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Public Procurement
Research Group

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Public Procurement: Global Revolution IX

17–18 June 2019



A two-day international conference on public procurement regulation
University of Nottingham East Midlands Conference Centre



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Conference organised by University of Nottingham

Programme directors:

Professor Sue Arrowsmith

Achilles Professor of Public Procurement Law
and Policy, University of Nottingham

Dr Peter Trepte

Senior Fellow in Public Procurement Law,
University of Nottingham



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EU and/or global – take a look at our distance learning
(part time) postgraduate programme in Public
Procurement Law and Policy (Masters/Diploma/Cert)
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Programme

Day 1 Monday 17 June 2019

8.45am Introduction from the Chair, **Dr Peter Trepte, University of Nottingham**

8.50am Plenary session: New Developments in International and Domestic Procurement Regulation

8.50am–10.10am

Introduction from the Plenary Chair: Professor Sue Arrowsmith, University of Nottingham
Keynote address: Brexit, a view from the judiciary — Professor Dr Carl Baudenbacher, former President of the EFTA Court, University of St. Gallen HSG, Monckton Chambers, London
Update on public procurement in the UK – Peter Bennett, UK Cabinet Office
An update from the United Nations Commission on International Trade Law (UNCITRAL) – Caroline Nicholas, UNCITRAL
An update from the World Trade Organisation (WTO) Secretariat on the Government Procurement Agreement (GPA) – Antony Taubman, World Trade Organisation
An update from the Organisation for Economic Co-operation and Development (OECD) – Paulo Magina, OECD
An update from the Chartered Institute of Procurement and Supply (CIPS) – Malcolm Harrison, CIPS
An update from the Procurement Lawyers' Association (PLA) – Duncan Osler, MacRoberts LLP

10.15am–11.30am Workshops session one				
Workshop stream A Procurement in the UK	Workshop stream B Procurement in practice	Workshop stream C Current issues in the international arena	Workshop stream D Data issues in public procurement: open contracting, use of data for performance measurement and detecting irregularities, and data protection etc.	Workshop stream E Procurement in the EU
Workshop A1 Brexit and public procurement regulation: the current landscape Chair: Debbie Metcalfe, Achilles	Workshop B1 Reliance on third party capacities Chair: Professor Andrea Sundstrand, Stockholm University	Workshop C1 Current issues in international trade and procurement Chair: Ping Wang, University of Nottingham	Workshop D1 Data collection and analysis Chair: Gavin Hayman, Open Contracting Partnership	Workshop E1 Transparency in EU public procurement Chair: Roger Bickerstaff, Bird and Bird
Panel presentations and discussion: <ul style="list-style-type: none"> Overview and future vision for procurement post-Brexit Professor Sue Arrowsmith, University of Nottingham The UK's accession to the GPA in the context of Brexit Robert Anderson, University of Nottingham Procurement after Brexit – a view from the Cabinet Office Peter Bennett, Cabinet Office 	<ul style="list-style-type: none"> Reliance on third party capacities – selected issues Zbigniew Raczkiwicz, European Union The commitment of third parties Virginie Dor and Youri Musschebroeck, CMS Law firm, Belgium Third party capacities and bidder changes during the tender process Mirella Lechna, Wardynski & Partners, Poland Bidder Modifications— Professor Francesco Cardarelli, Università degli studi di Roma Foro Italico, and Dr Sonia Caldarelli, Roma Tre University, Italy 	<ul style="list-style-type: none"> GPA Reciprocity providing leverage for bilateral agreements Jean Heilman Grier, Djanghe, LLC, USA The EU's International Procurement Instrument Georgia Voulgari, National & Kapodistrian University of Athens, Greece 	<ul style="list-style-type: none"> Data, trends and protectionist tendencies Zornitsa Kutlina-Dimitrova, European Commission Using data to learn about procurement economics in the EU George Konstantinidis, University of Southampton Using data to uncover irregularities in EU funded procurement – the case of Hungary Gábor Soós, National University of Public Service, Hungary 	<ul style="list-style-type: none"> The many faces of transparency Kirsi-Maria Halonen, University of Lapland, Finland Transparency in public procurement – a pre-requisite for effective legal protection Professor Roberto Caranta, University of Turin, Italy Transparency provisions in the UK Paul Henty, Charles Russell Speechlys LLP, UK

