

How can we promote Sustainable Public Procurement?

A workshop building on experiences at local level.

EURODIACONIA SOCIAL POLICY DAYS STRENGTHENING SOCIAL EUROPE

Dr. Friederike Mussnug
Diakonie Deutschland
8 November 2023

1 Sustainable Public procurement in Germany

Public Procurement in Germany

According to German Procurement Statistics (www.destatis.de)

Relevance of Public Procurement in German economics in 2019*

- 35 % of public spending
- 15 % BIP

German Public Procurement Statistics 2021**

- Contracts: 182.033
- Contract-volume: 103.9 bn €

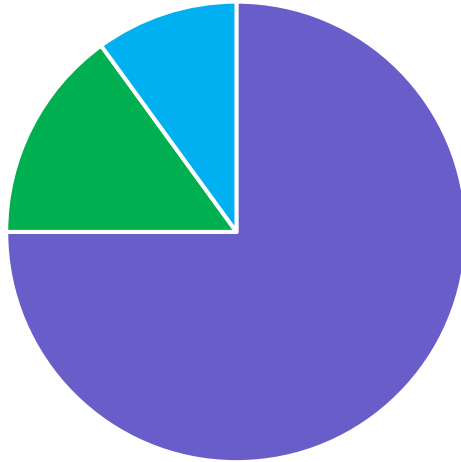
Sustainable Procurement in Germany 2021**

- 22.894 contracts
- 13,7 % of the contacts above threshold
- 86,3 % of the contracts below threshold
- Contract-volumen 28.062 mio €

* <https://www.oecd.org/publications/offentliche-vergabe-in-deutschland-48df1474-de.htm>

** https://www.destatis.de/DE/Themen/Staat/Oeffentliche-Finanzen/Vergabestatistik/_inhalt.html#sprg622380

Securing social services in Germany



- Admission Contract under Triangular System
- Public Contract
- Public Funding

Triangular System

- Right of choice between economic operators for beneficiaries
- Plurality of economic operators
- Non exclusive contracts
- Mandatory for contracts within the triangular system
- Esp. help for disabled, nursing, child aid

Public Contract

- State directed help and management of large case-loads
- No specific rights for the beneficiaries
- Partly legally prescribed, partly within discretion of social authorities
- Esp. labour market services, debt consultation, support for refugees

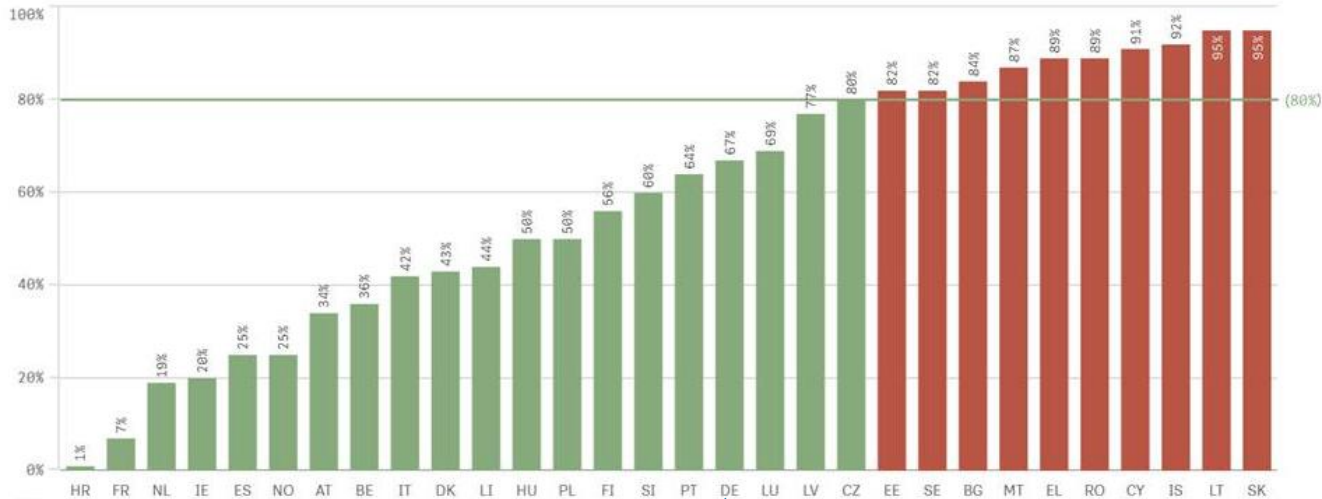
Public funding

- State financed support for private initiatives that serve as well a public interest
- Under EU State aid law
- No contract
- No legal claim to funding
- Esp. consulting, women's shelters,

Home truths from TED

Indicator [5]: Award criteria

This chart measures the proportion of procedures awarded solely because the offer was the cheapest one available.

