Index

A2 Motorway case 477
abnormally low tenders 50–51, 168–175, 477–479
Access Directive 23
Accession Treaty (2004) 4
accountability principle 46–59
award criteria 48–51
contract compliance and rule of reason 52–57
impacts of 577
judicial redress and 57–58
objectivity doctrine 1, 46–51, 156, 330, 408–409, 613, 624
probity in public sector integration and 51–52
procedural autonomy doctrine 58, 330, 334, 362–364, 368–369, 379
procedural equality doctrine 58, 59, 330, 336–337
selection criteria 47–48
see also probity and public procurement
Acquired Rights Directive 36–37
active corruption, definition 490
ADDBHU case 303
Adolf Truley case 66, 77–78
advertisements see publicity and advertisements
affiliated undertakings see utilities procurement
AG Lenz 127
agency arrangements 107–109
AGESP/AGESP Holding 83–84
Agora case 44–45, 67
air transport sector see public service partnerships
Aktor ATE case 351
Albano, G.L. 146
Albany case 301–302
Alcatel case 415–416
Aleris Ungplan case 359
Almunia Package principles (2012) 302, 309–315
Alstom case (UK) 69–72
Altmark case 304–315, 320, 469–471, 475
American Cyanamid Co v Ethicom 142–143
ANAV case 85–86, 583–584
Ancona case 99–100
Anglo-French Defence Treaty (2010) 525
An Post case 106
anti-trust law and policy xiv, 36–37
Antwerp International Airport case 476
Apostol, Anca Ramona 263–264
ARGE case 6, 51, 174, 478, 479–480
Arnáiz, T.M. 488–489, 505
Arnhem and Rheden see BFI case
Arrowsmith, S. 121, 141, 266, 488, 502
Asemfo case 604
ATT EAC case 166–167
Augusta case 526
Aurox case 108–109
Austria
award criteria case 155
standstill period case 415–416
State aid case 6, 51, 174, 478, 479–480
Authorization Directive 23
availability risk 576, 615
award criteria 149–175
overview xix, 149–150
abnormally low tenders 168–175
accountability principle and 48–51
below-threshold contracts 167–168
best price-quality ratio 164–167
comparison of MEAT under Directives 154–167, 278–280
contractual performance and public procurement 13–14
in defence procurement regime 538–539
general rules on 154–157
lowest life-cycle costing, definition 161–164, 167
lowest price 50, 150–154, 157–158
SMEs and 278–280, 569
social and other specific services contracts 154, 167–168
socio-economic policies and 14–19, 54, 330

