

# Index

---

- ABB Daimler-Benz Transportation (Deutschland) GmbH 390
- abnormally low tenders 24–6, 124–5, 182, 253, 274, 276
- award of contracts 410–11, 423–5
  - obviously 275, 410, 423–4
- accessibility criteria 23, 79, 164, 168
- accountability 482
- effect of objectivity 270–76
  - impact of judicial redress 284–5
  - principle of 18, 250, 270–85, 426, 442, 481
  - selection and qualification 271–84
- accreditation 110, 114, 184, 191
- Acquired Rights Directive 283, 298
- acquiscommunautaire* 10, 13, 26, 53, 260, 486, 493
- actions for damages 201, 218, 230–31
- acts
- administrative 196–7, 208, 212, 241
  - procedural 208–9, 241
  - review of (time limit) 245–7
- additional works (awarded to concessionaire) 123
- administrative acts 196–7, 208, 212, 241
- administrative appeals 208–9, 210–11, 391
- administrative barriers 2, 4
- administrative costs 24, 201, 252, 460
- Administrative Court 234
- of Appeal (Athens) 391
  - of First Instance (Athens) 391
- administrative supervision 230, 256–7, 290, 292
- admissibility requirements 195
- interim measures 207–11, 241, 247–8
- Adolf Truley* case 323
- Adtranz 390
- advertisement 26, 408–9, 417, 497
- competitive dialogue 444, 445, 492
  - prior 71, 72, 74, 75, 77–8, 398–401, 444
  - public contracts 22–3, 63, 70–82, 250–51, 369, 371
  - public housing schemes 119
  - public works concessions 121, 122
  - utilities contracts 151–67
- Advisory Committee for Public Contracts 201
- Advisory Committee for Public Procurement 276, 411, 424
- Advisory Committee on Telecommunications 201
- AEG Westinghouse Transport Systems GmbH 390
- affiliated undertakings 141, 142, 485, 486, 493, 498
- affirmative action 29, 279
- Agora* case 41, 262–3, 266, 294–5, 343, 350
- Agreement on Government Procurement (AGP) 202
- air transport 19–20, 459
- airports 139
- Aktor ATE/ESR* case 249
- Altmark* case 39, 47, 268–70, 357–60
- Ambulances case (Germany) 374
- amicus curiae* 199
- An Post* case 371
- ANAV case 328
- annulment orders 212, 213, 214, 215–16, 218, 220–21, 230–31, 234, 241, 249
- anonymity (design contest jury) 110, 191
- anti-trust law 21–33, 48, 253, 490, 493
- apparent advantage theory 42, 344, 352–3
- appeals 75, 153, 157, 175, 223, 241
- administrative 208–9, 210–11, 391
- appropriateness test 38, 246
- arbitration services 65, 143, 198–9

- ARGE* case 276, 380, 411, 424–5  
*Arnhem and Rheden* case 334–5, 447  
 assets 308, 368, 437, 438, 439, 440–41  
*Assitur* case 397  
*astreintedéfinitive, une* 235  
*astreinteprovisoire, une* 235  
 attestation 201, 236, 239  
*Auroux* case 366–8  
 Austria  
     *Bundesvergabeamt* 219, 221  
     Government 215, 219, 221, 295, 318  
     *Mannesmann* case 266–7, 308, 315, 339, 347  
     *ÖsterreichischeStaatsdruckerei* 295  
 autonomy, procedural  
     doctrine of 284–5  
     principle of 239–42  
 availability risk 432, 441  
 award  
     of concession contracts 453–6  
     of damages 194, 196–9, 230–31, 248–9  
 award criteria  
     ecological 405, 415–17, 419  
     electronic auctions 118–19, 188  
     environmental considerations 414, 415, 417, 420–21, 491, 493  
     lowest offer *see* lowest offer  
     most economically advantageous *see* most economically advantageous offer  
     objectivity 273, 386, 407, 422  
     public contracts 27–30, 118–19, 123–5  
     public procurement contracts 410–25  
     social conditions as 412–14, 493  
     subject matter and 181, 419–23  
     terms/relevance 410–12  
     unlawful decisions 220–22, 231–3, 240–41  
     utilities contracts 181–2, 188  
     variants 417–19  
     weighting of restricted procedures 407–9  
     *see also* selection criteria  
 award procedures 29  
     choice of participants 92–3  
     competitive dialogue *see* competitive dialogue  
     Court's jurisprudence 396–7  
     failure to participate 223–4, 242  
     negotiated *see* negotiated procedures  
     open *see* open procedures  
     public contracts 92–123  
     public housing schemes 119–20  
     public procurement contracts 398–409  
     Public Sector Directive 92–123  
     Remedies Directive 223–4, 242  
     restricted *see* restricted procedures  
     transparency 119, 255, 338, 407–9, 451, 456, 492, 497  
     utilities contracts 178–81  
     Utilities Directive 178–81  
 award of public procurement contracts  
     award criteria 410–25  
     award procedures 398–409  
     selection and qualification 376–97  
 balance-sheets (or extracts) 85  
 balance of interests test 206, 235  
*Ballast Nedam II* case 379  
 bankruptcy 83, 90, 172, 180, 272  
 barriers 22  
     administrative 2, 4  
     entry 22–3, 54, 217, 314, 442, 453, 458, 461  
     non-tariff 1, 3–5, 6, 25, 28, 33–4, 49, 271, 377, 482, 489  
*Bayerischer Rundfunk* case 324  
*Beentjes* case 288, 412–13, 414  
 Belgium 497  
     Advocate-General 385–6, 387  
     *Conseild'Etat* 383  
     federal system 289  
     law 383–4, 385–6, 387–8  
*BFI Holding* case 41, 262, 266, 294, 307, 308, 343, 347, 350  
 bid costs 230–31  
 bid evaluation 380, 396  
 bilateral agreements 131, 132  
 Bockhorn (Lower Saxony) 404  
 bodies governed by law 13, 59, 62, 133–4, 171, 492  
     as contracting authorities 286–96, 300–301, 303–6, 312–14, 317, 320, 323–4, 487–8  
     *de minimis* principle 256–9, 261–3  
     management supervision 292  
     partnerships 467, 479

- Braunschweig (Lower Saxony) 404–5, 406
- Braunschweigische Kohlebergwerke 404–5
- Build-develop-operate (BDO) 437
- Build-lease-operate-transfer (BLOT) 438
- Build-operate-transfer (BOT) 438
- Build-own-operate (BOO) 437
- Build-own-operate-transfer (BOOT) 438
- burden of proof 197, 231, 248, 302, 400
- Buy-build-operate (BBO) 437
- buyer profile 70, 71, 151–2, 158
- candidates (for public contracts) 62–3
  - choice of 92–3
  - competitive dialogue 71–2, 75, 77–8, 92, 97–101, 444–6
  - exclusion/rejection 91–2
  - informing (of tender decision) 125
  - personal situation 82–4
  - utilities contracts 131
- capital 17, 121, 134, 252–3, 287, 301–2, 323
  - costs of 433
  - holding (in-house entity) 468–9
  - investment 303, 327–9, 458, 468–9
  - mixed entities 442–3
  - partnership financing 428, 433, 439, 442–3, 472, 474, 479–80
  - raising 65, 143, 485, 494
- capital asset pricing model 434
- Carbotermo* case 326–7, 330–31, 470, 471
- cartels 21
- CEI-Bellini* case 379, 380
- CEN 271, 376
- CENELEC 271, 376
- central purchasing bodies 480, 495
  - Public Sector Directive 62, 134, 488
  - Utilities Directive 134, 145, 488–9, 494
- CEPT 271, 376
- certainty *see* legal certainty
- certification
  - of economic operators 90–91, 178
  - services 110, 114, 191
- Charter of Fundamental Rights 43, 462
- Chronopost* case 266, 351
- Classic Directive 457, 458, 462
- coal (exploration/extraction) 138–9, 144
- Code of Conduct for Armaments Procurement 57
- Coditel Brabant* case 332, 469–70, 471
- collusion 21, 33, 48–9, 370
- commercial activities 258–63, 293–4, 296–8
- commercial confidentiality 139, 140, 159, 251
- commercial development 258–9, 316–21
- commercial market 473–5
- commercial services 42, 259–60, 261–2, 266–7, 296, 298, 345–6
- commercialism 483
  - doctrine of 256, 260, 261–4, 298
  - test of 324–5
- commerciality 18, 260, 293–5, 491
- Commission v. Belgium* 497
- Commission v. Denmark* 497
- Commission v. France* 366–7, 397
- Commission v. Germany* 247, 248, 331, 367, 374
- Commission v. Greece* 211, 397
- Commission v. Ireland* 247
- Commission v. Italy* 398–9
- Commission v. Portugal* 249
- Commission v. Spain* 300, 303, 309, 323, 363–4, 375, 402
- commissioning role 37
- Common European Defence Policy 58
- Common Foreign and Security Policy 57
- Common Procurement Vocabulary (CPV) 66, 70, 127, 130, 151, 271, 377
- Common Product Classification (CPC) 271, 361, 362–3, 377
- communication 183–4
  - participants-jury 110, 191
- Company Law Directive 356
- compensation 19–20, 47, 197, 198
- compensation approach
  - public procurement and 351–3, 354, 357–60
  - services of general interest 344–6, 348
  - single market 38–9, 41–3, 45, 47–8
  - verification effect 264–5, 266–9