11.30am–11.50am Refreshments

11.50am–1pm Workshops session two

Workshop A2 Brexit panel discussion and questions Chair: Professor Sue Arrowsmith, University of Nottingham	Workshop B2 Issues with the organisation of bidders Chair: Violeta Simionescu, Integrate Investment, Romania	Workshop C2 GPA accession issues Chair: Caroline Nicholas, UNCITRAL	Workshop D2 Performance measurement in public procurement Chair: Professor Steve Schooner, George Washington University, USA	Workshop E2 'New' economic operators Chair: Chris Jansen, Vrije Universiteit Amsterdam, Netherlands
<ul style="list-style-type: none"> ▪ Supply Chain and Brexit Anthony Woolich, Holman Fenwick Willan LLP Followed by questions and discussion 	<ul style="list-style-type: none"> ▪ Temporary associations, public procurement and competition Law: some guidance from the Spanish experience Dr Ascensión Gallego Córcoles, Universidad de Castilla-La Mancha, Spain ▪ Vendor lock-in in IT contracts – what to consider when choosing and using IT Systems Karolina Matuszewska-Pautsch, European Stability Mechanism, Luxembourg 	<ul style="list-style-type: none"> ▪ Do's and don'ts of GPA accession Jonathan Denison Cross, EBRD Consultant ▪ WTO GPA coverage of sovereign wealth funds: ways forward for Kazakhstan Astghik Solomonyan, University of Nottingham ▪ WTO GPA accession: driving force for reforms in the public procurement sector. Case study of recently acceded countries Dorina Harcenco, Academy of Economic Studies of Moldova and EBRD Consultant 	<ul style="list-style-type: none"> ▪ Measuring efficiency of public procurement John Fletcher, George Washington University, USA ▪ Measuring what matters in public procurement law: Efficiency, quality and more Desiree Klingler, University of St. Gallen, Switzerland ▪ Procuring with 'Building Information Modelling' (BIM) Professor Sara Valaguzza, University of Milan, Italy (co-author Professor Gabriella Racca, University of Turin, Italy) ▪ Using data to measure performance of procurement systems (MAPS e-procurement module) Eliza Niewadomska, EBRD ▪ Measuring value for money through a procurement management information system David Galpin, Single Source Regulations Office 	<ul style="list-style-type: none"> ▪ Citizens initiatives and the concept of economic operator in EU public procurement law Professor Dr Elisabetta Manunza, Utrecht University, The Netherlands ▪ Rethinking the public-private divide in EU internal market law: the case of public procurement Nathan Meershoek, Utrecht University, The Netherlands

1pm–1.15pm Group photograph (please go straight to the steps outside the Orchard Hotel at the end of the session)

1.15pm–2.15pm Lunch

2.15pm–3.45pm Workshops session three				
Workshop A3 Conflicts of interest Chair: Martyn Scott, DLA Piper	Workshop B3 Innovation and procurement Chair: Susie Smith, Consultant	Workshop C3 Public procurement and EU external trade Chair: Professor Martin Trybus, University of Birmingham	Workshop D3 Open data: efficiency, competition and cost savings Chair: Lindsey Marchessault, Open Contracting Partnership	Workshop E3 Redefining the State Chair:
<ul style="list-style-type: none"> ▪ Introduction to conflicts of interest; proposed nomenclature. Contracting Authority conflicts Jonathan Davey, Partner, Addleshaw Goddard LLP ▪ Bidder conflicts of interest identification and resolution Fran Mussellwhite, Bevan Brittan ▪ Collusion and Organisational conflict; conclusion Louise Huson, DLA Piper 	<ul style="list-style-type: none"> ▪ Preliminary Market Consultations and Innovation Procurement Dr Isabel Gallego Córcoles, University of Castilla-La Mancha, Spain ▪ Harnessing Innovation Jun Jin and Samuel Jack, US Agency for International Development (USAID), USA 	<ul style="list-style-type: none"> ▪ Procurement as part of EU external action Baudouin Heuinckx, Belgium Defence Procurement Division and University of Nottingham ▪ Transatlantic defence procurement Luke Butler, University of Bristol Law School ▪ The Internationalisation of public procurement Aris Georgopoulos, University of Nottingham ▪ Public procurement in EU free trade agreements Alice Manzini, University of Birmingham 	<ul style="list-style-type: none"> ▪ Strategic sourcing 2.0: Improving fiscal efficiency using big data in eight Latin American countries Dr Mihaly Fazekas (Central European University, presenting author), Alexandre Borges de Oliveira (World Bank) and Abdoulaye Fabregas (World Bank) ▪ How Prozorro e-procurement system generated savings in Ukraine Nataliia Shapoval, Kiev School of Economics, Ukraine ▪ Analyzing the cost of delayed payments in Paraguay Juan Pane National University of Asunción, Paraguay 	<ul style="list-style-type: none"> ▪ The State as contracting authority – one whole or a cluster of smaller contracting authorities Stephanie Hötte, Radboud University, The Netherlands ▪ The standard of diligent contracting authority – a new standard in EU procurement law Kadri Härginen, Sorainen, Estonia