629
summary conclusion 175
transparency principle and 162–163
awarded and awarding, use of terms 357
AWSA II 477
Azienda Sanitaria Locale di Lecce case 111
BAI v Commission 476, 480
bankruptcy 47–48
Bayerischer Rundfunk case 77
Beentjes case 16–18, 62, 158–159, 165–166, 263
Belgacom case 192
Belgium
railway network concession contracts 594
Bent Moisten Vestergaard case 188–189, 195
best price-quality ratio 164–167
Beth, E. 515–516
BFI case 44, 67–68, 91–92, 608
bid rigging 427–436, 437, 446, 491
Blackpool case (UK) 208
bodies governed by public law
acting in the ‘general interest’ and meeting
needs of industrial/commercial nature 66–69
contracting authorities and 63–69
dependency test 64–65
elegibility to participate in tendering
procedures 5–6
management supervision of entities 66
public utilities and ‘undertakings’ as 81–82
use of term 24–25, 41
bribery, definition 489
British Telecommunications case 26
Broadband Guidelines (EU) 471–472
broadcasting services 20
Büchner, S. 514
Build-develop-operate (BDO), public-private
partnerships 572
Build-lease-operate-transfer (BLOT),
public-private partnerships 574
Build-operate-transfer (BOT), public-private
partnerships 573
Build-own-operate (BOO), public-private
partnerships 572
Build-own-operate-transfer (BOOT),
public-private partnerships 573–574
BUPA case 299
Burguet, R. 513–514
Buy-build-operate (BBO), public-private
partnerships 573
Cambridge case 65
capital asset pricing model (CAPM) 560
Caranta, Roberto 191
Carbotermo case 83–84, 87, 458–459,
581–582, 586–587
Carranta, R. 311
Celentani, M. 514
central purchasing body, definition 7
centralized procurement see competition
challenges and rule reform
certification of contractors 7
Charter of Fundamental Rights of the
European Union 295, 297–298, 355, 373,
375, 383, 384–385, 388, 439, 569
cherry-picking, use of term 260–263
Chong, E. 513
Chronopost case 302, 308
CJEU decisions, impact on public
procurement 390–420
overview xx, 390–391
contract termination 416–418
environmental considerations 405–409
Hamburg case law and non-institutional
cooperation 402–405
in-house awards 400–401, 403–405
Lianakis case and separate procurement
stages 409–414
relationship to national courts 392–394
remedies and 414–418
role and composition of Court 391–392
service concessions 394–400
standstill period 415–416
summary conclusion 418–420
see also Court of Justice of the European
Union (CJEU)
CJEU judicial activism 325–351
overview xii, xx, 325
damages 348–351
equal treatment 328
interim protection concept 335–337
procurement regulation and exhaustive
harmonisation 326–328
redress concepts, definition 330–334
Remedies Directives principles 332–335
rule of reason approach 329–330
summary conclusion 351
see also Court of Justice of the European
Union (CJEU); set aside procedures
and annulment of CJEU decisions
Classic Directives see Public Procurement
Directives 2014/24/EU
Club Hotel Loutraki case 182–183, 205–206,
357
Code of Conduct on Defence Procurement
(EDA) 525
Coditel Brabant case 587
Combinatie Spijker case 368
Commission v Belgium 328
Commission v Denmark 328
Commission v France cases
  2001 64
  2005 107–108, 187
Commission v Germany cases
  2003 350, 416–418
  2004 108
  2007 416–418
  2009 113, 587
  2010 118, 347
Commission v Ireland cases
  2006 316–317
  2010 189, 191–192, 347
Commission v Italy 188
Commission v Portugal 350–351
Commission v Spain cases
  2005 76–80, 106–107
  2010 118
Common Foreign and Security Policy (CFSP) 524–525
Common Procurement Vocabulary (CPV) 47, 136, 282
Common Product Classification 47
Common Security and Defence Policy (CSDP) 524–525, 531
Communication on Fighting Corruption in the EU (EC) 494–495
Community Eco-Management and Audit Scheme (EMAS) 19
compatibility test 330, 463–464, 471–475
competition challenges and rule reform overview xx, 423–427
aggregation of buying power 444–446
collusion-conscious tender design 429, 431–432
eProcurement and 446–449
impacts of centralized procurement 441–446
OECD recommendations and guidelines 427–432, 437
proposal for suspension and debarment system 432–436
strengthening tenderers’ rights 437–441
summary conclusion 449–451
Competition Directive 23
competitive dialogue 7–9, 254–256
Comune di Ancona case 192–193
Coname case 95, 188, 189, 203, 458, 585
concession, definitions 561, 570–571, 594–597, 617
concessions and public procurement 593–626
overview xxi, 26, 29–31, 593–597
characteristics of 603–604
concessions for works and services, new definition 619–621
contracts 604–605
under Directive 2004/18 611–617
duration of 621–622
exclusions 622–623
legal regime 623–625
under new Directive (2014) 617–625
operational risk 607–611, 619–622
public contracts and 90–100
public work concessions in classical sectors 611–614
right to exploit service 606–607
summary conclusion 626
works and/or provision of services 605–606
see also public service partnerships
Concordia Bus case 15–16, 18–19, 154–156, 158, 469
conflict of interest see probity and public procurement
ConISMa case 378
construction risk 576, 615
Contract Award Notices (CAN) 35, 371–373
contract compliance, definition 53
contracting authorities 60–88, 454–455
Alstom case (UK) 69–72
bodies governed by public law, tests of 63–69
contracting authorities, definition 60–61
dual capacity concept 74–75
in-house procurement arrangements and 83–88
overview xviii
private ‘bodies’ performing public services 75–81
private limited companies meeting need in the general interest 72–73
public utilities and ‘undertakings’ as bodies governed by public law 81–82
SGEIs and 318–320
state, regional and local authority 61–63
contractor lists 7
Coppier, R. 513
Corbeau case 301, 302
Corporate Social Responsibility (CSR) 218, 221, 222, 516, 518

Correos case 116, 604–605

Corruption 21

see also probity and public procurement

Corruption Perception Index (CPI) 497–499

Courage case 385

Court of Justice of the European Union (CJEU) xvii–xviii

approaches to public procurement framework xii–xv, 4

on award criteria 149

on bottom limits of tenders 5–6

condemns awards without prior publication 38

on contract compliance 54

de lege ferenda interpretation 326–327, 351
direct effect 2, 4

on dualism test 41–42

on equal treatment 195–196, 205

functionality and dependency tests xiii

on functionality test with contracting authorities 61, 62–63, 68–69

on most economically advantageous offer criteria 15–19, 50–51, 52–53, 55–56

rule of reason approach of 2

on state aid incompatible with TFEU 235

on sub-dimensional contracts 186–193, 247

see also CJEU decisions, impact on public procurement; CJEU judicial activism;

set aside procedures and annulment of CJEU decisions; individual cases

Craiova case 467–468

cross-border interest

public contracts and concessions 99–100, 565

sub-dimensional contracts and 202–204

CS Communications case 369–370

Czech Republic

independent review bodies 364

integration of competition and central procurement authorities 448–449

Dannebrog case 186

Data-processing case 92

de minimis principle 37–39, 184
debarment see suspension and debarment system proposal

