



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

**No** 553/PP/GRO/IMA/16/9031

Economic and legal analysis of the factors leading to a low rate of publication of public procurement opportunities in Germany

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Final Study

Version\_v02

5 May 2018

## EXECUTIVE SUMMARY

This study is a response to the conclusion reached by the European Commission that far fewer contracts for works, supplies and services were tendered EU-wide in Germany than in other countries of the European Union. The Commission estimated that in 2014, only 4% of public sector expenditures were expended in Germany on EU-wide public procurements for works, supplies, and services, whereas the average of all other EU countries was around 28%. The number of German EU-wide procurement procedures was also lower in comparison.

Therefore, the object of this study was to conduct an in-depth analysis of the public procurement volume and of procurement activities in Germany in the period 2011 to 2015. Another focus of it was to identify potential problems in connection with the law and with organisational practices relevant to procurement. A comparative analysis of Germany and the other member states of the EU was not a part of the investigation.

The methodology used in the study is a combination of quantitative and qualitative analyses of the data and information, first for Germany as a whole and then in case studies as random samples. The data of the largest German tendering platforms, the statistical data of the public administrations and public entities, public budgets and annual financial statements, procurement statistics, and a large number of text sources as well as direct requests for information were subjected to extensive analysis.

The final task of the study was to draw inferences, from the findings of the various analyses, about the actual causes of the low rate of EU-wide procurement procedures in Germany and to recommend where meaningful improvement measures could be taken.

### 1) Data analysis of public procurement activities in Germany as a whole

#### *a. The total procurement volume of the public sector*

Based on the statistical data on the core- and extra-budgetary activities of the public authorities and public entities, a **total procurement volume of the German public sector of around 330 billion euros in 2015** can be presumed. This figure includes investments and recurring operating expenses, but no expenditures for energy trade.<sup>1</sup>

Of the 330 billion euros, 170 billion euros (52%) were allocated to the core- and extra-budgetary activities of the public authorities, and 160 billion euros (48%) to public entities. Of the total procurement volume, 70 billion euros of the core- and extra-budgetary activities were attributed to municipalities and administrative districts. The procurement volume of public entities would also have to be primarily allocated to the local level, considering that 88% of the public entities were local-level entities. Therefore, up to **63%** (210 billion euros in 2015) of the total procurement volume could be allocated to the **local level**.

The personnel costs of the public entities can be interpreted as the value of services performed by the entities themselves. This in turn could therefore be interpreted as the value of the procurement volume not procured on the open market on account of the so-called **in-house provision**. The statistics showed a figure of **100 billion euros** for this **in 2015**. If these services were to be procured on the open market, the total procurement volume of the public sector would increase accordingly. The amount for 2015 would then be 430 billion euros instead of 330 billion euros.

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<sup>1</sup> The figures included in the calculation of the procurement volume also contain procurements that are not governed by procurement law. They also include double payments (e.g. through payments within government levels), and although these may very well represent substantial amounts, they cannot be eliminated from the calculation on the basis of the statistical data available.

*b. The procurement activities of the public sector*

**Based on the total number of all public procurement procedures** (EU-wide or national procedures that were not restricted from the outset to certain participants) in the period 2011 to 2015, 82% were effected nationally and **only 18% EU-wide**. And although the majority (58%) of all public procurement procedures involved contracts for works, their share of EU-wide procedures was lower (46%) than for supplies and services (54%).

The contracting authorities at the local levels were clearly the main actors in procurement activities in Germany. 36% of the public procurement procedures were effected by the administrations of the municipalities and districts, and a further 30% by public entities. In total, up to **around 66% of all public procurement procedures** were therefore made at the **local level**. The share effected by the public contracting authorities at the *Länder* level was around 18%.

The analysis of the different *Länder*, at all levels of public contracting authorities, showed that **the number of EU-wide public procurement procedures per 100 000 residents was very similar for all Länder**. What was striking, however, is that **far more national public procurement procedures per 100 000 residents were carried out in the Länder of the former East Germany**.<sup>2</sup>

No comprehensive data sources were available regarding the number of contracts awarded through non-public procurement procedures (all procedures that were not open to all market participants<sup>3</sup>). But from the few that were available (procurement statistics of some municipalities and of one *Land*, statistics of the Federal Ministry for Economic Affairs and Energy (BMWi)), it was evident that the number of procurements made via non-public procedures clearly exceeded the number made via public procedures.<sup>4</sup>

*c. Shares of the various procurement procedures of the total procurement volume*

Depending on the underlying assumption, the analysis allowed the indirect inference that around **one-tenth to one-third of the total procurement volume** (35 to 105 billion of the 330 billion euros in 2015) was awarded **via public procurement procedures**.

The contract value of the **contracts awarded EU-wide via public procurement procedures** in 2015 was in the range of **20 to 55 billion euros** (6% to 17% of the total procurement volume). Of this, between 9% and 46% was for works, again depending on the assumptions relied on. The contract value of **public procurement procedures** at the **national level** was estimated as somewhere **between 15 and 50 billion euros**. Of this, between 18% and 59% was for works. Even though these spans are wide, they still show that, with respect to EU-wide public procedures, the share of contracts awarded for supplies and services tended to far outweigh those for works. This tendency was reversed at the national level. There the share of contracts for works was higher.

It is estimated that around **one-third** (110 of the 330 billion euros in 2015) of the total procurement volume was **awarded via non-public procurement procedures**. Of this, 41% was for works and 59% for supplies and services. A total of 44% to 65% (145 to 215 billion euros) of the total procurement volume was thereby procured via procedures governed by procurement law (public or non-public procurement procedures).

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<sup>2</sup> This was only in reference to the number of publications. The reason for the differences in the number of procedures could have been because the procurements were carried out in different ways or because of differing total contract values (per 100 000 residents).

<sup>3</sup> Procedures that are restricted from the outset to certain participants.

<sup>4</sup> One example is the State Government of Saxony: In 2011, there were 926 EU-wide procedures and 2 276 national public procedures as compared to 116 302 non-public procedures in the form of *Freihändige Vergaben* or *Beschränkte Ausschreibungen*.

The nature of the available data did not allow an allocation of the remaining 115 to 285 billion euros (35% to 56%) to either public or non-public procurement procedures. It cannot be inferred from this, however, that the unallocable procurement volume had to have been procured via public procurement procedures. This is because the presumed total procurement volume—to a considerable albeit unidentifiable extent—includes procurements that are not subject to procurement law and double payments.

*d. Documented breaches of obligations to use public procurement procedures*

In the period under investigation, 4 314 complaints were lodged with the German public procurement boards [*Vergabekammern*] and 2 419 decisions were handed down. To be kept in mind here, however, is that uniform legal protection for bidders only exists in Germany for EU-wide procurements. Therefore all of the complaints lodged with the public procurement boards exclusively involved procurements above the EU thresholds. In addition, the reports of the German public audit offices [*Rechnungshöfe*] relevant to the period 2011 to 2015 were reviewed for potential violations of procurement law.

In conjunction with this study, 1 700 published decisions of the public procurement boards were reviewed. Of these decisions, 191 (11%) dealt with issues involving breaches of the obligation to use public procurement procedures. In around a quarter of the cases relevant to the study, the procurement boards held that these contracts should have been tendered EU-wide rather than nationally. The other cases involved procurements for which either no procurement procedure whatsoever was used or where the choice of the procurement procedure (e.g. negotiated procedure instead of an open procedure) did not conform with the law.

Notable here is that, in comparison to contracts for works or for supplies, **contracts for services were more often the subject of requests for review** or of criticism from the German public audit offices on account of breaches of an obligation to use public procurement procedures. **But in relation to the total number of procurements** by the public sector and of EU-wide procurements, **the absolute number of reported and relevant cases was low.** Moreover, the individual facts and circumstances surrounding the identified violations were very diverse and, despite a degree of concentration with respect to certain causalities, followed no general pattern on the whole.

In the decisions involving procurement law, the most frequently cited causes for disregarding the obligations to use public procurement procedures included uncertainties in relation to the application of the thresholds resulting from an incorrect classification of the procurement subjects (works instead of services), in distinguishing between ‘public contracts’ (mandatory public tendering) and ‘concessions’ (mandatory public tendering only since 2016), in interpreting exceptions to the rules (especially the issue of ‘urgency’ [*Dringlichkeit*] and ‘exclusive rights’ [*Exklusivrechte*]), and in deciding at which point in time contract notices or existing contracts have been so substantially modified that a new contract notice must be published.

2) Results of the reviews of the random sample case studies

*a. Case studies on six municipalities and two Länder administrations*

The **municipalities of similar sizes** demonstrated in the period 2011 to 2015 **similar procurement volumes per number of residents**. However, the procurement volume per number of residents in the **large cities** (Essen, Leipzig, Nuremberg; more than 500 000 residents) was **approximately 50% higher than in the mid-sized cities** (Aurich, Eberswalde, Ettlingen; up to 50 000 residents). For the administrations of the two *Länder* (city-state Hamburg, Free State of Saxony), no uniformity could be seen. The procurement volume per number of residents of the State government of Saxony was lower than that of the mid-sized cities. However, the city-state Hamburg is simultaneously a city and a *Land*. Its procurement volume per number of residents was therefore significantly higher, namely more than double that of the other large cities.

**Similar procurement volumes were not reflected in similar numbers of public procurement procedures.** Essen for example only had around one-third of the number of such procedures carried out in Leipzig. The case studies of the two cities in the *Länder* of the former East Germany (Eberswalde, Leipzig) showed higher numbers of public procurement procedures per 100 000 residents than the investigated cities of the same size in what was formerly West Germany. The case studies therefore seem to mirror the same tendency that was identified for Germany as a whole.

For supplies and services, the analyses showed that although the number of public procurement procedures were similar in all of the cities, their average contract values were higher the more residents there were living in the jurisdiction of the respective administration. For works, the number of public procurement procedures increased in relation to the number of residents, while the average contract values were around the same. The results therefore indicated **that in the case of supplies and services, the more residents there were—i.e. the larger area of competence was—the larger the average contract values tended to be.** This was not the case for works.

The procurement statistics indicated that there were **very low average contract values but very high numbers of non-public procurement procedures.** In the State Government of Saxony, 97% of all non-EU-wide procurement procedures were non-public procedures.

*b. Case study on the collection of household waste*

The collecting of household waste is the responsibility of the municipalities. In the investigation period, very few public procurement procedures were carried out. But of these, the majority were made EU-wide. The main reason for the small number of procedures was likely the **large percentage of in-house provision** of such services.

Another important factor was that such services are often performed by public-private companies that are partly owned by the state. In one of the administrative districts studied, the contract for such services was not cancelled but automatically renewed for ten years. Even though this was probably not objectionable under German procurement law, it may have been problematic from the point of view of public budgetary law if no review had been made as to whether the renewal of the contract was cost-efficient.