3.45pm–4.05pm Refreshments

4.05pm–5.30pm Workshops session four

Workshop A4 Development agreements Chair: Duncan Osler, MacRoberts, LLP	Workshop B4 In-house and public-public procurement Chair: Jonathan Davey, Addleshaw Goddard LLP	Workshop C4 Harmonising reforms Chair: Elisabetta Morlino, University Suor Orsola Benincasa of Naples, Italy	Workshop D4 Data protection Chair:	Workshop E4 Procurement and aid effectiveness Chair: Dr Peter Trepte, University of Nottingham
<ul style="list-style-type: none"> ▪ New issues in structuring development agreements as land deals post <i>Faraday</i> Kuldip Dhanoya, TLT LLP and Laura Wisdom, Burges Salmon LLP ▪ Boundaries between concessions and land deals in light of <i>Ocean Outdoor</i> Matthew Mo, Bevan Brittan 	<ul style="list-style-type: none"> ▪ In-House transactions: Lost in Translation Dr Carri Ginter, Sorainen, Estonia ▪ The Teckal-exemption: two issues of interpretation faced by the Swedish Courts Erik Olsson, Advokatfirman Kahn Pedersen, Sweden ▪ The limits of commercial activities by public-public cooperations Dr Willem Janssen, Utrecht University, The Netherlands ▪ Public-Public cooperation and public-public within the European Union Dr Livio Girgenti, Italy 	<ul style="list-style-type: none"> ▪ Developing the MAPS II tool Paulo Magina, OECD ▪ Using MAPS II Evgeny Smirnov, EBRD ▪ Use and perspectives for Alternative Procurement Arrangements (APA) in Latin America Cesar Pereira, Justen Pereira, Oliveira & Talamini, Brazil ▪ Malaysia's procurement regime – need for a public procurement law? Datin Grace Xavier, Research Fellow, Faculty of Law University of Malaya 	<ul style="list-style-type: none"> ▪ GDPR in Swedish Public Procurement Dr Andrea Sundstrand, Stockholm University, Sweden ▪ Contract confidentiality myth busting Gavin Hayman, Open Contracting ▪ Outsourcing Oversight Report Elizabeth Archer, Principal Policy Officer, UK Information Commissioner's Office 	<ul style="list-style-type: none"> ▪ PPRG Book Launch Panel Discussion: where to from here? Roberto Caranta Jun Jin Annamaria La Chimia Sope Williams-Elegbe Chris Yukins

6.30pm Pre-dinner drinks and PPRG book launch:
Public Procurement and Aid Effectiveness

7pm Conference dinner

Day 2 Tuesday 18 June 2019

8.55am Introduction from the Chair – **Professor Sue Arrowsmith, University of Nottingham**

9am–10.10am Plenary session: Addressing Bid-rigging in Public Procurement

Introduction from the Plenary Chair – Dr Peter Trepte, University of Nottingham
Keynote address: Recent research – Professor William Kovacic, George Washington Law School and Competition Law Centre
The European Regulator's approach: Vassilios Kanaras, European Commission

