



Irish Centre for European Law

Trinity College, Dublin

Public Procurement Conference

Thursday 28 June 2012

Royal Irish Academy, 19 Dawson St, Dublin 2

9.30am – 5.00pm

Registration from 8.45am

Supported by Arthur Cox

This conference will cover key developments and hot topics in Public Procurement, with a particular focus on difficulties faced by contracting authorities in complying with the procurement rules. The conference will be addressed by leading national and international experts. The first session of the conference, *Procurement in Context*, will be addressed by Minister Brian Hayes TD and Thomas Barrett of the European Investment Bank, before the conference turns to more legal issues.

Programme

8.45-9.30am Registration & Coffee

9.30am **Welcome - Nathy Dunleavy BL, Director ICEL**

Morning Chairman: The Hon. Mrs Justice Fidelma Macken, Chairman ICEL

I. PUBLIC PROCUREMENT IN CONTEXT

9.35am *Chairman's Introduction*

9.40am **Brian Hayes TD**
Minister of State, Department of Public Expenditure and Reform

Public Procurement: Delivering Value, Driving Growth

10.10am **Thomas Barrett**
Director, European Investment Bank, Luxembourg

Procurement and Funding Public Projects: View from the EIB

10.40am **Q&A**

10.50am Morning Coffee (*Refreshments provided in the Members' Room*)

II. "HOT TOPICS" IN PUBLIC PROCUREMENT

11.20am **Patrick McGovern, Arthur Cox Solicitors**

Shared and Collaborative Services

11.45am **Brian Doherty, Departmental Solicitors Office, Belfast**

Applying the Procurement Rules at the Local Level: Key Challenges

12.10pm **Claudio Romanini, European Commission**

Public Procurement Reform & Europe 2020: New Directives

12.40pm **Q & A**

1-2.00pm Lunch (*Light lunch provided in the Member's Room*)

Afternoon Chairman: Dr. Diarmuid Rossa Phelan SC

III. COMMON PROBLEMS FACED BY CONTRACTING AUTHORITIES

2.00pm *Chairman's Introduction*

2.05pm **Anna-Marie Curran, A&L Goodbody**

Key Problem Areas for Contracting Authorities:
*Abnormally Low Tenders; Contractual Variations
& Results of Survey on Key Problem Areas in Public Procurement*

2.25pm **James Kinch, Dublin City Council**

Challenges in the Tender Process:
Secondary Policies & State Aid Issues; Clarifications

2.45pm **Q&A and Commentary (Commentator: Claudio Romanini)**

3.15pm *Afternoon Tea (Refreshments provided in the Members' Room)*

IV. PUBLIC PROCUREMENT LITIGATION

3.40pm **Nathy Dunleavy BL**
Procurement Litigation: Introduction

3.50pm **Eileen Barrington SC**
Public Procurement: Issues for Litigators

4.15pm **The Hon. Mr Justice Bernard McCloskey**
Recurring Themes in Procurement Litigation: the Standstill Period, Interim Orders and the Overriding Objective

4.45pm **Q&A**

5.00pm **Conference Ends**

Biographical Notes

Thomas Barrett is the EIB Director responsible for Technical and Financial Advisory Services (TFA) including EPEC, the European PPP Expertise Centre operated jointly by the EIB; the European Commission and EU National Authorities. Prior to heading the EIB's Advisory Services, Mr Barrett was previously responsible for the EIB's Centres of Expertise on Trans-European Networks (TENs); on Energy and the Environment and on the Knowledge Economy for which EIB have developed a series of joint risk sharing financial instruments such as LGTT; Project Bonds; RSFF and sectoral Investments funds. Mr Barrett was also EIB Director for North Western Europe before which he was responsible for project financing of the aerospace; oil and gas and satellite telecommunication sectors. Of Irish nationality, he is an INSEAD MBA (France) and a graduate of the National University of Ireland in Mathematics and Philosophy.

Eileen Barrington is a practising barrister. She did a Masters in European Law in the College of Europe in Bruges. She worked as a lawyer in Paris and Brussels for a number of years before returning to the Irish Bar in 1994 and became a Senior Counsel in 2011. She practices mainly in the area of administrative and commercial law.

Anna-Marie Curran is a Partner in A&L Goodbody specialising in procurement law. She advises a wide range of clients in the public, utilities and private sectors on contentious and non-contentious procurement matters. She has represented clients in procurement cases in the Irish and Northern Ireland courts and before the European Commission. Anna-Marie lectures on procurement law at the Law Society of Ireland and is visiting professor on procurement law at the University of Bangor.

