

PRESS RELEASE

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Page(s) 3

Subject **CMS Business Breakfast on the new Austrian
Federal Public Procurement Act (BVerG)**

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New requirements on procurement procedures for public clients

The new Federal Public Procurement Act features numerous changes, some with far-reaching consequences for clients and tenderers. The mandatory introduction of electronic procurement is one significant challenge for smaller entities in particular. The CMS Business Breakfast early in October provided answers to many of the questions that arose.

Rapid orientation and appropriate implementation are being called for. This view is shared also by Bernt Elsner, CMS Partner and Head of the international CMS Public Procurement Practice Group: "As Austria was already far behind in terms of implementation, there will be no orientation period between the publication of the act and its coming into force. Ever since the new Federal Public Procurement Act came into effect on 21 August 2018, it has been applicable to almost all new procurement procedures." Whereas contracting authorities are focusing on adapting their tender templates to the new act, interested entities must check whether or not the new provisions are advantageous for successful participation.

The main changes

The new Federal Public Procurement Act will simplify the application of the negotiated procedure and competitive dialogue. The mandatory application of the highest bidder principle is set out more clearly. The potential grounds for exclusion from the procurement procedure are stricter and the means of restoring lost reliability through self-cleaning measures are tighter.

The standard European self-declaration has been implemented. Mandatory electronic procurement will be applied also to non-central procurement agencies with effect from 18 October 2018. This means that tenders will no longer be submitted in writing, but rather uploaded to procurement platforms.

Once oriented, this will surely mean quicker and simpler access for tenderers, especially to procurement procedures in other countries. This can help more entities, including smaller ones, participate in public calls for tenders, thus creating more competition. CMS provides clients with a proprietary procurement platform operated by a major provider (see the [CMS procurement portal](#)). Several procedures have been executed through the CMS procurement portal in the past three months.

The opportunities for collaboration between contracting authorities open up important options, the codification of (i) the in-house procurement concept as well as (ii) the possibilities of contractual amendments after conclusion ensure more legal certainty.

The newly regulated notification and reporting obligations should not be overlooked. Rules concerning the public transport services are of considerable importance.

A completely new, comprehensive act governs the tendering of construction and service concessions which are now also subject to specific legal remedies.

Pooled capacity

The fact that four CMS speakers discussed the most important changes to the Federal Public Procurement Act and their effects at the Business Breakfast reflects the extensive capacity of CMS in this economically significant field of law. The partners Bernt Elsner, Robert Keisler and Thomas Hamerl together with associate Ruth Bittner demonstrated their expertise. Several neighboring fields of law such as building contract law, antitrust law, state aid and public law are also of significance. The CMS team is exceptionally well positioned and well versed in multidisciplinary matters.

CMS is particularly successful regarding the tendering of major projects and complex concessions through its interdisciplinary approach and experience with major projects, including outside of Austria. "We support businesses from the start of the procurement procedure to the conclusion of the contract, and even during its implementation. Clients greatly appreciate that they can come to us with any questions they might have, regardless of whether they relate to public law, civil law or procedural law. And if necessary, we represent our clients in disputes, be it review proceedings in the contest for the award, the enforcement of supplementary claims in front of civil courts or national or international courts of arbitration," explains Elsner.

CMS hot topics

In 2018, CMS is hosting numerous events aimed specifically at companies wishing to receive timely information about risk assessment and prevention. But alongside Risk & Prevention, CMS Vienna is also inviting companies to exclusive information events dealing with a second major topic area – Digital Economy – in order to present and discuss increasingly important legal issues relating to FinTechs, cybercrime, smart contracts and ICO (Initial Coin Offerings), etc.

A photo of the CMS Business Breakfast are available for free use [here](#).

For further events at CMS in Vienna please refer to the cms.law website under [Events](#).

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M&A, banking and finance, real estate, construction law, taxes, labour laws, IP and IT laws, and public procurement.

We not only create sound legal solutions for you but also work to create pragmatic solutions, also with regards to your commercial goals. Our solutions correspond as much as possible to your company's business needs. We operate offices in Vienna, Belgrade, Bratislava, Brussels, Istanbul, Kiev, Ljubljana, Podgorica, Sarajevo, Skopje, Sofia and Zagreb. All CMS offices together offer clients a team of more than 600 experienced specialists in 17 offices across the CEE/SEE region. cms.law

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