- competence 13, 57, 88
  - legal 475–7
  - transfer of 475–7
- competition 32–3, 54, 393, 422, 480–81
  - call for 154–9, 161, 175, 176–7, 179–81, 237, 328, 371
  - costs 24
  - design contests 189, 190
  - direct exposure 145–6, 147
  - distortion of 344, 352, 358, 383, 388
  - effect 49–50
  - effective 55, 384, 387, 443, 455
  - fair 383, 408
  - free 304, 307, 311, 340
  - law 18, 22, 34, 48, 426, 482, 490
  - perfect 12
  - policy 37, 48, 355, 373
  - significant 262, 295, 320, 347
  - see also* anti-trust law
- competitive advantage 383–4, 385, 388
- competitive dialogue 9, 92, 124, 126, 181, 397, 492
  - advertisement/publicity 71–2, 75, 77–8
  - award of contract 101
  - closure of 100–101
  - conduct of 97–9
  - opening of 99–100
  - public-private partnerships 444–6
  - submission of final tenders 101
- competitive markets 262, 263–4, 294
- competitive tendering 253, 429, 468–9, 492–3, 499
- competitiveness 19, 24, 41, 56, 294, 344, 350, 358, 372, 483, 489, 491
  - doctrine of 256, 261–4
  - price (effect on transparency) 49, 251–3
  - test of 325
- compliance 25–6, 290, 394, 495
  - contract *see* contract compliance
  - legal redress 194–201, 203–6, 230
  - see also* Remedies Directives
- compulsory administration 90, 172, 272
- compulsory tendering 459, 491
- Coname* case 329, 372
- concession contracts 53, 455, 456–7
- concessions
  - exclusion from public procurement rules 336–9
  - public (notion of) 434–6
  - public service 333–65
  - public works 120–23
  - service (partnerships) 446–65
  - service (as public contracts) 371–4
- conciliation 65, 143, 200, 201, 204–5, 236, 239, 244
- Concordia* case 414
- conduct
  - of design contests 108–9
  - of dynamic purchasing systems 115
  - of framework agreements 111
- confidentiality 110, 112, 184, 191, 193, 445
  - commercial 139, 140, 159, 251
  - information disclosure 63, 135
- consortium
  - members 245, 302, 390–96
  - reliance on 85–6, 89
- construction risk 432, 441
- contract award notices (CAN) 76, 158–9, 251
- contract awards
  - contract conclusion and (time factor) 206–7, 242
  - information storage 192
  - procedure (failure to participate) 223–4, 242
  - reports of 126
- contract compliance 27, 29–32, 413
  - effect of 270, 278–81
- contract conclusion (time factor) 206–7, 242
- contract notices 33, 71–6, 77–9, 81, 93, 97, 100–101
  - prior publication 102–7
- contract value calculation
  - public contracts 67–9
  - Public Sector Directive 67–9
  - Utilities Directive 148–50, 157–9, 161, 185–6, 187
- contracting authorities 491
  - applicability of Directives 322–32
  - bodies governed by public law 289–90, 292
  - concept of 487–8
  - connection with private undertakings 297–8
  - definitions 59–60, 62, 286–7, 288
  - dependency test 290–92

- design contests 107–10
- dualism/dual capacity 42, 256, 258–60, 295–8, 323, 345–6, 352, 491
- entities meeting needs of general interest 300–301, 313–21, 459–60
- functional dimension 287–9
- in-house procurement arrangements 325–32
- non-applicability of Directives 324–5
- notion of 286–332
- operational dependency and 330–31
- private companies as 311–13
- public-public partnerships 331–2
- public nature of procurement 286–321
- qualitative selection by 82–92
- reality checks by 88
- semi-public undertakings 301–3
- similarity of control 325–30
- state aid regulation 44–6, 48, 346, 352
- state commercial companies 303–11
- transfer of undertakings 298–9
- contracting out 298
- contractorization task 58
- contractors, location of 382–3
- contracts
  - based framework agreements 111–12
  - below thresholds 369–70
  - delineation of public service 360–63
  - management systems 430
  - pecuniary interest concluded in writing 337–8, 450
  - public *see* public contracts
  - subject matter 170, 181, 186, 274, 392–3, 419–23
  - utilities *see* utilities contracts
- contractual performance 81–2, 167
- contractual public-private partnership 436
- contractualized governance 32
- control 493
  - in-house 470–72, 474, 475
  - in partnerships 436–8
  - similarity of 45–6, 257, 268, 292, 325–30, 356, 469–70
  - state 286–92, 303–11
  - strategic 51, 325–6
- cooperation
  - genuine public 472–3
  - institutional/vertical 466–7, 474–5
  - non-institutional/horizontal 446, 472, 474, 475
- corporate governance 257, 290
- corporatism 480
- Correos* case 369
- corruption 56, 83, 84, 90, 171–3, 176, 178, 276, 277
- costs
  - administrative 24, 201, 252, 460
  - bid 230–31
  - of capital 433
  - of competition 24
  - set-up 113, 183
- Council Act 83, 172, 277
- Council Directives 83, 141, 172, 278, 316–17
- Council Joint Actions 82–3, 171–2, 277
- Council of Ministers 307
- Court of First Instance 37, 357
- Court of Justice 199, 236–7, 378, 391, 454, 476
- criminal organizations 82, 84, 90, 171, 173, 176, 178, 276, 277
- cross-border
  - interest 370, 371, 460, 461
  - procurement 52
  - trade 361, 458–9
- damages
  - actions for 202, 218, 230–31
  - award of 194, 196–9, 201, 206, 213, 218, 230–31, 248–9
- data-processing systems 336, 448
- de legeferenda* approach 487, 493, 495
- de legelata* approach 491, 493, 498
- de minimis* principle 253–70
- deadlines 97, 185
  - requests to participate 77–8
  - see also* time limits
- debt 433, 438–9, 440, 489
- decision-making 257, 263, 268, 324, 356, 436, 470, 477
- Decision by the Commission (excluded from Utilities Directive) 146–7
- decisions
  - review of 212–19, 242–4, 245–7
  - unlawfulness of 231–3, 240–41

