



Federal Ministry
for Economic Affairs
and Energy

Public Procurement in Germany

Workshop on the Public Procurement Strategy Package - Panel 2

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A. Structure of the German public procurement system

B. Legal framework – Overview

C. Key Aspects of the German public procurement system



Key Figures (estimates):

- About **30.000 Contracting Authorities (CA)**
- Perform about **2.4 million procurement procedures** per annum
- **Estimated annual volume** of public procurement including supplies, services & works in Germany:
 - Total: 280-360 billion €p.a.**
(est. German Federal Government)
 - 400 billion €/annum**
(est. EU-COM)
- **Percentage of Gross Domestic Product (GDP):** approx. **10-15 % p.a.**

A. Structure of the German PP system

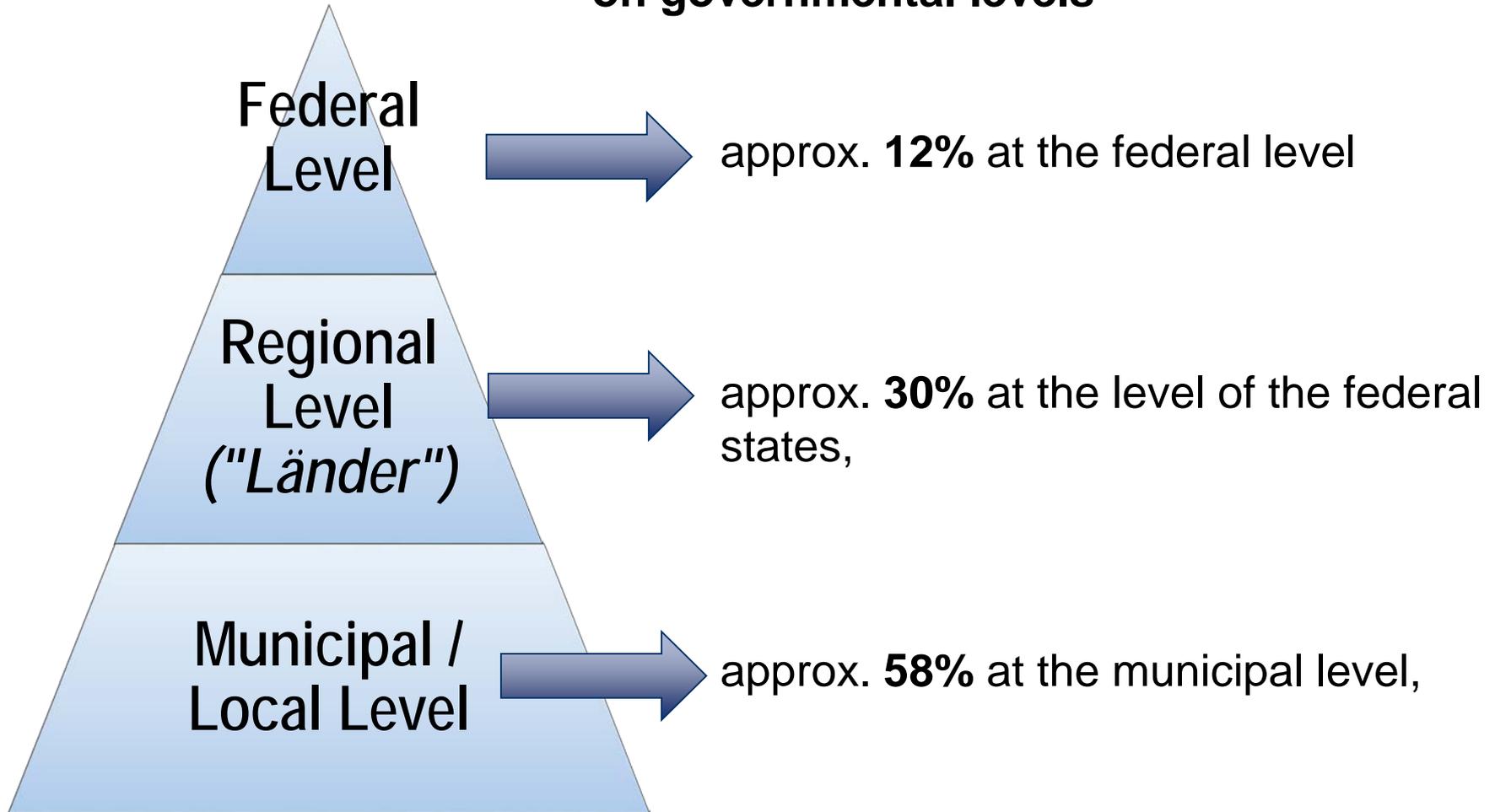
Characteristics

- **Decentralized system** (→ federal structure of Germany)
- Each level (federal, regional, local/municipal) **independent** w/r/t financial and budgetary issues