The problem presented by contracts with longer contract terms, and the option they often contain to automatically extend the term, plays a role in the entire utilities supply and waste collection sector. Drawing on experiences from the consulting praxis and on information derived from a variety of publications, options to renew contracts without public tendering obligations were intentionally created and used. This is likely one of the main reasons why public tenders for services in the waste collection sector occurred relatively rarely in the investigation period.

*c. Case study on the procurement of medical consumables for hospitals*

German hospitals expend around 13 billion euros each year on medical consumables. The case study investigated the procurement of medical consumables via public procurement procedures for Germany as a whole and in concrete examples.

In all of the examples in the investigation period, very few public procurement procedures were carried out. In one private purchasing association, the percentage of the procurement volume procured publicly was only 2% of the total purchasing volume. This seems very low considering that the procuring of supplies via purchasing associations does not release public hospitals from their obligations to comply with procurement law. As to how this obligation was actually being complied with was something that could not be judged on the basis of the information available. Equally unclear is which amounts of supplies and services that are not subject to procurement law were being procured by the purchasing associations. This needs further investigation.

*d. Case study on the procurement of construction works and real estate-related services*

The case study of a public entity that manages municipal real estate showed that the **total volumes of the vast majority of the projects were small to very small**, which came nowhere near exceeding EU-thresholds. The largest share of the total contract value (43% of works, 69% of services) was procured via non-public procurement procedures. The construction works of the individual construction projects were rigorously split up and tendered in lots—individual lots and lots pursuant to the various trades. For projects whose total volumes were above the EU-thresholds, all of the lots were tendered EU-wide in compliance with procurement law. This case study was a good illustration of the common German **practice of procuring works on the basis of lots**, which is done in the interests of the small and medium-sized business sector. The procurement maxim of the companies—i.e. that contracts should be tendered in a large number of lots—and the splitting up of projects into smaller units allowed the inference that a bundling of smaller individual projects into larger contracts tended to be done rather rarely.

What stood out in the case study of the City of Ettlingen was that around 7 million euros (net) for works had been spent on a large restoration project over the course of three years. Before the project was tendered, however, the project had been divided up into two construction phases, the cost estimate for each of which was below the EU-threshold. The reason given for dividing it up was that the project had to be realized in successive phases in dependence on the public budget situation. No EU-wide procurement procedure was made. The tendering of the first construction phase was said to have been done under **time pressure** in order to take advantage of an expiring funding programme. But as it turned out, the two construction phases were realized one after the other in close succession of time. Furthermore, the **underlying cost estimate** seemed to have been **very optimistic**. For the first construction phase alone, the actual costs were more than 50% higher than the estimate and therefore clearly above the EU-threshold.

The **splitting up of larger projects into individual construction phases** that are to be realized one after another is a common practice in the area of public construction projects. Public budgetary reasons are often cited as the justification for this. What the Ettlingen example suggests is that there may be difficulties in such cases with calculating the total costs of a project.

*e. Case study on public bus transportation services*

This case study suggested that in the investigation period, EU-wide procurement procedures were rarely made. This was due to the large **amount of in-house provision** of services by the public sector in this area (76% of passenger-kilometres; equivalent to a procurement volume of around 3.6 billion euros). The vast majority of procurements were evidently made via in-house awards to public entities. Only 24% of the services were performed by private enterprises. However, a distinct trend towards an increase in public procurement procedures was identifiable over the course of the investigation period.

3) Knowledge gained through advisory activities

The knowledge gained through the advising of many contracting authorities at the local, *Länder*, and *Bund* levels was also utilized for drawing conclusions about the fundamental reasons for the low rate of public—especially EU-wide—procurement procedures.

One reason lies in Germany's federal structure. Such a structure engenders **a large number of contracting authorities at the different administrative levels**—at the *Bund*, *Länder*, and particularly at the local level. The structuring of the public budget in smaller units [according to the different administrative levels] and rather narrowly defined procurement needs tend to lead to procurements of smaller units. The **individual contract values are therefore rarely above the respective thresholds**.

Another reason is that **for below threshold procurements**, there are **no uniform legal regulations** applicable to the *Bund*, the *Länder*, and the local regional authorities. In addition to there being a large number of different laws, the different ways of interpreting these laws complicates things even further. This leads to problems in the application of the procurement laws and is a source of many potential errors. All in all, there is **plenty of room for divergent interpretations of the laws** in Germany, a situation that is being used—consciously or unconsciously—to circumvent public procurement procedures, especially EU-wide procedures.

Furthermore, many **contracting authorities regard public procurement procedures**, especially EU-wide procedures, as a burden—they mean additional costs and additional risks, and are simply seen as a waste of money. What also plays a major role is the fact that most of the *Länder* only have bidder protection laws for procurements governed by EU procurement law. The risk of a procurement procedure being interrupted on account of a bidder application for a review therefore only exists in most *Länder* for EU-wide procurements. In our experience, this might make contracting authorities more inclined to circumvent—within the scope of existing interpretations—EU-wide procurements.

#### 4) Findings on the reasons for the low rate of EU-wide procurement procedures

*- The strong administrative autonomy of the municipalities is intrinsic to Germany. The German municipalities perform an abundance of different tasks. The local level is also the most important government level for implementing public services and laws. The fact that the local regional authorities and their public entities are responsible for performing such an abundance of tasks is therefore a major determinant of procurement activities in Germany. The large number of local regional authorities with relatively small numbers of residents is thus a primary cause of the low rate of EU-wide procurement procedures at the local level. -*

The investigations showed that the average size of procurement projects increases proportionate to the number of residents of a local regional authority. The more residents a regional authority had, the more often procurement projects were above the thresholds for a mandatory EU-wide procurement procedure. This effect was far more evident in relation to supplies and services than for works.

However, in Germany, around 60% of all residents live in municipalities with less than 50 000 residents, and more than half of these in municipalities with less than 20 000 residents. The **small size of many local regional authorities** gives rise not only to small infrastructure units and infrastructure sizes but also to small budgets with little freedom in terms of budgetary spending. This alone is one of the main reasons why the procurements of many local regional authorities are of rather limited sizes. These limitations are intensified even further through the additional financial restrictions that have been imposed on many municipalities in the last years (e.g. measures restricting the free use of budgets in stressed financial situations). For example, projects will then only be planned for one year at a time.

In the aggregate, these structural factors are the reason why the **average sizes of the procurement projects of the majority of the local regional authorities were rather small** and therefore why the EU-thresholds were relatively rarely reached. It can be deduced from this that the largest share of the procurement volume at the local level must have been made up of few, or even very few, EU-wide procedures.

*- The large, and again increasing, share of insourced services at the local level was another reason for the low percentages of EU-wide procurement procedures. -*

The **in-house provision of public services** by the core administrations or by their public entities played a significant role here, **particularly at the local level**. The areas primarily concerned here included the public utilities and waste collection sectors (water, heating, energy), waste

management, city sanitation services, and public local/regional passenger services. There are many reasons for so much in-house provision by the municipalities. For one thing, it generates income for the municipality (for ‘municipal cross-financing’). For another, it counters the scepticism frequently felt towards the privatisation of public functions. The **remunicipalisation** trend, which has evidently been happening in the last years, has caused the share of in-house provision to increase even more.

*- A lower share of EU-wide procurement procedures could also have been caused by ‘soft’ incentives, by keeping projects on a smaller dimension, or by overly low estimates of project costs. -*

If the results of the analyses are contemplated in a wider context that includes the experiences drawn from the consulting field, then it can be concluded that certain **legal and organisational conditions relevant to procurements of the public sector and certain traditions or motivating forces underlying administrative actions** have an indirect impact on the share of EU-wide (especially public) procurement procedures.

Restrictions in relation to public budgets and the oftentimes **scarcity of human resources** of the public authorities provide concrete incentives (or more precisely imperatives) for favouring the implementation of several smaller projects one after another rather than one big project. Projects are therefore divided up into manageable and budget-compatible components.

Another likely factor is the **scepticism felt towards EU-wide procurement procedures**. Such scepticism results from actual experiences and from preconceptions. For example, it is expected that EU-wide procedures will **involve a larger number of documents**, which is often perceived as an **extra burden**. Also the **bidder protection** afforded by EU-wide procedures is **associated with a higher risk of delays and additional expenditures** caused by possible complaints by the bidders.

Other factors **encourage the making of overly low estimates of project costs**. For example, the obtaining of budget approval tends to be the easier the lower the estimated costs of a project are.

*- Old contracts with their options to automatically renew the contract term deprive the market of procurement volume. The observations made suggest that this is a contributing factor to the low share of EU-wide procurement procedures. -*

The **option to automatically renew existing contracts** deprives the market of contract value for long periods of time and in incalculable amounts. Old contracts with such provisions are common in such areas as waste removal and public bus transportation.

*- Because of the substantial gaps in the available data, the share of EU-wide procurement procedures could only be calculated on the basis of extrapolations drawn from presumptions. Therefore it cannot be ruled out that the actual share of EU-wide procurement procedures is higher or lower than what was calculated. -*

The data sources formerly available in Germany were inadequate for determining which share of the procurement volume was actually made up of EU-wide procurement procedures. Therefore the extent to which the proposition—the share is too low—is actually true could not be conclusively decided and was not the subject of the investigation anyway. What the study did uncover, however, were serious **deficiencies in the availability and equivocalness of the data**. These deficiencies existed in relation to such things as the total volume of public task fulfilment (works, supplies, services (without utilities)) in Germany, the actual volume and share of public procurement, and the volume and share of insourced services. There were too many gaps in the data sources even for making a qualified estimate of the actual total contract value of EU-wide procurement procedures (and all other types of procurement procedures). It was only for a few regional authorities that individual statistics were available.

## 5) Conclusions and recommendations

The causes of the low rate of EU-wide procurement procedures in Germany can be classified in three spheres:

### 1. *Legal structure underlying the competence for public task fulfilment*

Germany is legally structured as a federal system with a highly decentralized administration. In this system, budget and subject-matter competencies are widely split up among the various administrative levels. The local level (municipal level) in particular has competence for a wide range of tasks, which is referred to as an ‘all-inclusive jurisdiction to administer local affairs’. This often gives rise to procurements being made in small units.

### 2. *Organisational structure underlying procurement responsibilities in the individual administrations and public entities*

The organisational structure is also a system in which responsibilities are widely split up among the individual administrative units. The in-house provision of services also plays a major role.

### 3. *Motives for administrative actions and procurement practices*

Historically rooted traditions, situationally conditioned real or presumed constraints, or scepticism are also inducements for making procurements in smaller units and on short-term bases. Things such as limited spending authority, scarce human resources, and other (municipal-) political aims all play a role here. Often legal considerations are the source of additional motives for dispensing with EU-wide procurement procedures whenever possible.