- default risk 433
- defence sector 56–8, 66
- Defence and Security Directive 56, 57, 58
- deficit-based calculation method 37, 48
- definition contract procedure 397
- definitive acts 208, 209, 241
- delivery of public services 264–70
- delivery risk 441
- demand 12
  - risk 432, 441–2
  - side 21–4, 48, 50, 62, 133–5, 250–51
- Denmark 234, 497
- dependence
  - economic 471–2
  - organizational 469–71
- dependency 45, 52, 55–6, 268, 355–6
  - doctrine of 256, 257–8
  - test 290–92, 325, 367, 491
- derogations 38, 56, 84, 400–401, 405, 407, 478
- Design-Build-Finance-Operate (DBFO) 437
- Design-construct-manage-finance (DCMF) 437
- design contests 130
  - communication (participants/jury) 110, 191
  - composition of jury 110, 191
  - conduct of 108–9, 189–90
  - decisions of jury 110, 191
  - scope and thresholds 107–8, 189
- detachable acts 196, 219–22
- dimensionality 254–5, 256, 498–9
- direct awards 1, 248, 372, 461–5, 494
- direct effect 202, 230, 378, 423, 491
- disability 65, 144, 164, 168, 278
- discrimination 49, 54, 224–5, 376–7, 384, 422
  - direct 394, 450
  - indirect 371, 394, 450
  - nationality and 34, 217, 254, 271, 338, 369, 371–2, 398, 443, 450–51, 482, 489, 497
  - positive 29, 279
  - see also* non-discrimination
- Dispute Settlement Understanding 203
- dissuasive penalty payments 233–4, 235
- dominant influence 326, 493, 498
- dominium* 263
- double tendering 367–8
- droit public de la concurrence* 22
- dualism
  - doctrine of 256, 258–60, 267
  - dual capacity 42, 258–60, 267, 295–7, 298, 345–6, 352, 491
  - test of 323–4
- dumping 25, 253
- Dundalk* case 377–8
- Dupont de Nemours* case 411
- dynamic purchasing systems
  - award of contracts 115–16, 185–6
  - conduct of 115, 185
  - indicative tenders 115, 185
  - legal framework 61, 67, 69, 71–2, 76, 112–16, 125–6, 130, 148, 155, 158, 182–6
  - setting up 113–14, 183–4
- eco-labels 80, 165–6, 170
- Eco-Management and Audit Scheme (EMAS) 88–9, 177
- ecological criteria 405, 415–17, 419
- economic capacity/standing 90, 119–20, 174, 176, 178, 272–3, 379–81, 413
- economic dependence 471–2
- economic operators 59, 60, 61–2
  - award criteria 123–5
  - award procedures 92–123
  - economic/financial standing 85–6
  - exclusion/rejection 91
  - groups 85–6, 89, 91–2
  - official list 89–91
  - technical/professional ability 86–9
  - utilities contracts 130–33, 171–4
- economic policy 28, 29, 32
  - neo-classical approach 21, 22, 24, 25, 490
  - ordo-liberal approach 26–7, 283, 490
- economic risk 334–5, 434–6, 447–8, 452
- economies of scale 37, 50
- Edi-Sta-EdiliziaStradaleSpA 390
- effectiveness
  - doctrine of 239, 285
  - principle of 229, 239, 242–5, 246, 247, 248–9, 394
- effects approach 42, 352–3
- efficiency 1, 22, 32, 50, 86, 284, 292, 428, 453, 457

- gains 49, 298, 433, 436, 480, 499
- losses 465
- electricity sector 136, 143–5, 419–23
- electronic auctions 61, 72, 130
  - award criteria 116–17, 118–19, 186, 188
  - closure of 117–18, 187–8
  - organization of 117, 187
- Elisoccorso/Elilombarda* case 245
- employment 30–31
  - discrimination 278, 280
  - protection 82, 167, 182, 275, 491
  - sheltered 65, 144, 153, 175
- encryption 110, 113, 184, 191
- energy sector 138–9, 143–5
- entities (contracting authorities)
  - meeting needs of general interest 313–16
  - partnerships 459–60, 468–9
  - private (industrial/commercial development) 316–21
  - private law 300–301
- Entsorgungsbetriebe Simmering GesmbH* (EBS) 313–14, 316
- environmental management 88–9, 90, 120, 177
- environmental protection 406, 414–15, 417, 420–21, 491
  - obligations relating to 82, 167
- equal treatment 104, 277
  - award of contracts 382, 384–5, 387, 392–4, 398, 408–9, 417–18, 421–2
  - partnerships 443, 452, 455, 461–3, 464–5, 479
  - principle 40, 217, 222, 248, 252, 303, 338, 343, 350, 369, 372–3, 496–7
- equality 119
  - principle 387, 394
  - procedural 239, 245–9, 285
- equity 439
  - procedural 285
- equivalence 125, 419
  - doctrine of 270–71
  - principle of 229, 246, 248–9, 394
- EspaceTrianon* case 245
- ‘essential part’ criterion 330–31
- Eurowasser* case 373–4
- Europe 2020 Growth Strategy 451, 499
- European Commission
  - Communications 3, 53, 483
  - EC Treaty 56–7, 217, 246–7, 302, 336, 338, 405, 407, 449–51, 452–3
  - EU Treaty 462–3, 464
  - Green Papers 3, 483
- European Court of Justice 255, 357, 377–8, 471, 498
  - jurisprudence 6, 18, 220, 261, 490–91
  - role 259–62, 270, 272, 279, 483
  - single market and 17–18, 25, 30, 35–7, 39, 52
- European Courts 37, 39–40
- European Defence Agency (EDA) 57
- European Defence Equipment Market 56
- European Defence Policy 56, 57, 58
- European Defence and Security Policy 56, 57, 58
- European Union
  - Budget review 452
  - Charter of Fundamental Rights 43, 462
  - Defence and Security Procurement 56, 57, 58
  - integration *see* integration
  - legal framework 59–127
  - single market 2, 3, 11–58, 451–2, 482, 497, 499
  - see also* *acquiscommunautaire*
- ex officio application 84–5, 173
- ex propriomotu*investigatopm 231–3, 240–41
- excluded contracts 63–5, 82–5
- exclusion
  - automatic 82–5
  - criteria 171, 383, 455, 484–6, 494–5
- exclusive rights 46, 64, 488
  - award procedures/criteria 398–9, 406, 485
  - concessions awarded to entities enjoying 459–60, 493
  - inter-administrative contracts 364, 493, 494
  - legal framework 63, 65, 134, 143, 179
  - partnerships 451, 461
  - procurement rules 477–81

- public contracts 338, 356, 364, 373
- service contracts 143, 287, 322, 356, 498
- Experimental Educational Prison (Segovia) 303
- expertise, professional 87–8
- exploitation 64, 334–5, 337, 367, 372
  - partnerships 435–6, 447–8, 450, 463
- external political risks 432
- externalization 17, 475–7
- Fabricom* case 383, 385–6, 388
- facilities management 58
- fairness 338, 451, 453, 455, 462
- Fidel SpA 390
- final judgement 277
- financial capacity/standing 85–6, 90, 119–20, 174, 176, 178, 272–3, 379–81, 413
- financial guarantees 439
- financial risk 432
- financial service contracts 65, 142–3
- financing
  - approaches *see* compensation
  - approach; *quid pro quo*
  - approach; state aid approach
  - dependency and 257, 290
  - partnerships 433, 438–40
  - public services 348–9
- finances 234–5, 240
- Finland 316–21
- fixed-term contracts 68, 69, 149, 150
- fixed networks 136–7, 143–4, 485, 494
- flexibility effect 490, 491, 493
  - transparency and 255–6, 492
- formality test 256, 288, 289, 491
- Foster* principle 286
- framework agreements 61, 67, 69, 73–5, 76, 403
  - public contracts 110–12, 125–6
  - utilities contracts 129, 145, 148, 154–5, 157, 158, 180–81, 494
- France 366–7
  - imposition of fines 234–5
  - Post Office 351
  - Public Procurement Code 397
- fraud 83, 84, 171–2, 173, 176, 178, 249, 276, 277
- free competition 304, 307, 311, 340
- free movement principles 32
  - goods 34–6, 52, 338, 341–2, 451, 453, 482, 489, 496
  - services 214, 372, 453, 474, 482, 489, 491
- freedom to provide goods 217
- freedom to provide services 35, 52, 217, 288, 371–2, 442, 478–9, 496
  - award of contracts 391, 393, 397–8, 406, 408, 413–14, 417
- freedom of transactions 279
- Fritsch, Chiari* case 244
- functional requirements 79, 80, 98, 125, 164–5, 169–70
- functionality 287, 289
  - doctrine of 256
  - test of 249, 288, 322, 368, 491
- gas (exploration/extraction) 138–9, 144, 145
- gas and heat sector 135–6, 143, 145
- GATT Agreement 202
- gearing 438–9
- general economic interest 261, 293, 336, 342
  - see also* services of general economic interest (SGEIS)
- general interest
  - needs in *see* needs in the general interest
  - obligations 43
  - services of *see* services of general interest
- general needs 13, 259–60
- Germany 247, 331, 367, 374
  - Braunschweig waste policy 404–6
- Gesellschaft für Abfallentsorgungstechnik GmbH* (GAT) case 382
- Gestion Hotelera Internacional* 361
- goods
  - free movement 34–6, 52, 338, 341–2, 451, 453, 482, 489, 496
  - freedom to provide 217
  - uniform 402, 403–4
- Government Procurement Agreement (GPA) 75, 131, 158
  - remedies/enforcement under 202–49
- grave professional misconduct 83, 90, 172, 272, 277
- Greece 211, 390–93, 397



