Introductory bibliography on European Union (EU) public procurement law

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1. Introduction

The following is a short introductory bibliography listing key reading in the English language on EU public procurement law, which has been produced by the Asia Inter University Network for Teaching and Research in Public Procurement Regulation. The bibliography is not intended to be comprehensive, but merely introductory. It is not intended to cover the law of individual Member States of the EC, although it includes some items of a general and/or comparative nature that deal with Member States implementation but also shed light on EC law itself.

Separate bibliographies have also been produced on: i) Regulating public procurement: general issues and regulation under the UNCITRAL Model Law on procurement; ii) Public procurement regulation within the WTO. The Network consortium is in the process of producing a more comprehensive bibliography on these and other subjects in public procurement (including the laws of certain individual countries), which it is hoped will be published later in 2009 and continuously updated.

The list has been compiled based on materials used for teaching modules on public procurement in some of the partner institutions of the Asia Link project. It should be emphasized that the selection of materials for inclusion is in part influenced by the focus of these particular modules and by the availability of materials at the partner institutions.

The bibliography was last updated in April 2009.

These materials were produced with the financial assistance of the EU. The contents of the materials are the sole responsibility of the University of Nottingham, member of the consortium involved in the EU Asia Inter University Network for Teaching and Research in Public Procurement Regulation and can under no circumstances be regarded as reflecting the position of the European Union. The EU Asia Inter University Network for Teaching and Research in Public Procurement Regulation is led by University of Nottingham (Project leader: Professor Sue Arrowsmith) and the other consortium members are Copenhagen Business School, the Central University of Finance and Economics (Beijing), Xinjiang University, and the University of Malaya.
2. General books

2.1 Books written since the 2004 directives:


2.2 Books written before the 2004 directives but still of current interest:


L. Gormley (ed.), *Gordian Knots in Public Procurement Law* (Koln: Bundesanzeiger 1997)


3. **Books on specialist areas of EU procurement law**


4. **Reasons for regulating public procurement under EU law**


See also the material "**Reasons for regulating public procurement in trade agreements/organisations**" in the short bibliography on WTO procurement.

5. **Introduction to the EU procurement regime and general perspectives**

6. The EC Treaty’s free movement rules

6.1. General


6.2. Positive obligations under the EC Treaty


P. Horijk and M. Meulenbelt, “A Bridge Too Far: Why the European Commission’s Attempts to Construct an Obligation to Tender outside the Scope of the Public Procurement Directives should be Dismissed” (2005) 14 Public Procurement Law Review 123

6.3. Application of the EC Treaty to defence procurement

A. Georgopoulos, "Defence Procurement and EU Law" (2005) 30 European Law Review 559


7. The EU Procurement Directives: general

7.1. Introduction to the directives


7.2. The reforms of 2004


7.3. Implementation of directives

8. Coverage of the EU Public Sector Directive 2004/18/EC

8.1. Entities covered


P. Trepte, Public Procurement in the EU: a Practitioner’s Guide (Oxford: OUP 2007), Ch. 2

8.2. Contracts and projects covered

S. Arrowsmith, “Some Problems in Delimiting the Scope of the Public Procurement Directives” (1997) 6 Public Procurement Law Review 198

S. Arrowsmith, The Law of Public and Utilities Procurement (2nd ed) (London: Sweet & Maxwell 2005), Ch. 6

A. Brown, ”Getting to Grips with Aggregation under the E.C. Public Procurement Rules” (1993) 2 Public Procurement Law Review 69


P. Trepte, Public Procurement in the EU: a Practitioner’s Guide (Oxford: OUP 2007), Ch. 4

See also the separate sections on:

- on Concessions, 9.12 below
- Limits of the EC rules: the distinction between procurement and in-house arrangements, 17 below
9. Contract award procedures under the EU Public Sector Directive 2004/18/EC

9.1. General principles


9.2. Choosing an award procedure


9.3. Advertising the contract: the contract notice

M. Dischendorfer, "New Functionalities of the SIMAP Web Services" (1999) 8 Public Procurement Law Review CS 1


9.4. Qualification of economic operators


M. Gabriel, "The establishment and participation of bidding consortia in award and review procedures in Germany and Austria" (2007) 16 Public Procurement Law Review 174


E. Piselli, “The Scope for Excluding Providers who have Committed Criminal Offences under the EU Procurement Directives” (2000) 9 Public Procurement Law Review 267

H.J. Priess, “Distortions of Competition in Tender Proceedings: How to Deal with Conflicts of Interest (Family Ties, Business Links and the Cross-Representation of Contracting Authority Officials and Bidders) and the Involvement of Project Consultants” (2002) 11 Public Procurement Law Review 153

P. Trepte, Public Procurement in the EU: a Practitioner’s Guide (Oxford: OUP 2007), Ch. 6.31-6.92


9.5. Obtaining tenders in the open and restricted procedures


S. Treumer, “The Selection of Qualified Firms to be Invited to Tender under the EC Procurement Directives” (1998) 7 *Public Procurement Law Review* 147

