

The definitive update on European public procurement to help you successfully navigate the transitional period

Day One - Wednesday 12 October 2016

8:30 - 9:00

Registration

9:00 - 9:10

Chairman's Welcome and Opening Remarks



Laurence Gormley,
Professor,
UNIVERSITY OF GRONINGEN (Netherlands)

9:10 - 9:50

European Case Law at a National Level

An analysis and review of key case law across Europe at a national level



Anders Birkelund Nielsen,
Partner,
BECH BRUUN (Denmark)

9:50 - 10:30

Understanding the Light Touch Regime

- What was the point of removing the part A / part B distinction and replacing it with a Light Touch regime?
- What types of contracts does it apply to? Is there any sense to the selection?
- And if it is the right approach for these contracts, why not apply a Light Touch regime to all public contracts? Why shouldn't this be the future of all public procurement?
- What are the applicable obligations? What can Member States' systems add or subtract?
- What should authorities be able to achieve with a Light Touch procurement?



Christopher Brennan,
Consultant,
Mills & Reeve (UK)

10:30 - 10:50

Morning Coffee

10:50 - 11:30

State Aid and Public Procurement

- Impact of state aid rules on public procurement
- Impact of public procurement on state aid assessment
- Privatisations and sale of land
- Altmark ruling and services of general economic interest
- Transport networks, postal services and social service
- Procurement platforms and state aid



Bob Martens,
Partner,
DLA PIPER (Belgium)

11:30 - 12:10

UK public procurement post Brexit - the GPA model:

- In what circumstances would the UK adopt legislation which limits procurement obligations to the GPA requirements?
- Would this mean a change to the scope of the current procurement legislation?
- Would procurement procedures be any different, if so in what



Totis Kotsonis,
Partner,
EVERSHEDS (UK)

way?

- What would be the key differences between a procurement carried out under the EU directives and under the GPA rules?
- Would the remedies system remain the same?

12:10 - 1:10

Lunch

1:10 - 1:50

Recent Developments in Remedies

- Overview of the effect of remedies
- How easy is it to win in court?
- What are remedies doing to the procurers?
- Is there better management of the regime?
- Setting aside of a contract



Jane Jenkins,
Partner,
FRESHFIELDS (UK)

1:50 - 2:30

Utilities Directive

- What are the key changes?
- What is the scope of the new Directive?
- What is the likely effect of the new definition of “special or exclusive rights”?
- Material changes and termination of contracts provisions – how will these affect utility procurement?
- What changes does the legislation introduce in relation to tender procedures?
- What are the key differences with the public sector directive?
- The question of the application of Treaty principles to utilities



Totis Kotsonis,
Partner,
EVERSHEDS (UK)

2:30 - 2:50

Afternoon Coffee

2:50 - 3:50

Concessions Directive

- Implementation
- Principles and pitfalls
- How and why is it different to the public sector directive?



Michael Bowsher QC,
Barrister,
MONCKTON CHAMBERS (UK)

3:50 - 4:50

New Models for Procurement Law - What happens now?



Michael Bowsher QC,
Barrister,
MONCKTON CHAMBERS (UK)

4:50 - 4:55

Chair's Closing Remarks and end of day one



Laurence Gormley,
Professor,
UNIVERSITY OF GRONINGEN (Netherlands)

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Chairman's Opening Remarks



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UNIVERSITY OF GRONINGEN (Netherlands)

9:10 - 9:50

Lessons Learnt and Recent Significant Cases at the ECJ

- Types of contract covered by the procurement directives
- Exceptions for procurement between public bodies
- Grounds for excluding bidders
- Whether members of a bidding consortium may change
- Requirement that tenderers pay their workers a minimum wage
- Duty to give reasons to rejected tenderers



Adrian Brown,
Of Counsel,
HERBERT SMITH FREEHILLS (Belgium)

9:50 - 10:30

Panel Discussion: Implementation Experiences - A Pan-European Perspective

- What are the different member states planning to do?
- What is different in the new directives?
- Timeline
- Challenges
- Dealing with the transitional period and revising draft contracts



Peter Hodal,
Senior Associate,
WHITE & CASE (Czech Republic)



Pieter Kuypers,
Partner,
AKD (Belgium)

10:30 - 10:50

Morning Coffee

10:50 - 11:30

Quality considerations, evaluation of tenders and awarding contracts: a shift in paradigm.

- Comparison between the concepts of WTO Government Procurement Agreement and of the EU public procurement directives
- Assessing the differences between the directives 2007/18/EC and 2014/24/EU regarding the evaluation of tenders
- Competition based on price and based on quality from a competition law perspective
- Competition based on quality as a precondition if sustainability issues should be integrated when awarding contracts



Marc Steiner,
Judge,
SWISS FEDERAL ADMINISTRATIVE COURT
(Switzerland)

11:30 - 12:30

Corruption and Competition in Public Procurement

- Collusion / Bid rigging – A risk in procurement often underestimated
- Collusion / Bid rigging– What to do to reduce the risk in public tenders?
- The role of competition authorities in ensuring effective procurement
- The relationship between collusion and corruption



Antonio Capobianco,
Senior Expert in Competition Law,
OECD (France)

12:30 - 1:30

Lunch

1:30 - 2:30

Afternoon Workshop: Contract Negotiations and Modification

- How to avoid triggering a material change

- How to change a struggling contract?
- How to structure variation clauses
- Challenges at a late stage
- How to future-proof contracts
- Case law update



Johannes Stalzer,
Counsel,
SCHOENHERR (Austria)

2:30 - 3:10

Exclusions

- How will it be implemented by different states?
- Will there be coordination between member states?
- Corruption
- Competition law
- Past performance
- Recent case law



Roland Stein,
Partner, Public Procurement Law and
International Trade Law ,
BLOMSTEIN (Germany)

3:10 - 3:30

Afternoon Coffee

3:30 - 4:10

Conflict of Interest

- Conflict provisions in the Directive/Regulations
- Identifying and managing potential conflicts between the authority and bidder
- Involvement of bidders in preparing tender documents
- When is it permissible to exclude bidders ?
- Recent case law, eg Intrasoft



Cyrus Mehta,
Partner, EU Competition & Trade, Regulatory ,
NABARRO (UK)

4:10 - 4:50

Legal challenges to Cross-Border Procurement

- Different models of collaborative cross border procurement covered by the rules
- Difficulties in delineating joint and independent activities within complex collaboration projects
- Shortcomings of the system from a choice of law perspective
- Difficulties in ensuing domestic and cross-border litigation



Albert Sanchez-Graells,
Senior Lecturer in Law, Member of the European
Commission Stakeholder Expert Group on Public
Procurement,
UNIVERSITY OF BRISTOL (UK)

4:50 - 4:55

Chair's closing remarks and end of conference



Laurence Gormley,
Professor,
UNIVERSITY OF GRONINGEN (Netherlands)