decentralized procurement see competition challenges and rule reform

Defence and Security Procurement Directive 2009/81/EC 523–537

Article 47, award criteria 538–539

Article 2, applicability 527–528

Article 8, thresholds 528–529

Article 13, exceptions 529–532

Article 18, technical specifications 536–537

Article 42, qualification of bidders 537–538

Title IV, remedies 542–545

see also individual provisions

defence procurement regime 523–547

overview xx–xxi, 523–526

award criteria 538–539

cooperative programmes 530–531

direct awards and concessions 567–571

exclusion 531–532

intelligence services 530

offsets and subcontracts 539–542

peacekeeping deployed forces 531

procurement procedures 532–535

qualification of bidders 537–538

review and remedies 542–545

scope of Directive 527–532

secrecy 529

summary conclusion 546–547

technical specifications and contract performance conditions 536–537

thresholds 528–529

demand risk 558, 576, 615, 619

demand-side perspectives see innovative and sustainable procurement

Denflee (UK) 128, 145

Denmark

independent review bodies 365

integration of competition and central procurement authorities 448–449

sub-dimensional contracts case 186, 207

dependency test xiii, 40–41, 64–65, 330

Design-Build-Finance-Operate (DBFO), public-private partnerships 572

Design-construct-manage-finance (DCMF), public-private partnerships 572

DG MARKT 176

direct awards and concessions 567–571

Donau Chemie case 376

Dorn, N. 491

double tendering 109

dualism test 41–43, 74–75, 330

dynamic purchasing systems (DPS) 11–12, 124–125, 276, 372

e-Certis database 289

eco-labels 223

Index 633

EFTA Surveillance Authority (ESA) 358–360, 467, 477
electronic auctions 12–13, 503
electronic procurement see eProcurement
Elisoccorso/Elilombarda case 340
emergency ambulance services 113–116
Enterprise Europe Network (EEN) 282
Entsorgungsbetriebe Simmering GesmbH (EBS) case 68–69
environmental policies 14–19, 57, 163, 330, 405–409, 471
e-PRIOR 496
eProcurement 11, 134, 281–282, 446–449
Espac Trianon case 340
ethics see probity and public procurement
EU Anti-corruption Report 494
Eurawasser case 96
Eurobarometer survey (2011) 494–495
European Anti-fraud Office (OLAF) 491, 495, 500–501
European Charter for Small Enterprises (2000) 270
European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts (EC) 272, 287
European Commission (EC) anti-trust law and policy xiv, 36–37
Communication on Fighting Corruption in the EU 494–495
European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts 272, 287
Explanatory Note on Framework Agreements 132, 140–141
Green Paper on Public Procurement in the European Union: Exploring the Way Forward 3, 130, 602
Guidelines on Environmental Aid 471
Guidelines on Risk Capital for SMEs 471
Implementing the Lisbon Programme: Modern SME Policy for Growth and Employment (2005) 270
Interpretative Communication on Concessions under Community Law (2000) 612
Quality Framework (2013) 295, 310–311
study on cross-border procurement (2011) 385–386
Work Programme (2000) 3 see also individual Directives
European Court of Justice (ECJ) see Court of Justice of the European Union (CJEU)
European Defence Agency (EDA) 524–525, 530–531
European Economic Area (EEA) 352, 354–355, 358–360, 364 see also individual countries
European Green Public Procurement (EGPP) 221–223
European Growth Initiative 618
European Institutions towards a Single Market Act ix–x
European Neighborhood Policy 228
European Single Procurement Document (ESPD) 288
European Small Business Portal 270
European Union (EU) bilateral agreements 355
Broadband Guidelines 471–472
defence spending 524, 546
government expenditures (2011) 268
institutional impacts on innovation 216–217
public expenditures 482–483, 496–497
registered SMEs in 270 see also individual Member States
Eurostar International Limited (EIL) 69–72
Eurostat 576, 615, 620
EVN case 155, 159–160
Evropaïki Dynamiki case 190
ex proprio motu investigation see set aside procedures and annulment of CJEU decisions exclusion criteria 20–21, 47–48
exclusive rights 24–26, 100, 551–554, 566 extortion, definition 489
Fabricom case 253, 508
Fastweb cases 373, 378, 379
Fiedziuk, N. 315, 316
Finland
award criteria case 154–155
integration of competition and central procurement authorities 448–449
mixed contracts case 183–184
Finnish Turntables case 526
flexibility doctrine xiv, xvii, 21, 24, 39–43, 320–321, 330
Foster case 24–25, 75–76
framework agreements 119–148
overview xviii–xix, 10–11, 119–121
award phase 138–140
binding and non-binding 133–134
contract notice 137
definition under Public Sector Directive 131–132
determination of qualifying tenders 137–138
duration of 140–142
establishment of 136–143
evaluation of 143–147
