



GW LAW

GOVERNMENT
PROCUREMENT

KING'S
College
LONDON

DEVELOPMENTS IN DEFENSE PROCUREMENT LAW: EUROPE AND THE UNITED STATES

OCTOBER 19 & NOVEMBER 9
9 AM ET / 14:00 UK / 15:00 CET

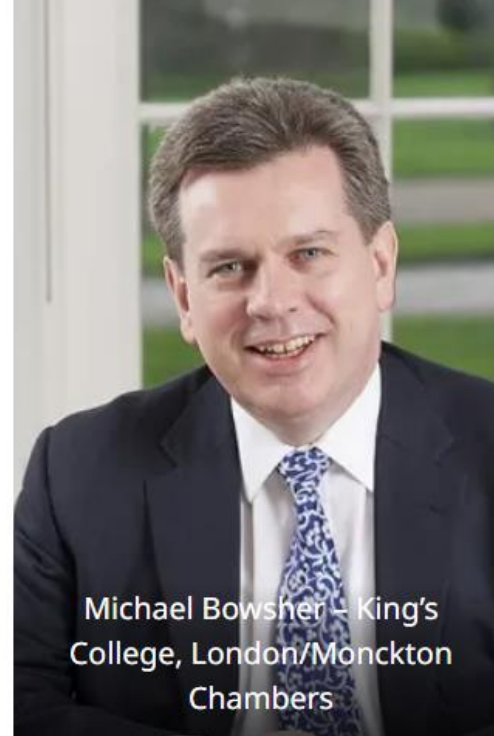
Welcome

Professor Christopher Yukins
GW Law School

- Recording and materials at www.publicprocurementinternational.com
- Questions – please use chat (not Q&A)
- All panelists' statements are in their personal capacities



Panelists





Michael Bowsher – King's
College, London/Monckton
Chambers

European Defence Agency Data



European Defence After Invasion of Ukraine

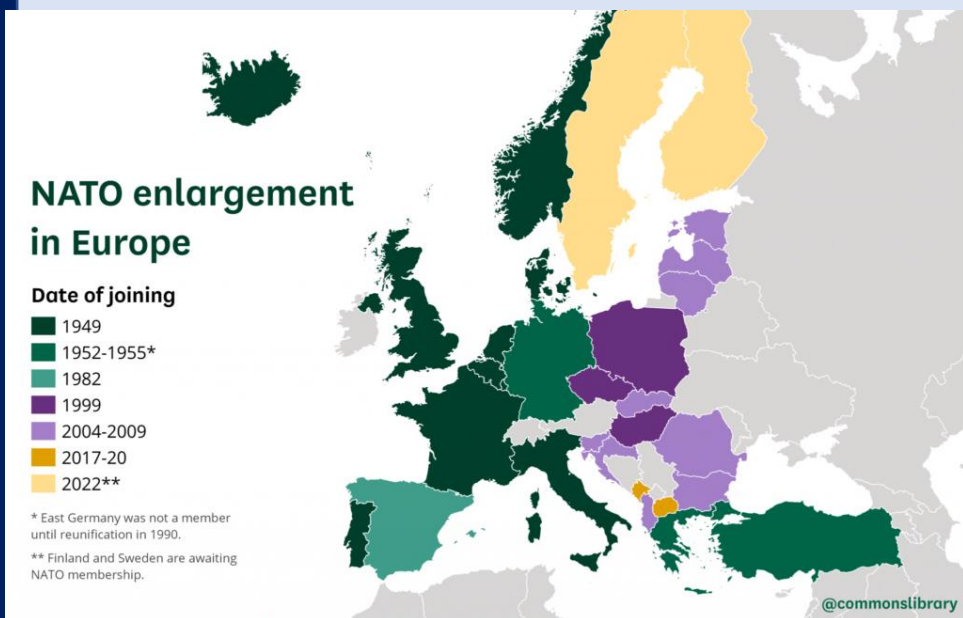


Europeans will have little choice but to take on a larger share of the burden of their own defence. Since Russia's invasion in February, EU countries have announced an extra €200 billion in defence spending. Most notably, German Chancellor Olaf Scholz pledged that Germany would finally meet its NATO commitment to spend 2 per cent of GDP on defence, and he established a €100 billion ad-hoc fund to help reach that target. . . [T]he EU has been under-investing in defence compared with its peers: according to the European Commission, EU states spent 20 per cent more in 2021 than in 1999, whereas Russian spending had increased by almost 300 per cent (in constant 2020 US dollars) over the same period. Defence cuts after the 2008 financial crisis have left member-states with a current under-investment gap of around €160 billion.

