt between <i>ex tunc</i> or <i>ex nunc</i> ineffectiveness</p> <p>The judge may opt between <i>ex tunc</i> or <i>ex nunc</i> ineffectiveness</p> <p>The judge may opt between <i>ex tunc</i> or <i>ex nunc</i> ineffectiveness.</p> <p>The ineffectiveness of the preparatory acts or of the award act or of the formalisation act may imply the ineffectiveness of the concerned act, depending on the review body's criteria</p> <p>Nullification <i>ex tunc</i> (NOT null and void)</p> <p>Prospective cancellation (<i>ex nunc</i>).</p>
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3-2 Alternative penalties

<p><u>BULGARIA</u></p> <p><u>Nature and scale of alternative penalties</u></p> <p><u>CYPRUS</u></p> <p><u>Nature of alternative penalties</u></p> <p><u>Scale of alternative penalties</u></p> <p><u>Payment and allocation of penalties amount</u></p> <p><u>CZECH REPUBLIC</u></p> <p><u>Nature of alternative penalties</u></p> <p><u>Scale of alternative penalties</u></p> <p><u>Payment and allocation of penalties amount</u></p> <p><u>DENMARK</u></p> <p><u>Nature of alternative penalties</u></p>	<p>Financial penalties of up to 10% of the value of the concluded contract, to the discretion of the judge</p> <ul style="list-style-type: none"> • the imposition of fines on the contracting authority; or, • the shortening of the duration of the contract or the reduction of the supplies or the works that are required. <ul style="list-style-type: none"> • 10% of the contract value with a maximum of €100000. • Measures against the head of the contracting authority. • to the government general account. <ul style="list-style-type: none"> • financial penalties • maximum 5 % of value of the contract or 10 millions CZK; two times more in repeated cases • penalties are paid as revenues of the State budget <ul style="list-style-type: none"> • The complaint board decides whether to use financial penalties and shortening of the duration of the contract if the contracting authority is public. • When the contracting authority is established by private law the prosecution service decides whether to use
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<p><u>Scale of alternative penalties</u></p> <p><u>Payment and allocation of penalties amount</u></p> <p><u>FRANCE</u></p> <p><u>Nature and scale of alternative penalties</u></p> <p><u>IRELAND</u></p> <p><u>Nature of alternative penalties</u></p> <p><u>Scale of alternative penalties</u></p> <p><u>Payment and allocation of penalties amount</u></p> <p><u>ITALY</u></p> <p><u>Nature of alternative penalties</u></p> <p><u>Scale of alternative penalties</u></p> <p><u>Payment and allocation of penalties amount</u></p> <p><u>POLAND</u></p> <p><u>Nature of alternative penalties</u></p> <p><u>Scale of alternative penalties</u></p> <p><u>Payment and allocation of penalties amount</u></p> <p><u>ROMANIA</u></p> <p><u>Nature of alternative penalties</u></p> <p><u>Scale of alternative penalties</u></p>	<p>financial penalties.</p> <ul style="list-style-type: none"> • Financial penalties and shortening of the duration of the contract. • The financial penalties are paid directly to the Danish Competition Authority and is transferred to the Exchequer. <ul style="list-style-type: none"> • Financial penalties up to 20 % of the total amount of the contract, to the discretion of the judge (choice and quantum of sanction is ruled by the principle of personalization of sentences, that implies a requirement of proportionality - principle with a constitutional value in French law) • Shortening of the duration of the contract to the discretion of the judge <ul style="list-style-type: none"> • Shortening of contract or financial penalties • First draft specified up to a 20% percentage of contract subject to cap of €1 million. Possibility to leaving total discretion to Court being considered • Not specified as yet. <ul style="list-style-type: none"> • penalties imposed by the judge • financial penalties • the shortening of the duration of the contract <ul style="list-style-type: none"> • penalties are paid as revenues of the State budget <ul style="list-style-type: none"> • Penalties imposed by National Appeal Chamber • Financial penalties • Shortening of the duration of the contract <ul style="list-style-type: none"> • Financial penalties are paid as revenues of the State Budget <ul style="list-style-type: none"> • penalties imposed by the judge • financial penalties up to 15% from the value of the contract • the shortening of the duration of the contract
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Payment and allocation of penalties amount

SLOVENIA

Nature and scale of alternative penalties

Payment and allocation of penalties amount

SPAIN

Nature of alternative penalties

Scale of alternative penalties

Payment and allocation of penalties amount

THE NETHERLAND

Nature of alternative penalties

Scale of alternative penalties

Payment and allocation of penalties amount

UNITED KINGDOM

Nature of alternative penalties

Scale of alternative penalties

Payment and allocation of penalties amount

- penalties are paid as revenues of the State budget

Financial penalties:

- for the contracting authority 20 – 40% of the value of the contract
- for the legal representative of the contracting authority 1,6 – 2,4% of the value of the contract

Maximum value of the financial penalty for the contracting authority is 300.000 EUR.

Maximum value of the financial penalty for the legal representative of the contracting authority is 80.000 EUR.

Penalties are paid as revenues of the State budget.

- Penalties imposed by the ad hoc administrative review body or, secondly, by the judge.

- Financial penalties
- The shortening of the duration of the contract.

Penalties are paid by each contracting authority and charged on its budget : state, regional, local, etc.

Shortening of the contract and/ or a penalty.

A penalty of max 15% of the total estimated amount of the contract.

The penalty is payed to the Competition Authority that imposes the penalty. The Competition Authority can only impose a penalty on the basis of a civil judgement in a case. This judgement is sent to the Competition Authority that will determine what the amount of the penalty should be on the basis of the gravity of the case. The penalty is an administrative penalty, and will in the end fall to the State budget.

As ordered by the Court. Penalties must be effective, proportionate and dissuasive

- Court discretion on scale of penalty:
- Civil financial penalty as imposed by the Court.
- Contract duration shortened to the extent ordered by the Court.

Paid to HM Treasury, who must pay it into the Consolidated Fund.