

Intensive Workshop on National Best Practices: Addressing Uncertainties in Public Procurement Law

18 – 19 November 2013 | De Warande, Brussels

Presentations | Discussion Rounds | Best Practice | Expert Guidance

- How to Achieve Best Value for Money?
- Strategic Public Procurement: The Use of Award criteria
- Redress and Remedies in Public Procurement: National Experiences
- National Courts in Public Procurement
- Framework Agreements in Public Procurement
- The Modernization Agenda of Public Procurement: The E-procurement Initiative

Speakers:

Chair:

- **Christopher BOVIS**
University of Hull
- **Joaquim NUNES DE ALMEIDA**
DG MARKT, European Commission, Brussels
- **Marc STEINER**
Federal Administrative Court, St. Gallen
- **Constant DE KONINCK**
Belgian Court of Audit, Brussels
- **Grzegorz LANG**
Ministry of Economy, Poland
- **Stephan RECHTEN**
Beiten Burkhardt Law Firm, Berlin
- **Jérôme GRAND D'ESNON**
Carbonnier, Lamaze, Rasle & Associés, Paris

Overview

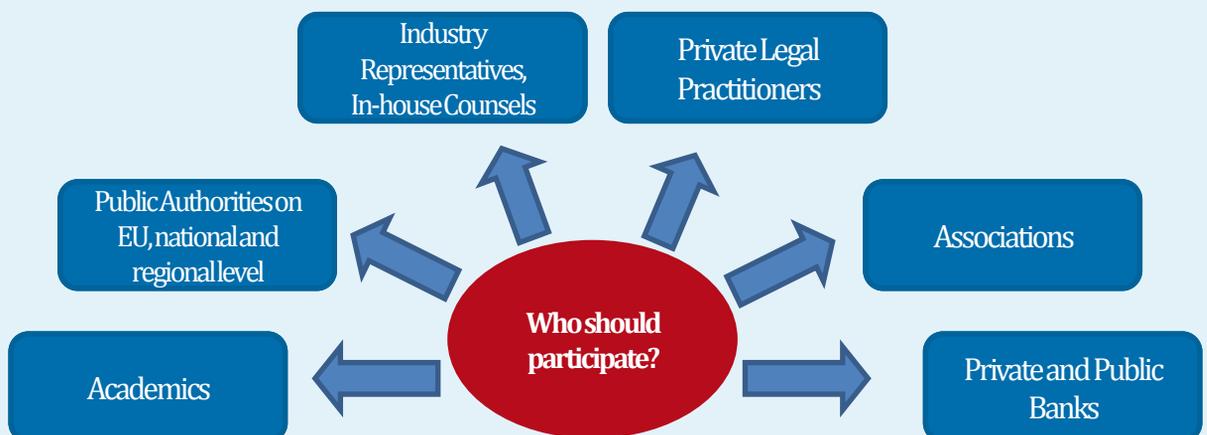
: BACKGROUND

The new rules for EU Public Procurement will be adopted in autumn this year, introducing a number of substantial modifications that the contracting authorities and bidding companies need to be aware of: The European Commission aims to **strengthen the Competitive Dialogue** as procedure to achieve a better value for money and more flexibility. However, the practical implementation and experiences with this procedure varies significantly between Member States. Furthermore, the new rules will give contracting authorities more room to make **strategic choices, emphasizing environmental and social aspects** in the procurement procedure. A huge challenge remains the **handling of remedies** and the implementation on national level above and below EU thresholds as well as the **enforcement of Public Procurement rules** and the award of damages in national courts.

: METHODOLOGY

The intensive workshop will give participants a profound insight into current and forthcoming legal requirements of the **new Public Procurement package** and their **practical implementation on national level**. Following the approach *from practitioners for practitioners*, this forum provides an interactive exchange on the most crucial questions and challenges of Public Procurement law among experts. As the number of participants is limited, there will be sufficient room for **in-depth discussion, expert guidance, case studies** and **your individual questions**. The speakers will in principle stay along for an entire day, so that they will also be available for taking questions outside the slots assigned to them.