- No overarching PP statistics (*at present*)
- **However:**
 - acceptance and compliance by authorities on all Gov. levels
 - working and highly efficient remedies system (above thresholds)
 - monitoring function of inspecting authorities, audits courts, EU-Commission, legal review system by ECJ (Europ. Court of Justice)
 - German Government is establishing federal public procurement statistics (on the basis of a new ordinance)

A. Structure of the German PP system

Contracting Authorities

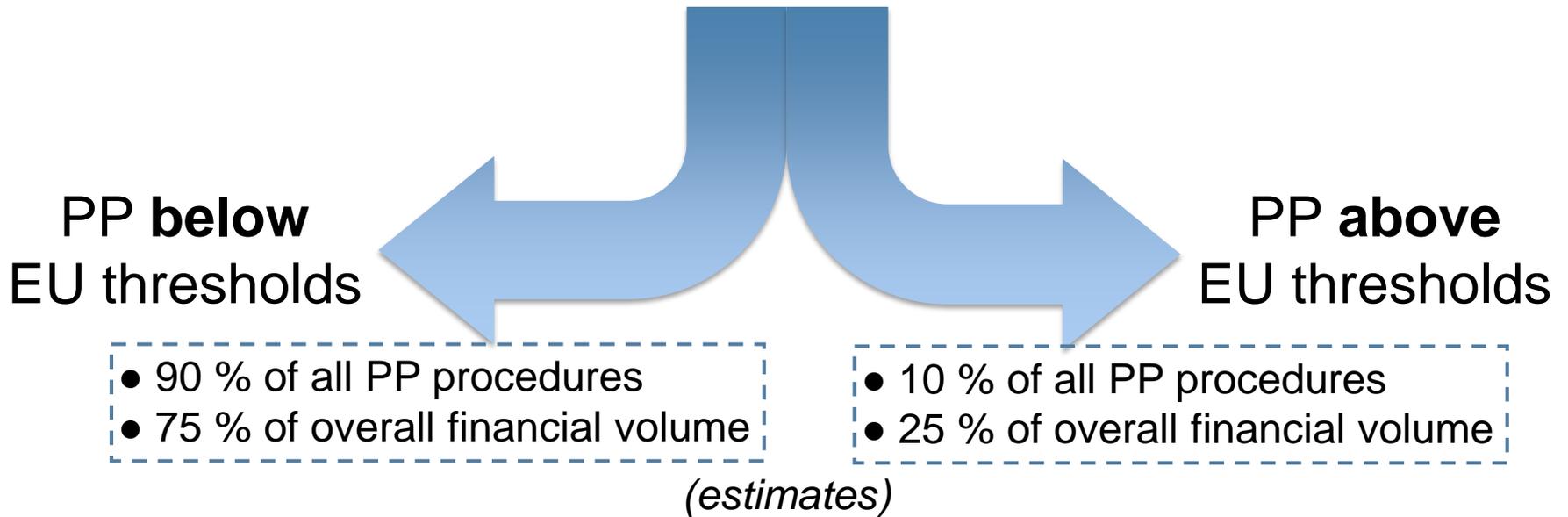
Distribution of public procurement activities on governmental levels



A. Structure of the German PP system

Duality:

PP above and below EU thresholds



A. Structure of the German PP system

Duality:

PP above and below EU thresholds

▶ Above the thresholds: competition law:

- WTO/GPA
- Law against restraints on competition
(*Gesetz gegen Wettbewerbsbeschränkungen - GWB*)
- Ordinance on the award of public contracts
(*Vergabeverordnung - VgV*)

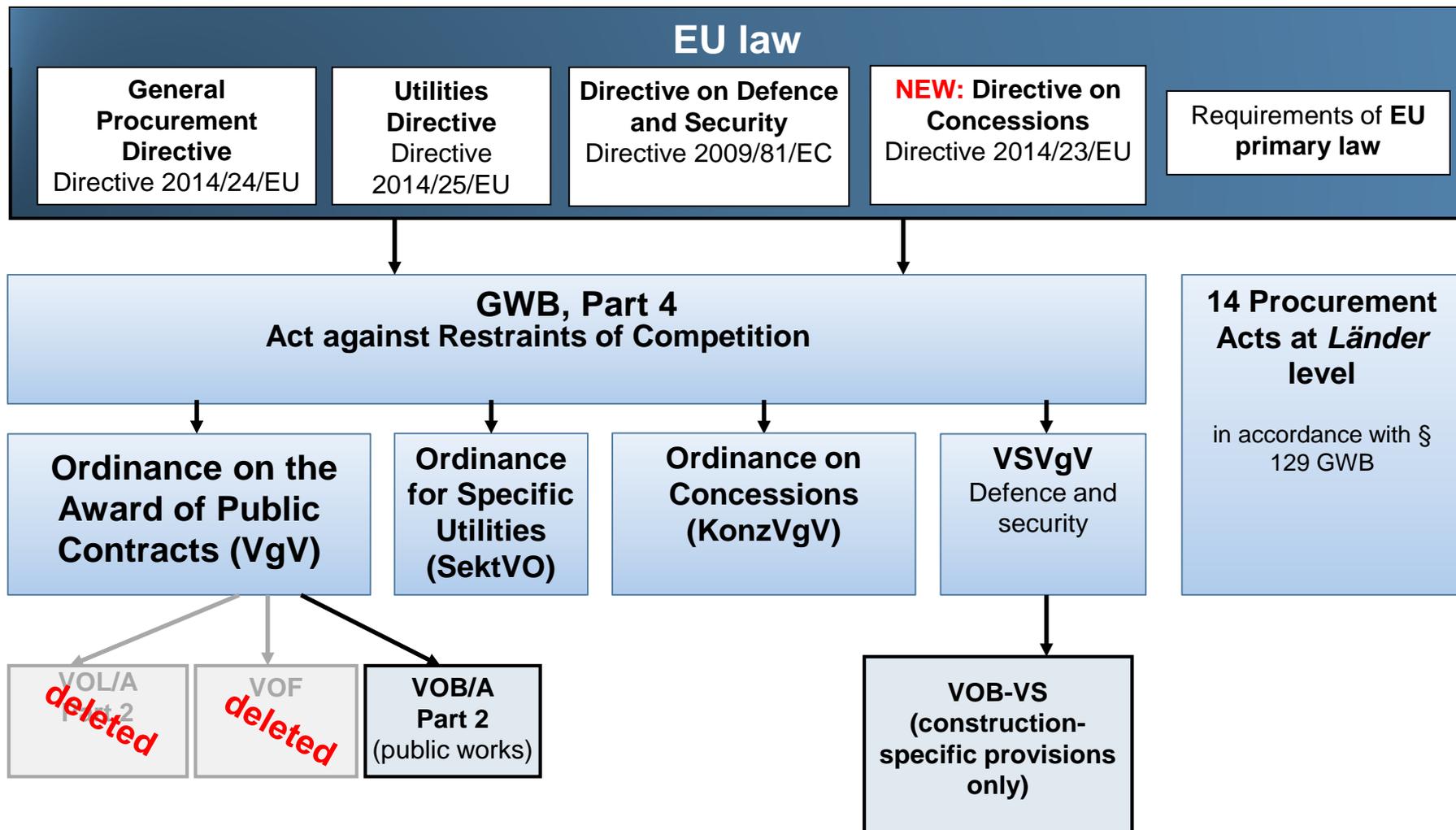


▶ Below the thresholds: budgetary law:

- Procedural/administrative regulations, UVgO (Code of procedure for procuring supplies and services below EU-thresholds), VOB (specific for public works)

B. Legal framework – Overview

Legal Structure above EU thresholds



New: Law on a competition register

- The German Parliament adopted a law establishing a so called “competition register” in July 2017.
- The law sets up a register that contains information for example on criminal sentences for crimes such as money laundering, fraud, corruption offences or tax evasion that can be attributed to a company.
- The prosecutor’s office and other authorities will be obliged to submit to the register information on relevant convictions.
- Contracting authorities are then obliged to draw information on bidders from the register prior to the award of a contract.
- Contracting authorities have to decide whether to exclude a bidder on the basis of the information received.