10.15am–11.30am Workshops session five

Workshop stream A: Procurement in the UK and the EU	Workshop stream B: Procurement in practice	Workshop stream C: Current issues in the international arena	Workshop stream D: Bid-rigging in public procurement	Workshop stream E: Current issues in the international arena (additional stream)
Workshop A5 Procurement of social care services Chair: Susie Smith, Consultant	Workshop B5 Making remedies effective Chair: Carina Risvig Hamer, Copenhagen Business School, Denmark	Workshop C5 Regional procurement reforms and issues Chair: Jan Jackholt, EBRD	Workshop D5 Bid-rigging and procurement Chair: Professor William Kovacic, George Washington Law School and Competition Law Centre, USA	Workshop E5 Selected issues in international procurement Chair: Professor Derek McKee, University of Montreal, Canada
<ul style="list-style-type: none"> ▪ Dutch Municipal procurement of social care services – from competitive to relational contracting Jan Telgen, Madelon Wind and Niels Uenk, Public Procurement Research Centre ▪ Treatment of social services procurement in Germany Dr Friederike Mussnug, Diakonie Deutschland, Germany ▪ How might modern slavery risk in adult social care procurement be reduced? Caroline Emberson, University of Nottingham 	<ul style="list-style-type: none"> ▪ Applying MAPS II to the EU remedies system Professor Maria Alessandra Sandulli University of Roma Tre, Italy and Dr Flaminia Aperio Bella and Avv. Sabrina Tranquilli, Università della Toscana, Italy ▪ Duty to state reasons – a drama in two acts Juris Grantiš, University of Latvia, Latvia ▪ The relative merits of administrative review – the case of Bangladesh Ashraf-UI-Bari Nobel, PhD candidate, University of Nottingham, UK 	<ul style="list-style-type: none"> ▪ Tracking procurement in trade agreements in New Zealand Barbara Allen, Victoria University of Wellington, New Zealand ▪ Public Procurement in British Overseas Territories: a critical assessment Laura Panadès-Estruch, Cayman Islands Law School, Cayman Islands ▪ Breaking the mould - reforming procurement in Trinidad and Tobago Pastora Brown, Team Lead, The Office of Procurement Regulation, Trinidad & Tobago 	<ul style="list-style-type: none"> ▪ The EU's work programme on bid-rigging in procurement Vassilios Kanaras, European Commission, Brussels ▪ Procurement and competition law approaches to bid-rigging John Grayston, Grayston & Co., Brussels ▪ From Assitur to Lloyd's of London, and beyond. Linked undertakings and the borders of collusion in public procurement and competition law Miguel Assis Raimundo, Lisbon Law School, Portugal 	<ul style="list-style-type: none"> ▪ Commercial Online Marketplaces: Will They Too Undo the International Trade Order? Chris Yukins, George Washington University, USA ▪ Joint public procurement and innovation: lessons across borders Gabriella Racca, University of Turin, Italy ▪ The impact of international hard and soft law on EU and national public procurement law Chrysoula Moukiou, Panteion University of Social and Political Sciences, Greece

11.30am–11.50am Refreshments

11.50am–1pm Workshops session six

<p>Workshop A6 Collaborative procurement Chair: Luke Butler, University of Bristol Law School</p>	<p>Workshop B6 Sustainable procurement Chair: Professor Geo Quinot, University of Stellenbosch, South Africa</p>	<p>Workshop C6 Procurement of infrastructure for international sporting events Chair: Astghik Solomanyan, University of Nottingham</p>	<p>Workshop D6 Prevention of bid-rigging Chair: John Grayston, Grayston & Co., Brussels</p>	<p>Workshop E6 Regulatory challenges in Africa Chair: Professor Sope Williams-Elegbe, University of Stellenbosch, South Africa</p>
<ul style="list-style-type: none"> ▪ Sharing economy and public procurement – to collaborate, or not to collaborate? Dr Piotr Bogdanowicz, Warsaw University, Poland ▪ Applicable (Procurement?) Laws in collaborative procurement of security goods between EU Member States Dr Pascal Friton and Christopher Wolters, Blomstein, Germany 	<ul style="list-style-type: none"> ▪ Green public procurement and geography Isabelle Hasquenoph, University Pantheon-Sorbonne, France ▪ Public procurement and human rights: Beyond Buying Social Olga Martin-Ortega and Claire Methven O'Brien, University of Greenwich ▪ The promotion of human rights through public procurement in South African law Dr Allison Anthony, University of the Western Cape, South Africa ▪ Green criteria in subsidies and credits – examples in Poland Anna Gorczynska, University of Lodz, Poland 	<ul style="list-style-type: none"> ▪ Procurement of infrastructure for international sporting events: mapping the field for IPACS and beyond Professor Sue Arrowsmith, University of Nottingham ▪ An open contracting approach to major events: boosting trust, transparency and delivery Gavin Hayman, Open Contracting Partnership 	<ul style="list-style-type: none"> ▪ Anti-competitive behaviour of companies Alfredo Vitale, European University of Rome, Italy and Filippo Brunetti, Chiomenti, Italy ▪ Joint bidding Totis Kotsonis, Eversheds Sutherland ▪ The pro-collusive features of framework agreements and how to deal with them Penelope Giosa, University of East Anglia 	<ul style="list-style-type: none"> ▪ Building Institutional Relationships in the Development and Regulation of Public Procurement in South Africa Songezo Mabece, Executive Assistant, Competition Commission of South Africa ▪ A Comparative Analysis of the Use of Unsolicited Proposal for the Delivery of PPP Projects in Africa George Nwangwu, Former PPP Coordinator, Federal Ministry of Finance, Nigeria