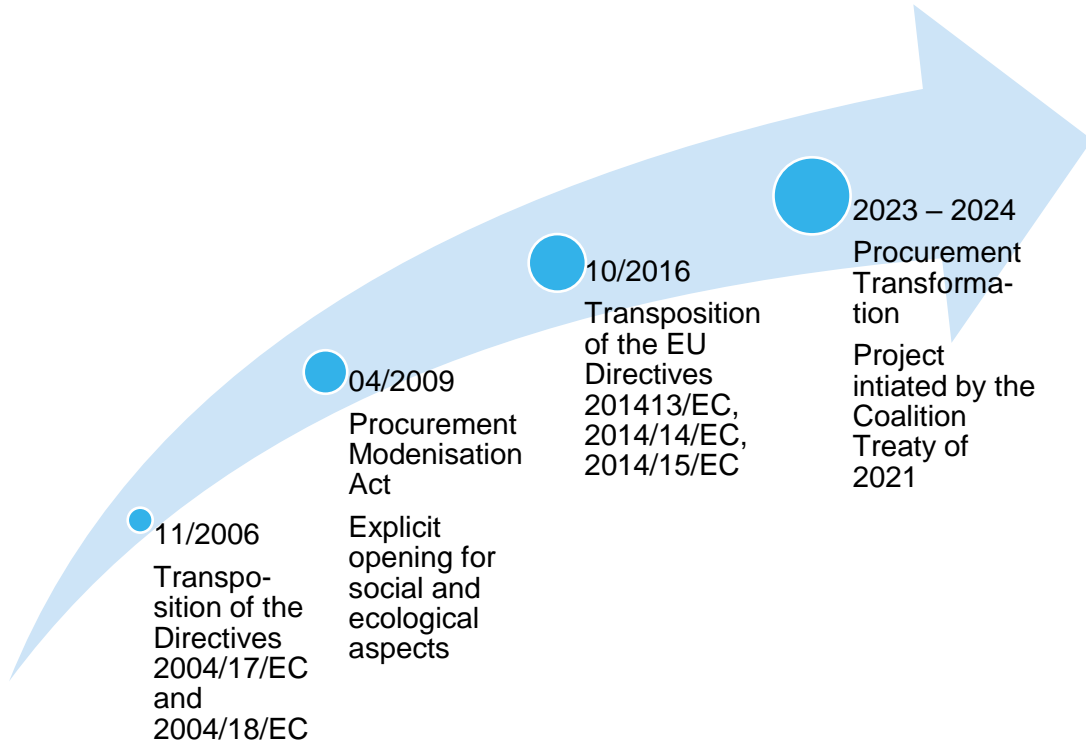


“While the choice of criteria depends on what is being purchased, over-reliance on price suggests better criteria could have been applied, so a better purchase could have been made.

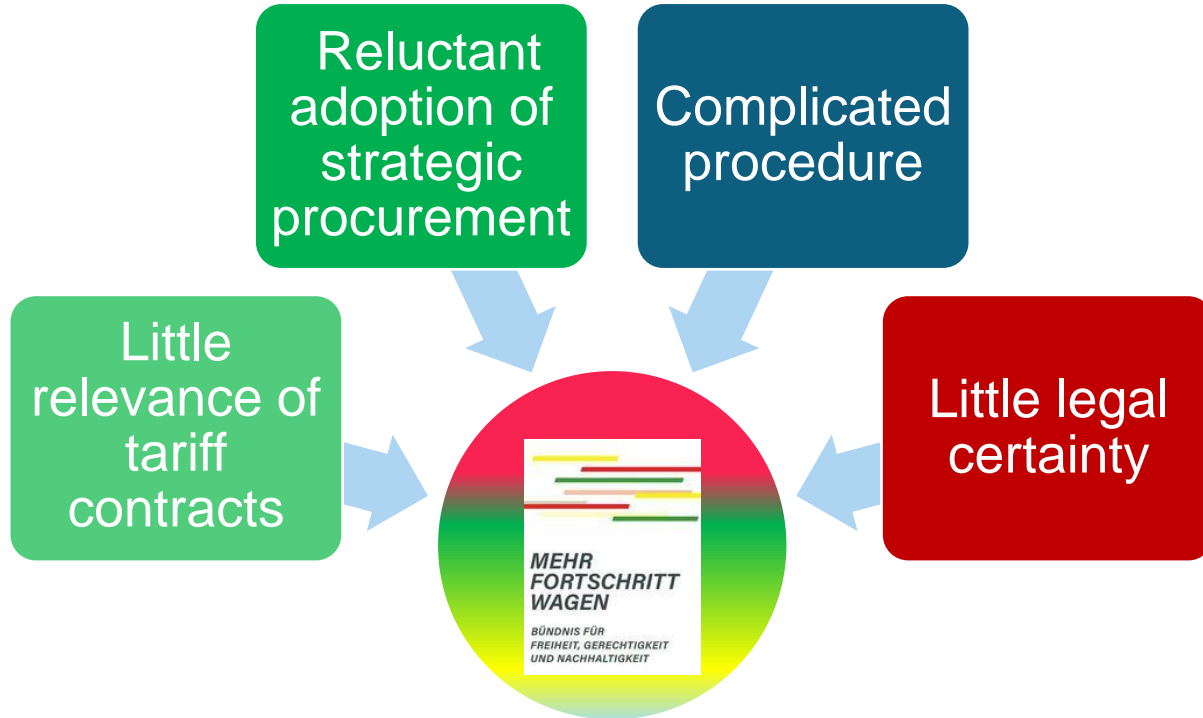
The indicator reflects how public buyers choose the companies they award contracts to. Specifically, it shows whether they decide based on price alone, or whether they also consider quality.”

© Single Market and Competitiveness
Scoreboard, [Access to public procurement |
Single Market and Competitiveness
Scoreboard \(europa.eu\)](#)

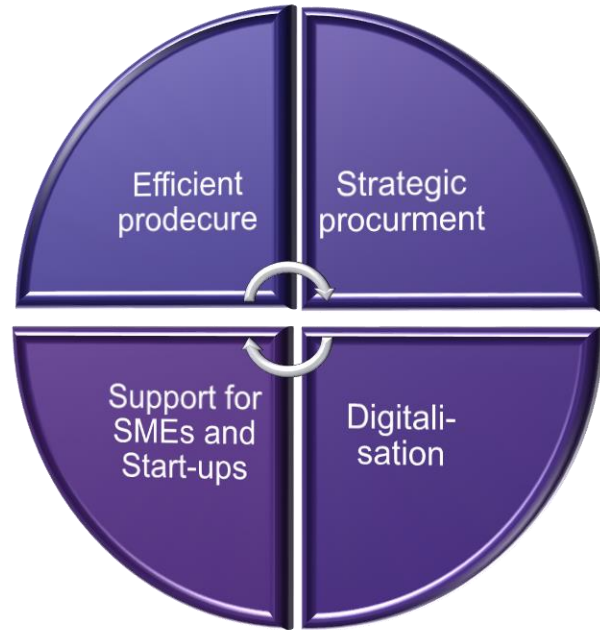
Development of sustainable public procurement in German Procurement Law



Motives for the Transformation Project



Goals of the Transformation Project



Open question:
Do we have a legal or practical implementation problem?

Procedure:

- Initial Stakeholder-consultation (01-06/23)
- Legal drafts (IV/2023)
- Stake-holder participation (IV/2023)
- Legislative process (I – II/2024)

Outcome:

Weighing of the different, partly clashing goals and stakeholder-input

Stipulation for all goals

Legal certainty

2

Sustainable procurement of social services

Challenges to the Social State

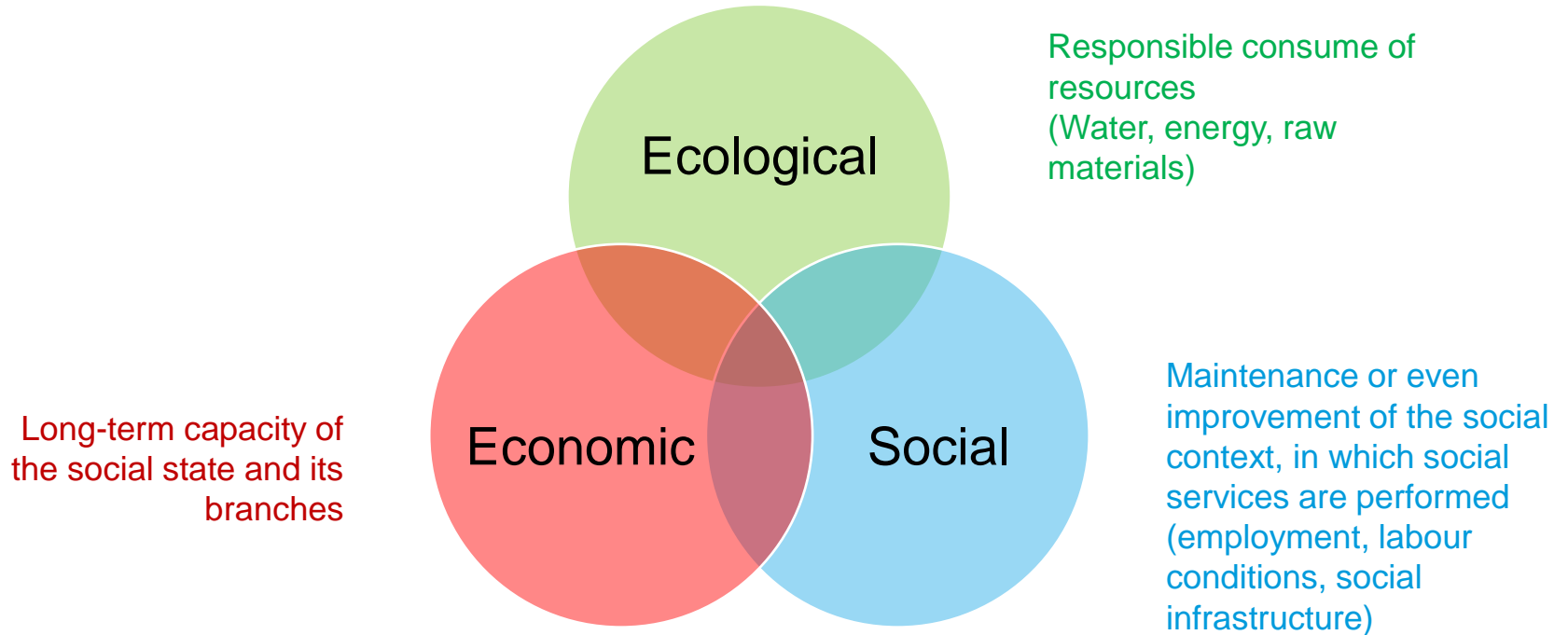


Challenges to the social state

- growing need of social help
- reduced public funds,
- less staff to render social services,
- ecological transformation includes social infrastructure .

Focus of public procurement on sustainability is part of the problem solving no new fangled luxury

Dimensions of sustainability



See in detail [17 Sustainable Development Goals der UN \(SDGs\)](#)

Social sustainability in the procurement of social services (SGD 5 gender equality, 8 decent work, 11 sustainable cities)

Subject matter of contract: social services

The procurement of social services does not imply that the procurement itself is **socially sustainable**: problematic consequences of rigorous price-competition explored in a 2023 study by Sigrid Betzelt, Ingo Bode and Sarina Parschick

Issues of social sustainable procurement of social services:

1. **Inclusion of disadvantaged persons**
2. **Tarif wages: price-competition about wages**
3. **Social infrastructure and monopson-position of the contracting authority**
4. **Gender, antidiscrimination, cultural sensitivity**
5. **Infrastructure in economically unattractive areas, closing the urban-rural gap**



Maintenance or even improvement of the social context, in which social services are performed (employment, labour conditions, social infrastructure)

Social sustainability in the procurement of social services (SGD 5 gender equality, 8 decent work, 11 sustainable cities)

Social

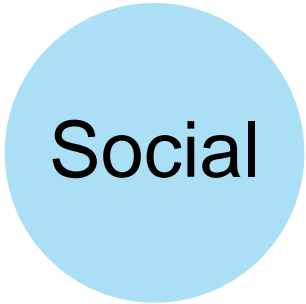
Maintenance or even improvement of the social context, in which social services are performed (employment, labour conditions, social infrastructure)

Best practice: preferment of inclusion enterprises in public procurement by Landschaftsverband Westfalen-Lippe (LWL)

- LWL is a Local government association in Nordrhein-Westfalen:
- performing duties belonging to municipal autonomy (esp. social, cultural)
- 27 member municipalities
- Profiting of synergies and better efficiency



Social sustainability in the procurement of social services (SGD 5 gender equality, 8 decent work, 11 sustainable cities)



