



Hogan
Lovells

Procurement law our experience

2020

Our experience in public procurement law

Public procurement law in Germany has undergone rapid changes since the 1990s. The main driving force has been EU law, which has removed the public procurement system from the realm of purely administrative budget law by granting subjective rights to unsuccessful bidders.

Public procurement law is now a day-to-day issue for all federal, state and local authorities. Even public companies such as municipal utilities are exposed to the ever stricter requirements in this field. Finally, the sophisticated legal redress system of this area of law is also making it increasingly significant for private companies that feel disadvantaged in the awarding of contracts. This is because the contracting authority and the bidder must meet a large number of requirements during the award process and when contracts are subsequently fulfilled. The awarding of concessions in the gas, electricity, water and heating sectors is currently a hot topic due to the expiration of contracts.

Meet requirements – be wary of pitfalls

As a client, your work on awarding contracts is subject to budgetary and deadline pressure. We help you to meet objectives and implement measures. Our lawyers guide you through the entire procurement procedure: from determining the right type of procedure and drafting the tender documents, through to assessing the tenders and representing you before public procurement tribunals and courts.

Our lawyers have gained their experience from numerous contract award and review procedures. They keep a constant eye on all the pitfalls of complex contract award procedures, such as the calculation of threshold values, the drafting of descriptions of services, and deadline compliance.

Also as a bidder in public tenders, precise knowledge of the requirements is essential. The slightest formal error can lead to exclusion, and an incorrect bidding strategy can be the difference between success and failure. We help you examine whether the procedure is lawful and prepare tenders, as well as represent you in any legal redress proceedings.

Compliance and reporting

Even after the contract has been awarded, further requirements must be met. This applies in particular to companies that work with US federal or state authorities. The team is present in major regulatory hubs such as Berlin, Brussels, Washington and London. Our global team will guide you safely through the maze of international compliance and reporting requirements. In the unlikely event that something goes wrong, we will help you successfully remedy the situation.

The right tactics – even when time is short

Litigation in contract award procedures is subject to tight timeframes. If a dispute arises, we will develop the right tactics for you. Whether the case concerns protecting bidder rights in public tenders, damages claims asserted by bidders or defending a client against requests for the review of a contract award – we take into account all strategic and procedural aspects.

Hogan Lovells has extensive experience in public procurement law. The main areas in which we advise clients include:

- National, EU-wide and international contract award procedures
- Review procedures before public procurement chambers and divisions
- Concession award procedures
- Bidding procedures for public concessions
- Setting up and negotiating concession contracts
- Structuring and implementing functional privatisations and public-private partnerships



Representative experience



City of Bergisch Gladbach

Advising the swimming pool operator in the bidding process on the search for a strategic partner in the field of energy and water supply.



Alliander AG

Advice on participation in the concession award procedure for electricity and gas pursuant to sec. 46 of the German Energy Industry Act [*Energiewirtschaftsgesetz – EnWG*] of the state of Berlin and on the remunicipalisation of public utilities.



Free and Hanseatic City of Hamburg

Comprehensive advice on the concession award procedure for electricity, including a cooperation agreement with a strategic partner.



City of Duisburg

Ongoing advice on public procurement law.



Stadtwerke Dusseldorf

Ongoing advice on public procurement law, particularly advice on the law governing concession contracts.



Stadtwerke Velbert

Advice on concession award procedures in the areas of electricity, gas and water as well as on municipal business law.



REGIOMED-KLINIKEN GmbH

Support with regard to public procurement and regulatory issues.



Free State of Bavaria

Advice on public procurement law and EU state aid law in relation to the magnetic levitation railway in Munich (Transrapid).



Stadtwerke Menden GmbH

Ongoing advice on public procurement law.



Autobahn Tank und Rast GmbH

Advice on public procurement law and EU state aid law in relation to the construction of a network of fast charging stations at the federal motorway service stations operated by Tank & Rast.



STEAG GmbH

Ongoing advice on public procurement law.



Stadtwerke Menden GmbH

Ongoing advice on public procurement law.



enwor – energie & wasser vorort GmbH

Support in connection with the tender procedure for the water concession of the city of Übach-Palenberg (bidding process, representation in dealings with the state antitrust authority).



City of Bergisch Gladbach

Advice on the concession award procedure for electricity, gas, water and district heating.



German Federal Association of the Security and Defence Industry

Comprehensive advice on the public procurement law positioning of the German security and defence industry on the agenda of arms and other public procurement law issues.



German Federal Ministry of Defence

Advice on public procurement law and EU state aid law in relation to the restructuring of the garment management system of the German armed forces and other projects.



Baxter Deutschland GmbH

Ongoing advice on public procurement law and antitrust law with regard to invitations to tender issued by statutory health insurance companies, e.g. for vaccine discount agreements or for medical devices.



A national medical association in Germany

Advice on the concession award procedure for the marketing, production and dispatch of medical notifications as well as the creation and operation of the Internet site.