The legal structure per se from which the public sector derives its competence for public task fulfilment in Germany is not being queried. What spheres 2 and 3 imply, however, is that there are other influenceable, and therefore modifiable, factors that also contribute to the low rate of EU-wide procurement procedures, or to the favouring of national or non-public procedures. Factors such as long-standing organisational and administrative practices, preconceptions, uncertainties, lack of experience, lack of knowledge, etc. all play a role here, not to mention actions induced or dictated by the budgetary system and by the law. Particularly in the area of procurements below the threshold, the laws of the various *Länder* differ greatly. And what is completely missing is the transparency of the system in relation to the procurement practices of the contracting authorities.

Based on the conclusions drawn from the analyses made in this study, measures should be taken in the following areas:

1. *Standardisation of procurement and public budgetary law for below threshold procurements and clarification of ambiguous legal terms to eliminate uncertainty.*
2. *Introduction of bidder protection in the case of below threshold procurements to improve external control measures and to eliminate a key motive for circumventing EU-wide procurement procedures.*
3. *Emphasizing economic efficiency as a parameter for an organisation-wide procurement strategy and for the concrete designing of procurement projects; implementing the corresponding imperatives and incentives, including in procurement law.*
4. *Creation of more transparency in procurement and budgetary practices to facilitate continual improvements, especially the creation of a database from which reliable information on the volume of public services, on the procurement volume, and on the procurement practices of the public sector can be extracted; nationwide for all public contracting authorities and all types of procurement procedures.*
5. *More in-depth investigations of problematic sector-specific aspects or approaches.*

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## GLOSSARY

Beschränkte Ausschreibung mit Teilnahmewettbewerb	See public-procurement procedures.
Beschränkte Ausschreibung ohne Teilnahmewettbewerb	See non-public procurement procedures.
Beteiligungsbericht	Means participation report of a public authority.
Bodies governed by public law	Means bodies that have all of the following characteristics:  (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;  (b) they have legal personality; and  (c) they are financed, for the most part, by the State, local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, local authorities, or by other bodies governed by public law.
Bund	Means the highest administrative level of the Federal Republic of Germany.
Bund authorities	‘ <i>Bundesbehörde</i> ’ and ‘ <i>Bundesamt</i> ’; DTAD refers to ‘ <i>Bundesbehörden / Ämter</i> ’, which means that agencies within the federal levels are also included.
Bundesbehörde, Bundesbehörden	Comprises various administrations within the Bund-level.
Bundesministerium, Bundesministerien	Highest administration within the Bund-level.
Competitive dialog	See procurement procedures requiring a contract notice.
Competitive procedure with negotiation	See procurement procedures requiring a contract notice.
Confessional institutions	Various institutions of a parish/congregation.
Contract award notice	Notice published by contracting authorities announcing the award of a contract.
Contract notice	Notice published by contracting authorities, seeking expressions of interest or inviting companies to tender; In the context of this study ‘contract notice’ is the unit of measure used for all evaluations concerning the number of public procurement procedures. In the DTAD data base for

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	EU-wide and in national procurement procedures, the German term for ‘contract notice’ is ‘ <i>Ausschreibung</i> ’.
Contract value	Synonym for value of contract. Used in the context of the evaluation of public and non-public procurement procedures.
Contracting authority	Means the State, local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law.
Core administration	The German term for ‘core administration’ is ‘ <i>Kernverwaltung</i> ’. Core administration means the public administration of a public authority. It does not include the public entities of the regional authority.
District	Administrative district (‘ <i>Landkreis</i> ’ bzw. ‘ <i>Kreis</i> ’)
Eigenbetrieb	Municipal enterprise without legal personality.
EU-wide procurement (procedure)	Means public procurement governed by EU public procurement law (public procurement above the EU threshold values).
Freihändige Vergabe	See non-public procurement procedures.
In-house (provision)	Means that public tasks/services are performed by the public authorities and their public entities themselves.
Innovation partnership	See public procurement procedures.
Land / Länder	Federal state; the German term is used in this study.
Länder authorities	‘ <i>Landesbehörde</i> ’ and ‘ <i>Landesamt</i> ’; DTAD refers to ‘ <i>Landesbehörden / Ämter</i> ’, which means that all administrations within the Federal state-levels are also included.
Levels of administration	The German administrative levels comprise <i>Bund</i> , <i>Länder</i> and local level.
national procurement / below threshold procurement (procedure)	Means procurement governed by national procurement law (public procurement below the EU threshold values).
National publication	Means public and non-public procurement procedures on national level.
Negotiated procedures without prior publication	See non-public procurement procedures.
Non-public tender/procurement procedure (non-public procedure)	Means EU-wide or national procurement procedures that are restricted from the outset to certain participants. Accordingly, the procedures are not open to all market participants.

Non-public tender/procurement procedures are formal procedures governed by EU or national procurement law. They do not require the publication of a contract notice.

EU-wide procurement procedures:

- Negotiated procedure without prior publication: One or several economic operators are invited to submit bids.

National procurement procedures:

- Beschränkte Ausschreibung ohne Teilnahmewettbewerb: A restricted number of economic operators are invited to submit bids.
- Freihändige Vergabe: One or several economic operators are invited to submit bids.

Öffentliche Ausschreibung

See public procurement procedures.

Open procedure

See public procurement procedures.

Prior information notice

A notice published in order to inform potential bidders about the intention to conduct a non-public procurement procedure.

Procurement volume

Means public sector expenditures expended on public procurements for works, supplies, and services procured on the open market; does not include value of services performed by the public authorities and their public entities themselves (so-called in-house provision);

Note: In the context of this study the procurement volume does also not include expenditures for energy trade, unless otherwise specified.

Public authority

Means contracting authorities in form of public administration.

Public entity

Means bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law; ‘*Öffentliche Unternehmen*’, ‘*Öffentliche Fonds*’, ‘*Körperschaften des öffentlichen Rechts*’, ‘*Anstalten des öffentlichen Rechts*’, ‘*Genossenschaften*’, ‘*Stiftungen des öffentlichen Rechts*’, ‘*Zweckverbände*’, ‘*Vergabepflichtige Vereine*’, ‘*Vergabepflichtige Unternehmen*’ und ‘*Entwicklungsbank*’ are subsumed within the category ‘public entities’ due to the fact that an assignment to a respective individual category is not possible on account of the lack of precision or clarity of the characteristics of the categories.

Public tender/procurement procedure (public procedure)

Means EU-wide or national procurement procedures that are not restricted from the outset to certain participants.

Public tender/procurement procedures are formal procedures governed by EU or national procurement law. They require the publication of a contract notice.

EU-wide procurement procedures:

- Open procedure: Any economic operator may submit a tender.
- Restricted procedure: any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority.
- Competitive procedure with negotiation: any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority
- Competitive dialogue: any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority.
- Innovation partnership: any economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority

National procurement procedures:

- Öffentliche Ausschreibung: Any economic operator may submit a tender.
- Beschränkte Ausschreibung mit öffentlichen Teilnahmewettbewerb: any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority.

Public utility company  
(Stadtwerke)

Public entity for the provision of e.g. energy, water, and for the waste disposal.

Publication levels

Means the two levels of publication; i.e. EU level and national level.

Regional authority

The German term for 'regional authority' is '*Gebietskörperschaft*'. A regional authority is a public administration with territorial jurisdiction. Its administrative sovereignty is limited to a spatially defined part of Germany. In Germany the

	regional authorities comprise <i>Länder</i> ( <i>Länder</i> level), and municipalities and districts (local level).
Restricted procedure	See public procurement procedures.
Stadtwerke	See public utility company.
TED	<p>TED (Tenders Electronic Daily) is the online version of the 'Supplement to the Official Journal' of the EU, dedicated to European public procurement.</p> <p>In figures the term TED is used as synonym for EU-wide procurement procedures.</p>
Total procurement volume	<p>Means the total of all German public sector expenditures expended on public procurements for works, supplies, and services procured on the open market; does not include value of services performed by the public authorities and their public entities themselves (so-called in-house provision);</p> <p>Note: In the context of this study the procurement volume does also not include expenditures for energy trade, unless otherwise specified.</p>
Types of (public) procurement subject	Comprise the three categories works, supplies and services.
Zweckverband	Special-purpose association.

## 1. BACKGROUND OF THIS STUDY

The European Commission commissioned *Alfen Consult GmbH* together with its subcontractors, *GÖRG Partnerschaft von Rechtsanwälten mbB* and *DTAD Deutscher Auftragsdienst AG*, to investigate the current state of procurement practices in Germany.

The observation that Germany tenders far fewer contracts EU-wide than the other Member States was the starting point for this study. Commission estimates showed that only 4%<sup>5</sup> of German expenditures for works, supplies and services (without utilities) was tendered for EU-wide contracts in 2014, whereas the average for all 28 EU countries was 22%. Additionally, as the median contract value in Germany was close to the median value of all EU countries, this together with the low aggregate value showed that the total number of contracts published in Germany under EU procurement legislation (above threshold procurement, in the study referred to as EU-wide procurement) was comparatively low.<sup>6</sup>

Although a variety of reasons had been cited for this—such as Germany’s federal structure and the fact that the state itself provides a large share of services—, an analysis of it had never been undertaken before.

Therefore the object of this study was to conduct an in-depth analysis of the public procurement volume and of procurement activities in Germany in the period 2011 and 2015.

It was therefore the task of the authors to

- collect data on public procurement procedures in Germany and to make an estimate of the public procurement volume,
- collect decisions of the judicial review bodies (so-called ‘*Vergabekammer*’, public procurement boards, and ‘*Vergabesenate*’, public procurement chambers of the Higher Regional Courts) and decisions of the audit offices,
- identify 14 suitable case studies that would enable a deeper analysis of German procurement practices against the backdrop of the federal structures in Germany, and to
- verify, in the case studies, the findings from Tasks 1 and 2, and to identify, the reasons for the low rate of publication at the levels of the individual contracting authorities.

The general objective of the study therefore was to identify reasons for the low publication rate in Germany. In this context the main focus was on identifying the sectors, the types of procurement subjects, and the levels of contracting authorities at/in which publication of procurement opportunities was most frequently not being carried out.

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<sup>5</sup> Tender specification for contract No 553/PP/GRO/IMA/16/9031, p 12.

<sup>6</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0018&qid=1467297726733&from=EN> Art.11

## 2. DATA ANALYSIS OF PUBLIC PROCUREMENT ACTIVITIES IN GERMANY AS A WHOLE – ECONOMIC ANALYSIS

This chapter attempts to answer the following key questions, which were derived from the above-referenced study background. These are:

- Which sectors had the highest and which had the lowest rates of publication?
- Which types of procurement were found at the highest rates of publication and which types were found at the lowest?
- Which levels of administration were involved at the highest rates of publication and which were involved at the lowest?

### 2.1. Systematics of public sector authorities and procurement procedures

For the purposes of this study, the contracting authorities of the public sector in Germany were those defined by Article 2 of Directive 2014/24/EU, which included ‘central government authorities’ and ‘sub-central contracting authorities’ (hereinafter referred to collectively as ‘public authorities’) as well as ‘bodies governed by public law’ and ‘associations of one or more contracting authorities’ (hereinafter referred to collectively as ‘public entities’).

The following table sets out the systematics of procurement procedures for EU-wide procurement (above threshold procurement) and national procurement (below threshold procurement) in Germany. All those procedures are formal procedures according to EU or national procurement law.

Table 1: EU-wide and national procurement procedures

EU-wide procurement procedures (above thresholds) (Article 27 ff. of Directive 2014/24/EU)	National procurement procedures (below thresholds) (VOB/A und VOL/A)
Public procurement procedures	
<i>Open procedure</i> Any economic operator may submit a tender.	<i>Öffentliche Ausschreibung</i> (formal procedure) Any economic operator may submit a tender.
<i>Restricted procedure, competitive procedure with negotiation, competitive dialogue, innovation partnership</i> Any economic operator may submit a request to participate.	<i>Beschränkte Ausschreibung mit öffentlichen Teilnahmewettbewerb</i> (formal procedure) Any economic operator may submit a request to participate.
Non-public procurement procedures	
<i>Negotiated procedure without prior publication</i>	<i>Beschränkte Ausschreibung ohne Teilnahmewettbewerb</i> (formal procedure) A restricted number of economic operators are invited to submit bids.
	<i>Freihändige Vergabe</i> (informal procedure) One or several economic operators are invited to submit bids.

As to when a contracting authority is allowed to use a non-public procedure for below threshold procurement is regulated in different ways in the different *Länder*. The choice of procurement procedure will depend on the specific limits set by each *Land* (see Table 39).

## 2.2. Data sources

It is important to bear in mind from the outset that the data available for a quantitative evaluation of procurement practices in Germany was remarkably incomplete in the period under examination. Neither uniform procurement statistics nor specific details on expenditures for public procurement volumes were available, nor was any differentiation made whatsoever between self-provision (in-house) and procurement on the open market.<sup>7</sup>

Documents for EU-wide procurement procedures were published centrally in Tenders Electronically Daily (TED). Documents for national procedures were not published centrally but rather on a variety of procurement platforms or with the contracting authorities. This information was compiled and sold on the market by service providers such as the *Deutscher Auftragsdienst AG (DTAD)*.

In light of the foregoing, a quantitative evaluation of procurement practices and an estimate of the share of procurement that was not awarded through published procurement procedures were only possible – if at all – by drawing upon other sources of data and by making value estimates.

The other sources of data upon which this study made its estimates are those described below.

### 2.2.1. DTAD data base

DTAD's data base comprised documents published at both the national and the EU level within the context of procurement procedures of German public authorities. The DTAD data base included publications from various procurement platforms, such as TED (Tenders Electronic Daily – Supplement to the Official Journal of the EU), [www.bund.de](http://www.bund.de), and the e-awarding platforms of the Federal Government [*Bund*], *Länder*, and municipalities. DTAD also searched for procurement procedures of public authorities in 3 000 other websites on a daily basis. The DTAD data base therefore provided the best information available on procurement procedures of public authorities published between 2011 and 2015 in Germany.

The DTAD data base contained a total of 1 089 934 documents. These comprised several types of documents published within the context of procurement procedures, for example prior information notices, contract notices, contract award notices, modifications, etc. (see Table 22). Thus, there was often a number of documents which were published in the course of one procedure. However, for every public procurement procedure a contract notice was published by contracting authorities, seeking expressions of interest or inviting companies to tender. Therefore, to avoid double counting the unit of measure used in this study for all evaluations concerning the number of public procurement procedures was the contract notice.<sup>8,9</sup>

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<sup>7</sup> All administrative levels already had processes in place for data collection and data notification to the EU on the basis of their existing statistics-keeping duties, at least for those procedures exceeding upper threshold values. However, according to the Kienbaum Study, there were, even for EU-wide publications, discrepancies between the information provided in statistical notices made to the EU and the information provided in the actual tender publications published in the TED system (Kienbaum, 2014).

<sup>8</sup> Public procurement procedures are not restricted from the outset to certain participants. Public procurement procedures are formal procedures governed by EU or national procurement law.

<sup>9</sup> The number of contract notices sums up public invitations to tender including calls for expression of interest/calls for competition. In the DTAD data base for EU-wide and national procurement procedures, the German term for 'contract notice' is '*Ausschreibung*'.

In the DTAD data base, the total number of contract notices published between 2011 and 2015 was 682 042 for German EU-wide procedures and national procedures together. These documents therefore formed the basis of the analyses.

The DTAD data base allowed for an analysis of public procurement procedures on the basis of a variety of qualitative aspects in relation to the numbers of contract notices. A quantitative analysis, on the other hand, was not possible since specific/correct information about contract values was only available for EU-wide publications and only in an incomplete form.

### **2.2.2. Statistical data of the overall German budget**

The statistical data published by the statistical offices of the German *Länder* or by the *Federal Statistical Office (Statistisches Bundesamt)* at the national level had been incorporated in the analysis as a starting point for assessing public procurement volumes.

These statistics analysed and reported on the public budgets of the government authorities and the financial statements of the public entities; this information was available on the relevant websites.<sup>10</sup>

### **2.2.3. Procurement statistics**

Uniform and complete procurement statistics – at least complete enough to enable a comprehensive analysis of the issues in this study – are not kept in Germany. For the period under examination procurement statistics were available for some individual municipalities and for one single *Land* (State Government of Saxony) but they were not representative for a number of reasons (e.g. they only include contracts awarded above specific threshold values). What they did provide, however, was information in relation to values. They also allowed indirect quantitative conclusions to be drawn about (i) the percentages of the different procurement subjects, (ii) contracts awarded by way of *Beschränkte Ausschreibung* procedures, and (iii) contracts awarded by way of *Freihändige Vergabe* procedures.<sup>11</sup>

Procurement statistics provided by the *Federal Ministry for Economic Affairs and Energy (BMWi)* had also been incorporated in the examination.<sup>12</sup> These, however, did not claim to be complete and only included contracts awarded above specific threshold values. The information available from the federal ministries [*Bundesministerien*] regarding contract values at least contained information on the overall value of awarded contracts below the threshold but no numbers.

A point of discussion in this study was the extent to which it was possible and sensible to draw – from these rather limited procurement statistics – any conclusions about the overall state of public procurement in Germany.

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<sup>10</sup> <http://www.statistikportal.de> (statistics portal provided by the statistical offices of the 16 *Länder* and the Federal Statistical Office); <http://www.destatis.de> (Website of the Federal Statistical Office).

<sup>11</sup> The ‘*Freihändige Vergabe* procedure’ is an formal national procurement procedure pursuant to which the contracting party usually invites three parties to make a bid. The procedure can be preceded by an invitation to compete. The contracting party must observe the principles of fair competition, equal treatment, and transparency. This type of procedure is permitted for contracts with low values and in those exceptional cases prescribed by law. The threshold values are individually stipulated in the respective legislation of the Federal Government and the *Länder*.

<sup>12</sup> <http://www.bmwi.de/Redaktion/DE/Textsammlungen/Wirtschaft/eu-statistik.html>.

## 2.3. Analysis of DTAD data

Subject of the subsequent analysis were German EU-wide and national public procurement procedures. The unit of measure for all evaluations concerning the number of public procurement procedures was the contract notice.

### 2.3.1. National and EU-wide contract notices

Table 2 shows the total number of contract notices broken down into national publications and EU-wide publications for each year of the investigation period 2011 to 2015.

Table 2: Number of contract notices (national and EU-wide) for the period 2011 to 2015

	2011	2012	2013	2014	2015	Mean	Sum
National	94 830 (81%)	106 930 (83%)	117 595 (83%)	123 703 (83%)	116 332 (80%)	111 878 (82%)	559 390 (82%)
EU-wide	22 323 (19%)	22 648 (17%)	24 109 (17%)	25 232 (17%)	28 340 (20%)	24 530 (18%)	122 652 (18%)
<b>Total</b>	<b>117 153</b>	<b>129 578</b>	<b>141 704</b>	<b>148 935</b>	<b>144 672</b>	<b>136 408</b>	<b>682 042</b>

Source: DTAD

With respect to the EU-wide contract notices, there were only minimal differences between the numbers contained in the DTAD data base and the respective figures in the Public Procurement Indicators 2015 (Anon., 2016). This indicated that the DTAD data set was a very reliable data base.

There was a steady increase in the total number of contract notices (both EU-wide and national) between 2011 and 2014, whereas a drop of 3 843 could be seen in 2015. This (quite recent) drop was only in the area of national contract notices, however. The number of EU-wide contract notices increased by 6 700 during the time period 2011 to 2015, which meant that EU-wide contract notices accounted for 20% of all contract notices in 2015 (see Table 2).

There was no way, however, in the context of this study of determining what percentage of the total number of German EU-wide procedures were below threshold publications. This is because the contracting authorities generally refrained from specifying the expected value of the contract in their contract notices. The evaluation of the DTAD data was therefore restricted to determining whether publications were made EU-wide or at the national level. Accordingly, there was no way of determining from the percentages of EU-wide contract notices and national contract notices set out in Table 2 (and in the following considerations) which shares of the publications were actually above the threshold and which shares were below it.

The use of the respective threshold amounts to derive a minimum total contract value of contracts procured EU-wide was also not possible. This was because among the procedures published EU-wide were a large number of procurement procedures whose contract values were far below the threshold amounts.<sup>13</sup>

There are two explanations for the large number of procedures published EU-wide with contract values below the threshold amounts.

<sup>13</sup> PPI 2015, (Anon., 2016), see p. 4, fn. 7.

One is that EU-wide publication is voluntary for below threshold procurements. The other explanation is far more important, however. It has to do with the so-called requirement that contracts must be procured in lots. In order to safeguard the interests of the small and medium-sized business sector in Germany, the German legislature demands that contracting authorities procure their contracts, in terms of their contents, in individual lots, divided per trade or in other parts, rather than in one combined package. A combined procurement of several trade-based or other partial lots is only allowed in exceptional cases if it is necessary for commercial or technical reasons.<sup>14</sup>

Consequently, projects of a larger scale are usually divided up into lots according to different industrial/technical lots.<sup>15</sup> The contracting authorities have two options with respect to the choice of procurement method. When dividing up a project into lots, they can tender and award each lot separately. Or they can, within one contract notice, reserve for themselves the right to award the project in individual lots or as one combined package.<sup>16</sup> Therefore no direct correlation can be drawn between the number of contract notices and the number of lots. As to how many lots a contract notice contains is something that is not—at least not extensively—captured as a criterion in the DTAD data base. The evaluations made were therefore not based on the number of lots.

The preferred practice of procuring contracts by lots is likely the main reason for the large number of below threshold contract values in the case of EU-wide procurements, especially for construction works.

### **2.3.2. Assessment based on type of procurement subject (works, services, supplies)**

The analysis of contract notices according to the types of procurement subject for the time period 2011 to 2015 resulted in the percentages set out in Figure 1. Of the total number of contract notices shown, notices in relation to works by far made up the largest share (58%). Services accounted for 17% and supplies for 13% of total number of contract notices.<sup>17</sup>

Since the majority of the total number of contract notices were national publications (mean 82%, see also Table 2), a similar distribution could be applied to the subset ‘national contract notices’. It was clearly apparent, however, that services and supplies made up considerably larger shares of EU-wide contract notices, although the category ‘works’ still ranked highest at the EU publication level.

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<sup>14</sup> The reason for this legal provision, which is anchored in Paragraph 97 of the Act Against Restraints of Competition (GWB), is the German legislature’s desire to protect the interests of Germany’s small and medium-sized business sector. The aim of the provision is therefore to keep the contents of the contracts, and especially the size of them, as transparent as possible so that smaller businesses are also able to bid for them.

Regardless of whether or not a project is divided up in lots and whether such lots are procured separately or in one single procurement, it is the total contract value of the project that must be used to review whether the thresholds for an EU-wide procurement have been exceeded.

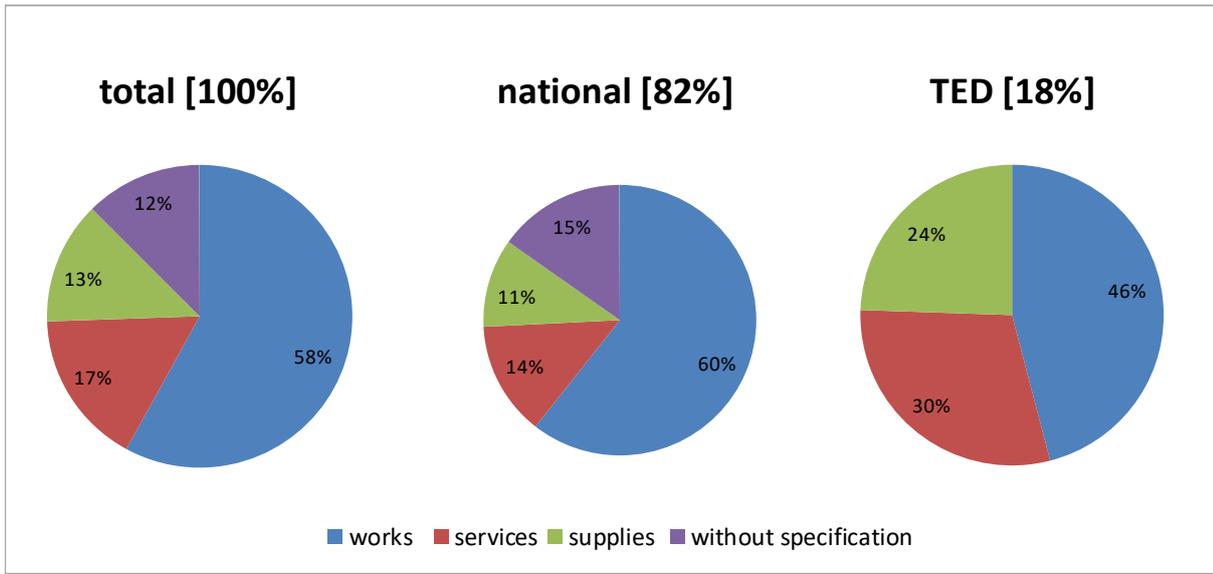
<sup>15</sup> PPI 2015, (Anon., 2016), see p. 4, fn. 7. and p. 18.

<sup>16</sup> What must also be taken into consideration here is the option provided for in Paragraph 3 of the Public Procurement Regulation (VgV). This provision allows for the exclusively national procurement of individual lots if the estimated individual net value of a lot is below EUR 80 000 in the case of supplies and services and below EUR 1 000 000 in the case of construction works and if the total net values of such lots does not exceed 20% of the total contract value.

<sup>17</sup> In the time period 2011 to 2015, the category ‘type of procurement subject’ could not be evaluated in around 12.5% of the publications due to a lack of information in the DTAD data base. But this gap had almost been filled during the course of the period such that the share of unallocated tenders in 2015 was close to zero. (see Table 23)

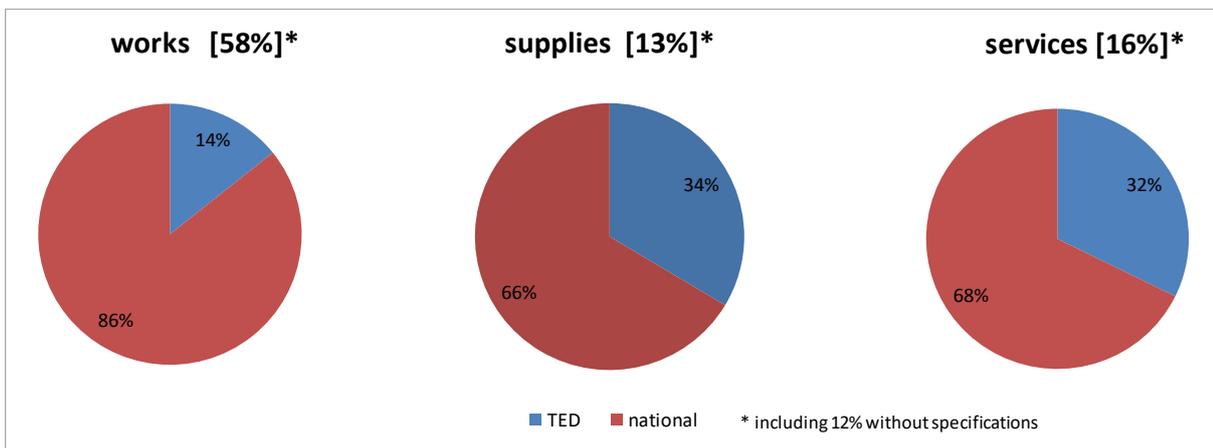
With regard to the allocation of contract notices at the EU and at the national levels (see Figure 2), it was noticeable that the ratio of EU-wide contract notices to national contract notices for supplies, and services was about 1:2. This was clearly not the case when it comes to works, where the ratio was around 1:6. This means that only 14% of works-related contract notices were published EU-wide (see Table 23).

Figure 1: Number of contract notices (total, national, and TED) for the period 2011 to 2015 by procurement subject (works, services and supplies)<sup>18</sup> [in %]



Source: DTAD

Figure 2: Number of contract notices (works, supplies, and services) for the period 2011 to 2015, by publication level (national and TED) [in %]



Source: DTAD

### 2.3.3. Assessment based on the type of contracting authority

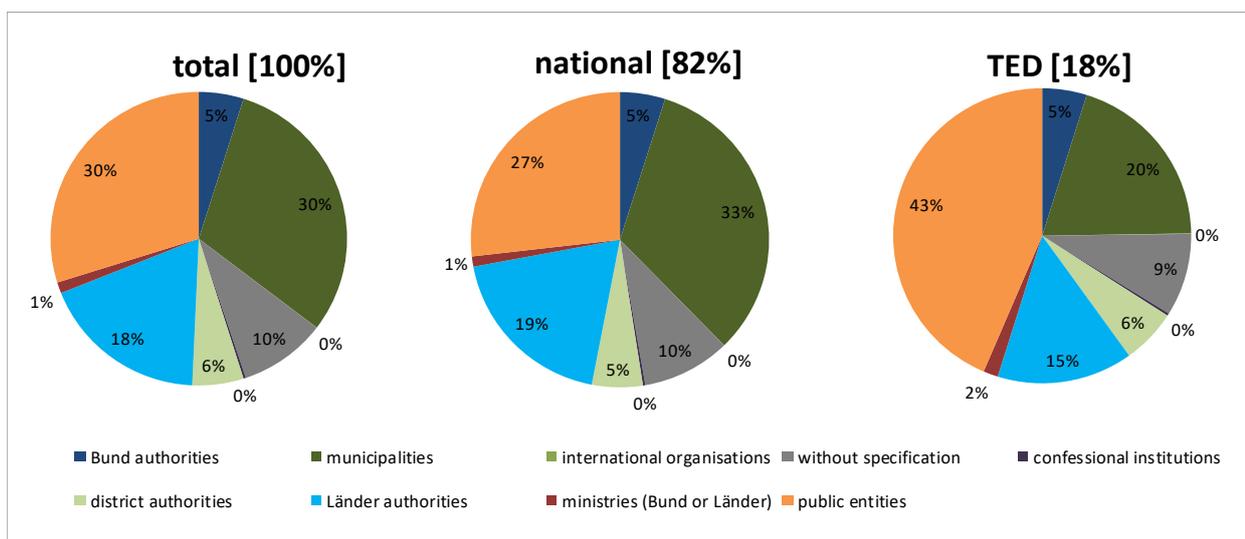
The DTAD data base systematically assigns the contracting authorities to specific categories. The categories are as follows:

<sup>18</sup> The category ‘mixed contracts’ is not shown due to its negligible size.

- international organisations
- ministries (*Bund* or *Länder*)
- *Bund* authorities<sup>19</sup>
- *Länder* authorities<sup>20</sup>
- district authorities
- municipalities
- confessional institutions
- public entities<sup>21</sup>

Unfortunately, the DTAD data does not differentiate between ministries at the federal level and ministries at the *Länder* level. In keeping with the DTAD system, the categories presented above were used in the context of the following evaluations of the DTAD data.

Figure 3: Number of contract notices (total, national, and TED) for the period 2011 to 2015 per type of contracting authority [in %]



Source: DTAD

Figure 3 shows the percentages of total contract notices that were represented by the different categories of contracting authorities, and it does so separately for each of the two levels of publication, i.e. national and EU-wide.<sup>22, 23</sup>

<sup>19</sup> DTAD refers to ‘*Bundesbehörden / Ämter*’, which means that agencies within the federal levels are also included.

<sup>20</sup> DTAD refers to ‘*Landesbehörden / Ämter*’, which means that agencies within the *Länder* levels are also included.

<sup>21</sup> The DTAD categories ‘*Andere Körperschaften des öffentlichen Rechts*’, ‘*Anstalten des öffentlichen Rechts*’, ‘*Genossenschaften*’, ‘*Stiftungen des öffentlichen Rechts*’, ‘*Zweckverbände*’, ‘*Vergabepflichtige Vereine*’, ‘*Vergabepflichtige Unternehmen*’ und ‘*Entwicklungsbank*’ were subsumed within the category ‘public entities’ due to the fact that an assignment to a respective individual category was not possible.

<sup>22</sup> See Table 25 for presentation of numbers.

<sup>23</sup> See Table 26 and Table 27 for a separate observation of EU-wide and national contract notices per year for the period 2011 to 2015.

The largest number of contract notices were published by public entities and by municipalities. Of the total of the two levels of publication, 30% of all contract notices were made by each of these categories of contracting authorities. There were, however, differences regarding the respective shares of national publications and EU-wide publications. Whereas public entities accounted for the largest share of EU-wide publications (43%), municipalities made up the largest share of national publications (33%).

