

## Analysis report of procurement standards and procurement praxis in Germany

### Introduction

In Germany the federal government, federal states and municipalities have enormous market power, with annual spending on procurement of products and services to a total value of approximately 260 billion, which through demand can create important stimuli for increased supply and stronger market penetration of energy-efficient products and services as well as for additional market driven technological innovations.<sup>1</sup>

The consideration of energy efficiency as a criterion in the procurement of products and services and in particular through attention to the life-cycle cost principle in appropriate cases offers additional opportunities for energy savings and also cost-cutting both for the public sector and for companies. Particularly in the area of energy-efficient procurement, Art. 5 of the Energy Service Directive 2006/32/EC highlights the importance of the exemplary role of the public sector.

### Current national procurement legislation

For procurement procedures important are:

- fourth chapter of the competition law against distortion of competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB),
- public procurement regulation (Vergabeverordnung VgV),
- regulations on contract awards (Vertragsordnungen VOL/A, VOF and VOB/A), and
- law on budgetary funds.

Two European directives have been implemented into the public procurement regulation (Vergabeverordnung, VgV) and have to be obeyed by in European tenders.

- § 4 (4) VgV lays down the requirements from Art. 9 of the directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products.
- In § 4 (7) VgV the rules of the directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles are stated.

All legal principles like equal treatment, transparency, as well as free movement of goods have to be respected in the procurement procedure.

#### Types of Award

- Public invitations to tender are procedures in which an unrestricted number of enterprises are publicly requested to submit tenders.

<sup>1</sup> Source: Second National Energy Efficiency Action Plan (NEEAP) of the Federal Republic of Germany, page 96 (<http://www.bmwi.de/English/Redaktion/Pdf/zweiter-nationaler-energieeffizienz-aktionsplan-der-brd,property=pdf,bereich=bmwi,sprache=en,rwb=true.pdf>)

- In restricted invitations to tender, enterprises are generally publicly invited to take part (a call for competition) and a limited number from the group of candidates is then requested to submit tenders.
- Single tendering is a procedure in which the contracting authorities, with or without a call for competition, generally approach several selected enterprises to negotiate with one or more on the contractual terms and conditions.

In restricted invitations to tender and single tendering procedures, several – never less than three – candidates must be requested to submit a tender. Services up to an anticipated contract value of EUR 500 (without value added tax) can be procured without award procedure in keeping with the budgetary principles of sound financial management (direct purchase).

The possibility to implement green criteria is laid down in regulations on contract awards for public supplies and services- Part A (VOL/A) in following Articles:

#### Article 16, Verification and Evaluation of Tenders

(8) When deciding on contract award, the contracting authorities shall take into account various criteria of relevance to the subject-matter of a contract, such as quality, price, technical merit, aesthetics, functional utility, **environmental features**, operating costs, lifecycle costs, cost-effectiveness, customer service and technical assistance, delivery date and delivery or completion time limit.

#### Article 8 EC, Contractual Specifications, Technical Requirements

(5) Where contracting authorities lay down environmental features in terms of performance or functional requirements, they may use the specifications as defined by European or (multi)national eco-labels or by any other eco-label, provided that

- a) they are appropriate to define the features of the supplies or services required by the contract,
- b) the requirements for the eco-label are drawn up on the basis of scientifically verified information,
- c) the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and
- d) they are accessible and available to all interested parties.
- e) In the tender documents, the contracting authorities may indicate in the case of goods or services bearing an eco-label that these presumably comply with the technical specifications described in the performance or functional requirements. The contracting authorities must accept any other suitable evidence, such as technical dossiers from the manufacturer or test reports from recognised bodies.

In January 2008 the Federal Ministry of Economics and Technology enacted an internal administrative regulation for the federal institutions. They should procure products and services with criteria of environmental labels and with regarding life-cycle-costs.

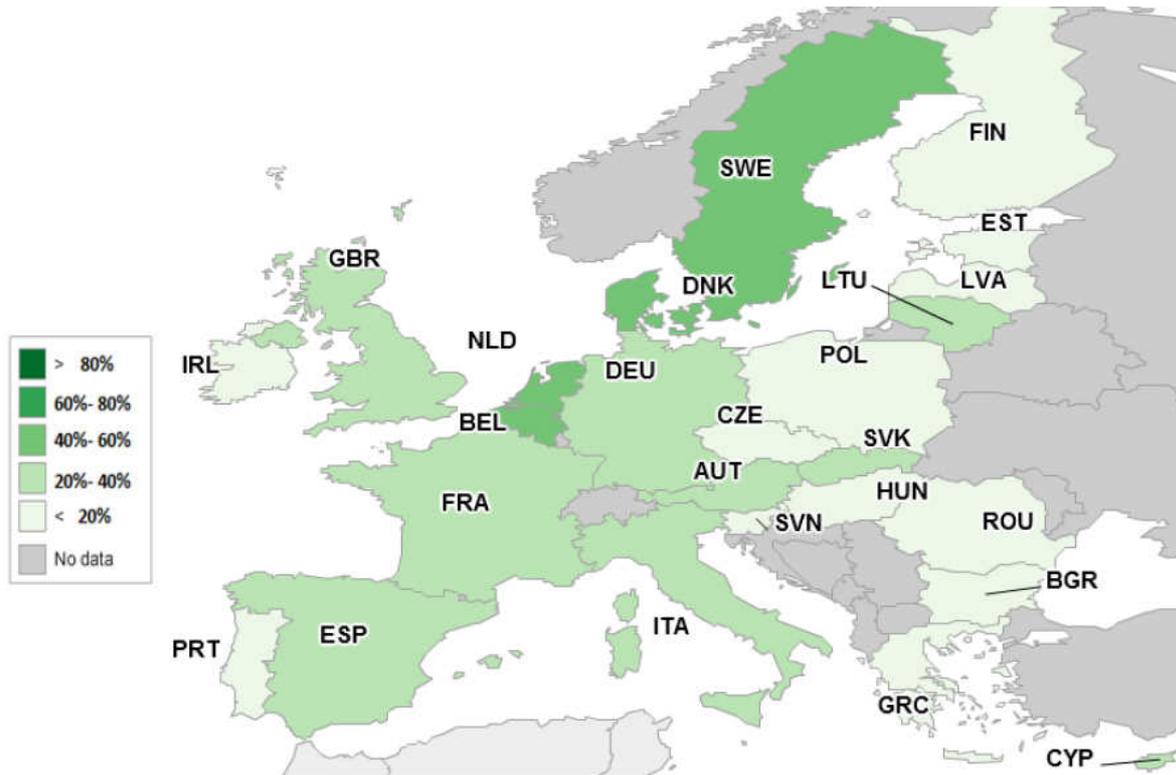
A Common Decree on the procurement of wood products (interministerial decree at the federal level) requires that wood products procured by the federal administration must demonstrably derive from sustainable forestry.

## Current national practice

A multi-criteria analysis of PricewaterhouseCoopers, Significant and Ecofys from January 2009 for the years 2007/08 shows that 30 % of all public procurement volume in Germany can be considered as green.

A survey from 2011<sup>2</sup> shows that Germany has average figures for GPP in Europe.

Uptake of EU GPP in the EU27 (share of last contracts – by number)\*:



\*Luxembourg excluded due to unavailability of data.

According to an assessment by the German Energy Agency made for the BfEE of public invitations to tender related to energy efficiency, from 2004 to the beginning of 2011 a total of 554 contracting services were put out to tender on the supra-regional tender platforms Tenders Electronic Daily (TED) and Vergabe24/Deutsches Ausschreibungsblatt (German public contract awards journal). Of these 115 were accounted for by energy saving contracting, 418 by energy supply contracting, and 21 by lighting contracting. The average guaranteed annual energy cost saving in the framework of the energy saving contracting amounted to about 270,000 billion Euros (net) for the known cases. Besides contracting services further classical invitations to tender related to energy efficiency can be found, especially in construction services, such as modernisation of heating systems and window replacement, and in the supply of goods, for example in ICT and procurement of hybrid vehicles.

<sup>2</sup> 2012: Centre for European Policy Studies (CEPS) THE UPTAKE OF GREEN PUBLIC PROCUREMENT IN THE EU27.

A study (McKinsey 2008) has stated the procurement volume of the public sector – merely for the sectors that are especially relevant from the point of view of energy consumption, being buildings, appliances and IT, mobility and transport routes, utilities and waste management, and energy production – at more than 51 billion Euros. Of this approximately 32 billion Euros, or 62 %, is accounted for by the municipalities including municipal utilities, approximately 13 billion Euros by the federal government, and approximately 6 billion Euros by the federal states. Nevertheless, the challenge of integrating energy efficiency as a criterion throughout the public-sector procurement process, in particular in the municipalities in view of their enormous number and the very heterogeneous requirements and available resources, is especially large. As there are around 30.000 public contracting authorities in Germany the knowledge about GPP differs widely between different procurement offices.