framework contracts and 132–133
historical context of 125–131
improper use of 142
multi-provider 124–125, 139–140, 275–276
within public sector 122–123
remedies 142–143
single provider 123–124, 138–139
summary conclusion 147–148
term contracts 134–136
Framework Directive 23
France
award criteria 158
Eiffel Tower concession contract 593–594
framework agreements 126
independent review bodies 366–367
sub-dimensional contracts 199
Francovich case 361
fraud 21
see also probity and public procurement
Fritsch Chiari case 339
functionality test xiii
with contracting authorities 61, 62–63, 68–69
transparency and 39
GATT Agreement 333
GEMO case 303–304
general economic interest 43, 66–69, 72–73
see also SGEIs, financing of
Germany
independent review bodies 364
integration of competition and central procurement authorities 448–449
sub-dimensional contracts 207–208
Germany v Commission 187, 194, 195, 210
Gestion Hoteleria Internacional case 103–104
gold plating, use of term 198–199
Greece
Commission infringement proceedings against 127
judicial review case 182–183, 205–206, 257
Green Paper on Public Procurement in the European Union: Exploring the Way Forward (EC) 3, 130, 602
Greenwood, M. 489, 491–492
Grossmann case 339
Guidelines for Fighting Bid Rigging in Public Procurement (OECD) 427–432
Guidelines on Environmental Aid (EC) 471
Guidelines on Risk Capital for SMEs (EC) 471
Hackermüller case 378
Harland, K. 486, 487
harmonization of laws/policies 57
Healthcare at Home Ltd v Common Services Agency (Scotland) 137–138
Helmut Müller case 109–110
Hög-Jæren wind park case 472
in-house procurement arrangements 83–88
Hungary
Public Procurement Transparency Index 500
Hunsaker, K. 486–487
Hurtigruten judgement (EFTA Court) 477
Iceland
equal access to contract awards 354
full implementation of Remedies Directive 358
independent review bodies 366
ICT sector 226, 447, 503
illicit conduct, omission of term 511–512
Implementing the Lisbon Programme: Modern SME Policy for Growth and Employment (EC) (2005) 270
Impresa Lombardini case 51, 170–173
Impresa Pizzarotti case 110–111
Iceland
independent monitoring system 517–518
innovation, definition 248–249
innovation partnership 233–239
compliance analysis 235–238
IPR arrangements 238–239
PPP innovation and 257–266
selection criteria 259–263
structure of 263–266
innovative and sustainable procurement 215–241
overview xix, 215–216
circular and life-cycle costing approaches 224–226
cooperative procurement 219, 220
EU GPP criteria 221–223
EU institutional impacts 216–217
innovation partnership 233–239
international trade impacts 217–218
market consultations 219, 220–221, 222–223
Pre-commercial Procurement (PCP) and PPI 226–233
public vs. commercial demand 219–221
R&D services 226–233
summary conclusion 239–241
intellectual property rights (IPRs) 221, 232–233, 238–239, 264
inter-administrative agreements 106–107
Interconnection Directive 23
Ireland independent review bodies 364
ISO 26000 218
Italy
transposition case 346, 368–369, 382
Kapsch AG 415–416
Kaufmann, D. 497
Kells, S. 516
Kelman, S. 514
kickbacks 491
Klasse, M. 315
Klotz, J.M. 489, 491–492
Köln Messe case 90
Korhonen case 77–78
Lämmertzahl case 346, 368, 369
Land Burgenland case 307
land/real estate contracts 109–110
Late Payment Help-Desk 290
Lease-develop-operate (LDO), public-private partnerships 573
leasing/sub-leasing contracts 89–90
Lianakis case 165–166, 167, 175, 409–414
Licensing Directive 23
Liechtenstein
equal access to contract awards 354
full implementation of Remedies Directive 358
Life Cycle Costing (LCC) 161–164, 167, 224–226
Lisbon Programme (2005) 270
Lisbon Treaty 297–298, 300, 404–405, 494, 589
locus standi see set aside procedures and annulment of CJEU decisions
Lottomatica case 91–92
lowest life-cycle costing, definition 161–164
lowest price 50, 150–154, 157–158
see also State aid and public procurement
Maastricht Treaty ix, xii, xv–xvi, 37
Mannesmann Anlagenbau Austria case 101
Max Havelaar case 159, 175
McCrudden, C. 516
McCue, C.P. 514–515
Medipac-Kazantzidis case 116, 191
medium enterprises, definition 270
see also SMEs, and public procurement
Mehiläinen Oy case 183–184
Michtaniki AE case 378, 508
micro-market lock-ins 122
Military Exports case 526
mixed contracts see sub-dimensional contracts
Mödling case 85, 583
money laundering 21, 489
see also probity and public procurement
comparison under old/new Directives 154–167, 278–280
SGEI s and 306–307, 311
Müller case 606, 609, 621
multi-provider framework agreements 124–125, 139–140, 275–276
NACE (General Industrial Classification of Economic Activities within the European Communities) 47
Nachrichtenagentur case 357
national enforcement of EU procurement rules 354, 357–384
anticipatory effect before expiry 380–381
damages 374–379