- Green Papers 3, 483
- Grossmann* case 245
- groups 85–6, 89, 91–2
- Hamburg* judgement 472, 475
- handicapped persons 65, 144
- harm 206, 208–9, 223–4, 226–8, 230, 233, 241
- harmonization 16–17, 26, 271, 283, 376
  - exhaustive 484, 486, 493–4, 498–9
- Helmut Müller* case 368
- holding companies 379
- Holst Italia* case 379
- horizontal cooperation 466, 472, 474, 475
- housing schemes 119–20
- illegal awards 220, 236–7, 248
- illegal measures 208
- immediate economic benefit 368
- imports 50
  - penetration 51–2, 482
- ImpresaLombardini* case 276, 411, 424
- in-house contracts 326, 355–6, 486, 493
- in-house control 470–72, 474, 475
- in-house entity 467–72, 474, 475
- in-house procurement arrangements 325–32
- incentive-based regulation 481
- Independent European Programme Group 56
- indicative tenders 61, 74, 112–13, 115, 130, 164, 185
- industrial development 316–21
- industrial policy 32, 34–5, 48–58
- industrial restructuring 55
- ineffectiveness principle 237–40
- infant industries 35, 52
- information
  - disclosure 63, 135
  - misrepresentation 84, 90, 172
  - open award procedures 94
  - storage 110, 191, 192–3
- infrastructure 52, 481
  - investment 427, 430–31, 432, 439
  - projects 428, 430–31, 432, 435–6, 439
- Initiative for Growth 427
- innovation 24, 33, 56, 427, 429, 431, 451
- institutional cooperation 466–7, 474–5
- institutional public-private partnerships 436–7, 443
- integration
  - EU 1, 3–5, 8, 10, 22, 26–8, 34, 50, 283, 482, 489–91
  - public markets 22, 26–8, 48, 49, 254, 490
  - public sector 276–8, 376
- intellectual property rights 398
- inter-administrative contracts 363–5, 493, 494
- interest to review 222–3, 244–5
- interim measures 201, 205–6, 234
  - admissibility requirements 207–11, 241, 247–8
- internal market
  - EU 25, 32, 34, 56, 145, 452–3, 457
  - significance of concessions 456–8
  - White Paper 4, 376, 483
- internal operators 459
- internal political risks 432
- international rules, contracts awarded pursuant to 140–41
- Interpretative Communication 463
- investment 32, 35, 50, 440, 465
  - capital 303, 327–9, 458, 468–9
  - foreign direct 55
  - infrastructure 427, 430–31, 432, 439
- invitation to negotiate 103–7
- invitation to tender 86, 164, 223
  - absence of proceedings 224–8
  - negotiated procedures 162–3
  - restricted procedures 96–7, 161–3
  - transparency and 250–51
  - withdrawal of 214–22, 229, 243
- Ireland 247
- Italy 398–9
  - Lotto 335, 447–8
- joint-stock companies 326, 327, 470
- joint-venture model 436–7
- joint implementation/exploitation 64
- joint procurement 475, 479
- joint ventures 141–2, 260, 297, 356
- judicial protection 212, 214, 241, 248, 457
- judicial record 84
- judicial redress (impact) 284–5

- judicial review 200–201, 205, 209, 213, 218–19, 239, 241, 244, 370
- jurisprudence 18, 220, 261, 293, 490
  - changes in contracts 374–5
  - inferences 9–10, 328, 493
  - public procurement 5, 7, 266, 343, 350, 491
  - related to selection/award 396–7
  - state aid 36, 42–4, 47, 266–7, 342–3, 346, 348, 352–3
- jury (in design contest) 110, 191
- justice, access to 455
  
- know-how 398, 465
- Köln Messe* case 365
- Korhonen* case 311, 323, 324
  
- La Poste 351
- Lämmerzahl* case 246
- land 288, 365–6, 368, 485
- Lease-develop-operate (LDO) 438
- leases/leasing 139–40, 431, 438
- legal certainty 329, 367, 401–2, 498
  - dual capacity 259, 267, 296, 345–6
  - partnerships 452, 453–4, 458–9, 463, 465
  - principle of 229, 239, 259, 266, 285
- legal competence 475–7
- legal framework 6–10
  - public sector procurement 29, 59–127, 491
  - redress and remedies 194–249
  - utilities procurement 128–93
- legal redress 194–249
- legal uncertainty 238, 247
  - partnerships 452–3, 454, 458 463–5
- legislative reforms (on concessions) 451–6
- Letter of Intent (LoI) 58
- leverage 438–9
- lex lacuna* 288
- lex and policy lacuna* 342, 349
- lexspecialis* 484, 486, 493, 495
- Lianakis* case 396–7
- liberalization 235, 281, 483, 489–90
  - single market 13, 31, 52, 54–6, 482
- Liikenne* case 19, 299
- Lisbon European Council 3
- Lisbon Treaty 473
- loans 439
  
- local land consolidation committee 288
- locus standi* 222–3, 226, 244–5, 396
- Lottomatica* case 335, 447–8
- ‘lower bottom limit’ 253, 410, 423
- lowest offer
  - award criteria 23–7, 34, 75, 105, 124, 157, 182, 274, 381, 410, 423–5, 430
  - legal framework 75, 105, 124, 157, 182
- Luxembourg 235
  
- Maastricht Treaty 56, 254, 473
- majority voting 469
- management supervision 257, 290, 292
- management systems 430
- Makedoniko Metro 390, 391, 395
- Mannesmann Anlagenbau Austria* case 266–7, 308, 315, 339, 347
- marchés publics* 41, 351, 358, 482
  - see also public markets
- Maritime and Commercial Court 234
- market
  - access 10, 21–2, 27, 49, 54–5, 146, 202, 264, 490, 492, 495, 499
  - intelligence 430
  - mechanism 32–3
  - network 351
  - price 38, 42, 44–5, 267, 344–5, 352–4, 360
  - segmentation 21–2
  - testing 58, 298, 383–5
- markets
  - commercial 473–5
  - competitive 262, 263–4, 294
  - see also public markets; *sui generis* markets
- mathematical criteria 117, 187, 275–6, 410–11, 424
- mediation 75, 153, 157, 175, 204, 244
- Medipac-Kazantzidis* case 369
- mergers 48, 50
- Mikhaniki AE 390, 397
- mixed-capital entities 442–3
- mixed contracts 60, 129, 295–6
- modernization objective 492
- Mödling* case 328
- monetary applicability
  - Public Sector Directive 66–70
  - Utilities Directive 148–50