Ian Bond and Luigi Scazzieri (Centre for European Reform, Aug. 2022)

President Andrzej Duda signed [Poland's] homeland defence bill into effect after it was fast-tracked through parliament Meanwhile, Poland's conservative leader Jarosław Kaczyński, who is deputy prime minister in charge of security, said . . . that the effort was "taking on a new meaning in the context of the Russian invasion of Ukraine." . . . Kaczyński, who sponsored the legislative initiative, has previously said that the new rules are designed to "create the legal basis and financial instruments for a radical expansion of Poland's armed forces in terms of both manpower and firepower." Kaczyński, who heads Poland's ruling conservative Law and Justice (PiS) party, told reporters last year that "a country located at the external border of the European Union must have a major deterrence capability and be able to defend itself on its own for a long time." . . . Under the law, Poland plans to set aside at least 3 percent of its GDP for defence starting next year, up from 2.2 percent in 2022, and its armed forces are expected increase to about 300,000 troops, including 250,000 career soldiers

Polskie Radio (March 2022)





European Defence Procurement

19 October 2022



Charlotte Brunlid

European Defence Procurement

Swedish perspective: Background and present situation

- Characteristic of the defence market, commercial values, national security, defence policy interests and special regulations
- Background to the present Swedish political approach
 - Cooperation between public and private sector
 - Disarmament of parts of the defence
 - Rearmament
- New security situation
- Strategy for defence, May 2022



Charlotte Brunlid



European Defence Procurement

Swedish perspective: Challenges

- Availability of private sector's capacity in times of crisis and war
- Control and financing of technological innovations
- Swedish priorities: fighter aircraft, underwater and command, control and surveillance information domain
- Balance between international cooperation, interoperability and national capacity
- EU interest and mutual development v. subsidiarity
- Research and development, R&D
- Effects of the NATO-application
- Restrictive use of Art. 346 TFEU



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Public procurement
Defense procurement
Protective security
Administrative law



Tomasz Darowski, Partner – DZP (Warsaw)

1. DIFFERENT METHODS OF PURCHASING MILITARY EQUIPMENT
 - 1.1 G2G procurements: grounds for applying this method, process, examples
 - 1.2 Commercial procurements:
 - (a) public procurement contracts
 - (b) in-house contracts
 - (c) contracts concluded in relation to the essential interest of State security
2. NEW PROCUREMENT AGENCY IN POLAND
3. OFFSETS VS INDUSTRIAL COOPERATION
4. SUMMARY – IS THERE ANY SYSTEM?



Luke Butler,
University of
Nottingham

- Defence-related provisions in the post-Brexit Procurement Bill
 - Moves away from the EU Procurement Directives
 - Mainly aimed at excluding/limiting the new regime's application to defence
- Post-Brexit defence and security industrial strategy
 - Shift away from the global competition mandate
 - Towards more strategic relationships with suppliers
 - Reform of Single Source Contracting Regulation (SSCR)

BLOMSTEIN

Developments in Defense Procurement Law: Europe and the United States - German perspective: extending exemptions and restricting legal protection

Pascal Friton

19 October 2022 Berlin/London



Why was the Act on the Acceleration of Procurement for the Bundeswehr (**BwBBG**) established?

Speed of Defence Procurement in Germany always point of criticism

- There never was a clear analysis of what caused the delays
- Scholz noted existence of a „Zeitenwende“ (historical turning point) that resulted in the need of a speedy equipment of German armed forces -> EUR 100 Billions for procurement was set up
- Perceived need to accelerate procurement process for the much needed equipment