Christopher Bovis - 9781781953266
Downloaded from Elgar Online at 03/01/2019 07:38:46AM
via free access
delayed transposition 381–383
enforcement levels 357–362
independent review bodies 364–367
ineffectiveness 371–373
interim protection 367–368
post full transposition 383–384
pre-Directive adoption 379–380
standstill period 354, 370–371
time limits to enact review proceedings 368–370
see also Remedies Directive in public procurement; individual Member States

national regulatory authorities (NRAs) 23–24
neo-liberal economic theory xiii–xv
nepotism, definition 490
Netherlands
award criteria case 159
New Classic Directives see Public Procurement Directives 2014/24/EU
New Procurement Directives see Public Procurement Directives 2014/24/EU
Non-Economic Services of General Interest (NESGIs) 296
Nord-pas-de-Calais case 16–18
Norma case 97–98, 379

Norway
equal access to contract awards 354
full implementation of Remedies Directive 358
independent review bodies 366

Nyikos, Gy. 517

objectivity doctrine 1, 46–51, 156, 330, 408–409, 613, 624
obviously abnormally low tenders, use of term 50–51


OPAC case see Commission v France cases
Open Network Provision (OPN) 22–23
Operate under License (OL), public-private partnerships 573
operational dependency see utilities procurement

Ordine degli Architetti case 90

Organization for Economic Co-operation and Development (OECD)
CSR Guidelines 218
Guidelines for Fighting Bid Rigging in Public Procurement 427–432
public procurement comparison to GDP (2011) 496–497
Recommendation on Fighting Bid Rigging in Public Procurement 427–436, 437, 446
study on sub-dimensional contracts (2010) 198, 200, 204–205
surveys on public procurement 268
Organisation for Joint Armaments Procurement (OCCAR) 525, 530–531
Orthopadie Schutechnik case 609
Oymanns case 77

P&O European Ferries case 476–477
pacta servanta sunt principle 352
passive corruption, definition 490
PEPPOL (Pan-European Procurement Online) 496, 510
Picci, L. 513
Piga, G. 513
Poland
changes to contract terms case 477
sub-dimensional contracts 200
Portugal
sub-dimensional contracts case 191
Post Office limited (POL) case 473–474
postal services sector 24, 81, 116, 181, 604–605
see also SGEIs, financing of

