



Consulegis is a global network of law firms which supports members in their professional activities

## NEWSLETTER WINTER 2010

### Dear Members

In the last newsletter we highlighted the importance of emerging markets for our members and their clients. We found that these markets increasingly are offering new and exciting channels in which to do business, providing an opportunity for all of us to tap into their enormous economic potential.

Emerging markets were a paramount topic during our autumn conference in Buenos Aires (see page 8 for a full report). Two events of particular note were the meetings of our two regional subgroups in Latin America and Asia, which considered how best to profit from the many business opportunities opening up in these areas. Ronnie Tan (Singapore) highlighted a very interesting project proposed by the Singapore Government which will sponsor certain activities between Singapore, Asia and the rest of the world. Consulegis and its members are to be offered access to this exciting venture, of which more details will follow in spring 2011.

The autumn conference in Buenos Aires was another highlight in our long series of wonderful and impressive conferences. We would like to thank most cordially our hosts, Dr Eduardo Chehtman from Estudio Chehtman and Eduardo Represas from Brons & Salas for this memorable event.

Participants arrived as guests and left Buenos Aires as friends.

The theme for this newsletter is Public Procurement, drawing on the expertise of Consulegis members across the network to provide a variety of different perspectives on the matter.

Meanwhile we look forward to the beginning of another busy year in the Consulegis calendar: 2011 will see a new Advisory Board elected during our AGM in Cologne. We would invite all those interested in becoming a board member to put themselves forward, having, of course given due consideration to the time and commitment this would entail. More detailed information and documentation on how to do so will be distributed in December 2010.

Until then it only remains for us to wish all members and friends of Consulegis a very merry Christmas and a happy New Year!

With warm regards,



**Dr Roland Ermini**  
Managing Director



**Gerd O. Ziegenfeuter**  
Chairman of the Board

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### CONSULEGIS IS REPRESENTED IN:

- |                        |            |                |
|------------------------|------------|----------------|
| Argentina              | Estonia    | Netherlands    |
| Australia              | Finland    | Panama         |
| Austria                | France     | Paraguay       |
| Belgium                | Germany    | Poland         |
| Brazil                 | Greece     | Portugal       |
| British Virgin Islands | Hong Kong  | Romania        |
| Bulgaria               | Hungary    | Russia         |
| Canada                 | India      | Singapore      |
| China                  | Ireland    | Spain          |
| Costa Rica             | Israel     | Sweden         |
| Cuba                   | Italy      | Switzerland    |
| Cyprus                 | Luxembourg | Turkey         |
| Czech Republic         | Malaysia   | United Kingdom |
| Denmark                | Mexico     | USA            |

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# Consulegis around the world



## UK

The outcome of the French "Roanne" case threw the UK

development industry into a panic, indicating that agreements between public bodies and developers were now likely to be caught by Public Procurement Regulations, having hitherto been exempt. A recent case in the UK involving Müller, however, has offered a degree of reassurance.



## NETHERLANDS

The opening up of Public Procurement within the EU internal

market aims at increasing cross-border competition and improving prices paid by public authorities. In 2004, the European Parliament and the EU's Council of Ministers adopted a legislative package of Public Procurement directives, which have been implemented in the laws of all EU member states.



## GERMANY

The conversion of former World War II military bases in

Germany often results in a complex interaction between the interests of the State, the community and any private investors involved. Mediation between these parties and adherence to the provisions of Public Procurement law makes consulting in this field of practice both challenging and diverse.



## SWITZERLAND

As of 1 January 2011, a new Swiss Code of Civil Procedure will

come into force which will replace the 26 Cantonal civil procedure laws. While this will harmonise the Cantonal procedures before the Swiss civil courts, areas will still remain in which the Cantons will be allowed or even obliged to instate specific rules.



## BUENOS AIRES

Consulegis members and guests convened in Buenos Aires,

Argentina, in October for the annual autumn conference 2010. The theme, 'Doing Business in Emerging Markets', was appropriate given Consulegis' ambitions to expand beyond traditional markets in Europe and North America.



## TURKEY

For the first time Consulegis ran a promotional stand

at the Union Internationale des Avocats (UIA) in Istanbul on 30 October. Over 1000 people attended and around 20 lawyers expressed serious interest in joining the Consulegis network.



## SINGAPORE

Public Procurement is an area of legislation which helps to ensure

that the hallmarks of transparency and fairness are present throughout the tender process for public sector contracts. It is also intended to make sure the government gets the best deal possible.



# Work Life Quiz



**By Dr Roland Ermini**  
 Managing Director  
 Consulegis  
 consulegis@consulegis.com

## What was your first ever job?

I started my first ever job when I was 17 years old and still at school (a Gymnasium, the equivalent of high school) in Basel, Switzerland. I helped out at one of the local post offices sorting parcels from 6pm to 10pm three times a week.

## What was your worst experience as a trainee?

My first job after I finished university was with a small company selling Dexion racks (steel shelving). I was admitted as a trainee and I was supposed to take care of the administrative area. It was a painful experience since I had no idea about running an office, and the lady to whom I reported was not very helpful.

## Where's the best place to go if you want to find out what's really going on in the office?

Go to the internal post office. You get all the gossip and important information there. These people know what's going on! Another good source is the company chauffeurs. Boy, they know EVERYTHING!

## What time do you normally leave the office?

Any time after 6pm.

## What do you do at weekends?

Shopping and working in the house on Saturdays; working for Consulegis on Sundays.

## What is your favourite restaurant?

I have a number of preferred restaurants, for example:  
 Zürich: Kronenhalle, Terrace, Rive Gauche, Widder, to name a few;  
 Basel: Kunsthalle;  
 London: The Wolseley and Simpsons in the Strand;  
 Nice: Café Tourin;  
 St. Tropez: Bar/Restaurant 55.

## If you had not been an economist what would you have been?

As an alternative I would have become a lawyer.

## What is your favourite film?

The Rocky Horror Picture Show.

## Who is your hero and why?

I have no hero. I admire Dr Albert Schweitzer and all the nameless people offering medical health in the poorest regions of this world.

## What is the best thing about your job?

People and friends.

## What is the toughest thing about your job?

Having too little time to realise all the exciting projects.

## What has been your biggest career mistake and what did you learn from it?

Life and mistakes go together, its inevitable, but never give up.

## What are you currently reading?

A beautiful illustrated book on Russian artists.

## What's the most exciting deal/case you've worked on?

- a) Two acquisitions I succeeded in seeing through, both of which became very profitable and successful enterprises.
- b) Starting a new company from scratch: a very time consuming struggle, but exciting.

## If you were stranded on a desert island, what two luxury items would you take?

A sail boat (including petrol!) and a machine to produce fresh water.

## What is your proudest achievement for Consulegis?

Letting the members decide.

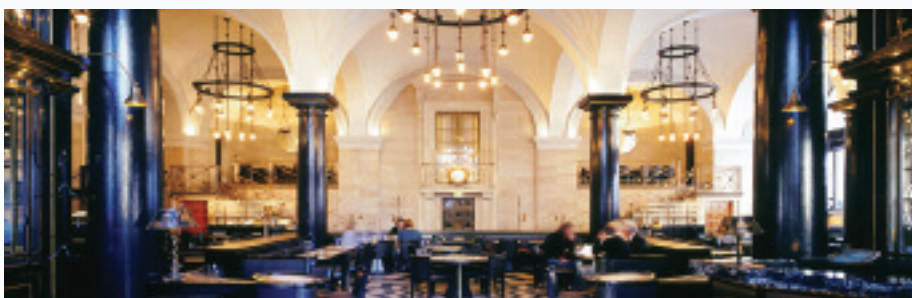
## What are your aspirations for the future of Consulegis?

- a) To increase membership to some 150 members
- b) That the regional subgroups may produce successful business propositions for Consulegis members
- c) That Asia Connect will be a big success for Consulegis and its members

## Tell us two truths and one lie about yourself (in any order)

I enjoy life in all its facets and I love sun, the beach and good music (jazz and samba); I am patient and adore the new slowness movement.

The Wolseley, London



# News from... the UK



## Müller Delight Public Procurement Regulations in the UK post Müller



**By Helen Meyler**  
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**By Jonathan Wood**  
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The outcome of the French “Roanne” case threw the UK development industry into a panic, indicating that agreements between public bodies and developers were now likely to be caught by Public Procurement Regulations, having hitherto been exempt. A recent case in the UK involving Müller, however, has offered a degree of reassurance.

### Why does this matter?

Public Procurement legislation applies to the purchasing of works and services by public authorities, and development agreements often comprise an element of works on publicly-owned land. Public Procurement Regulations require public authorities to hold a tendering process when contracting for works or services, commencing with an advertisement in the Official Journal of the European Union (OJEU), so as to ensure open and transparent competition between all economic operators in the European Community.

### Why the panic?

Whilst local authorities will generally hold competitive tenders for development schemes, these competitions are not always compliant with the Regulations. Moreover, large regeneration projects in the UK are often the result of many years of close collaboration between developers and local authorities, with the developer having approached the public authority in the first instance to promote a scheme requiring



public land, and will therefore never have been openly advertised.

The aftermath of Roanne raised the prospect of fines and damages being imposed on local authorities for breaches of the Regulations. Worse still, the New Remedies Directive, introduced in the UK in December 2009 meant that for the first time the developer could face repercussions, such as the suspension of the contract, if development agreements were found to be in breach of the Regulations. In response to these issues a number of major schemes were aborted as developers retired to lick their wounds.

### Müller Delight

Then came the decision in Müller, followed by advice from the UK's Office of Government Commerce in June 2010. Whilst each case needs to be analysed on its particular facts, the OGC and the Judges

in Müller set out useful guidelines as to those “mixed work and land” contracts which should escape the regime, and those which are more likely to be caught. Practitioners are now in a far better position to advise clients at a very early stage as to whether projects should be tendered in a manner compliant with the Regulations, before too much money and time is wasted.

Care must nonetheless be taken, as the Courts will attack any structure they consider to be a “sham”; however the Müller decision is refreshing in demonstrating a more common sense approach from the ECJ. This is to be welcomed in the current economic climate where it is difficult enough to kick start regeneration without the fear of costly court action from the European Commission and an aggrieved developer looming in the background.

# News from... Germany



## Conversion and the Effects on German Public Procurement Law



**By Harald Nickel**

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The division of Germany into four occupied zones following the Second World War resulted in numerous military areas and barracks across the country that have since been left vacant following the departure of US, French, British and Russian troops. In most cases these properties were handed back to the State rather than to their respective communities.

The State is now keen to see these plots of land converted and developed, however it is unable to generate a planning law for these areas as this function lies with the individual community. This creates a complex dual interaction which may then be further compounded by the individual interests of potential investors.

The office of Nickel Rechtsanwälte Partnerschaftsgesellschaft has been advising on the conversion of military properties for almost twenty years. It is the mediation between these three interested parties and the adherence to the provisions of the Public Procurement law when disposing of these properties that makes consulting in this field of practice so complex and diverse.

It became clear when trying to overcome these problems just how sparse – and in parts contradictory – the current legal provisions on this issue are, particularly in the area of Public Procurement. Correspondingly, conversion projects such as these and modified EU provisions have, amongst other issues, played



An abandoned former Soviet military base in Berlin

their part in prompting a recent overhaul of German Public Procurement law.

Up until just two years ago, the governing jurisdiction of the OLG Düsseldorf Procurement Chambers provided the application of EU procurement law for the triangular agreement cases (state sells to the investor in agreement with the city, which creates the planning law for this). Our view at Nickel Rechtsanwälte Partnerschaftsgesellschaft however, was that this approach could not be applicable in all cases, and therefore clients were shown other possible options.

At the start of the year, the European Court of Justice confirmed this view in its ruling dated 26 March 2010, which overturned the previous jurisdiction in Germany and referred to the Communication from the European Commission regarding elements of state

financial aid in sales of buildings or plots of land by the public sector, dated 10 July 1997. These regulations relate to EU Financial Aid and Competition Law and cannot readily be implemented without corresponding consultation with regard to their application in Germany.

The significance of Public Procurement law in Germany is continuing to grow dynamically due to these legislative developments and other the sweeping changes in this area in Germany. As a result, primary legal protection against procurement violations that are under the EU thresholds – which was not previously available – is to be introduced, offering primary legal protection to approximately 90% of all procurement procedures in Germany for the first time.



## News from... The Netherlands



### Public Procurement within the EU: opportunities and challenges



**By Mieke Mel**

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The opening up of Public Procurement within the internal market aims at increasing cross-border competition and improving prices paid by public authorities. In 2004, the European Parliament and the EU's Council of Ministers adopted a legislative package of Public Procurement directives, which have been implemented in the laws of all EU member states.

The directives provide for transparent procedures which should ensure fair conditions of competition for suppliers, and thus give suppliers the opportunity to obtain contracts abroad. Though the Public Procurement rules should provide for a level playing field, in practice suppliers who submit a tender abroad do face more than one challenge.

For example, contracting authorities are allowed to impose a requirement that tenders must be drawn up in the language of the member state in which the contracting authority is established. Therefore, the supplier will need to provide a professional translation of its tender. Another challenge is that contracting authorities often insist that the personnel who will carry out the contract must speak the national language. Whether such

requirements are allowed, also depends on the language. The requirement that all personnel should master the Dutch language is likely to have a greater discriminatory effect than the requirement that all personnel should speak English.

According to Dutch case law, such a language requirement will be deemed to be discriminatory if there is no objective justification for it. The requirement that only executives should master the Dutch language is allowed by Dutch Courts.

Finally, it is quite a challenge for the supplier to provide for the correct (foreign) references with regard to its financial and economic standing. To avoid making mistakes and, subsequently, exclusion from participation in a contract, obtaining local advice is strongly recommended!

## News from... Switzerland



### New Swiss Code of Civil Procedure as of 1 January 2011



**By Mario Ermini**

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As of 1 January 2011, a new Swiss Code of Civil Procedure will come into force which will replace the 26 Cantonal civil procedure laws.

While this will generally harmonise the Cantonal procedures before the Swiss civil courts, areas will still remain in which the Cantons, while complying with the new Code of Civil Procedure, will be allowed or even obliged to instate specific rules. For example, the actual organisation of the Cantonal courts will still be the responsibility of the Cantons.

The new Swiss Code of Civil Procedure will bring many significant changes, including changes regarding the compulsory conciliation procedure, the possibility of mediation, the time when *lis alibi pendens* is assumed, the applicable statute of limitation, substantiation and the possibility of introducing new facts, and the availability of appeal or other remedy against a judgment or an order. This list is by no means exhaustive.

Apart from the procedural changes, the transition itself and the management of pending law suits will be a challenge. It is expected that, as a general rule, no change will occur during proceedings pending before an instance if these proceedings were started before 1 January 2011. However, changes will be applicable

between instances: an appeal before a second instance will have to be made pursuant to the new procedural rules, even if the proceedings before the prior instance were governed by the old rules. Proceedings initiated starting 1 January 2011 will be governed by the new rules.

The above is of course only a very brief description of some of the issues that will arise following the change to the new Swiss Code of Civil Procedure. Practitioners in Switzerland will have to exercise even greater care than usual when advising a client on the possible strategies and venues. The law firm Ermini AG would be glad to assist you and your clients regarding procedures before Swiss courts, and the upcoming new Swiss Code of Civil Procedure.



# News from ... Singapore



## A level playing field Public Procurement in Singapore



**Ronnie Tan**

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Ronnie Tan, Managing Director of Central Chambers, gives an insight into Public Procurement practice in Singapore based on his firm's extensive experience representing government agencies.

Procurement can be simply defined as the buying of goods and services through a tender system. Procurement is used by the public sector to discourage government officers from choosing suppliers of certain goods and services based on private preferences. It is intended to ensure that the hallmarks of transparency and fairness are present throughout the tender process, from the outset all the way to the eventual award of the contract.

Thus in the case of a government department wishing to purchase 200 units of computers, the government purchasing

officer cannot engage a single vendor directly to supply them: that would be too limited and arbitrary a use of public funds. The other tenet of Procurement is maximisation of total returns to the Department calling for the tender. Having a broader range of suppliers enables the Department to get the best value for money. For instance, the units of computers may come with different extras depending on the supplier and the Department should be allowed to choose the best deal.

Tenderers are notified of upcoming tenders through the media, including online, and must then obtain the necessary tender documents. The tenderers quote their price based on a prescribed scope of work or specification of goods, and strict compliance with these specifications by the tenderers is expected. Technically, non-compliant bids are disqualified.

The concept of negotiation is therefore strictly frowned upon within the procurement world, going against this requirement of compliance. The only exception to this, perhaps, is the innovative use of a clarification process in which the terms of the tender may be reviewed; however, the decision of whether to engage in a clarification exercise rests solely with the Department.

The common forms of tender used in Singapore are:

- i) Invitation to Quote (ITQ)
- ii) Invitation to Tender (ITT)
- iii) Request for Proposal (RFP)

The ITQ is the simplest form as it has the least of formalities for tenders of low value. The ITT is used for higher value tenders with normal tender formalities. The RFP is used where the Government authority wants a Project done but is not in the best position to provide the complete specifications. In such a case, the tender is in the form of an RFP requesting tendering parties to propose methods that are best suited for the project.

Procurement as a method of ensuring transparency and competition is an effective measure for any government to incorporate into its system of administration. In Singapore, Public Procurement is certainly here to stay.





# News from ... Consulegis

## Consulegis Autumn Conference, Buenos Aires, 21 – 24 October 2010



**By Dr Roland Ermini**  
 Managing Director  
 Consulegis  
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Consulegis members and guests convened in Buenos Aires, Argentina, in October for the annual autumn conference 2010. Hosted by Estudio Chehtman and Brons & Salas Abogados, it was the first time that the network had organised such a meeting in South America.

The theme of this conference was 'Doing Business in Emerging Markets', an appropriate focus given Consulegis' ambitions to expand its activities beyond traditional markets in Europe and North America and into areas including South America and Asia.

The Consulegis Plenary Session on Friday 22 October was attended by some 70 people. Ambassador Nestor Edgardo Stancanelli, Director of Public Affairs at the Argentinian Foreign Office, gave a comprehensive overview on the economic situation in Argentina and in the 'Mercosur countries'. The second key-note speaker was Alejandro Chehtman, son of host Dr Eduardo Chehtman, who summarised the issues surrounding extraterritorial jurisdiction and anti-trust law.

An important step towards developing Consulegis' presence in emerging markets has been the revival of the Consulegis America Latina Chapter (CALC) and the founding of a similar regional subgroup in Asia. Upon the invitation of Fernando Hernandez (Mexico)

and Pedro Pais de Almeida (Portugal) nearly 40 people attended the first CALC Business Generation Forum on Wednesday 20 October 2010 in Buenos Aires, which served as an excellent introduction to the Consulegis annual conference the following day.

The Regional Subgroup Asia was founded some four weeks earlier in Singapore (24 September 2010) with the support of the Economic Development Board of Singapore. During the conference Ronnie Tan (Singapore) gave a detailed report on how this project is progressing.

Besides the exchange of professional information Consulegis conferences are an opportunity for members to socialise with old friends and new and to discuss matters of mutual interest. With this in mind, our hosts organised a fantastic programme of events including a much applauded Tango night on the Friday evening, and a very elegant Gala Dinner in the Alvear Hotel the following day.

Buenos Aires, the economic centre and capital of Argentina, is one of the largest Latin American cities, with around 13 million inhabitants. Boasting a unique blend of Italian, Spanish, and German culture, visitors were overwhelmed by its beautiful sights, elegant shopping areas and excellent art.

We are happy to report that this meeting was another highlight in the history of successful Consulegis conferences, and we are very grateful to our hosts and our members for such an enjoyable and engaging event.

## Standing out from the crowd



For the first time Consulegis ran a promotional stand at the Union Internationale des Avocats (UIA) in Istanbul. Over 1000 people attended and around 20 lawyers expressed serious interest in joining the Consulegis network.

Consulegis Managing Director Dr Roland Ermini together with Mrs Asli Parlak from Turkey promoted Consulegis during the 54th UIA Annual Congress in Istanbul from 30 October - 3 November 2010. Consulegis was the only lawyers' network officially present. The other six booths were taken by publishers, the UIA itself, and by a non-profit organisation.

The stand displayed a variety of Consulegis publications and promotional materials. We would like to thank Cengiz Soylemezoglu from Consulegis member firm IKMS Law in Istanbul for being instrumental in organising the stand and its materials in time, despite complicated customs procedures.

Our aims in being present at the UIA were to enhance the Consulegis brand, to promote our network and to attract new members. We believe that all three objectives were attained: of 200 visitors to the Consulegis stand, 20 expressed an interest in Consulegis membership and 80 left their business cards and will receive follow-up correspondence.

In conclusion, we believe that this project was highly successful and subject to board approval, we would propose that Consulegis be present at the UIA in Miami, USA in October / November 2011.



# ANNOUNCEMENTS

## Consulegis on facebook

Since it was launched the Consulegis facebook page has been a great success, attracting almost 500 members. Visit <http://www.facebook.com/Consulegis> to view the page and become a member.

## Roetzel wins international litigation award

Roetzel has been awarded the "Best Law Firm in Ohio for Business Litigation Work" for 2010 by the Corporate INTL Magazine Legal Awards for Practice Excellence. The Corporate International Legal Awards is designed to distinguish leading legal teams who have been active over the past 12 months and who have shown excellence not only in expertise, but in service during a difficult global economic downturn.

## Marxman Advocaten recognised for excellence

Marxman Advocaten has won a trophy for the most successful advisory project 2010. Marxman developed the so-called Fight Right Hallmark for KNKF (Dutch Alliance of Power Sports and Fitness). This hallmark is awarded to sports clubs which ensure a safe environment for their pupils. This news comes as the practice announces the expansion of its international presence through the establishment of offices in Amsterdam.

## APPOINTMENTS

On 7 July 2010 the City of Los Angeles City Council approved the appointment of **Jeffery Daar**, of member firm Daar & Newman Lawyers to a third term as a City of Los Angeles Commissioner. In June, Jeffrey was also re-elected Chairperson of the City Commission on which he serves.

**Arnoldo André** from member firm Lexincorp-André Tinoco Abogados has been appointed President of the Chamber of Commerce in Costa Rica.

Congratulations Jeffery and Arnoldo!

## Diary

### International Conferences

#### Consulegis AGM and Spring Conference 2011

Cologne, Germany, 28 April – 1 May 2011  
Host : Junge, Schüngeler, Wendland Rechtsanwalte Partnerschaft, Cologne.  
Details will be published in December 2010/January 2011

#### Consulegis Autumn Conference 2011

Istanbul/Turkey, 20 – 23 October 2011.  
Host : IKMS Law Firm, Istanbul.  
Details will be published in May 2011

### Regional Conferences

#### Consulegis America Latina Chapter (CALC)

A meeting is planned for Wednesday 27 April 2011 (before the AGM and Spring Conference 2011) in Cologne / Germany, and on Wednesday 19 October 2011 in Istanbul (before the autumn conference).  
Agenda and other details will be published in December 2010.  
For further information please contact Fernando Hernandez Gomez in Guadalajara/Mexico.

### Consulegis Subgroup Asia

A meeting will take place in September 2011. Venue and other details will be published in May 2011.  
For information please contact Michael Lintern-Smith in Hong Kong and/or Ronnie Tan in Singapore.

### Consulegis European Regional Conference

"Hot Topics in Europe"  
Hosts: Brodermann & Jahn, Hamburg; Capital Law, Cardiff; Cabinet Ratheaux, Lyon  
Venue: Moelln (near Hamburg), 11 & 12 February 2010  
Participants are kindly asked to arrive in Hamburg on Friday 11 February before 12 noon. The agenda will be distributed in December 2010.  
Please save the date and RSVP by email to Consulegis or to Dr Eckart Brodermann in Hamburg (cc. Consulegis office).

### Other Events

#### Board Meetings

(For information please contact Dr Roland Ermini in Zurich)

Winter Board Meeting  
Zurich, Switzerland 24 January 2011

Spring Meeting  
Cologne, Germany 28 April 2011

Autumn Meeting  
Istanbul, Turkey 20 October 2011

### Marketing Steering Group

(For more information please contact Jonathan Wood, London, UK.)

Zurich, Switzerland 23 January 2011

Cologne, Germany 28 April 2011

Istanbul, Turkey 20 October 2011

### Young Lawyers Initiative

(For more information please contact Elin Pinnell, Cardiff, UK)

Next meeting: 28 April 2011 in Cologne/Germany.

### Dr Thomas Marx Award 2011

Deadline for entries is 30 June 2011. Award will be presented in Istanbul on 21 October 2011.

For details see:

[www.consulegis.com/DrThomasMarxAward](http://www.consulegis.com/DrThomasMarxAward)