Gesellschaftliches Umfeld, in dem die Leistung erbracht wird, bleibt erhalten oder wird verbessert (Arbeitsplatzerhalt, Arbeitsbedingungen, Infrastruktur)

Best practice: preferment of inclusion enterprises in public procurement by Landschaftsverband Westfalen-Lippe (LWL)

- Political motive: better employment chances for handicapped people
- Side effect: successful employment reduces the need for public help
 - Socially and economically sustainable
- Instruments:
 - reserved contracts Article 20 Directive 2014/24/EC and its transposition § 118 Competition Law
 - § 141 Book IX Social Law Book and its transposition in Nordrhein-Westfalen: possibility to prefer Sheltered Workshops and Inclusion Enterprises by
 - Preferred treatment in public procurement
 - Assessment of Tenders: for contracts with a value of no more than 10.000 offered prices receive a reduction by 15 %, possible even 15 %
 - E.g. Offered price 9.000 € → considered only 7.650 €
 - Exclusive competition only for sheltered workshops and Inclusion enterprises
- Conditions for Contract Performance

Social sustainability in the procurement of social services (SGD 5 gender equality, 8 decent work, 11 sustainable cities)



Gesellschaftliches Umfeld, in dem die Leistung erbracht wird, bleibt erhalten oder wird verbessert (Arbeitsplatzerhalt, Arbeitsbedingungen, Infrastruktur)

Best practice: preferment of inclusion enterprises in public procurement by Landschaftsverband Westfalen-Lippe (LWL)

- Differentiated system
 - Below contract volume of 10.000 €: price reduction between 5 – 15 %
 - Above contract volume of 10.000 €: negotiation procedure and exclusive competition for inclusion enterprises
 - Above threshold:
 - Reserved contracts for sheltered workshops and inclusion enterprises
 - Conditions for contract performance (inclusion of at least 25 % of staff with handicapped people)

Social sustainability in the procurement of social services (SGD 5 gender equality, 8 decent work, 11 sustainable cities)



Best practice: preferment of inclusion enterprises in public procurement by Landschaftsverband Westfalen-Lippe (LWL)

- In practice between 2014 and 2017
 - Branches: facility management, transport and disposal, conference and accommodation, catering, others
- Number of contracts 683
- Volume 2.700.000 €

Gesellschaftliches Umfeld, in dem die Leistung erbracht wird, bleibt erhalten oder wird verbessert (Arbeitsplatzerhalt, Arbeitsbedingungen, Infrastruktur)

Ecologic sustainability in the procurement of social services (SGD 12: sustainable consume and production)



Responsible consume
of resources
(Water, energy, raw
materials)

Subject matter of contract: social services

Application on the performance of social services must observe the relation to the subject matter:

- Labour market services: e.g. training for work in gastronomy, craft and technical work, IT → Scope 3
- Transfer-services for participants:
- Catering during the trainings: vegetarian catering, reuse tableware
- Office materials: reduction of paper-consume; recycled paper-policy

Procurement practice:

- **Best practice: Hamburg Labour Market training**
- Market-consultations (Article 40):
 - Professional training-conditions in the 1st labour-market: Precautions for ecologically sustainable work-conditions?
 - Subjects for training: necessary knowledge and skills for sustainable work
- Conditions for performance of contracts (Article 70) → Scope 3
 - Office materials: 100 % recycled paper (scope)
 - Energy: energy only from regenerative sources; switching off-policy after hours
 - Waste-separation in order to facilitate recycling

Economic sustainability in the procurement of social services (SDG 9: Industry, infrastructure, innovation)




Long-term capacity of the social state and its branches

Section 127 Subsection 1 Competition Law (Gesetz gegen Wettbewerbsbeschränkungen, GWB): „The most economically advantageous tender is determined according to the best price-quality ratio. Apart from the price or costs, to determine this, qualitative, environmental or social aspects may also be taken into account.“

Procurement practice:

- De facto the procurement of social services is determined nearly always on the basis of the lowest price tendered.
- Counter-measures:
 - Competition about performance quality and economic cost-calculation
 - Comparative value or rather standard value method: allows to determine a relation between credits for performance and calculated costs. Important: a realistic corridor above and below the tender with best cost.
 - Life-cycle-costs: possible where the service performance calls for goods



Thank you
very much

Dr. Friederike Mussnug
Kommissarische Leitung Zentrum Recht und Wirtschaft
Diakonie Deutschland, friederike.mussnug@diakonie.de