: PARTICIPANTS



Programme

DAY 1 | 18 November 2013

Chair:

Christopher BOVIS

*Chair in Law and Professor of European Business Law,
University of Hull*

10:00-10:30 Registration

10:30-11:30 Main developments in European Public Procurement Law – An Overview

Speaker:

Joaquim NUNES DE ALMEIDA
*Director in Directorate C - Public Procurement,
DG MARKT, European Commission, Brussels*

11:30-12:00 Coffee Break & Networking

12:00-13:30 Best Value for Money Criteria: The Efficiency of Procurement Procedures in Practice

- Selection and qualification for public procurement contracts in Member states
- Disqualification of candidates
- Life-cycle-cost approach
- Socio-economic and environmental criteria as conditions of the contract
- Partnering

Speaker:

Christopher BOVIS
Marc STEINER, *Judge, Federal Administrative Court, St. Gallen*
Stephan RECHTEN, *Beiten Burkhardt Law Firm, Berlin*

13:30-14:30 Lunch Break & Networking

14:30-16:00 Redress and Remedies in Public Procurement: National Experiences

- Remedies: The EU rules and the WTO Government Procurement Agreement (GPA)
- Judicial protection of tenderers/contracting authorities
- Implementation in the Member States: above vs below-thresholds; Diversity between MS

Speaker:

Christopher BOVIS
Marc STEINER
Grzegorz LANG, *Ministry of Economy, Poland*

16:00-16:30 Coffee Break & Networking

16:30-18:00 National Courts in Public Procurement

- Experience of national systems in public procurement cases
- The Award of Damages under national systems

Speaker:

Constant DE KONINCK, *Senior Auditor, Belgian Court of Audit, Brussels*
Jérôme GRAND D'ESNON, *Partner, Carbonnier, Lamaze, Rasle&Associés, Paris*

DAY 2 | 19 November 2013

9:30-11:00 Framework Agreements in Public Procurement

- Design of contracts: models, examples, best-practices to ensure the right balance of legal certainty and flexibility
- Innovation agreements
- Multi-supplier agreements
- Remedies under Framework Agreements

Speaker:

Christopher BOVIS
Jérôme GRAND D'ESNON

11:00-11:30 Coffee Break & Networking

11:30-13:00 The Modernization Agenda of Public Procurement: The E-procurement Initiative

- Agenda towards no paper procurement – state of the art, challenges, outlook 2016+
- Legal requirements and challenges for contracting authorities and tenderers

13:00-14:00 Light Lunch & End of Workshop

Continuing Professional Development (CPD)
This Workshop carries 8,5 hours SRA CPD credit
(or in other national systems accordingly)

Speakers



Christopher BOVIS, *Chair in Law and Professor of European Business Law, University of Hull*

Professor, JD, MPhil, LL.M, FRSA is H.K. Bevan Chair in Law at the University of Hull. Christopher Bovis is a leading authority in EU public procurement and public-private partnerships. He specializes in European Business Law, anti-trust law and policy, with particular emphasis on public sector management. He advises international institutions on public sector reforms and has acted on behalf of government and industry on numerous high profile projects. He has been instrumental in structuring flagship public-private partnerships in the UK, EU and overseas. He has published extensively in international legal and management journals and has produced numerous books, monographs and articles on European and business subjects. His academic work has been translated into different languages, including Chinese, French and German.



Constant DE KONINCK, *Senior Auditor, Belgian Court of Audit, Brussels*

is Master of Laws, Master in Public Law and Master in Criminology. He works as a senior auditor at the Belgian Court of Audit where he specializes in the audit of the tendering and execution of major public procurement contracts. Constant de Koninck has published extensively about the theory and practice of Belgian and European public procurement law and this as well in German, English, French and Dutch. He regularly gives lectures and presentations on the subject of public procurement at home and abroad. Constant De Koninck is editor in chief of the *Chronique des Marchés Publics* (Yearbook Public Procurement).