Pre-commercial Procurement (PCP) and PPI 226–233
compliance analysis 229–232
IPR arrangements 232–233
PPPs and 250–253
process phases 228–229
pre-let contract arrangements 110–111
Pressetext case 117–118, 625
prior information notices (PINs) 134, 284
probit and public procurement 482–518
overview xx, 20–21, 482–484
accountability and 51–52
avoidance of unfair advantages 485
corruption, definitions 489–492
corruption/conflict of interest 484, 491, 508–509
EU policies on corruption 493–496
exclusion criteria 20–21, 47–48
exclusion grounds 484–485
measurement of corruption 496–501
money laundering 503–504
new Directives on 507–517
previous Directives on 501–507, 512–517
probity, definition 485–486, 486–489
recommendations 517–518
rules of communication 506, 510
self-cleaning process 485, 492–493, 509
statistical obligation and monitoring 507, 511
suspension and debarment system proposal 432–436
transparency and publication 502–503, 508
probity checklist (Beth) 515–516
procedural autonomy doctrine 58, 330, 334, 362–364, 368–369, 379
procedural equality doctrine 58, 59, 330, 336–337
Procurement Lawyers Association 134
public competition law xiv
public contracts 89–118
overview xviii, 89
agency arrangements as 107–109
Annex II B Services Contracts 105–106
below-threshold contracts 116–117
changes of circumstances in 117–118
concession contracts vs. 563
cross-border interest in concessions 99–100
deficit contracts as concessions 98–99
delineation of 103–105
emergency ambulance services as 113–116
exclusive rights as concessions 100
inter-administrative agreements as 106–107
land/real estate contracts 109–110
pecuniary interest consideration requirement 89–90
pre-let contract arrangements as 110–111
public service concessions concept 90–95
research activities as 112–113
service concessions as 95–98
shadow payments in concessions 97–98
social housing and 111–112
State aid and 454–455
subcontracting 102–103
vertical procurement 100–102
Public Contracts (Amendment) Regulations (2009) 142
public passenger transport sector see public service partnerships
Public Procurement Directives 2014/24/EU 29, 216–217, 242
Article 1(6), dynamic purchasing systems 11–12
Article 1(7), electronic auctions 12–13
Article 1(10), central purchasing body 7
Article 2, lowest life-cycle costing 161–164
Article 18, competition 431
Article 19, reserved contracts 14
Article 26, competitive dialogue 254–256
Article 29, competitive dialogue 7–9
Article 31, innovation partnership 233–239, 260–262, 264–265
Article 32, awards 11, 231–232, 233
Article 40, market consultations 220
Article 45, exclusion based on probity 20–21, 52
Article 50, environmental management standards 18–19
Article 53, framework agreements 10–11
Article 55, tenders 5
Article 58, technical and professional ability 259
Article 60, subcontracting 19
Article 66, award criteria 150–158, 159–160, 165–167
Article 67, transparency 162–163, 167
Article 69, abnormally low tenders 173–174
Article 72, price revision 158
Article 76, general principles 168
innovation, definition 248–249
socio-economic/environmental policies 14–19
see also individual provisions
Public Procurement of Innovation (PPI) 219
see also innovative and sustainable procurement
public procurement regulation, introduction 1–31
overview ix–xxi, 1–2, 3–5
award criteria 13–19
see also award criteria
competitive dialogue 7–9
concessions 29–31
contracting authorities see contracting authorities
dynamic purchasing systems (DPS) 11–12
eProcurement 11
flexibility xiv, xvii, 21, 24
framework agreements see framework agreements 10–11
joint and centralized procurement 7
modernization xiv, xvii, 3–4
new amendments to Directives 29–31
official list of contractors 7
probity and xx, 20–21
reforms of xvii–xviii
simplification xiv, 3–4
small and medium enterprises (SMEs) and subcontracting 19
sub-dimensional contracts see sub-dimensional contracts
summary conclusion 627–628
utilities procurement 3–5, 10, 21–28
public procurement regulation principles 35–59
overview xviii
accountability 46–59
transparency 35–46
see also individual principles
Article 53, award criteria 153
Article 55, abnormally low tenders 169, 172–174, 478–479
concessions 611–617
framework agreements 131–132
see also individual provisions
Public Sector Procurement Review Directive 337
public service concessions concept 90–95
public service obligations (PSOs) see SGEIs, financing of public service partnerships overview xxi, 548–549
assessment of risk in PPPs 575–576
assessment of risk transfer in PPPs 558–560
capital holding of in-house entities 584–585
characteristics of 558–560
concessions for entities with exclusive rights 566
concessions for internal market 562–564
concessions in air transport 566
concessions in priority/non-priority services 565–566
concessions in public passenger transport 566
concessions in utilities sectors 564–565
concessions of sub-dimensional value 567
contractual model of public private partnerships (PPP) 571
control and similarity requirement 580–584
direct awards and concessions 567–571
evolution of 554–558
exclusive rights 551–554, 566
externalization and public procurement 549–551
financing of PPPs 559–560, 574–575
in-house arrangements 579–580
institutional model of public private partnerships (PPP) 571–572
operational dependency 586–587
operational types of PPPs 572–574
PPPs, international implementation of 557–558
procurement of PPPs 577–578
public concessions concept 560–562
public-public partnerships 587–591
summary conclusion 591–592
see also public-private partnership (PPP) innovation
public services, definition 548
see also SGEIs, financing of Public Services Directive 73, 93, 103–107, 565
see also Public Sector Directive 2004/18/EC
public undertakings 81–88
see also utilities procurement
public undertakings, definition 25
Public Works Directive 17, 19, 44–45, 91, 107
publicity and advertisements 8, 155, 194
framework agreements 10, 135–136
invitations to tender 35
public works concessions 611
secrecy considerations and 529
service concessions 188
sub-dimensional contracts 197
see also individual types of notices
public-private partnership (PPP), definition 243
public-private partnership (PPP) innovation 242–267
overview xix, 242–245
competitive dialogue and procurement 254–256
competitive procedure with negotiations 256–257
equal treatment concerns 253
exclusive development and 252–253
Index 639

as extended mixed contract 246–248
innovation partnership 257–266
objectives and benefits of 245–246
pre-commercial procurement and 250–253
procurement and 248–249
summary conclusion 266–267
see also public service partnerships
public-public partnerships 587–591