Brian Doherty acts as deputy Head of Legal Services in Departmental Solicitor's Office in Belfast. DSO is the "in house" legal advisory unit for the Departments of the devolved government in Northern Ireland. He has particular responsibilities for the provision of legal advice on EU law, Human Rights law, Freedom of Information law and Law Reform to the devolved administration. He graduated from Queen's University, Belfast, and pursued postgraduate of EU law at the Europa Institute of the University of Amsterdam. Brian has been an active contributor to the activities of the Solicitors European Group of the Law Society, is on the board of the Irish Centre for European Law, has taught EU law at Queens University and at the Institute of Professional Legal Studies in Belfast. He has contributed to legal publications and has been a speaker on EU law in Northern Ireland and beyond.

Nathy Dunleavy is a practising barrister. He is a graduate of Trinity College, Dublin and director of ICEL. He has a broad civil law practice, with a specialism in European law. Mr Dunleavy's areas of interest include public procurement law, environmental law and competition law. He has lectured and published in the area of EU law and is the author of *Competition Law: A Practitioner's Guide* (Bloomsbury Professional, 2010). Before coming to the Irish Bar in 2007, Mr Dunleavy practised corporate law in New York and EU law and commercial litigation in Brussels and London.

Minister Brian Hayes TD is Minister of State at the Department of Public Expenditure and Reform with special responsibility for Public Service Reform & the Office of Public Works; and Minister of State at the Department of Finance with special responsibility for International Tax Issues and Customs Reform. He is a TD for the Dublin South West constituency.

James Kinch is a Solicitor in the Law Department of Dublin City Council. He practices in the areas of construction law, procurement and dispute resolution. He was trained by the European Commission's Legal Service in Brussels. He is Vice-Chair of the Law Society's In-house and Public Sector Committee and a member of its Arbitration and Mediation Committee.

The Hon. Mrs Justice Fidelma Macken is retired judge of the Supreme Court, a former judge at the Court of Justice of the EU in Luxembourg and Chairman of ICEL.

The Hon. Mr Justice Bernard McCloskey is a judge of the Northern Irish High Court in Belfast. He was educated at Queen's University Belfast, achieving a Second Class Honours, First Division degree and subsequently acquired a Certificate in International Human Rights Law at Strasbourg. He was called to the Bar in 1979 and took silk in 1999. He was Junior Crown Counsel from 1993-1999 and Senior Crown Counsel from June 2004 until September 2008. He was appointed to the bench in 2007, appointed Chairman of the Northern Ireland Law Commission in November 2009 and appointed Northern Ireland Judge of The United Kingdom Upper Tier Tribunal in December 2010. Mr Justice McCloskey is Judge In Residence at Queen's University, Belfast, a member of the Association of European Administrative Judges, a member of the Commonwealth Magistrates' and Judges' Association and a member of the Franco-British Lawyers' Society. He is author of "The Human Rights Act 1998: Recurring Themes and Principles" and has published widely on human rights law, public law, extradition law, immigration law, procurement law, planning and environmental law and procedural law. Mr Justice McCloskey has delivered over 200 judgments in the High Court, Court of Appeal and UK Upper Tier Tribunal spanning a broad range of fields.

Patrick McGovern is a senior partner and head of Procurement and Public Law at Arthur Cox Solicitors in Dublin. He has extensive experience in most of the leading projects in both Ireland and Northern Ireland over the last number of years. He has provided procurement advice to bodies such as NDFA, NTMA, RPA, DAA and local authorities and has been involved in major PPP and other projects in sectors including Waste, IT, Education, Water, Roads and Telecommunications/Broadband. Mr. McGovern is a Council Member of the Procurement Lawyers Association (UK and Ireland) and a member of the editorial board and national contributor for Ireland and Northern Ireland to the *Public Procurement Law Review*.

Diarmuid Rossa Phelan is a Senior Counsel practising in Dublin since 1994, a member of the Bars of New York, England and Wales, and Northern Ireland, and of the law faculty of Trinity College Dublin. He is an author of numerous books and articles on European Union law. Earlier in his career he worked as a lawyer in the Court of Justice of the EU, in France, and the United States, and studied in Ireland, America, Italy, and England.

Claudio Romanini is a principal administrator in DG Internal Market (Markt/C/4) at the European Commission in Brussels dealing with public procurement. He is currently part of the three-person strong drafting team preparing the new public procurement legislative proposals following the Green Paper on modernisation. He is also responsible for horizontal issues concerning Directive 2004/17/EC, including requests for exemption pursuant to its Article 30. Mr. Romanini has worked in the field of public procurement since joining the Commission in 1987. He was one of the two desk officers who followed the work on the legislative package (Directives 2004/17/EC and 2004/18/EC) from beginning to end, *inter alia* dealing intensively with issues relating to the competitive dialogue and all changes specific to the Utilities Directive. Born in Århus, Denmark, Mr. Romanini is a law graduate of the University of Århus.