Special law for procurement of LNG-Terminals on German coast served as blueprint

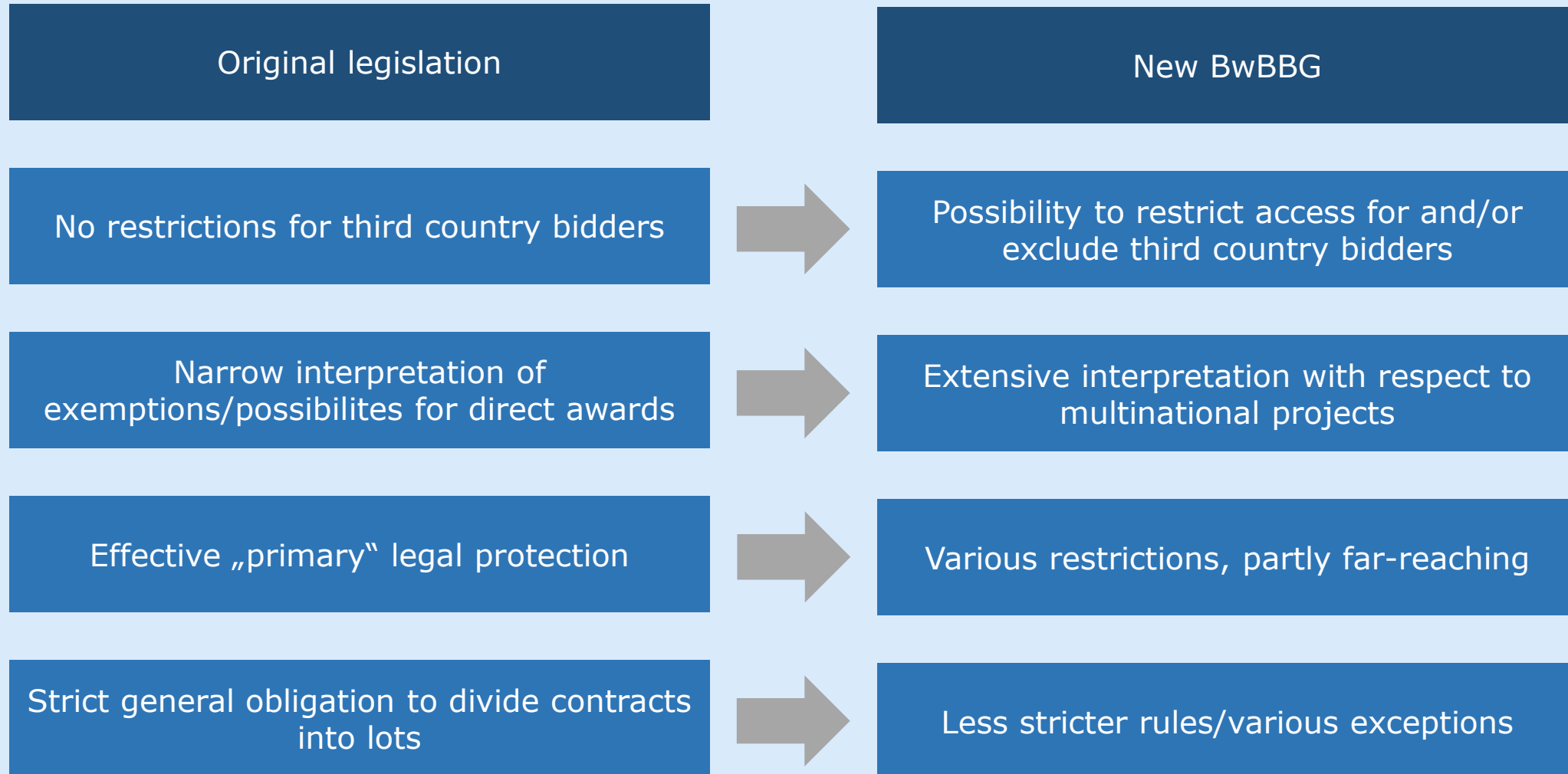
- A few copycats have emerged since
- German MOD was the first one



Law was established without any substantive debate

- Law was sold as a quick fix lengthy procurement process
- Around 6 weeks from initial draft until entry into force
- Hardly any procurement procedure completed or even started since

Main Content of BwBBG



Conformity of BwBBG with EU-law questionable



Art. 346 TFEU broadened

- Essential security interests are also affected if essential security interests of another EU member state or of the EU itself are affected



Exemption for procurement by e.g. OCCAR/NSPA for its members

- According to the defence directive provision, international organizations (NSPA and OCCAR) may procure for “its purposes” without having to adhere to Procurement law.
- By establishing that “statutory purposes” are a part of “its purposes”, the law intends to enable international organizations to procure for the purposes of their member states thereby circumventing otherwise applicable procurement law.



No invalidity of unlawful direct awards

- Union law permits “effective, proportionate and dissuasive” sanctions other than finding the contract invalid.
- However, the BwBBG-E does not specify where such a monetary sanction would go to. If it remains in the federal budget, it can hardly be said to be an effective or dissuasive sanction.



Questions & Discussion



Questions for Panel

- Will the build-up be uniform across Western and Central Europe?
- Will the European Union play a larger role in shaping defence procurement law?
- What legal issues need to be resolved first, across Europe, to eliminate non-tariff barriers to trade in defence?
- What should the United States do to facilitate cooperation?

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Next Session: US Perspectives: **November 9, 2022**

Register, materials and recordings at:

www.publicprocurementinternational.com

Recordings also at:

YouTube: GW Law Government Procurement Law Program

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