1pm–2.15pm Lunch

2.15pm–3.30pm Workshops session seven

Workshop A7 Effectiveness of damages for breach of EU procurement law Chair: Totis Kotsonis, Eversheds Sutherland	Workshop B7 A North-South perspective on law and sustainable public procurement practices Chair: Professor Annamaria La Chimia, University of Nottingham	Workshop C7 An open contracting approach to major events: boosting trust, transparency and delivery Chair: Gavin Hayman, Open Contracting Partnership	Workshop D7 Dealing with bid-rigging in practice Chair: tbc	Workshop E7 Blockchain technology and procurement Chair: Professor Chris Yukins, George Washington University, USA
<ul style="list-style-type: none"> ▪ A view from the judiciary Carl Baudenbacher, Former President of the EFTA Court, University of St. Gallen HSG, Monckton Chambers, London ▪ The effectiveness of remedies, a case for change? Carina Risvig Hamer, Copenhagen Business School, Denmark 	<ul style="list-style-type: none"> ▪ Conceptualising sustainable public procurement in the Global South – distinct from the North? Geo Quinot, African Procurement Law Unit, Stellenbosch University, South Africa ▪ Developments in sustainable public procurement policy and law in Ghana and Australia Dominic Dagbanja, University of Western Australia, Australia ▪ Multi-level regulatory frameworks in Germany and Kenya: implications and policy considerations for sustainable public procurement Tim Stoffel, German Development Institute, Germany 	<ul style="list-style-type: none"> ▪ Tbc 	<ul style="list-style-type: none"> ▪ Québec’s experiment with supplier white lists Professor Nicholas Jobidon, École nationale d’administration publique, Canada ▪ Self-cleaning and leniency programmes in South Korea Professor Dae-in Kim, EWHA University, Korea 	<ul style="list-style-type: none"> ▪ Procurement, corruption and blockchain technology Professor Sope Williams-Elegbe, University of Stellenbosch, South Africa ▪ Blockchain technology as a tool for electronic public procurement audit Juan Manuel Delgado, Olga Salazar, National Audit Office of Costa Rica

3.30pm–3.50pm Refreshments

3.50pm–5pm Workshops session eight

Workshop A8 Questioning the fundamentals Chair: Dr Aris Georgopoulos, University of Nottingham	Workshop B8 Sustainable procurement at the municipal level Chair: Marc Steiner, Swiss Federal Administrative Court, Switzerland	Workshop C8 New dimensions in defence procurement Chair: Dr Baudouin Heuninckx, Belgium Defence Procurement Division and University of Nottingham	Workshop D8 Chair: tbc	Workshop E8 Efficiency, from planning to award Chair: Dr Paula Faustino, University of Nottingham
<ul style="list-style-type: none"> ▪ Public Procurement law – a paradigm error? Wouter Stolwijk, Former Director, PIANOo ▪ The applicable law of procurement contracts Dr Jakub Krysa, Maruta Wachta SP.J., Poland ▪ Taking account of the judges Sebastian Carlos Barreto Cifuentes, University of Nottingham 	<ul style="list-style-type: none"> ▪ Sustainability at the municipal level Jellie Molino, University of Turin, Italy ▪ Sustainable public procurement in municipal contexts Maximillian Müngersdorff (co-author Tim Stoffel), German Development Institute, Germany 	<ul style="list-style-type: none"> ▪ NATO defence and security procurement: Settling Disputes over Procedures for “International Competitive Bidding (ICB)” Dr John Kitsos, Independent Public-Procurement Authority – Remedies Review, Greece ▪ Barriers to transatlantic defence procurement Dan Schoeni, United States Air Force 		<ul style="list-style-type: none"> ▪ Justifying the efficient procurement decision Jorge Faria Lopes, Ph.D. Researcher at Universidade Católica Portuguesa ▪ Ambiguities in the procurement award criteria Nikos Kilonis, European Court of Auditors, Luxembourg ▪ Problems with the scoring rules Andrei Ivanov, St Petersburg University, Russia

5pm Close

We are delighted to be working with the following collaborators:

