

Your World First

C/M/S/

Law . Tax



# Construction across Europe: one industry, many legal systems

The CMS Construction Group

October 2017

# One Europe, many legal approaches

Major construction projects have a lot in common, wherever you are in Europe, as do many facets of construction law. Some legislation affecting the industry applies across the European Union, with that relating to public procurement being just one example.

Despite this, major differences can often arise between the approaches adopted by individual legal systems. This can lead to legal results which are surprising to construction professionals from another jurisdiction. The following are a few examples:

- In Ukraine, a developer, prior to completion of the construction works and commissioning of the object, may have to pay up to 10% of the estimated value of the project as a contribution to the cost of the infrastructure development.
- Courts in the United Kingdom rarely enforce agreements to agree. As a result, problems can often arise when a contractor starts work in reliance on a developer's letter of intent expressing an intention to conclude a contract in the future.
- German law relating to standard terms and conditions is so stringent that it outlaws many standard terms seeking to limit liability in FIDIC and other international contract forms. This even applies when the parties involved are major companies.
- In Italy, failure to adopt and implement control and prevention procedures (known as "Model 231", originally devised as anti-bribery measures) in compliance with Italian law may expose not only national but also foreign contractors to court orders suspending their business operations, criminal liabilities of directors and substantial turnover-based fines not only in case of acts of bribery but also in several other circumstances triggering application of criminal law, including injuries resulting from breach of health & safety rules as well as in case of breach of environmental legislation.
- Under Italian law, employers under a construction contract may be liable to employees of their contractors and subcontractors, for up to two years after the end of the contract, for payment of salaries, social security contributions and insurance contributions.
- Russian construction law imposes a specific legal framework in which each party in the construction process (the developer, the construction company, the design and engineering company) is assigned a particular role. So FIDIC standard forms of construction contracts require significant amendments to ensure they are compliant with Russian law.
- In France, a subcontractor can under certain circumstances pursue a claim for payment directly against the employer, whether or not the main contractor is insolvent.
- The Polish Civil Code provides that, under certain circumstances, an investor and a general contractor are jointly liable for payment towards a subcontractor, and that a subcontractor may demand payment from either of them as a result.
- In Spain, if the contractor becomes insolvent the employer is not entitled to terminate the agreement, whatever its terms. The court must reach any decision regarding termination.
- In the Netherlands, a contractor cannot be held liable for defects which are apparent when the works are taken over but which are not mentioned in the taking over certificate.
- In the Netherlands, most construction- and engineering agreements are subject to broadly accepted General Conditions (construed by Branch organizations), whilst most disputes are settled by the Arbitration Board for the Building Industry; this requires specific expertise.
- In Austria, the contractor is entitled to request a security up to 20% of the agreed price otherwise he is entitled to refuse performance and to terminate the construction agreement after having granted a reasonable grace period. For contracts with a construction period until completion of less than three months, the security can be up to 40% of the contract price.

# European coverage, local expertise

To be successful across Europe, the construction industry needs to take both local conditions and local laws into consideration. At CMS, we provide Europe-wide multi-disciplinary legal services for the international construction industry.

## What makes us the market leader in Europe?

- **Coverage.** We operate in 65 cities across Europe and a total of 71 locations throughout the world, and have over 1,000 partners, more than 4,500 legal and tax advisers and a total staff numbering over 7,500 people.
- **Know-how.** Construction law is now recognised throughout Europe as a specialist field. Our lawyers are able to act quickly and expertly to give commercial advice, assist in drafting and negotiating contracts, and resolve disputes as and when they arise.
- **Experience.** We have wide experience of construction law and a proven track record built up over many years. This includes drafting and advising on FIDIC and other international forms of contract. We also have extensive experience of dispute resolution, not only in Europe's national courts but also in domestic and international arbitration, including proceedings under the ICC, LCIA and UNCITRAL rules.
- **Consistency and local knowledge.** Our clients can expect a seamless service from CMS, no matter which office they use, together with a single point of contact in the client's home or operating country. This is combined with a level of local knowledge which can only be gained from a presence on the ground.
- **One-stop service.** Construction clients have legal needs beyond construction law itself; a major project may raise issues involving tax or employment law, for example. We offer a full range of commercial law services to meet all such needs.
- **Commercial focus.** Perhaps most importantly, our approach is rooted in knowledge of the industry and is geared towards achieving the desired commercial result for our clients, quickly and cost-effectively.

## Contact us



### **Andreas J. Roquette, LL.M. (NYU)**

Rechtsanwalt | Partner  
T +49 30 20360 1501  
E andreas.roquette@cms-hs.com

### **Victoria Peckett**

Partner | Head of Construction, UK  
T +44 20 7367 2544  
E victoria.peckett@cms-cmno.com



**Your free online legal information service.**

A subscription service for legal articles on a variety of topics delivered by email.  
**[cms-lawnow.com](http://cms-lawnow.com)**



**Your expert legal publications online.**

In-depth international legal research and insights that can be personalised.  
**[eguides.cmslegal.com](http://eguides.cmslegal.com)**

---

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

**CMS locations:**

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luxembourg, Lyon, Madrid, Manchester, Medellín, Mexico City, Milan, Monaco, Moscow, Munich, Muscat, Paris, Podgorica, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Sofia, Strasbourg, Stuttgart, Tehran, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

---

**[cms.law](http://cms.law)**