Quality Framework (2013) 295, 310–311

R&D&I Framework 471
see also innovative and sustainable procurement; public-private partnership (PPP) innovation
real estate contracts see land/real estate contracts
Recommendation on Fighting Bid Rigging in Public Procurement (OECD) 427–432, 437, 446
redress concept see CJEU judicial activism
overview 352–356
applicable decisions for judicial review 356–357
enforcement levels 357–362
summary conclusion 388–389
transparency and effectiveness 384–387
see also national enforcement of EU procurement rules
Remedies Directives see CJEU decisions, impact on public procurement; Public Sector Remedies Directives
research activities 112–113
research and development and innovation (R&D&I) see innovative and sustainable procurement; public-private partnership (PPP) innovation
reserved contracts 14
residual value risk 558–559, 576
Roberts, R.N. 515
Romania
independent review bodies 365–366
sub-dimensional contracts 200, 201, 207, 210
Rome Statute 37
RPL Lochau 84–85
Rubach-Larsen, A. 263
rule of reason, definition 2, 55
see also accountability principle
SAG case 170
Sanchez Grelas, Albert 192, 193, 317–318, 320
Santex case 346, 368–369, 382
Sea case 86–87, 583–584, 586
SECAP case 191, 196, 201, 203
self-cleaning process 485, 492–493, 509
service concessions 90–98, 188, 317–318, 394–400, 563–564, 600
service contracts 97–98, 179–180
Services of General Economic Interest see SGEI Framework; SGEIs, financing of
Services of General Interest (SGIs) 296
set aside procedures and annulment of CJEU decisions 337–348
absence of proceedings against invitation to tender 341–344
decisions for judicial review 344–345
ex proprio motu investigation of decisions 347
failure to participate in contract award procedure 340–341
ineffectiveness and 348
locus standi and interest to review acts 338–340, 342–343
standstill period 348
sufficient time between contract award and conclusion 347–348
time limits to enact review proceedings 345–347
Setco 86–87
seven-stage model for public procurement (Harland) 486, 487
Seventh Company Law Directive 26–27
SGEIs, financing of 295–322
overview xix, 295
Almunia Package principles (2012) 302, 309–315
Altmark case criteria 304–315, 320
compensation approach 303, 308–309
contracting authorities 318–320
de minimis regulation 313–315, 320
flexibility 320–321
in-house provision of 318–320
public procurement 315–321
quid pro quo approach 303–304, 308–309
service concessions 317–318
services of general economic interest concept 296–300  
State aid, overview 300–303  
summary conclusion 321–322  
TFEU Articles 107 and 106(2) 300–303, 305–306, 312–318  
shadow payments see public contracts  
Shead, B. 515  
SIAC case 157  
SIEPSA 76–81  
significant market power (SMP) 23  
Single European Act (1986) ix, 1  
Single Market Act (2011) xv, xvi–xviii, 484, 592  
single provider framework agreements 123–124  
Sintesi case 153  
Slaktehustomten case 467  
small and medium enterprises, definition 270  
Small Business Innovation Research (SBIR) (USA) 229–230  
SMEs, and public procurement overview xix, 19, 268–272  
administrative burden 286–289  
award criteria 278–280, 569  
bid deadlines 283–284  
diversity of technical solutions 280–281  
Enterprise Europe Network (EEN) assistance 282  
eProcurement improvements 281–282  
information exchange and feedback 284–286  
joint bidding of multiple SMEs 274–275  
large-scale contracts 272–275  
payment issues 289–292  
post award debriefing 286  
restriction of market access 275–276  
selection criteria 277–278  
small-medium enterprises, definition 270  
sub-contracting 19  
sub-dividing of contract lots 273–274  
summary conclusion 292–294  
technical and financial qualifications 276–278  
training and guidance for 283  
see also framework agreements  
social housing and public contracts 111–112  
Social Services of General Interest (SSGIs) 297  
socio-economic policies 14–19, 54, 330  
Sodemare and Others case 115–116  
solicitation, definition 489  
Spain changes to contract terms case 476, 480  
inter-administrative agreements 106–107  
interpretation of bodies governed by public law 76–81  
postal services case 116, 604–605  
sub-dimensional contracts 199, 209  
Spanish Weapons case 525–526  
Sparro, M. 146  
Special Purpose Vehicle (SPV) 574–575  
specificity requirement, definition 42  
Spottrup Boligselskab 188–189  
Stadt Graz case 363  
Stadt Halle case 84–85, 457, 458, 582–583  
Stadtwerke Brixen 85–88, 95–96, 189–190  
standstill period see set aside procedures and annulment of CJEU decisions  
State aid and public procurement 452–481  
overview xx, 452–454  
abnormally low offers 477–479  
applicable rules to public contracts 454–455  
balancing test 471–472  
broadband funding 468–469  
compatibility test 463–464, 471–475  
compliance with public procurement procedures 477–481  
compliance with State aid procedures 465–477  
contract terms 475–477  
equality principle 479–480  
in-house operators 457–459  
infrastructure funding exclusion 466  
land sales exclusion 466–468  
procedures 464–465  
public authorities and 457  
recipients as undertakings 461–463  
reform process 456–457  
Remedies Directives and 455–456  
SGEIs and Altmark criteria 469–471, 475  
third parties 459–461  
Transport Regulation 1370/2007 474–475  
use of secondary criteria 480–481  
see also SGEI Framework; SGEIs, financing of  
State Aid Framework (2014) 227, 231, 236  
strategic procurement  
general economic interest see SGEIs, financing of  
innovation see innovative and sustainable procurement; public-private partnership (PPP) innovation  
small and medium enterprises (SMEs) see SMEs, and public procurement
Index 641