C. Key aspects of German PP system

Principles of public procurement law

- ▶ **Transparency**
- ▶ **Competition**
e.g. more than one bidder
- ▶ **Non discrimination**
- ▶ **Equal treatment of European and international bidders**
(no preference for local bidders)
- ▶ **Interests of small and medium-sized enterprises**
(division into lots is mandatory; principle of proportionality)
- ▶ **Sustainability**
- ▶ **eProcurement**



C. Key aspects of German PP system

Non discrimination

- Principle of non discrimination of bidders / equal treatment
- The **origin of the bidder** is no selection criteria; no preference for local bidders
- Equal treatment of **German, European** and **international** bidders
- **No preference** for goods produced in Germany/EU, **no local content** requirements
- Principle of non discrimination has been in place in Germany since 1960; reinforced by EU internal market

C. Key aspects of German PP system

Most economically advantageous tender (MEAT)

- The **most economically advantageous tender (MEAT)** will be awarded the public contract
- The MEAT shall be identified - at least - on the base of **lowest price** or **lowest cost**
 - Including LCC (life-cycle cost)
- **Other criteria** for MEAT may include (for example):
 - Quality
 - Environmental aspects
 - Social aspects
 - Innovation

C. Key aspects of German PP system

Strategic aspects / Sustainability

(environmental, social, innovative)

- Sustainability in PP → esp. environmental + social aspects
- **Option** for contracting authorities to lay down strategic aspects (aspects of sustainability) in an individual PP procedure
 - technical specifications
 - award criteria
 - contract performance clauses
- However: no general obligation for contracting authorities to lay down specific strategic aspects
- Strategic Aspects must be:
 - linked to the subject-matter of the contract and
 - indicated in the call for competition or procurement documents

- **Calls for Competition** and **Contract Award Notices**
 - above thresholds: published on TED
(= single point of access by electronic means)
 - below thresholds: published in the internet
(website CA or e-tender platform)
- Availability of **procurement documents** by electronic means (= Internet)
 - unrestricted and full direct access free of charge
- All **communication** and information exchange only by electronic means
 - Submission of tenders
 - Requests of bidders
- Obligatory at the latest after 18. October 2018 (above the thresholds), at the latest by 2020 (below the thresholds)

C. Key aspects of German PP system e-Procurement

- ▶ Procurement procedures based on **electronic means**
mandatory
 - ▶ Possible **benefits**
 - Significant savings for all parties
 - Simplified and shortened processes
 - Reduction of administrative burdens
 - Increased transparency
 - Greater innovation
 - New business opportunities by improving the access of enterprises, including small and medium-sized enterprises (SMEs) to public procurement markets
 - ▶ Gradual but ambitious transition: longer implementation periods were used to full effect
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C. Key aspects of German PP system

Centralization

- **Central procurement agency (CPA)**
- **Central procurement body (CPB)** (within a contracting authority)
- Public contracting authorities may also procure supplies and services from central purchasing bodies
- **Occasional joint procurement**
- Technical cooperation

C. Key aspects of German PP system

Examples of centralization

▶ **Federal level:**

- Federal Procurement Office of the Ministry of Interior (BeschA)
- Federal Office of Bundeswehr Equipment, Information, Technology and In-Service Support (BAAINB)
- Federal Institute for Materials Research and Testing (BAM)
- Coordination Unit at the Federal Procurement Office of the Ministry of the Interior (Kaufhaus des Bundes) (73.000 standard products, 460 framework contracts)

▶ **Länder level:**

- „Vergabemarktplatz NRW“

▶ **Regional or local authorities:**

- Division procurement services City of Bonn

C. Key aspects of German PP system Professionalization

Solid legal framework in place but
one of the key challenges in Germany:



➤ Professionalization

- ▶ Training of public procurement officers has to be improved
- ▶ Multitude of private initiatives (forum vergabe, Deutsches Vergabennetzwerk etc.)
- ▶ Some public initiatives (Master programme of the Bundeswehr University Munich, Federal Academy of Public Administration, some academies on Länder-level)



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