



FACULDADE DE DIREITO
Universidade de Lisboa

Ficha de unidade curricular

Curso de Mestrado Profissionalizante

Erasmus Mundus Master in Law

Unidade curricular

Public procurement in a globalized world – Mestrado Profissionalizante Erasmus Mundus Master in Law

Docente responsável e respetiva carga letiva na unidade curricular (preencher o nome completo)

Nuno Cunha Rodrigues – 2 horas semanais (one semester)

Outros docentes e respetivas cargas letivas na unidade curricular

(máximo 1000 caracteres)

Objetivos de aprendizagem (conhecimentos, aptidões e competências a desenvolver pelos estudantes)

The course aims to explain how public procurement works in a globalized world.

There are economics explanations for the liberalization of public procurement that were included in the Government Procurement Agreement (GPA) concluded under the World Trade Organization (WTO) system. Today 47 states are part of the GPA, namely USA, Canada and the European Union.

Through this course it will be explained how the WTO system works, namely the GPA and the influence of international law in public procurement.

It will be also explained how public procurement is taken care by European Law.

Conteúdos programáticos

I - Introduction to public procurement;

II - Economics of public procurement and public contracts;

III - Globalization, international trade and public procurement:

3.1. Developed countries;

3.2. Economic analysis;

3.3. Secondary policies;

IV - The WTO and the GPA;

4.1. Principles:

4.1.1. Most favoured nation (MFN);

4.1.2. National treatment rule;

4.1.3. Exceptions

4.2. State as a regulator, company (state trading) or consumer (public procurement) under the WTO legal framework;

4.3. The Government Procurement Agreement (GPA):

4.3.1. History of the GPA

4.3.2. The legal framework of the GPA:

4.3.2.1. Scope and coverage;

4.3.3.2. Evaluation of contracts;

4.3.3.3. Negative lists;

4.3.3.4. Positive lists;

4.3.4.5. Off-sets;

4.3.4.6. The defense exceptions;

4.3.4.7. Case law under GPA

V - PUBLIC PROCUREMENT AND EU LAW;

PUBLIC PROCUREMENT AND COMPETITION LAW

1. The relationship between competition law and public procurement law

2. Relevant market and public contracts;



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- 3. Offer in public contracts:
 - 3.1. The application of Article 101 TFEU to public procurement:
 - 3.1.1. General framework
 - 3.1.2. The defense of competition by the contracting authority
 - 3.1.3. Procedures
 - 3.1.4. The application of Article 102 TFEU to public procurement
 - 4. The demand in public contracts:
 - 4.1. Market power and monopsony power
 - 4.2. State as a company:
 - 4.3. The notion of undertaking in European competition law
 - 4.4. The concept of economic activity
 - 5. Granting of special or exclusive rights in public contracts;
 - 5.1. Article 106(1) TFEU
 - 5.2. Article 106(2) TFEU
 - 6. Commercial monopolies and public contracts
 - 7. Public contracts and state aid

VI – EU LAW AND NATIONAL PUBLIC PROCUREMENT LAW

- 1. National sources of public procurement law.
- 2. The Public Contracts Code. Fundamental principles.
- 3. The 2014 directives
 - 3.1. objective scope
 - 3.2. subjective scope
 - 3.3. Hiring excluded
 - 3.4. The decision to contract in the Public Contracts Code.
 - 3.5. Estimated price; base price and contract price
 - 3.6. The choice of procedure;
 - 3.6.1. General framework;
 - 3.6.2. Types of procedures;
 - 3.7. Prohibition of splitting the expense;
 - 3.8. The award by lots
 - 3.9. The notion of competitor
 - 3.10. Causes of exclusion; relief of impediments and competition law
 - 3.11. The award of the contract
 - 3.12. Public service concessions and the implications of Directive 2014/23/EU;
 - 3.13. Contracts for the lease and acquisition of goods and services and the sale of goods.
 - 3.14. Public-Private Partnerships.

VII – The future of public procurement in a globalized world;

VIII- Public procurement in Portugal;

Demonstração da coerência dos conteúdos programáticos com os objetivos da unidade curricular

The course departs from the fundamentals of economics in order to explain how it has influenced international and European law. From this point it will be explained how the WTO system deals with public procurement and with the role of the state as a consumer and, from then, it will be explained the European system.

Metodologias de ensino (avaliação incluída)

Legal theory will be taught at the beginning, explained the issues described in the program. Later students will be called in order to analyze some of the most relevant judicial decisions concerning public procurement namely under international law (GPA) and European law (ECJ).

Final evaluation will be based on the interest, cooperation and work done during the scholar semester. A final work and the approval at a final exam will be mandatory.

Demonstração da coerência das metodologias de ensino com os objetivos de aprendizagem da



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The methodology of the course aims to allow students to get easily in contact with national public procurement law independently of their nationality. The knowledge of both international law and European law in nowadays necessary in order to understand any national legal system concerning public procurement.

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NOTA: este mapa é preenchido tantas vezes quantas as necessárias para descrever as diferentes unidades curriculares.

Curricular unit sheet

Course _____

Curricular unit

(maximun 1000 characters)

Responsible Academic staff and respective workload in the curricular unit (enter full name)

(maximun 100 characters)

Other academic staff and respective workloads in the curricular unit

(maximun 1000 characters)

Learning outcomes of the curricular unit

(maximun 1000 characters)



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Syllabus

(maximun 1000 characters) Insolvency Law

Demonstration of the syllabus coherence with the curricular unit's objectives.

(maximun 1000 characters)

Teaching methodologies (including evaluation)

(maximun 1000 characters)

Demonstration of the coherence between the teaching methodologies and the learning outcomes

(maximun 3000 characters)

Main Bibliography

(maximun 1000 characters)

NOTE: this map can be filled in as many times as necessary to describe the different curricular units.