Strohal case 42, 74–75
Strong Segurança case 191, 203
subcontracting 19, 102–103, 539–542
sub-dimensional contracts 176–212
overview xviii, xix, 176–177
applicable principles 194–197
calculation of estimated value 181–182
CJEU case law and 186–193
cross-border interest test 202–204
dimensional contracts vs. 184–185
direct procurement and national thresholds 198–202
EC Interpretive Communication (2006) 193–194
Interpretive Communication (2006) 195–196, 202
mixed contracts 182–184
national techniques for 197–200
remedies 204–210
summary conclusion 211–212
thresholds 177–180
total value of contracts by Authority (2006–2009) 179
transparency and 37–38
Succhi di frutta case 190
supply risk 619
Surveillance and Court Agreement (SCA) 358–360
suspension and debarment system proposal 432–436
sustainable procurement see innovative and sustainable procurement
Sweden
framework agreements 126
independent review bodies 366–367
integration of competition and central procurement authorities 448–449
Switzerland
bilateral agreement with 355
referendum on EEA Agreement 358–359
Taitotalo case 72–73
Tátrai, T. 517
TED (Tenders Electronic Daily) 200, 203, 212, 281, 496
Telaustria case 95, 150, 167–168, 184, 186–187, 189, 191, 205, 328, 363, 570–571, 612
telecommunications services 21–25
Teoranta case 62–63
term contracts 134–136
Tögel case 103–104, 381
trading in influence, definition 489
Tragsa case 550–551
transfer of competences, definition 550
Transparency Directive 472–473
Transparency International 498–499
transparency principle 35–46
award criteria and 162–163
commercialism and competitiveness doctrines 43–45
competition concerns and 437–441
competitive markets in utilities 45–46
de minimis principle and 37–39
dependency doctrine 40–41
dimensionality of public procurement and 37–39
dualism test and 41–43
effect of price competitiveness on 35–37
flexibility effect 39–43
functionality test 39
impacts of 577
non-discrimination and equal treatment 94–96, 99–100, 196–197
reduction of corruption 502–503, 508
Transporoute case 6, 51, 169–170
Transport Regulation 1370/2007 474–475, 566, 622
Treaty on European Union (TEU) 357–358, 380, 383–384
Article 6, environmental protection 18
Article 30, sub-dimensional contracts 189
Article 86 92–93
Article 258, compliance procedure 332, 358, 377
Article 267, judicial co-operation 331–332
Article 346, defence regime xx–xxi, 523–526
on equal treatment 94, 96, 100
on research activities 110–111
see also individual provisions
Research handbook on EU public procurement law

Trepte, P. 492

Uniplex case 346–347, 368, 369, 387
United Kingdom (UK)
47D(2) amendment 369
Commission infringement proceedings against 126–129, 145
contracting authorities in 69–72
Defence and Security Public Contract Regulations 543–544
framework agreements 121, 126
independent review bodies 364, 366–367
SEGI procedures case 473–474
sub-dimensional contracts 208–210
success of PPPs in 557
time limits to enact review proceedings case 346–347
Welsh Public Sector Network Scheme case 468–469, 475–476
United Nations (UN)
Global Compact 218
Guiding Principles on Business and Human Rights and the International Labour Organization 218
Millennium Development Goals 555
on public private partnerships 554–555
United States (USA)
contract compliance terms 53
pre-commercial procurement in 251
Small Business Innovation Research (SBIR) 229–230
suspension and debarment of competition infringers 434–436
Unitron Scandinavia case 94–95, 186, 612
Universal Service Directive 23
Universale Bau case 345–346, 368
Utilities Directive 93/38/EC 24, 101–102, 107
Utilities Directive 98/38/EC 21, 24–25
see also Public Procurement Directives 2014/24/EU
utilities markets 45–46
utilities procurement overview 3–5
affiliated undertakings 26–27
attestation procedure as remedy 333
competitive markets 27–28
concessions and 564–565
framework agreements 10
operational dependency 87–88
public undertakings 25, 61, 81–88
remit and extent of coverage 21–24
special or exclusive rights 24–26
telecommunications services 21–25
voluntary standards and specifications 47
value for money concept 35–36, 215,
226–227, 235–236, 279, 555
competition see competition challenges and rule reform
innovation see public-private partnership (PPP) innovation
public services see public service partnerships
SMEs see SMEs, and public procurement
State aid see State aid and public procurement
see also most economically advantageous offer (MEAT)
Varec case 376
Varkaus, Finland 72–73
vertical procurement 100–102
Vienna, City of 68–69
Vlaamse Raad case 63
voluntary ex-ante transparency notice (VEAT) 373
Wall AG case 118, 203, 350, 614, 625
White Paper for the Completion of the Internal Market ix, 1
whole-life costing see Life Cycle Costing (LCC)
Williams, S. 505–506
work concessions 563–565
workforce issues 13–14, 20, 53, 115–116
see also socio-economic policies
Works Directive see Public Works Directive
World Trade Organization (WTO) xiii
bilateral agreements 355
Dispute Settlement Body (DSU) 334
Worldwide Governance Indicators (WGI) 497–498
Yukins, C.R. 145–146