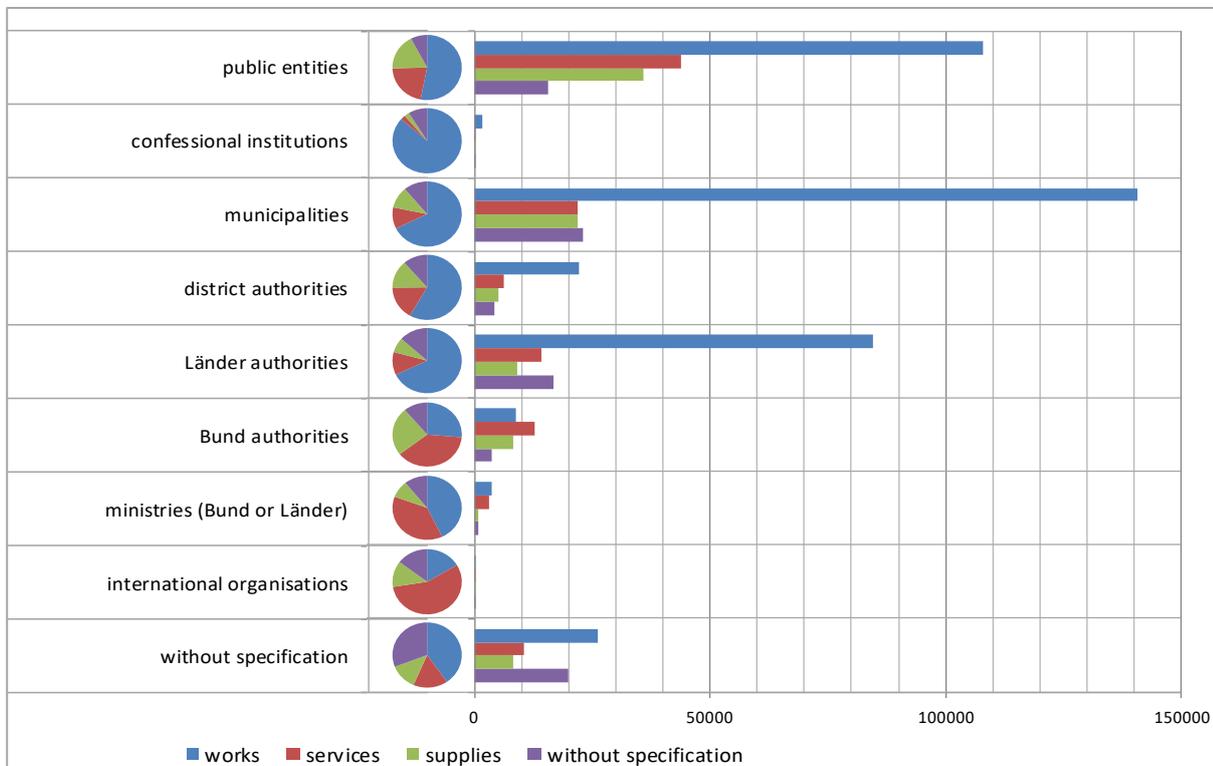
In any event, 18% of all contract notices were made by the *Länder* authorities. The institutions of the *Länder* must therefore also be seen as playing important roles in procurement activities. Their share was somewhat higher at the national level (19%) than it was in EU-wide procedures (15%).

The federal authorities (*Bund*) and the district authorities clearly played subordinate roles when it comes to the number of contract notices (5% or 6% each). The percentages of the other contracting authorities were either barely identifiable or not identifiable at all.

The results of the analysis of the contract notices according to the types of procurement subject (works, supplies, services) and according to categories of contracting authorities are illustrated in the following Figure 4 to Figure 7.

Figure 4 shows the variations in significance of the types of procurement subject for the different categories of contracting authorities.<sup>24</sup> The importance of the local administrative levels, the public entities, and the *Länder* authorities for the overall procurement situation in Germany is clearly visible (see also Table 28).

Figure 4: Number of contract notices in the period 2011 to 2015 per type of procurement subject and category of contracting authority (without ‘mixed contracts’) [in %]



Source: DTAD

<sup>24</sup> The category ‘mixed contracts’ is not shown because it is too small.

Figure 5 also shows that contract notices for works were being published predominately by municipalities (36%), public entities (27%), and *Länder* authorities (21%). These three categories of contracting authorities together accounted for 84% of all contract notices for works.<sup>25</sup>

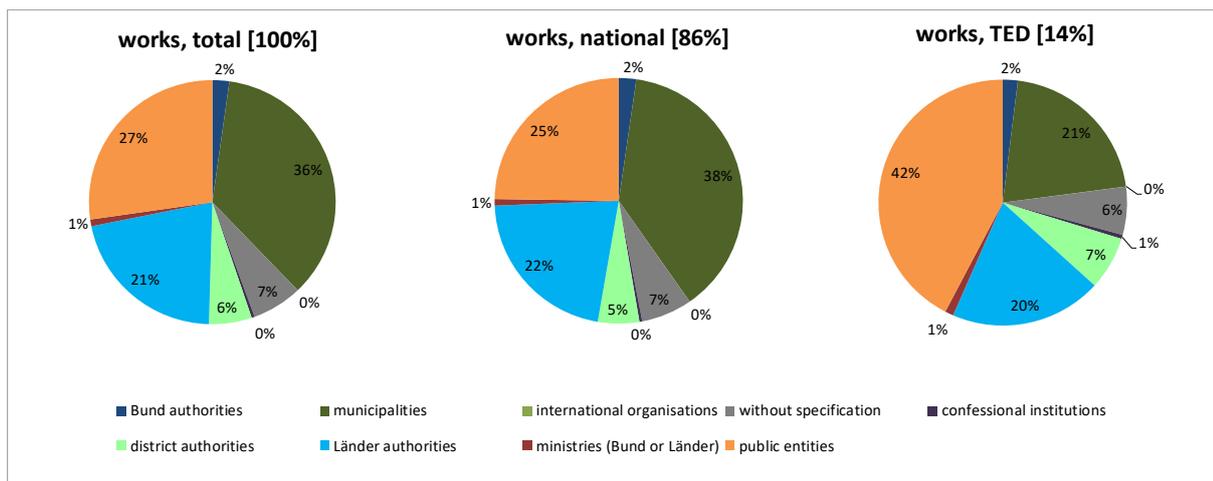
According to the Federal Statistical Office, approximately 89% of all public entities in 2012 were found at the local level. An indirect inference could be drawn from this for the purposes of this study, namely that the majority of contract notices in relation to works that were published by public entities were presumably also found at the local level. The district authorities, which accounted for a good 6% of contract notices for works, were local procurement stakeholders as well. In pure numbers, 66% of all contract notices for works were attributable to local stakeholders in the 2011 to 2015 investigation period.<sup>26</sup>

In the area of contract notices in relation to works, there was a noticeable difference between municipalities and public entities. What was striking here was that public entities published considerably more contract notices at the EU level than at the national level. The opposite was true for municipalities. However, the sum of both of these contracting authority categories was the same at both publication levels, where both categories together ultimately accounted for 63% of all contract notices (see Figure 7).

A similar albeit less pronounced effect was found in relation to supplies, i.e. municipalities and public entities accounted for significantly different shares of these at the EU and national levels (see Figure 6, Table 31). For services, there was no significant difference between EU-wide and national publications in relation to the number of contract notices (see Figure 7, Table 30).

But since the DTAD data base did not allow for similar evaluations to be made on the basis of contract values, it was impossible to determine whether and how this purely numerical difference was reflected in the procurement values purchased on the open market by the respective contracting authorities.

Figure 5: Number of contract notices (total, national, and TED) for works for the period 2011 to 2015 per category of contracting authority [in %]

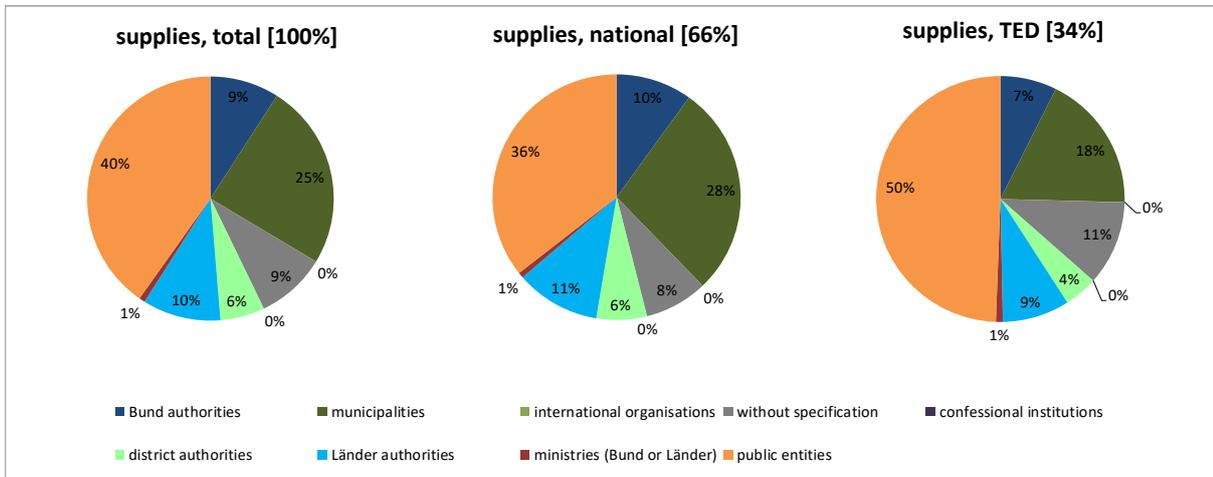


Source: DTAD

<sup>25</sup> The tabular presentation of the evaluation is found in Table 28 in the annex.