Jérôme GRAND D'ESNON, *Partner, Carbonnier, Lamaze, Rasle & Associés, Paris*

has spent most of his career practicing public law in the public sector. He has been successively, Director for Legal Affairs of the City of Paris, Counsellor at the French Presidency, Director for Legal Affairs of the French ministry of Economy and Finance, and this background made him a keen expert of the French central and local administration. As the Director at the ministry of Finance, he led the important reform of the French Public Procurement Code between 2004 and 2006 and took part to the elaboration of the French legislation on PPP's. Renown specialist in the field of public investment, he is expert to the UNCITRAL and to the World bank. He is Professor at the Institut Supérieur d'Administration du Royaume marocain and teaches procurement law at Paris I University.

Speakers



Grzegorz LANG, *Director, Department of Improvement of Economic Regulations, Ministry of Economy, Poland*

is Director of the Department of Improvement of Economic Regulations at the Ministry of Economy. He deals with various aspects of business-related law, including implementation of the EU law. Previously civil servant at the Office of the Committee of European Integration (1999-2007), then deputy Director of the Department of Economic Regulations of the Ministry of Economy (2007-2010). After accession assisted in a number of cases before the Court of Justice. Later Mr Lang was a lawyer at a law firm in Warsaw and expert at the Confederation Lewiatan - a Polish business association (2009-2013). He had been an international expert in Balkans and Greece. Until recently Mr Lang was a member of the Stakeholder Expert Group for Public Procurement at the European Commission. Mr Lang held numerous lectures at academic and professional institutions. He authored publications in public procurement law and European law in general. Graduated from Warsaw University Faculty of Law and Administration (cum laudem). Completed post-graduate studies in European Affairs (Warsaw University/Maastricht University) and one-year course in American law (Warsaw University/University of Florida). Intern at the Legal Service of the European Commission in 2003.



Stephan RECHTEN, *Beiten Burkhardt Law Firm, Berlin*

is Partner at Beiten Burkhardt's Berlin office and member of the Public & Procurement practice group. His area of activity comprises advice to both contracting authorities and private businesses on national and Europe-wide tender procedures, including privatisation and PPP projects, as well as the representation of clients in review proceedings before complaint boards and higher regional courts. He particularly advises his national and international clients in the defence, energy, IT and healthcare sectors. He also focuses on administrative as well as State aid and subsidy law. Stephan Rechten studied law at the University of Bonn and was admitted to the German Bar in 1997. He was in charge of national and European procurement law at the Federation of German Industries. He has been working with Beiten Burkhardt since 2007 and became Partner in 2009.



Marc STEINER, *Judge SWISS FEDERAL ADMINISTRATIVE COURT*

Marc Steiner holds a Master of Law from the University of Basel and is admitted to the bars. He has delivered an expertise on Green Public Procurement in Switzerland (2006) and issued a short working paper on how to integrate social aspects in public procurement processes (2009, 2nd version 2010). He has been appointed as a Judge to the Swiss Federal Administrative Court in 2007 (2nd Division, primarily in charge of economic matters including public procurement and competition). His comparative approach has been stimulated especially during two internships at the ECJ (1996 and 2008). He is one of four co-authors of the standard work on the practice of public procurement in Switzerland ("Praxis des öffentlichen Beschaffungsrechts", 3rd edition 2013). Marc Steiner is also involved as a regular guest of the ILO International Training Centre ITCILO, Torino, in the spreading of knowledge about the legal aspects of Sustainable Public Procurement. Furthermore, Marc Steiner was invited to act as an expert during the public hearing of the Internal Market and Consumer Protection Committee of the European Parliament on "Modernisation of Public Procurement" (24 May 2011). He has also contributed to the revised UNEP-Guidelines on the Implementation of Sustainable Public Procurement (2012).

Organisational Information & Registration

Intensive Workshop on National Best Practices: Addressing Uncertainties in Public Procurement Law

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