- money laundering 83–4, 90, 171–2, 173, 176, 178, 277, 278
- monitoring mechanisms 193
- monitoring requirements 126–7, 192–3
- monopoly 12, 21, 52–3, 55, 307
  - profit 481
  - revenue-producing 13, 486, 494, 498
- monopsony 12, 54, 56
- most economically advantageous offers 267, 345
  - award criteria 25–30, 273–4, 278–9, 281–3, 354, 381–3, 409–15, 419–21
  - legal framework 75, 81, 101, 105, 117–19, 153, 157, 166, 175–6, 181, 187–8, 197
  - partnerships 430, 446, 455
  - single market 25–30, 34, 45
- multi-focal strategies 51
- multi-operator framework agreement 111–12
- multilateral agreements 131, 132
- multinational organizations 51
- mutual exclusivity 341–2, 484, 494
- mutual recognition 177–8, 271, 376, 377, 478
- NACE 271, 377
- national champions 6, 50, 54, 55
- National Legal Orders
  - interim measures 205–6, 207–11
  - meaning/content of decisions 212–19
  - obligation to allow time 206–7
  - pre-judicial stages 204–5
  - remedies in 204–35
  - set aside 212, 219–22
- national standards 169, 170, 270, 271, 371, 376, 418
- nationality, discrimination and *see* discrimination
- NATO 56
- needs in the general interest 346–7, 488
  - commercialism and 261–3
  - commerciality and 293–5
  - contracting authorities 293–7, 300, 304–11, 313–21, 323, 325
  - definitions 261
  - dualism and 259–60, 295–7, 323
  - entities meeting 313–16
  - single market 13, 17–18
- NeerlandsInkoopcentrum NV* 378
- negative approach (contract compliance) 30, 31, 279, 281
- negotiated procedures 92, 101, 238, 409
  - conduct of 104–5
  - grounds for use 102–3, 105–7, 402–4
  - invitation to negotiate 103–7, 162–4
  - justifying use of 404–7
  - prior publication 102–3, 105–7, 255, 402–4
  - prior publicity 71–2, 74–5, 77–8, 398–401, 444, 492
  - receipt of tenders 161–2
  - use of (technical reasons) 399–400
  - utilities contracts 154, 157, 161–4, 177–80
- neo-classical approach 21, 22, 24, 25, 490
- network industries 483
- network management 459, 492
- network organizations 51
- 'network termination point' 64
- networks
  - fixed 136–7, 143–4, 485, 494
  - market 351
- non-commercial nature of public markets 37, 41, 48
- non-contractual attribution of tasks 477
- non-discrimination 48–9, 58, 135
  - legal framework 63, 92, 109, 113, 119, 144, 183, 190, 196, 204, 217
  - nationality and *see* discrimination
  - partnerships 442–3, 455, 464, 478–9
  - principle of 255, 274, 383, 385, 393, 406–7, 413–14, 417, 419–20, 496
- non-governmental organizations (NGOs) 271, 287–8, 376
- non-institutional cooperation 466, 472, 474, 475
- non-objective criteria 462
- non-priority services 370–75, 458–9, 487, 493, 494, 496
- non-tariff barriers 1, 3–5, 6, 25, 28, 33–4, 49, 271, 377, 482, 489
- Nord-pas-de-Calais* case 413

- notices
  - buyer profiles 70, 71, 151–2, 158
  - periodic indicative 151–2, 154, 158, 160, 163, 250
  - prior information 33, 70–71, 75, 77, 78, 93, 95, 157, 459
  - public contracts 70–76, 151–2, 158
  - utilities contracts 151–9
- objectivity 48, 268–9
  - award criteria 273, 386, 407, 422
  - effect of 270–76
- obligations
  - statistical 126–7, 192–3
  - universal service 13, 14, 37, 48
  - working conditions 82, 167, 182
- ‘obviously abnormally low offer’ 275, 410, 423–4
- Official Journal* 33, 70–71, 104, 140, 147, 150–52, 237–9, 250, 254–5, 375, 378, 457, 461
- offshore awarding authorities 234
- oil (exploration/extraction) 138–9, 144, 145
- oligopoly 12, 24
- OPAC* case 290
- open procedures 33
  - legal framework 92–4, 154, 156–7, 159–60, 178–80, 183
  - prior publicity 72, 74, 77, 444
  - time limit 159–60
- openness 49, 50, 250, 252
- Operate under Licence (OL) 438
- operational dependency 330–31
- operational risk 373–4, 375, 454, 457
- operational types of partnerships 437–8
- OrdinedegliArchitetti* case 365–6
- ordo-liberal approach 26–7, 283, 490
- Organization for Joint Armaments Procurement (OCCAR) 57–8
- organizational dependence 469–71
- organizational rationalization 51
- original contract 401
- ownership 51, 368, 488
  - partnerships 437–8, 440–41, 468–9
- Oymanns* case 324
- pact servantisunt* principle 220, 236, 248
- parent companies 379
- Parking Brixen* case 326, 328, 330, 372, 469 471, 497
- partnerships (public-private) 32, 260, 297, 328, 492
  - characteristics 431–4
  - competitive dialogue 444–6
  - contractual 436
  - emergence 427–38
  - financing of 438–40
  - institutional 436–7
  - legal types 434–7
  - operational types 437–8
  - procurement regulation 442–3
  - public concessions 434–6
  - risk and 440–46
  - service concessions 446–65
- partnership (public-public) 331–2, 367, 498
  - capital holdings 468–9
  - concepts (overview) 465–6
  - cooperation 466–7, 472–3, 474–5, 479
  - economic dependence 471–2
  - externalization 475–7
  - non-contractual attribution 477
  - organizational dependence 469–71
  - possible restrictions 473–5
  - rules and certain exclusive rights 477–81
- payment 365, 375, 436, 447, 450
  - penalty (dissuasive) 233–5
  - see also* compensation; remuneration
- pecuniary interest 337–8, 365, 367–8, 448, 450, 466
- penalties 233–5, 238, 240
- perfect competition 12
- performance 169, 170, 476
  - contractual 81–2, 167
  - risk 432, 441
- periodic indicative notices 151–2, 154, 158, 160, 163, 250
- planning decisions 365–6, 368
- political risks 432
- porosity 487, 493, 494, 495–9
- ports 139
- Portugal 249
- positive approach (contract compliance) 30, 31, 279–80
- positive discrimination 29, 279
- postal services 138, 145, 351

- pre-judicial stages 204–5
- predatory pricing 25, 253
- predictability 32, 36
- preference schemes 34–6, 341–2
- preferential procurement 54
- preferential purchasing patterns 49, 52
- preparatory work (tenders) 384–9
- Pressetext* case 374
- price 12, 19, 481, 489
  - competition 22, 23, 26
  - competitiveness 24, 49, 251–3
  - convergence 49–50
  - lower bottom limit 253, 410, 423
  - market 38, 42, 44–5, 267, 344–5, 352–4, 360
  - see also* abnormally low tenders; lowest offer; ‘obviously abnormally low offer’
- prior information notices 33, 70–71, 75, 77, 78, 93, 95, 157, 459
- prior publication 102–3, 105–7, 255, 402–4
- prior publicity 71, 72, 74, 75, 77–8, 398–401, 444, 492
- priority services 458–9
- prison services (Spain) 303–11
- private companies (as contracting authorities) 311–13
- private entities (as contracting authorities) 300–301, 316–21
- Private Finance Initiative 297
- private investor principle 40, 48, 266, 343, 351
- private operator principle 39–40, 265, 342–3, 349–50
- private lending 439
- private markets 11–12
  - anti-trust laws 21
- private undertakings 260, 261, 293–4, 343, 492
  - contracting authorities and 297–8
  - as contracting authorities 316–21
  - partnerships 468, 471
  - transfer of 298–9
- privatization 52, 54, 328, 438
- privatized utilities 46, 52, 287, 356–7
- probity, effect of 276–8
- procedural acts 208–9, 241
- procedural autonomy
  - doctrine of 284–5
  - principle of 239–42
- procedural equality
  - admissibility requirements and 247–8
  - damages 248–9
  - principle of 239, 245–9
  - time limits and 245–7
- procedural equity, doctrine of 285
- procurement *see* public procurement
- product range 12
- professional ability 86–9, 90, 120–21, 174, 176, 178
- professional activities, suitability to pursue 87–8, 120
- professional expertise 87–8
- professional misconduct 83, 90, 172, 272, 277
- profit
  - making 261, 293, 311, 320–21, 324–5, 469
  - maximization 11, 263
  - reasonable 270, 360
  - sharing 436, 439
- profitability 40, 41, 48, 262, 294, 324, 343, 350, 370
- prohibition principle 281
- project risk 432, 433
- proportionality 16, 38, 195, 236, 238, 348, 387, 398, 478
  - exclusion grounds 397
  - test 269, 359
- protectionism 34, 56
- public contracts
  - advertisement/publicity 70–82
  - AnnexII B Services Contracts 370–75
  - applicability of Directives 365–70
  - award criteria *see* award criteria
  - award procedures *see* award procedures
  - change of circumstances 374–5
  - contract value calculation 67–9
  - demand side 21–4, 48, 50, 62, 133–5
  - design contests 107–10
  - dynamic purchasing systems 112–16
  - excluded 63–5
  - inter-administrative agreements as 363–5
  - monitoring requirements 126–7
  - partnerships *see* partnerships
  - preparation of 383–8