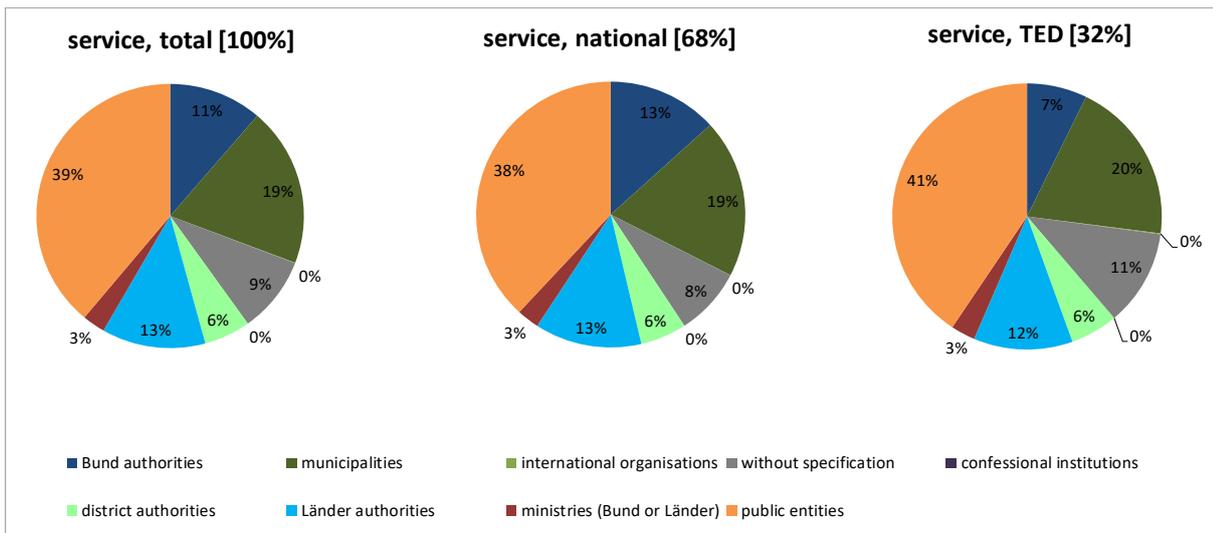
<sup>26</sup> (Schulze-Steikow, 2016)

Figure 6: Number of contract notices (total, national, and TED) for supplies for the period 2011 to 2015 per category of contracting authority [in %]



Source: DTAD

Figure 7: Number of contract notices (total, national, and TED) for services for the period 2011 to 2015 per category of contracting authority [in %]



Source: DTAD

### 2.3.4. Regional differentiation according to the Länder

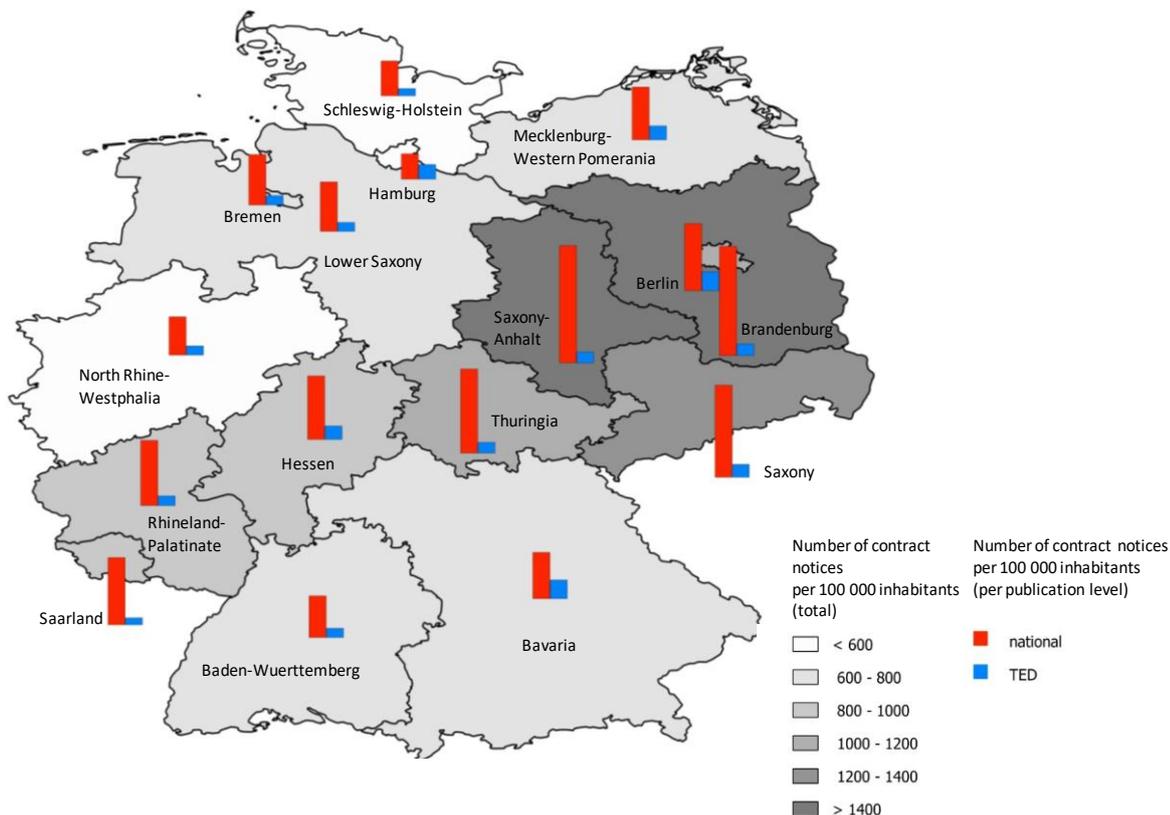
The analysis of the contract notices per *Land* brought a variety of regional differences to light. The results are illustrated on the following map and the actual values are compiled in Table 32 in the Annex.

The data Figure 8 shows that the total numbers varied significantly between the *Länder*. The numbers ranged from less than 600 contract notices in Schleswig-Holstein, city-state Hamburg, and North Rhine-Westphalia to over 1 400 contract notices per 100 000 inhabitants in Brandenburg and Saxony-Anhalt.

The wide spread in the total numbers was largely due to the numbers of national contract notices per 100 000 inhabitants in the individual *Land*. At the lower end of the spectrum was the city-state Hamburg with 481 and Schleswig-Holstein with 505 contract notices. At the upper end was once again Saxony-Anhalt with 1 529 and Brandenburg with 1 447.

The large differences in the number of national publications had a major impact on the percentages of EU-wide publications. The respective values were therefore only partially suitable for making inferences about the actual differences in the publication activities of the *Länder* at the EU level (the values ranged from 8% in Saxony-Anhalt to 37% in the city-state Hamburg).

Figure 8: Number of contract notices published per 100 000 inhabitants; total and by publication levels per Land



Source: DTAD

Figure 8 also shows that in relation to the absolute numbers of EU-wide publications per 100 000 inhabitants, the differences between the *Länder* were much lower. However, the city-state Hamburg, Berlin, and Free State of Bavaria had the largest numbers of EU-wide publications (blue pillar in Figure 8). At the lower end of the spectrum were Saarland, Schleswig-Holstein, and Lower Saxony.

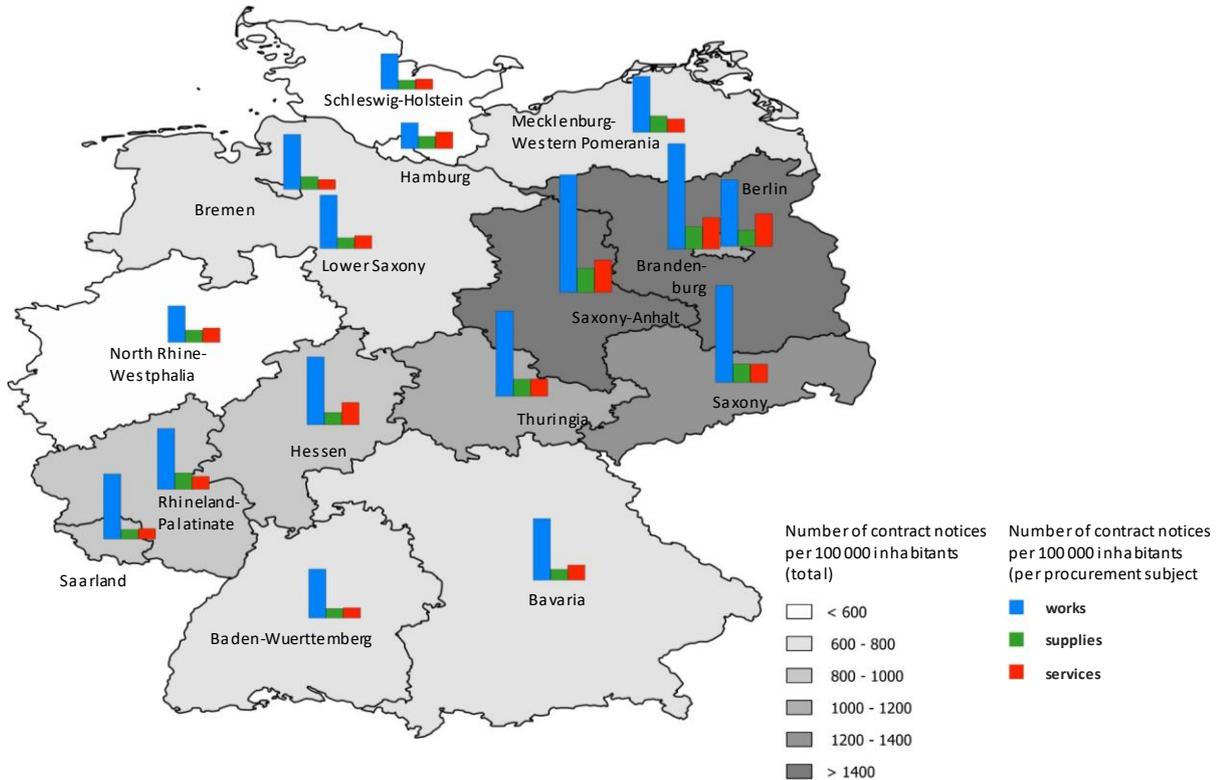
Figure 9 shows the distribution of total contract notices according to the three types of procurement subjects per 100 000 inhabitants.

Contract notices for works dominated the publication activities in all of the *Länder*. Noticeable, however, was that in the city-state Hamburg and North Rhine-Westphalia, significantly fewer contract notices for works were published in comparison to supplies and services than in the other *Länder*. By contrast, four of the former East German *Länder* – Saxony-Anhalt, Brandenburg, Free State of Saxony, and Free State of Thuringia – showed noticeably higher numbers of contract notices for works.

For services and supplies, the differences between the *Länder* were less pronounced. No clear trends were identifiable. In the majority of the *Länder*, the number of contract notices for supplies

was in varying degrees higher than those for services; in three *Länder*, publications for supplies were only marginally higher than for services.