Representative experience



German Federal Ministry of Defence

Comprehensive advice on public procurement law and EU state aid law in relation to the planned sale of the repair works of the federally owned HIL Heeresinstandsetzungslogistik GmbH under an EU-wide contract award procedure.



A German shipyard

Advice on public procurement law with a view to reinstatement in a contract award procedure due to the subsequent increase of the price cap.



AVG Abfallentsorgungs- und Verwertungsgesellschaft Köln mbH ("AVG")

Advice on public procurement law with regard to the establishment of an in-house joint venture to build and operate a sewage sludge incineration plant.



NRW.BANK

Comprehensive advice on public procurement law with regard to the privatisation of the state-owned casinos in North Rhine-Westphalia.



Office First Immobilien GmbH

Advice on public procurement law with regard to the conclusion of a co-contract with a construction obligation for NRW.BANK in Dusseldorf (negotiation procedure with participation contest).



Several German cities

Advice on the awarding of the operation, maintenance and modernization of the public lighting.



Insurance companies

Ongoing advice on public procurement law (including on participation in pan-European contract award procedures for insurance services).



State of North Rhine-Westphalia

Advice on public procurement law, EU state aid law and merger control law as well as representation with regard to the acquisition of a further third of the shares in Duisburger Hafen AG.



Westdeutsche Spielbanken GmbH & Co. KG

Ongoing advice on public procurement law in connection with public tenders.



Alliander AG

Advice on participation in the concession award procedure for gas and electricity pursuant to sec. 46 *EnWG* of the municipality of Henningsdorf.



A global management consulting firm

Ongoing advice on public procurement law.

Our team



Prof. Dr. Thomas Dünchheim

Partner and Head of Global Regulatory
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Thomas Dünchheim is the “Go to - Lawyer” for legal questions relating to municipal enterprises, public bank institutions or state-related transactions. He has more than twenty years experience in the area of public law, especially public commercial law, municipal law, environmental law and construction law.

He is Head of Government Regulatory Germany, a member of the Global Policy Advocacy Initiative and the Environmental Law Group of our law firm.

Thomas holds a diploma in public administration (Diplom-Verwaltungswirt) and studied law at the University of Cologne from 1994 to 1999. From 1999 to 2009, Thomas was mayor of the city of Monheim and headed the Legal Department, the Departments Human Resources and Administration, Urban Planning and for the promotion of Trade and Industry Departments. Since 2016 he is Professor for Constitutional and Public Commercial Law at the EBS University in Wiesbaden.



Dr. Marc Schweda

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Advising clients on all areas of EU and German competition law, Marc has been hand-picked by the German antitrust authority, the Bundeskartellamt, to defend it against a ground breaking €1.1bn damages claim for an unlawful prohibition of a merger. This case attracted a lot of attention as it marks the first time ever the authority has retained a competition lawyer to defend it in court, and since that is what Marc successfully did, through two instances, he enjoys a particularly good relationship to them.

Recognizing the need for high level advice in a wider range of competition related issues, Marc has also focused on public procurement law and EU state aid law. It is there, at the interface between the different disciplines of competition law, where Marc is difficult to beat.

Whether it is setting-up cooperation's and agreements in line with competition law

requirements, helping clients involved in cartels to get off as lightly as possible, representing plaintiffs and defendants in court in antitrust litigation cases or maneuvering clients through the shallows of international merger control, numerous clients have already trusted in Marc's advice.

Legal 500 says this is where Marc “develops tailor-made solutions”. Marc also regularly advises on complex procurement law matters in public tenders and related court proceedings as well as on EU state aid law matters. He has particular experience in the energy and life sciences sectors. Marc is co-author of two well-known German commentaries on German and EU competition law, the Langen/Bunte and the Lowenheim/Riesenkampf/Meessen. He also writes in Heidenhain, EU State Aid Law Handbook.



Our team



Dr. Falk Schöning

Partner, Brussels

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Praised by clients as an ‘excellent procurement and antitrust expert’, Falk Schöning focuses on solving international legal challenges. He has vast experience in merger control, antitrust compliance, foreign investment control as well as in export control and sanctions cases in Germany, Europe and abroad. Falk is a dedicated, solution-orientated and pragmatic advisor who handles the full range of matters from straight-forward notifications to the global coordination of merger control reviews in complex multi-billion dollar transactions.

Whatever the issue at stake, Falk ‘always considers the commercial goals when advising clients’

and ‘provides clear recommendations and risk assessments’ (Chambers). He has particular experience in the field of media and technology, where he deals with questions relating to data and competition law, the EU Digital Single Market strategy, artificial intelligence, blockchain and robots. In addition, as co-leader of Hogan Lovells’ European aerospace and defense group, Falk regularly advises on competition law, regulatory and procurement issues faced by airlines, defense contractors and UAV operators in Germany and Europe. Falk’s clients also benefit in policy advocacy projects from his long-standing experience in policymaking in Brussels and Berlin.