- principles governing award of 63
- public service concessions 333–65
- qualitative selection 82–92
- regulation 21–33
- reserved contracts 65
- service concessions as 371–4
- subcontracting *see* subcontracting
- subsidized 66–7
- supply side *see* supply side
- thresholds *see* thresholds
- types and categories 59–61
- vertical procurement 339–40
- public housing schemes 119–20
- public interest 195, 259, 261, 263, 335–6, 358
  - contracting authorities and 287–8, 291, 293, 295, 323, 327, 331
  - partnerships and 434, 446, 448–9, 465, 468, 472, 474–5, 480
  - redress and remedies 230, 235
  - single market 11, 12, 13, 14, 19
- public markets 251, 281, 344, 357
  - anti-trust law 21–33
  - concept/terms 11–20
  - integration 22, 26–8, 48, 49, 254, 490
- marchés publics* 41, 351, 358, 482
- regulation 21–48
- see also sui generis* markets
- public passenger transport 459
- public procurement
  - acquis* 236, 239, 260, 273, 284–5, 300, 386–7, 393, 420, 495, 498–9
  - contract award 376–425
  - dimensionality of 254–6, 498–9
  - doctrines and principles 250–85
  - externalization and 475–7
  - in-house arrangements 325–32
  - industrial policy and 48–58
  - partnerships 426–81
  - public markets and 11–20
  - public nature of 286–321
  - redress and remedies 194–249
  - rules 260, 336–9, 449–51, 477–81
  - single market 11–58
  - state aid regulation 33–48
  - vertical 339–40
- Public Procurement Directives
  - applicability 322–32, 365–70, 491
  - award of contracts 378, 381–2, 384–9, 391–6, 402–4, 408–11, 418–21, 423
  - compliance with 197, 201
  - contracting authorities 286, 289–90, 295–7, 300–302, 309, 311–12
  - doctrines and principles 250–85
  - exclusions 484, 486–7
  - non-applicability of contracting authorities 324–5
  - partnerships 449–53, 458, 465–7, 477–8, 480
  - policies/aims 483–4, 486–7, 489–91, 493–9
  - public contracts 333, 336–41, 354, 364, 371, 373–4
  - remedies 197, 201, 212, 214, 217, 230, 243, 248
  - single market 2–4, 7, 8, 10, 25–6, 33, 53, 56
  - transparency principle 250–53
  - treatment of porosity 495–9
- public sector 13, 24, 427, 483
  - integration 276–8, 376
  - procurement (legal framework) 29, 59–127
- public sector borrowing requirements 433, 439
- Public Sector Directives 9–10, 56–7, 367, 483, 492, 494, 498
  - advertisement/publicity 70–82
  - Annex IIB 370–75
  - award criteria 123–5
  - award procedures 92–123
  - contracting authorities in 483–4, 487–9
  - monetary applicability 66–70
  - monitoring requirements 126–7
  - partnerships 466, 471, 477, 479–80
  - qualitative selection 82–92
  - remit and scope 59–63
  - substantive applicability 63–5
  - utilities 139, 145, 171, 322, 330, 487–9
- public service concessions 61, 493, 495
  - air transport 459
  - awarded to entities enjoying exclusive rights 459–60
  - direct awards and uncertainty 461–5

- exclusions from procurement rules
  - 65, 336–9, 449–51
- legal framework 129, 147–8
- legislative reforms 451–6
- notion of 333–65
- partnerships 434–6, 446–65, 485–7
- priority/non-priority services
  - 458–9
- as public contracts 371–4
- public passenger transport 459
- significance of 456–8
- sub-dimensional value 460
- utilities sectors 458, 499
- public service contracts 20, 353, 355, 366, 494
  - Annex IIB 370–75
  - delineation 360–63
  - financing 348–9
  - legal framework 61, 65–6, 70, 73–6, 88, 105–7, 128–31, 141–3, 143, 148–51, 154, 156, 179–80
  - utilities sector 128–31, 141–3, 145, 148–51, 154, 156, 179–80, 485–6
- public services 24, 32
  - commercial 42, 345–6
  - delivery of 264–70
  - free movement 214, 372, 453, 474, 482, 489, 491
  - freedom to provide 35, 52, 217, 288, 371–2, 391, 393, 397–8, 406, 408, 413, 417, 442, 478–9, 496
  - funding *see* compensation approach; *quid pro quo* approach; state aid approach
  - obligations 13–15, 18–20, 37–9, 44, 47–8, 258, 265–9, 295, 353, 355, 357–9, 459
  - partnerships 426–81
  - state aid regulation 19, 21, 33–48
- Public Services Directive 194, 215, 449, 498
  - award of contracts 404–7, 415–17
  - contracting authorities 301–3, 306, 310–13, 315, 317–18, 321
  - public contracts 336–7, 340, 356, 360–64
- Public Supplies Directive 194–5, 197, 447
  - award of contracts 378, 380–84, 402–4
- contracting authorities 300–301, 306, 312–13, 317
  - public contracts 333, 340, 364–5
- public supply contracts 53, 215, 422
  - legal framework 60, 63, 66, 68–70, 73, 105–6, 151, 155
  - utilities sector 128, 131–2, 141–2, 145, 149, 151, 154–5, 179
- public undertakings 134, 261, 488
  - as contracting authorities 287, 293, 300–301, 304, 306, 309, 313, 322–3, 328
- public works concessions 53, 61, 70, 334, 395, 447, 453, 455
  - additional works awarded 123
  - advertisement/publicity 121
  - award procedures 121–2
  - nature of concessionaire 120–21
  - subcontracting 122
  - Utilities Directive 129, 147–8, 457–8, 460, 462–4, 466, 486, 495
- public works contracts 60, 68, 70–73, 88, 105–7, 151, 155, 215, 368, 390, 408, 447
  - Utilities Directive 128–31, 142, 145, 148–9, 154, 179–80
- Public Works Directive 53, 263
  - award of contracts 377, 392–5, 399–403, 409, 413–14
  - contracting authorities 300–301, 306, 310, 312–16
  - partnerships 447, 449
  - public contracts 334, 337, 340, 361, 364–5
  - redress and remedies 194–5, 197
- Publications Office (EU) 371
- publication of notices 70–76
- publicity 26, 119, 121, 147, 250–51, 451
  - prior 71–2, 74–5, 77–8, 398–401, 444, 492
  - public contracts 70–82, 338, 371
  - utilities contracts 151–67
- purchasing 12, 21
- 'pure capital injections' 468
- qualification 87, 411
  - criteria/requirements 30, 279, 378–9
  - jury members 110, 191

- process (accountability) 271–84
- public procurement contracts 376–97
- system (utilities) 153–4, 159, 168–77
- qualitative selection
  - criteria 25, 26, 28, 410
  - public contracts 82–92, 340–41, 378–9
  - utilities contracts 187–8, 340
- quality assurance 89, 90, 120, 177–8
- quality control 88
- quid pro quo* approach 38–9, 42–5, 264, 265, 267–8, 346, 348–9, 353–8, 360
  
