

Audits and Remedies in EU Funded Public Procurement

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Abstract

In general, the legality of actions during public procurement is decided by review bodies appointed at the national level. Once the procurement involves EU funds, the control of legality of procedures also involves a system of audits as part of the management and control of funds, involving specialised institutions. These can often determine the legality of public procurement procedures through their own account, without having recourse to a court procedure or any other review body, and they have the power to impose financial corrections. The interactions between the two systems is not regulated at the EU level and Member State regulation in certain cases is also incomplete, leading to friction between the decisions of review bodies and auditors.

This paper explores in detail the institutional competences in EU funded public procurement and examine how the system of audits interacts with of traditional review procedures at the EU and national level. These are presented both from the EU perspective and from the national perspective, using the Hungarian institutional system as an example. The method used in the paper is legal analysis and commentary on current EU and Hungarian national legislation and some relevant cases of the EU courts and the Hungarian review body.

The paper finds that in the context of EU funded procurements the Commission is a powerful institution and its audit findings must in many cases be accepted as an authentic interpretation of EU public procurement law. Financial corrections can have serious budgetary implications for Member States, but officially they are not deemed as a sanction, but only administrative measures connected to the eligibility of project expenditures. National review bodies have a prominent role in determining the legality of public procurement procedures, but their role becomes less important once EU funds are involved. Nevertheless, it is in the interest of Member States to define clearly the boundaries of competences of institutions dealing with the legality of public procurement.

Key words: Public procurement, EU funds, cohesion policy, remedies

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