Notwithstanding this, the market dominance of the public sector is especially pronounced in certain areas, for example in transport infrastructure and the utilities and waste management sector, each with more than 40 % market share, or in the server market, which accounts for approximately 20 % of demand (McKinsey 2008). The market dominance of the public sector in this segment is of particular significance for energy efficiency, as electricity consumption of the ICT sector, in particular the computer centres with their servers, is very high. In 2007 electricity consumption by ICT in Germany accounted for 10.5 % of total electricity consumption. Much is already being done in this sector, in particular by the universities with their mainframe computers and correspondingly high energy costs; thus among the top ten of the 500 most energy-efficient supercomputers in the world, four are located in German research institutions (as at November 2010: [www.green500.org](http://www.green500.org)). Not to be under-estimated, moreover, is the signal effect on private households and companies of the consideration of energy efficiency criteria in the procurement activities of the public sector.

In the transport sector, in IT equipment, or in building redevelopment, for example of schools, the public sector can fulfil a visible exemplary role and is indeed already taking on this role to a large extent. With this in mind, in June 2011 the federal government changed the Ordinance on the awarding of public-sector contracts (Awarding of Contracts Ordinance – VgV) such that in implementation of directives 2006/32/EC and 2010/30/EU in the procurement of goods relevant to energy consumption, technical plant or equipment (supply of goods or prerequisite for the provision of a service) the highest level of energy efficiency or – where available – the highest level of energy efficiency within the meaning of the energy labelling is to be required in the performance specification. Besides this bidders must provide concrete information on energy consumption and – in appropriate cases – on the life-cycle costs. The awarding authority must take into account this information from the bidder as a highly weighted award criterion in the process of determining the most economic bid.

Moreover, both the federal government and some of the federal states and municipalities have enacted internal administrative regulations, according to which energy efficiency criteria must form the basis of all procurement activities in terms of performance specification and evaluation of bids. Forerunners are Berlin, Bremen und Hamburg. The growing importance and consideration of energy efficiency in the procurement process is also highlighted by a multitude of public-sector tender platforms at EU, federal government and state level as well as by a series of private platforms, on which services and products are increasingly supplied and demanded taking into account energy efficiency criteria.

In 2011 networking activities have been increased to enable knowledge transfer between public purchasers in Germany by Vergabernetzwerk (<http://www.dvnw.de/>). With the introduction of the alliance for sustainable procurement (Beschaffungsallianz) and a competence center for sustainable procurement Germany is on a good way to greening its procurement standards. In 2012 the “Competence center for sustainable procurement” has started:

[http://www.bescha.bund.de/cIn\\_091/nn\\_664020/DE/Nachhaltigkeit/node.html?nnn=true](http://www.bescha.bund.de/cIn_091/nn_664020/DE/Nachhaltigkeit/node.html?nnn=true)

## Recognised barriers

The good news first: There are virtually no legal or institutional barriers preventing green procurement praxis. It is up to the individual decision makers to choose whether to include green criteria or not, and to evaluate the outcome. However, green procurement has some own specifics, and cannot be conducted completely in the same way as “standard” procurement. Specific issues demand specific legal and operational knowledge. Therefore trained personnel is needed to set targets, use developed criteria and tools. Green procurement is often more or less formally encouraged, but - being not compulsory - the neglecting of green issues often does not bring any consequences.

The main barriers can be summarised as follows although they can be very different in different procurement offices:

- The fear of higher costs.
- The responsibilities for purchase costs and operational costs in public administrations are often still shared between different public departments lead to low level of awareness regarding life cycle costs and the idea of receiving benefits later in time.
- Specific issues on green procurement demand specific knowledge, that is why trained personnel is needed to be able to identify opportunities, set targets, and draw out the most promising options.
- Green procurement is seen as extra work, resulting in resistance to change habits and procedures of procurement.
- Lack of political support.