Carsten Bringmann

Senior Associate, Dusseldorf

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Carsten Bringmann advises companies and the public sector on all aspects of public law. He focuses on public commercial law and has special experience in gambling law and constitutional law as well as procurement law.

Following his studies at the Heinrich-Heine-University in Düsseldorf, Carsten Bringmann completed his legal internship in the district

of Higher Regional Court in Hamm, at the Parliament of North Rhine-Westphalia and a well-known law firm in the public law sector. He is currently working on his doctoral thesis about gambling law. Carsten Bringmann is visiting lecturer for European and international business law at the University of Wuppertal.



Market voices

What clients say about us



Clients are ‘highly satisfied with the work’ of the ‘reliable and competent’ practice of Hogan Lovells International LLP, which stands out above all due to its ‘prompt work, excellent availability and practical focus; clients also value the ‘suitable breadth of the team’.

Legal 500, 2018



Sources emphasize the quality and ability of the team to understand the client’s needs and say: “All the lawyers have a very good technique, quickly understand our problems and always deliver solution-driven answers. They are very skilled in negotiations. I receive very quick answers and the lawyers are really pragmatic.”

The head of public law is recommended: Thomas Dünchheim is a key figure in this area.

Chambers Europe, 2018



Especially recommended is the ‘pragmatic’ Thomas Dünchheim in Dusseldorf, who has ‘enormous expertise in public law and communal structures’ and displays a ‘sensitivity in situation analysis that enables him to develop effective solutions’.

Legal 500, 2018



Hogan Lovells International LLP has a ‘fast and pragmatic’ public procurement law team with ‘good industry knowledge and an international approach’ (...).

Names of the next generation: Falk Schöning: ‘excellent public procurement and antitrust lawyer’ in Brussels, ‘who always has the economic objective in mind when providing legal advice and makes clear statements and risk assessments’

Legal 500, 2018



The public procurement practice distinguishes itself from its competitors through its close networking with other practices of firm. In this way, it is able to provide clients with very comprehensive support in their projects on a regular basis.

Often recommended: Dr. Marc Schweda

JUVE Handbook, 2019/20



The recommended practice skilfully links advice on public procurement law with other practice groups (...). The accredited Schweda embodies the practice group’s good interconnection at the interface to antitrust law advice.

Often recommended: Marc Schweda (“pragmatic and offers valuable solutions”, client)

JUVE Handbook, 2017/2018



Thanks to its cross practice group approach, the team at Hogan Lovells International LLP is often at the interface of IP, life sciences, corporate and antitrust law.

Falk Schöning in Brussels and Thomas Dünchheim, who heads the Government Regulatory Practice Group, are (...) key players.

Legal 500, 2019



“A client is impressed with the willingness to offer a quick and yet in-depth opinion from a commercial perspective: The lawyers also offer comprehensive advice at short notice.”

Chambers Europe, 2017



Hogan Lovells in Germany

Today, changes are happening faster than ever. Recognising them early on and adapting to them is crucial to your success.

Legal challenges can be encountered everywhere. We have a deep understanding of legal and commercial issues and work with you to find solutions to the most difficult legal matters worldwide. If you want to open up new markets, are looking for alternative forms of financing or are facing complex regulatory issues or disputes, we can support you. Whether changes present you with opportunities, risks or a period of upheaval – with Hogan Lovells you will be ready to tackle them.

In Germany, we have more than 350 lawyers at our four offices in Dusseldorf, Frankfurt am Main, Hamburg and Munich and our legal service office Berlin.

Outstanding experience in the following areas of law:

- Employment
- Supervisory and regulatory
- Banking and finance
- Corporate (including M&A and capital markets)
- Intellectual property
- Commercial and distribution
- Real estate
- Antitrust
- Litigation and arbitration
- Tax

Specialist knowledge of key industries:

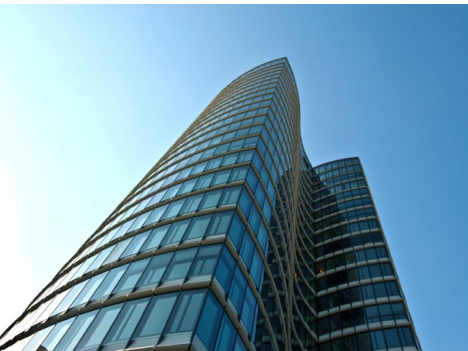
- Energy
- Financial services
- Real estate
- Consumer goods
- Life sciences and pharma
- Raw materials and infrastructure
- Telecommunications, media and technology
- Insurance

Our approach?

Collaborative.

We take the time to understand your needs and objectives.

Our offices in Germany and Belgium



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Miami
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Minneapolis
Monterrey
Moscow
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San Francisco
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Shanghai
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Zagreb*

*Our associated offices

Legal Services Centre: Berlin

www.hoganlovells.com

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