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## **Who should be able to bring challenges — and why?**

### **The role of public organizations and Advocate (Commissioner) of Small and Medium Enterprises from the Polish perspective**

In addition to the standard range of entities entitled to lodge appeal (protest) to the National Appeal Chamber in the Polish regulation, it is worth noting entities representing the public interest more broadly.

Contractors naturally focus primarily on protecting their own interests, including pursuing claims for damages before common courts – in Poland based on the new resolution of the Supreme Court of March 2021. The role of public organizations in appeal proceedings is broader and should include looking after common values that are important from the perspective of the entire public procurement system. The general term "public interest" creates significant possibility to support of required goals. They encompass integrity, efficiency, anticorruption approach. It is also the academic role to file this term with required meaning.

This is particularly important in Poland, where a completely new regulation on public procurement has been in force since 1 January 2021. It is supposed to consider the fact that procurers are finally realizing strategic goals that have so far been neglected in Poland. It is also worth noting in this context the growing importance of public procurement in the disbursement of funds from the post pandemic EU Reconstruction Fund and the misuse of public funds intended for combating the effects of the Covid 19 pandemic.

Currently, the possibility of filing appeals serves 151 organizations included in the list of the Polish President of the Public Procurement Office. The first one has been listed in 2002, the last one on 21 of April this year. These organizations include inter alia: chambers of commerce, organizations of employers, organizations of architects, construction engineers and urban planners. An entry on the list takes place by way of an administrative decision, which means that a possible refusal of the entry may be appealed to the court.

It is worth noting that these organizations, when filing legal protection measures, do not have to demonstrate a harm to their legal interest. They can act in favor of supplier but mostly in broader understand of "public interest".

The new solution foreseen in the Polish Public Procurement Act also granted the legitimacy to the (Advocate) Spokesman for Small and Medium Enterprises to initiate the protests proceedings. This is important also because of the role SME's should play in recovering from a pandemic.

The new solution may prove particularly useful in situations when on the public procurement market, a certain practice becomes established which raises doubts as to compliance with the regulations of the Public Procurement Law, and at the same time harming the interests of SMEs.

**The challenges are as follows:**

1. Examples of protests brought by organizations are still relatively rare, comprising only a few percent of the approximately 2,700 protests filed annually in Poland.
2. An examination of several cases indicates that the organizations were still primarily focused on protecting the interests of individual contractors, who requested their assistance. They did not consider the possibility of exercising the power to promote general values relevant to the public interest.
3. Activity data of the (Advocate) Commissioner for Small and Medium Enterprises is not yet available. This may prove to be an effective way to achieve the stated goals of protecting the public interest in public procurement.
4. Supporting joint education and training activities for organizations, international exchange of experiences, sharing of existing practice would be expedient to achieve the desired goals.



Lp.	Nazwa organizacji	Data wpisu	Nr decyzji
1.	Kolobrzaska Izba Gospodarcza w Kolobrzegu	14 marca 2002 r.	LO/3855/02
2.	Ogólnopolska Izba Gospodarcza Drogownictwa w Krakowie	14 marca 2002 r.	LO/3856/02
3.	Izba Budownictwa z siedzibą w Katowicach	14 marca 2002 r.	LO/3857/02
4.	Dolnośląska Izba Rzemieślnicza i Małej Przedsiębiorczości we Wrocławiu	14 marca 2002 r.	LO/3858/02
5.	Cech Rzemiosł Różnych w Namysłowie	14 marca 2002 r.	LO/3860/02
6.	Euroregionalna Izba Przemysłowo - Handlowa w Jeleniej Górze	14 marca 2002 r.	LO/3861/02
7.	Izba Rzemieślnicza oraz Małej i Średniej Przedsiębiorczości w Szczecinie	14 marca 2002 r.	LO/3862/02
8.	Izba Rzemieślnicza oraz Małej i Średniej Przedsiębiorczości w Tarnowie	14 marca 2002 r.	LO/3863/02
9.	Cech Rzemiosł Różnych we Włodawku	20 marca 2002 r.	LO/4061/02
10.	Cech Rzemiosł Różnych w Koszalinie	20 marca 2002 r.	LO/4062/02
11.	Cech Rzemiosł Różnych w Kolobrzegu	20 marca 2002 r.	LO/4063/02