## Drivers

### Additional Political Support

Additional legal requirements, beginning with public authorities, should push professional purchasers to give systematically more attention to green procurement. The European Energy Star regulation is a good example for the product group of IT equipment and the Directive 2009/33/EC for road vehicles. Similar initiatives should be considered for further product groups. In the context of the National Energy Efficiency Action Plans in the context of the Energy Services Directive, requirements on the national level could be foreseen additionally. National and international agreements, policies and programmes (both compulsory and voluntary) help to push the agenda and raise awareness.

### Institutional responsibility

Needed are more good examples of institutional role models. If some governmental body formally supports green procurement, but its own procurement criteria consist only of the lowest price request, then this green proclamation is probably not a good example. Pilot projects should be

European Project “Buy Smart+”.

Visit [www.buy-smart.info](http://www.buy-smart.info) for more information.

implemented in influential institutions. More institutional encouragement and additional institutional support from central and regional authorities is needed. Good practice cases with the procedures, advantages, results, impacts of green procurement should be promoted and disseminated. The implementation of green procurement (although usually gradually introduced) may require the re-organisation and re-definition of the overall purchasing policy. This must be done with a good knowledge of the real qualitative and quantitative needs and of the (green) criteria to be considered.

### Trained personnel

Since green procurement is voluntary action, strong emphasis must be put on motivation of the procurement actors. Convincing and motivating the responsible staff to engage in a new approach may be the most difficult but at the same time the most promising strategy to boost green procurement. In many places, where green procurement is implemented successfully, there are committed personnel, willing to make a difference.

To enable these implementers to implement green procurement more easily, to provide them with the necessary knowledge and tools, and to offer to them information sources with good practices and personal advice, is at this stage still indispensable. Respective trainings must be broadly organised and promoted, also for multipliers, who will in turn transport it to their clients. Since many procurement activities are today increasingly organised with the help of external service providers, e.g. professional e-procurement platforms, these service providers can be important promotional partners and multipliers for green procurement. The respective electronic support infrastructure offered by these platforms could be amended with electronic procedures for green procurement, including web-based tools for life cycle costs analysis. Through the establishment of strategic partnerships with such service providers, the transaction costs of green procurement would clearly decrease, scepticism towards legal risks would be minimised, and a large multiplication effect could be achieved.

### Knowledge about environmental and cost benefits

The awareness on green procurement and its benefits must be further increased. The life cycle cost approach should be strongly promoted and tools for the evaluation of offers with regard to life cycle costs should be made widely available. It must be easy for the procurers to prove, that the greener choice is also the more economical choice. It is for them the most important justification for choosing the green approach and engaging in higher initial costs. Some experience show that when green criteria are correctly selected, green procurement can result in a 15-20 % cost reduction.

### Building up green markets

One of the barriers is that for some products no or only niche markets for green products and services exist. However, the existence of at least a niche market for greener products of a certain product group is essential for engaging into green procurement. A tender that does not attract any offers is counterproductive. It is true to a certain extent, that demand creates supply. However, in today's world with the strong position of large multinational companies, it needs very strong purchasing power to make a large company develop a new or redesign an existing product.

This is an area, where again political initiatives are needed, and some very promising ones are under way. The implementing measures in the context of the Energy-using Products (EuP) Directive and the reorganisation and reclassification of the European Energy Label will help enormously to ban European Project "Buy Smart+".

Visit [www.buy-smart.info](http://www.buy-smart.info) for more information.

inefficient products from the markets and highlight excellent appliances and products for the customer.

### Relevant sources of information

Umweltbundesamt

[www.beschaffung-info.de](http://www.beschaffung-info.de)

Kompetenzstelle für nachhaltige Beschaffung

[http://www.bescha.bund.de/cIn\\_091/nn\\_664020/DE/Nachhaltigkeit/node.html?\\_nnn=true](http://www.bescha.bund.de/cIn_091/nn_664020/DE/Nachhaltigkeit/node.html?_nnn=true)

Green Public Procurement Tool Kit

[http://ec.europa.eu/environment/gpp/toolkit\\_en.htm](http://ec.europa.eu/environment/gpp/toolkit_en.htm)

Zukunft einkaufen

[www.zukunft-einkaufen.de](http://www.zukunft-einkaufen.de)

Kompass Nachhaltigkeit

[www.kompass-nachhaltigkeit.de](http://www.kompass-nachhaltigkeit.de)

EcoTopTen

[www.ecotopten.de](http://www.ecotopten.de)