9.6. Criteria for awarding the contract


9.7. The Rules on abnormally low offers


9.8. Amendments to tenders and negotiations with tenderers in open and restricted procedures


9.9. The competitive dialogue procedure


S. Verschuur, “Competitive Dialogue and the Scope for Discussion after Tenders and Before Selecting the Preferred Bidder—What is Fine-Tuning Etc?” 15 Public Procurement Law Review 327

9.10. The rules on specifications


9.11. Post award obligations and record-keeping


9.12. Concessions


P. Badcoe (ed.) *Public Private Partnerships and PFI* (looseleaf), 8.039-8.056


U. Neergaard, “Public service concessions and related concepts - the increased pressure from Community law on Member States' use of concessions” (2007) 16 *Public Procurement Law Review* 387


S. Arrowsmith, Methods for purchasing on-going requirements: the system of framework agreements and dynamic purchasing systems under the EC Directives and UK procurement regulations”, chapter 3 in Arrowsmith (ed.), *Public Procurement Regulation in the 21st Century: Reform of the UNCITRAL Model Law on Procurement* (Eagan: West 2009)


10. Remedies

10.1 Enforcement by the European Commission


10.2. National remedies

General


**Damages**


**The standstill obligation**


The new Remedies Directive


See also the material on the standstill obligation, above.

11. Social and environmental objectives (horizontal objectives) in EU procurement

11.1 General


• Note that the above book includes chapters on specific policy areas/sectors including: Small and Medium-Sized Enterprises; utilities; renewable energy; and eco-labels.


C. McCrudden, Buying Social Justice: Equality, Government Procurement, & Legal Change (OUP; 2007)


11.2. Green public procurement


P. Kunzlik (ed.), *The Environmental Performance of Public Procurement* (2003), published by the OECD


E. Piselli, “The Scope for Excluding Providers who have Committed Criminal Offences under the EU Procurement Directives” (2000) 9 Public Procurement Law Review 267


11.3 Small and medium-sized enterprises


N. Hatzis, "The legality of SME development policies under EC procurement law", ch. 8 in S. Arrowsmith and P. Kunzlik (eds.), *Social and Environmental Policies in EC Procurement Law* (Cambridge: CUP 2009)

11.4. Labour, equality and other policies


12. Electronic public procurement under EU law

12.1. Electronic communications and tendering


12.2. Electronic auctions


S. Arrowsmith, "Electronic Auctions under the new EC Procurement Directives" (2005) 14 Public Procurement Law Review 203


12.3. Dynamic purchasing systems


13. Defence Procurement

13.1. Application of the EC Treaty and the procurement directives to defence procurement


A. Georgopoulos, "Defence Procurement and EU Law" (2005) 30 European Law Review 559


13.2. The European Defence Agency


A. Georgopoulos, “The New European Defence Agency: Major Development or Fig Leaf?” (2005) 14 Public Procurement Law Review 103


See also the material Initiatives and proposals for liberalising defence markets, section 13.3 below.
13.3. Initiatives and proposals for liberalising defence markets


T. Taylor, "West European Industrial Issues for the 1990s" (1993) 4 Defence Economics 113


W. Walker and S. Willett, "Restructuring the European Defence Industrial Base" (1993) 4 Defence Economics 141

See also the material on the European Defence Agency above.
14. Utilities procurement

14.1 General


M. Bronckers, ”The Position of Privatized Utilities under WTO and EU Procurement Rules” 1996/1 Legal Issues in European Integration 145

T. Kotsonis, ”The Definition of Special or Exclusive Rights in the Utilities Directive: Leased Lines or Crossed Wires” (2007) 1 Public Procurement Law Review 68


14.3. Award procedures under Utilities Directive 2004/17


15. Compliance with, and impact of, the EU Procurement Rules


A. Cox and P. Furlong, "The Jury is Still out for Utilities Procurement" (1996) 5 Public Procurement Law Review 57


16. General critique and perspectives


See also the material on the economic impact of the public procurement rules in section 15 above.

17. Limits of the EU rules: the distinction between procurement and in-house arrangements


18. The EU’s relationship with third countries in public procurement


P. Eeckhout, The European Internal Market and International Trade: a Legal Analysis (1994), Ch. 9


J. Schnitzer, "The External Sphere of Public Procurement Law: Bi-regional Trade Relations from the Perspective of the European Community” (2005) 14 Public Procurement Law Review 63

See also the short bibliography on WTO procurement law, published separately.

19. The EU’s aid regime and public procurement


20. The Acquired Rights Directive and public procurement


21. The interplay between public procurement and competition law

21.1. Public procurement as State Aid


J. Hillger, “The Award of a Public Contract as State Aid within the Meaning of Article 87(1) EC” (2003) 12 Public Procurement Law Review 109

21.2. Application of Article 85 and Article 86 EC to public purchasers


21.3 Application of the EU rules on collusion in tendering


21.4. Impact of the procurement rules on competition in the market

C. Kennedy-Loest, “Spreading contract work to ensure security of supply and maintain competition: the issues under the EC Directives” (2007) 16 Public Procurement Law Review 116