



Law . Tax

Construction across Europe: one industry, many legal systems

The CMS Construction Group

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 unless they verify that such obligations were properly discharged.
- 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. In this regard, when FIDIC standard forms of construction contracts are used in Russia, they 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.
- Under Dutch law, most disputes are settled by the Arbitration Board for the Building Industry which requires specific expertise.

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 44 cities across Europe and a total of 54 locations throughout the world, and have over 750 partners, more than 2,800 legal and tax advisers and a total staff numbering over 5,000 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.

Some of our experience ...

Every day, lawyers from the CMS construction group advise clients across Europe on a wide range of projects and disputes in the construction and engineering field. These have included advising:

- the General Contractor of the National Stadium, i.e. a consortium of: Alpine Construction Polska, Alpine Bau Deutschland AG, Alpine Bau GmbH, Hydrobudowa Polska S.A. and PBG S.A. in connection with the construction aspects of the National Stadium;
- contractors and consultants in relation to the 2012 Olympic Games in London;
- an Italian contractor on disputes totaling USD 50 million arising out of the construction of an office development in Moscow for US owners;
- Hyder Consulting GmbH Germany on the conclusion of contracts for various joint venture and EPC agreements in relation to construction of DOHA metro in Qatar;
- a German architects' firm regarding the Kigali Convention Centre (office park, museum, hotel) in Rwanda (advice on real estate law: ownership, rent, feasibility, hotel lease). FIDIC agreements and Rwandan law both apply;
- HOCHTIEF Solutions as general contractor on the construction of EUR 400 million Hamburg Elbphilharmonie in strategic issues;
- Telefonica on the construction of the buildings that would host Telefonica Research and Development Unit in Madrid;
- STRABAG in relation to property matters in the course of large road construction projects in Bosnia and Herzegovina.
- INTER IKEA CENTRE PORTUGAL, S.A. on the building of the Mar Shopping Centre and ongoing day to day advice on real estate issues;
- Swedwood Group on the installation and expansion of its factory in Portugal – from ground purchase to the opening, including all regulatory authorizations and permits. A particular aspect was the assistance to the incorporation and construction of the factory under foreign investment regulations;
- the General Contractor constructing the City Stadium in Wrocław i.e. consortium of Max Bögl Polska Sp. z o.o. and Max Bögl Bauunternehmung;
- ASR on the design & build contract regarding the refurbishment of its new head offices. The ASR building is one of the largest office buildings in the Netherlands (84.000 m² GFA) with sustainable workplace for approx. 4,000 employees;
- RWE in a cross-border dispute concerning a pipeline project in the North Sea, including successful proceedings in the courts of the Netherlands and Italy;
- a joint venture between National Grid Electricity Transmission plc and SP Transmission Ltd in connection with the Western High Voltage Direct Current ("HVDC") Link. This project involves the engineering, procurement and construction of a subsea HVDC cable to connect Scotland with England and Wales, and the associated converter stations and infrastructure;
- the Wellcome Trust on the drafting of consultants' appointments and trade construction management contracts for the Genome Campus South Field Project and EBI Extension;

- Tishman International on the EUR 250 million Sofia Airport Centre project, a multi-purpose mix of offices, logistics and storage facilities and hotel;
- Spanish multinational Iberdrola on a suite of construction contracts for the construction of a USD 1.6 billion power plant;
- the Berlin Airport Company (Berlin International Airport) on the construction of the new EUR 3 billion Berlin Airport in connection with the preparation of the operational flight areas and their technical equipment;
- Bilfinger Berger in relation to the bidding procedure for the planning, construction, and operating of a new TGV-track in France (LGV SEA);
- the Serbian Government on the EUR 1.6 billion dispute with an Austrian consortium over an infrastructure project in Serbia;
- Peugeot Citroen Automobiles S.A. on the concept, structuring, implementation and follow-up of a major production plant construction project in Russia;
- the Municipality of Tirana to prepare and tender the construction of a new public transport terminal under DBFOT concession contract having a value of approx. EUR 40 million;
- one of the biggest European construction companies on an infrastructure dispute in Romania – involving a multimillion Euro dispute with a local authority related to public works;
- the Ministry of Infrastructure of the Republic of Kosovo during the pre-tender, tender and pre-construction phases of the 60 km Prishtine – Hani i Elezit Motorway Project, of a value of about EUR 60 million;
- Serenissima Costruzioni S.p.A. on the legal and tax aspects of the construction of a 22 km Fier by-pass motorway (EUR 39 million) based on the FIDIC conditions of contract for construction;
- AstraZeneca on the construction of a new pharmaceutical plant in Russia;
- a Russian warehouse developer in a dispute over EUR 12 million arising from the construction of a shopping centre;
- a global beverage company, regarding assistance and consulting on several French construction projects, including the drafting of real estate contracts;
- XXXLUTZ KG (second largest furniture dealer worldwide) on the construction of six furniture stores, of 5,000–5,500 m² each, across Slovakia;
- WTE Wassertechnik GmbH, Degremont Société Anonyme, Hochtief Polska S.A. i WTE Wassertechnik Polska Sp. z o.o. – comprehensive legal advice for the consortium of the general contractor carrying out the modernisation and expansion of the “Sitkówka” wastewater treatment plant in Kielce, carried out on the basis of public procurement law based on the FIDIC “design & build” formula;
- Fresenius Medical Care on development of three dialysis centers in Bosnia and Herzegovina.

Key contacts

Albania

CMS Tirana

Marco Lacaita

M +39 345 6112214

E marco.lacaita@cms-aacs.com

Iva Cucllari

T +355 4 430 2123

E iva.cucllari@cms-aacs.com

Austria

CMS Vienna

Nikolaus Weselik

T +43 1 40443 2250

E nikolaus.weselik@cms-rrh.com

Thomas Hamerl

M +43 664 60443 2700

E thomas.hamerl@cms-rrh.com

Belgium

CMS Brussels

Pierre-Axel Chabot

T +32 2 74369 39

E pierreaxel.chabot@cms-db.com

Stéphane Collin

T +32 2 74369 27

E stephane.collin@cms-db.com

Bosnia and Herzegovina

CMS Sarajevo

Nedžida Salihovic-Whalen

T +387 33 2964 08

E nedzida.salihovic-whelen@cms-rrh.com

Bulgaria

CMS Sofia

Gentscho Pavlov

T +359 2 447 1350

E gentscho.pavlov@cms-rrh.com

Jenia Dimitrova

T +359 2 923 4853

E jenia.dimitrova@cms-cmck.com

Croatia

CMS Zagreb

Gregor Famira

T +385 1 4825 600

E gregor.famira@cms-rrh.com

Czech Republic

CMS Prague

Iveta Plachá

T +420 2 21098 888

E iveta.placha@cms-cmck.com

Lukáš Hejduk

T +420 2 96798 892

E lukas.hejduk@cms-cmck.com

England and Wales

CMS London

Rupert Choat

T +44 20 7367 3573

E rupert.choat@cms-cmck.com

Victoria Peckett

T +44 20 7367 2544

E victoria.peckett@cms-cmck.com

France

CMS Paris

Aline Divo

M +33 6 89299194

E aline.divo@cms-bfl.com

Jean-Luc Tixier

M +33 6 86689276

E jean-luc.tixier@cms-bfl.com

Germany

CMS Berlin

Andreas J. Roquette

T +49 30 20360 1501

E andreas.roquette@cms-hs.com

CMS Duesseldorf

Michael Brück

T +49 211 4934 302

E michael.brueck@cms-hs.com

Hungary

CMS Budapest

Gábor Czike

T +36 1 48348 19

E gabor.czike@cms-cmck.com

Ferenc Mátrai

T +36 1 505 4912

E ferenc.matrai@cms-cmck.com

Italy

CMS Milan

Dietmar Zischg

T +39 02 4801 1171

E dietmar.zischg@cms-aacs.com

CMS Rome

Marco Casasole

T +39 06 4781 51

E marco.casasole@cms-aacs.com

Montenegro

CMS Podgorica

Milica Popovic

T +382 20 4160 70

E milica.popovic@cms-rrh.com

The Netherlands

CMS Utrecht

Arno Moret

T +31 30 2121 516

E arno.moret@cms-dsb.com

Jeroen Berlage

T +31 30 2121 306

E jeroen.berlage@cms-dsb.com

Poland

CMS Warsaw

Lidia Dziurzyńska-Leipert

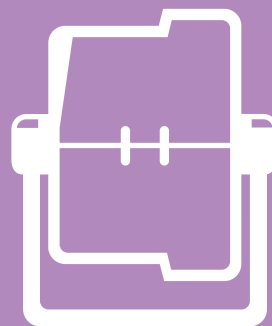
T +48 22 520 5659

E lidia.dziurzynska-leipert@cms-cmck.com

Arkadiusz Korzeniewski

T +48 22 520 5658

E arkadiusz.korzeniewski@cms-cmck.com



Portugal

CMS Lisbon

Luís Abreu Coutinho

T +351 21 09581 56

E luís.coutinho@cms-rpa.com

Salvador Pires Marques

T + 351 21 09581 41

E salvador.marques@cms-rpa.com

Romania

CMS Bucharest

Roxana Fratila

T +40 21 4073 839

E roxana.fratila@cms-cmck.com

Gabriel Sidere

T +40 21 4073 813

E gabriel.sidere@cms-cmck.com

Russia

CMS Moscow

Ivan Gritsenko

T +7 495 786 4044

E ivan.gritsenko@cmslegal.ru

Alexander Batalov

T +7 495 786 4018

E alexander.batalov@cmslegal.ru

Scotland

CMS Edinburgh

Harriet Munro

T +44 131 220 8993

E harriet.munro@cms-cmck.com

Timothy Pitt

T +44 131 220 7678

E timothy.pitt@cms-cmck.com

Serbia

CMS Belgrade

Radivoje Petrikić

T +381 11 3208 900

E radivoje.petrikic@cms-rrh.com

Slovakia

CMS Bratislava

Sylvia Szabó

T +421 2 3233 3421

E sylvia.szabo@rc-cms.sk

Peter Šimo

T +421 2 3233 3444

E peter.simo@cms-rrh.com

Slovenia

CMS Ljubljana

Aleš Lunder

T +386 1 62052 10

E ales.lunder@cms-rrh.com

Dunja Jandl

T +386 1 62052 10

E dunja.jandl@cms-rrh.com

Spain

CMS Madrid

Javier Torre de Silva

T +34 91 4519 321

E javier.torredesilva@cms-asl.com

Carmen Crespo Vallejo

T +34 91 4510 013

E carmen.crespo@cms-asl.com

Switzerland

CMS Zurich

Stefan Gerster

T +41 44 2851 111

E stefan.gerster@cms-veh.com

Sibylle Schnyder

T +41 44 2851 111

E sibylle.schnyder@cms-veh.com

Ukraine

CMS Kyiv

Daniel Bilak

T +380 44 39133 77

E daniel.bilak@cms-cmck.com

Anna Pogrebna

T +380 44 50017 18

E anna.pogrebna@cms-rrh.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 member firms are:

CMS Adonnino Ascoli & Cavasola Scamoni, Associazione Professionale (Italy);
CMS Albiñana & Suárez de Lezo S.L.P. (Spain);
CMS Bureau Francis Lefebvre S.E.L.A.F.A. (France);
CMS Cameron McKenna LLP (UK);
CMS DeBacker SCRL/CVBA (Belgium);
CMS Derks Star Busmann N.V. (The Netherlands);
CMS von Erlach Henrici Ltd (Switzerland);
CMS Hasche Sigle, Partnerschaft von Rechtsanwälten und Steuerberatern (Germany);
CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH (Austria) and
CMS Rui Pena, Arnaut & Associados RL (Portugal).

CMS locations:

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dresden, Dubai, Duesseldorf, Edinburgh, Frankfurt, Hamburg, Kyiv, Leipzig, Lisbon, Ljubljana, London, Luxembourg, Lyon, Madrid, Milan, Moscow, Munich, Paris, Prague, Rio de Janeiro, Rome, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

www.cmslegal.com