- race discrimination 278, 280
- ratione* 491
- rationemateriae* 208, 209
- ratione personae* 300, 304, 306, 309, 310, 313
- real advantage theory 41, 42, 266, 267, 344, 351–2, 353
- reality checks (contracting authorities) 88
- reasonable profit 270, 360
- recognized bodies 166, 170
- redress
  - judicial (impact) 284–5
  - Remedies Directive 194–201
  - WTO Government Procurement Agreement 202–49
- reference procedures 25
- references 86, 175
  - selection criterion 272, 378, 380–82
  - technical specification 80, 166, 378
- regional development 34–5, 341–2
- regulation 12, 481
  - anti-trust law 21–33
  - public procurement (doctrines and principles) 250–85
  - public procurement policies 482–9
  - state aid 33–48
- religious discrimination 278
- remedies
  - National Legal Orders 204–35
  - of redress 194–201
  - WTO Government Procurement Agreement 202–49
- Remedies Directives 56, 203, 284
  - amending 235–9
  - application of 239–49
  - award of contracts 389, 392, 395
  - National Legal Orders 204–35
  - partnerships 456, 457, 462–3
  - remit of redress 194–201
  - role of European Commission 199–201
- remuneration 17, 20, 36, 38, 43, 69, 150, 265, 475
  - see also* compensation; payment
- reports of contract awards 126
- requests to participate 77–8, 159, 161
- res judicata* 83, 172, 277
- resale to third parties 139–40, 485
- research and development 12, 56, 65, 108, 159, 179, 192, 427, 494
- reserved contracts 65, 144
- residual value risk 432, 441
- resource allocation 23, 35
- restricted procedures 33
  - accelerated 72, 96
  - public contracts 72, 74, 75, 77–8, 92, 93, 94–7
  - receipt of tenders 96–7, 161–2
  - utilities 154, 157, 161–2, 177–80
  - weighting of criteria 407–9
- restructuring effect 50
- ‘retention of identity’ test 299
- review
  - of acts/decisions (time limit) 245–7
  - decisions for 212–19, 242–4
  - judicial 200–201, 205, 209, 213–14, 218–19, 239, 241, 244, 370
  - proceedings 220–22, 228–30, 239
- Review Directive 389
- review procedures 285, 457
  - redress/remedies 194–5, 203–5, 207, 209, 213, 215, 218–19, 222–7, 230–33, 236–8, 240–44, 249
- right of establishment 35, 52, 217, 288, 371, 372, 482, 489, 491, 496
  - award of contracts 393, 398, 406, 408, 413, 417
  - partnerships 442, 443, 453
- rights
  - acquired (directive) 283, 298
  - exclusive *see* exclusive rights
  - protection of 478
  - special 63, 134, 322, 338, 373, 451, 488
- risk 12, 32, 320, 321, 367, 368



- allocation 429–30, 432, 436, 438
- availability 432, 441
- economic 334, 335, 434–5, 436, 447, 448, 452
- management 58, 252, 433
- operational 373–4, 375, 454, 457
- partnerships and 429–34, 436, 438, 440–48, 454, 457, 463–5
- transfer 433–4, 436, 440–42, 448
- rule of reason 27, 493
  - effect of 278–81
  - in public procurement 281–4, 498
- Santex* case 246
- savings 25, 33, 49, 253, 489
- scale economies 37, 50
- Sea* case 328–30, 470–71
- secret contracts 64, 109, 120, 140, 189, 485, 494
- securitization operations 440
- selection 411, 445
  - criteria 25–6, 28, 30, 61, 74, 157, 183, 221, 279–81, 413, 423, 462
  - process (accountability) 271–84
  - public procurement contracts 376–97
  - qualitative *see* qualitative selection
- self-regulation 287
- semi-public undertakings 301–3, 328, 366
- Serrantoni* case 397
- service concessions *see* public service concessions
- service contracts *see* public service contracts
- services *see* public services
- services of general economic interest (SGEIs) 19, 41, 47–8
  - procurement 343–4, 349–50
- services of general interest 14, 15, 18–19, 335–6
  - financing 36–7, 39–43, 45–7, 265–70, 348, 352, 357–60
  - partnerships 427, 448–9, 473
  - procurement 342–6
- set-up costs 113, 183
- set aside decisions 212, 230–31, 234, 243–4
  - detachable acts and 219–22
- sex discrimination 278, 280
- shadow tolls 439
- shareholders 325–6, 328, 329–31, 436, 443, 469–70
- SIEPSA 303–11
- similarity
  - of control 45–6, 257, 268, 292, 325–30, 356, 469–70
  - requirement (in-house) 325–30
- simplification objective 492
- single-operator framework agreement 111–12
- Single European Act 4–5
- single market (in EU) 2, 3, 11–58, 451–2, 482, 497, 499
- Single Market Act 3, 451–2, 497, 499
- small and medium-sized enterprises (SMEs) 33, 53, 453, 462, 499
- social cohesion 15, 16, 27
- social considerations (award criteria) 412–14, 493
- social exclusion 31, 281
- social inclusion 15
- social policy 27–32, 278–81, 412, 491
- social security contributions 83, 84, 90, 172, 173, 272
- social services of general interest (SSGIs) 15, 16, 17
- social time preference rate (STPR) 434
- Sociedad Estatal de Infraestructuras y Equipamientos Penitenciarios SA (SIEPSA) 303–11
- socio-economic conditions 8, 9, 32, 82, 167, 260, 297, 493
- solid fuels (exploration/extraction) 138–9, 144
- Spain 300, 323, 363–4, 375, 402–3
  - prison service 303–11
  - remedies 208–11
- special arrangements 144
- Special Drawing Rights (SDRs) 69, 150
- Special Purpose Vehicle (SPV) 438, 439–40
- special rights 63, 134, 322, 338, 373, 451, 488
- special security measures 64, 109, 120, 140, 189, 485, 494
- specialization 51, 473, 479
- specifications
  - minimum 417–18, 419

- open award procedures 94
- see also* technical specifications
- specificity requirement 259–60, 261, 293, 297
- Stadt Halle* case 301, 323, 327–8
- stand-alone projects 438
- standardization
  - legal framework 79–80, 89, 164–5, 169, 183
  - objectivity and 270–71
  - single market and 23, 24, 26
- standards
  - national 169–70, 270–71, 371, 376, 418
  - technical 6, 8, 74, 98, 157, 270–71, 376–8, 492
  - technical specifications 26, 79–81, 98, 164–6, 168–71
  - voluntary 271, 377
- standstill period 236, 237, 239, 240
- standstill provision 195
- state aid 18, 32, 124, 275
  - acquis* 18, 37, 39
  - assessment process 264–5, 268, 355
  - jurisprudence 36, 42–4, 47, 266–7, 342–3, 346, 348, 352–3
  - procurement and 341–2
  - regulation 19, 21, 33–48, 354–5, 358
- state aid approach 37–44, 264–7, 342, 348–51, 357
- state commercial companies 303–11
- state control 286–92, 303–11
- state sovereignty 57
- statistical obligations 126–7, 192–3
- strictosensu* approach 8, 10, 256, 287, 289, 490–91
- strictosensu* commerciality 19, 48–9
- Strohal* case 42, 260, 295, 296, 297–8, 345, 352
- structural adjustment 50
- sub-dimensional
  - contracts 369–70, 460, 487, 493, 496, 498–9
  - procurement 254–5
- subcontracting 52, 81, 89, 220
  - concession contracts 122
  - public contracts 365, 367, 374–5
  - public service concessions 339–41
  - utilities 167
- subject-matter of contract 170, 186, 392–3, 274
  - award criteria 181, 419–23
- subjectivity 47, 269, 360
- subsidiaries 374, 379
- subsidiarity 16, 236
- subsidies 36, 270, 291, 358, 380, 439
- subsidized contracts 66–7, 70
- substantive applicability
  - Public Sector Directive 63–5
  - Utilities Directive 135–48
- substantive rules 219
- substitutability 19, 258, 358
- sui generis* markets 8, 10, 265–6, 269, 426, 482, 490
  - public contracts 350–51, 357, 360
  - single market 18–19, 22, 37, 41, 48, 57
- suitability 379, 445
  - criteria 7, 30, 280, 380–82, 396
  - evaluation 86, 273, 380, 396
  - legal framework 87–8, 90–91, 99, 120
- sunk costs 481
- supply 12
  - chain management 492
  - contracts *see* public supply contracts
- supply side 21, 23–4, 29, 204, 250–53, 490
  - industrial policy and 48, 49, 50, 55–6, 58
  - public sector contracts 61–2
  - utilities contracts 130–33
- Taitotalo 316–21
- tax obligations 82–4, 90, 167, 172, 173, 272
- technical ability 86–9, 120, 174, 176, 178, 272, 378, 381, 413
- technical capacity 90, 272, 340–41, 378–80, 382–3
- technical specifications 26, 213, 270–71, 376–8, 418–19, 444
  - public contracts 79–81, 98, 371
  - qualifications and 168–71
  - utilities contracts 129, 164–6, 168–71
- technical standards 6, 8, 74, 98, 157, 270–71, 376–8, 492

- Teckal* case 46, 260, 292, 298, 325, 328, 330–31, 356, 364, 367, 467, 469, 470–71
- Teknocenter-Centro Servizi  
 Administrativi-SRL 390
- Teleaustria* case 371, 464, 497
- telecommunications 54, 63–4, 66, 108–9, 120, 192, 201, 485, 493, 494
- tenderers 125  
 connection of 388–9  
 exclusion 82–4, 91–2, 385–8, 397  
 personal situation 82–4  
 qualitative selection 82–92, 178  
 reliance on other sources 389  
*see also* candidates (for public contracts)
- tendering  
 compulsory 459, 491  
 costs 23, 24
- tenders 101, 125  
 deadlines/time limits 77–8, 94–7, 159–62, 185, 228–30, 239, 243–7  
 indicative 61, 74, 112–13, 115, 130, 164, 185  
 invitation to submit 96–7, 162–4, 224–8  
 lower bottom limit 253, 410, 423  
 preparation of 385–9  
*see also* abnormally low tenders; lowest offer; most economically advantageous offer
- Teoranta* case 288–9
- TFEU 8, 12–16, 18, 38, 43–4, 47–8, 109, 200, 286, 373, 453, 457, 476, 478, 486, 494
- Thessaloniki Metro Bouygues 390, 391, 394
- third countries 202, 499  
 contracts excluded 140, 485, 494  
 economic operators and 131–3
- third parties 63  
 partnerships 434, 446, 448–9, 467, 477  
 public contracts and 334, 335, 339–41, 365  
 resale/lease to 139–40, 485
- thresholds 22, 253–4, 255, 295, 471  
 design contests 107–8, 189  
 public contracts 66, 69–70  
 sub-dimensional 369–70, 460, 487, 493, 496, 498–9  
 utilities contracts 148, 150, 180
- time limits 185  
 enacting review proceedings 228–30, 239  
 extension of 94, 95, 96  
 open procedures 159–60  
 requests to participate 159–62  
 review of acts/decisions 245–7
- Tögel* case 361, 362
- Tokyo Round 202
- toll revenue 439
- trade  
 barriers *see* barriers  
 cross-border 361, 458–9  
 patterns 5, 6, 489
- trade effect 49, 50
- trade marks 270, 376, 378
- trade secrets 63, 135
- Tragsa* case 477
- Transfer of Undertakings Directive 298, 299
- transparency 338–9, 369, 371–3, 496  
 award criteria 386–7, 393–4, 408–9, 418, 421–2  
 effects on 251–3  
 flexibility and 255–6, 492  
 legal framework 63, 119, 135, 204–7, 217, 222, 248–9  
 partnerships 426, 442, 451–3, 455, 459–62, 464–5, 478–9, 481  
 principle of 250–56, 268–70  
 redress/remedies 204–7, 217, 222, 248–9  
 in single market 18, 22, 32–3, 48–50, 56, 58, 451–2, 482, 497
- Transporoute* case 276, 378–9, 411, 424
- Transport Regulation 459
- transport services 137, 145, 427, 459
- Transurb Consult 390
- Treaty on EU (Maastricht) 56, 254, 473
- Treaty of Rome 56, 254
- Tribunal Administratif* 235
- ultra vires* doctrine 30
- UN Millennium Declaration 428
- UN Millennium Development Goals 428

- uncertainty 47, 52, 360, 401, 452
  - in concessions 461–5
  - legal *see* legal uncertainty
- Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) 203
- undertakings
  - affiliated 141, 142, 485–6, 493, 498
  - preparation of tenders 388–9
  - selection of 383–5
  - semi-public 301–3, 328, 366
  - transfer of 298–9
  - see also* private undertakings; public undertakings
- unemployment 15, 27, 30–31, 55–6, 280, 281, 412, 413
- uniform goods 402, 403–4
- unilateral suspension 203
- Uniplex* case 247
- United Nations 427–8
- Unitrans Scandinavia* case 338, 451
- universal service obligations 13, 14, 37, 48
- Universale-Bau* case 246, 314, 323
- University of Cambridge* case 290–91
- unlawful acts/decisions 276–7, 285
  - award of contracts 391, 397, 411, 424
  - partnerships 452, 461–2
  - redress/remedies 195–6, 201, 205, 207–8, 210, 213, 215, 218–22, 227–33, 240–42, 246, 249
- Uruguay Round 202
- utilities contracts 52, 234–5, 459, 492
  - activities covered 135–9
  - activities excluded 139–48
  - affiliated undertakings 141–2, 485–6, 493, 498
  - award criteria 181–91
  - award procedures 178–81
  - competitive markets 263–4
  - Compliance Directive 197, 198
  - concessions 53–4, 452, 458
  - contracting authorities 286–7, 289, 300–301, 303–4, 306–7, 309–10, 313, 322–3, 326, 330, 487–9
  - demand side 133–5
  - design contests 189–91
  - dynamic purchasing systems 182–6
  - exclusions 139–48, 484–6, 494–5
  - framework agreements 129, 145, 148, 154–5, 158, 180–81, 494
  - legal framework 128–93
  - monitoring requirements 192–3
  - mutual recognition 177–8
  - privatization 46, 52, 287, 356–7
  - qualification systems 153–4, 168–77
  - qualitative selection 178
  - supply side 130–33
  - thresholds 148, 150, 180
  - types/categories 128–30
- Utilities Directives 54–5, 57, 63–4, 263–4, 287, 289, 409, 415
  - activities covered 135–9
  - activities excluded 139–48
  - award criteria 181–91
  - award procedures 178–81
  - exclusions 139–48, 484–6, 494–5
  - monetary applicability 148–50
  - monitoring requirements 192–3
  - partnerships 450, 457–8
  - public contracts 337, 340, 356–7
  - publicity/advertisement 151–67
  - qualification and qualitative selection 168–78
  - remit and scope 128–35
  - substantive applicability 135–48
- value for money 428, 431, 433, 442, 451–2, 456
- variants
  - award criteria 417–19
  - public contracts 81
  - utilities contracts 166–7
- Varkhaus (Finland) 316–21
- Vergabekontrollsenat* 215
- verification effect (delivery of public services) 264–70
- vertical cooperation 466–7, 474–5
- vertical procurement 339–40
- Vestergaard* case 369
- Vlaamse Raad* 289
- voluntary attestation system 201
- Voluntary Code of Practice 53
- voluntary standards 271, 377
- Wall/Frankfurt* case 248–9, 374–5
- waste disposal facility 404–6
- waste management 476
- water sector 136–7, 143–4

- welfare gains 22, 24, 35
- welfare losses 35
- Weser-Ems AG 404
- White Paper for the Completion of the  
Internal Market 4, 376, 483
- winding up 83, 90, 172, 180, 272
- Work Programme (2000) 3
- working conditions 82, 167, 182, 275
- works concessions *see* public works  
concessions
- works contracts *see* public works  
contracts
- World Trade Organization 8, 133, 490
  - Dispute Settlement Body 203
  - GPA *see* Government Procurement  
Agreement (GPA)