Figure 9: Number of contract notices per 100 000 inhabitants, total and by type of procurement subject per *Land*

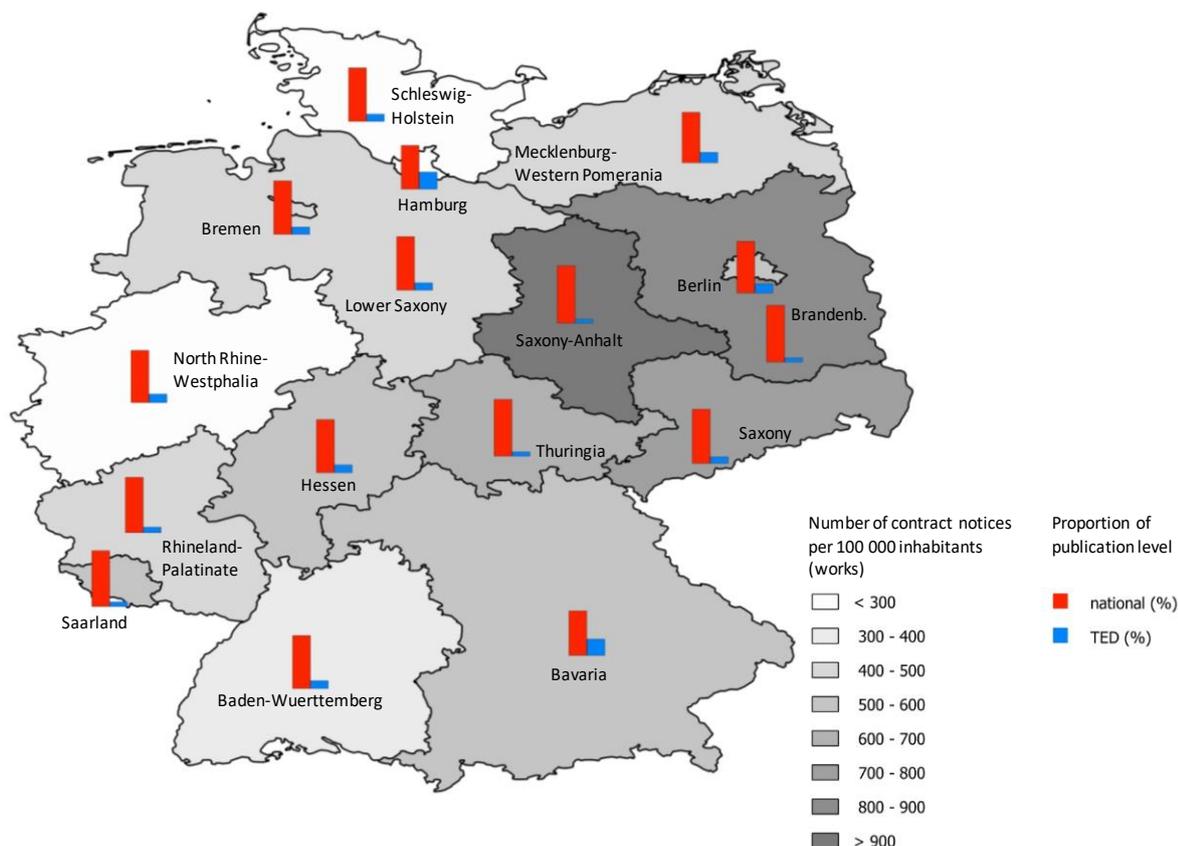


Source: DTAD

Figure 10 shows a separate analysis of contract notices for works. In all of the *Länder*, contract notices for works dominated the overall picture. The illustration of the results is therefore very similar to Figure 9.

What can be seen again is that the largest shares of publications at the EU level were found in the city-state Hamburg and the Free State of Bavaria. Not to be overlooked here, however, is that the city-state Hamburg had the lowest number of contract notices. The largest numbers of contract notices for works were found in Saxony-Anhalt and Brandenburg. It was therefore not possible to conclude from these low percentages of EU-wide publications in these *Länder* that overall publication activities in these states were also low.

Figure 10: Number of contract notices for works per 100 000 inhabitants and proportions of publication levels per *Land*



Source: DTAD

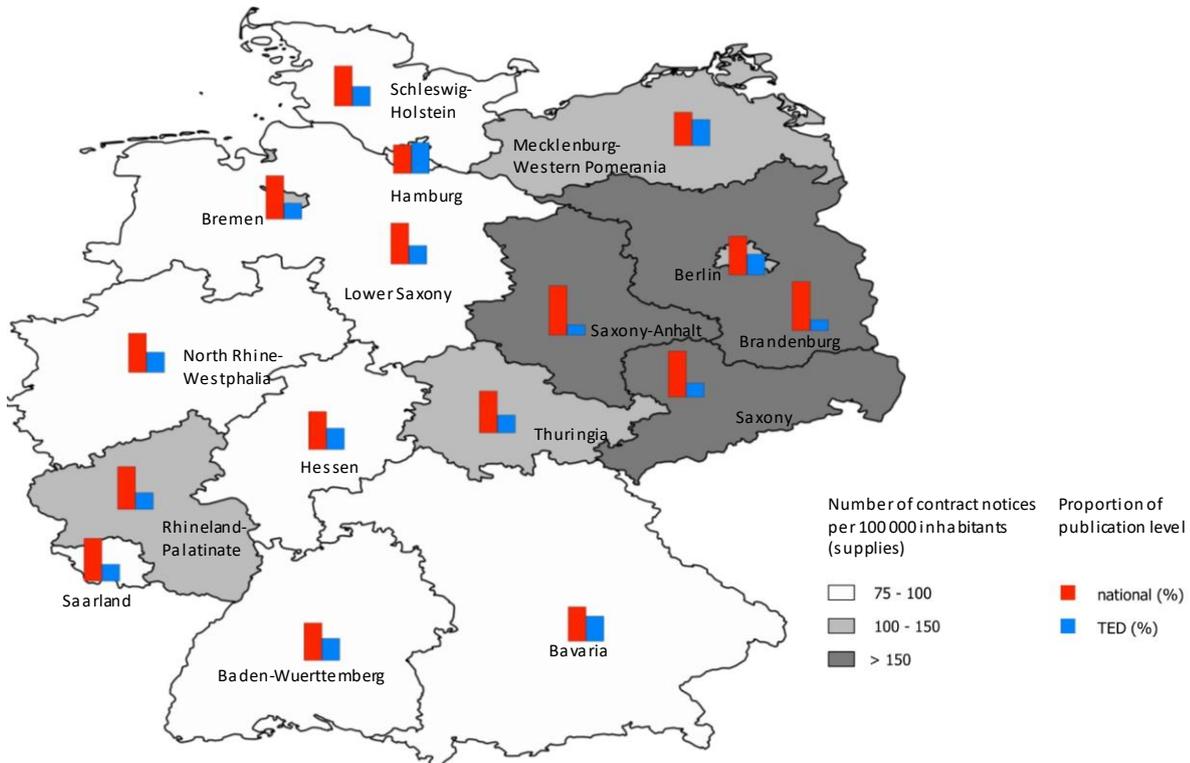
Figure 11 and Figure 12 depict contract notices separated according to supplies, and services. It was evident that the percentages of contract notices at the EU level tended to be distinctly higher than for works. On the other hand, both analyses showed a very similar pattern in the total number of all contract notices per 100 000 inhabitants.

In sum, the analyses generally showed a very similar picture of the differences between the *Länder* both in relation to the total number of all contract notices and in relation to the separate individual types of procurement subject (works, supplies, services).

Significant differences between the publication activities were most evident in the area of contract notices at the national level. The former East German *Länder* tended to publish more contract notices per 100 000 inhabitants than the other *Länder*. But only in Saxony-Anhalt, Brandenburg, and Free State of Saxony was this difference substantial, whereas Free State of Thuringia showed a weaker tendency in this regard. For Mecklenburg-Western Pomerania, this tendency could only be seen in relation to the procurement subject supplies. Schleswig-Holstein, the city-state Hamburg, and North Rhine-Westphalia had by far the lowest numbers of contract notices per 100 000 inhabitants in relation to all types of procurement subject.

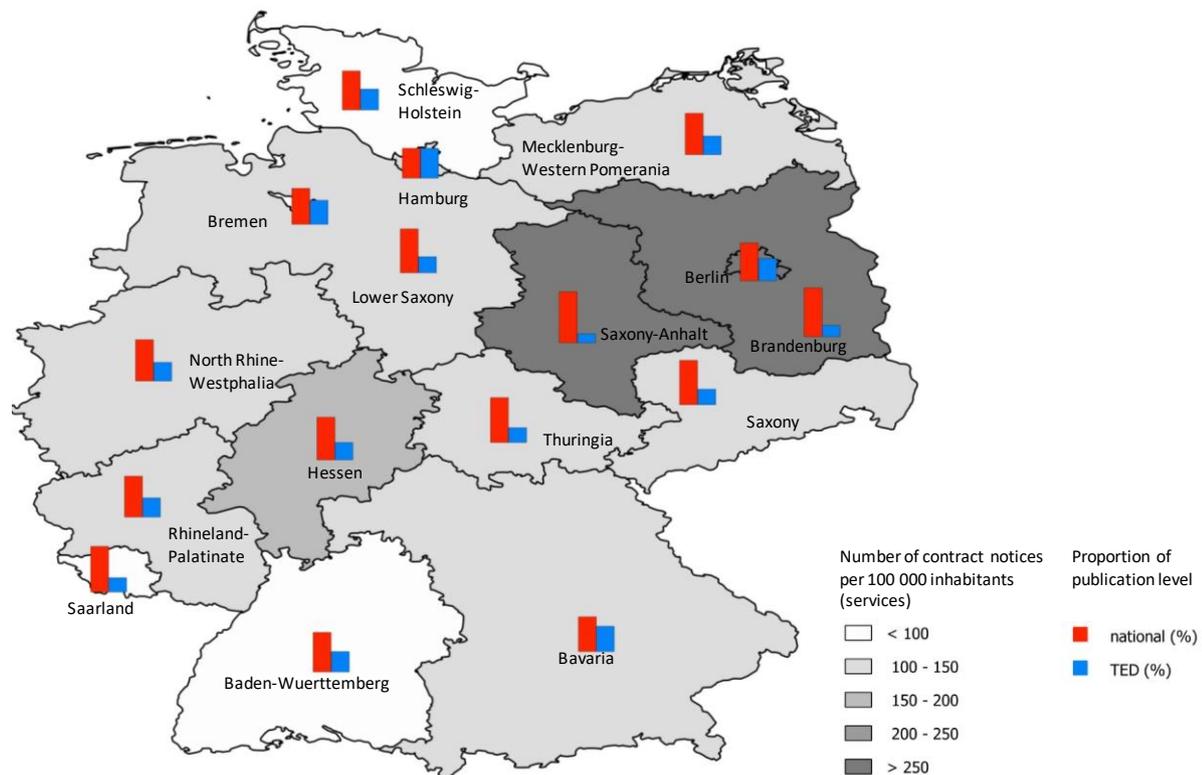
The number of contract notices per 100 000 inhabitants published at the EU level showed less variation. In this regard, the Free State of Bavaria and the city-state Hamburg had the highest number of contract notices per 100 000 inhabitants. The lowest figures were found in Schleswig-Holstein and Saarland. Very low figures were also found in Lower-Saxony, Baden-Württemberg, North Rhine-Westphalia, the city-state Bremen, and Rhineland-Palatinate.

Figure 11: Number of contract notices for supplies per 100 000 inhabitants and proportions of publication levels per *Land*



Source: DTAD

Figure 12: Number of contract notices for services per 100 000 inhabitants and proportions of publication levels per *Land*



Source: DTAD

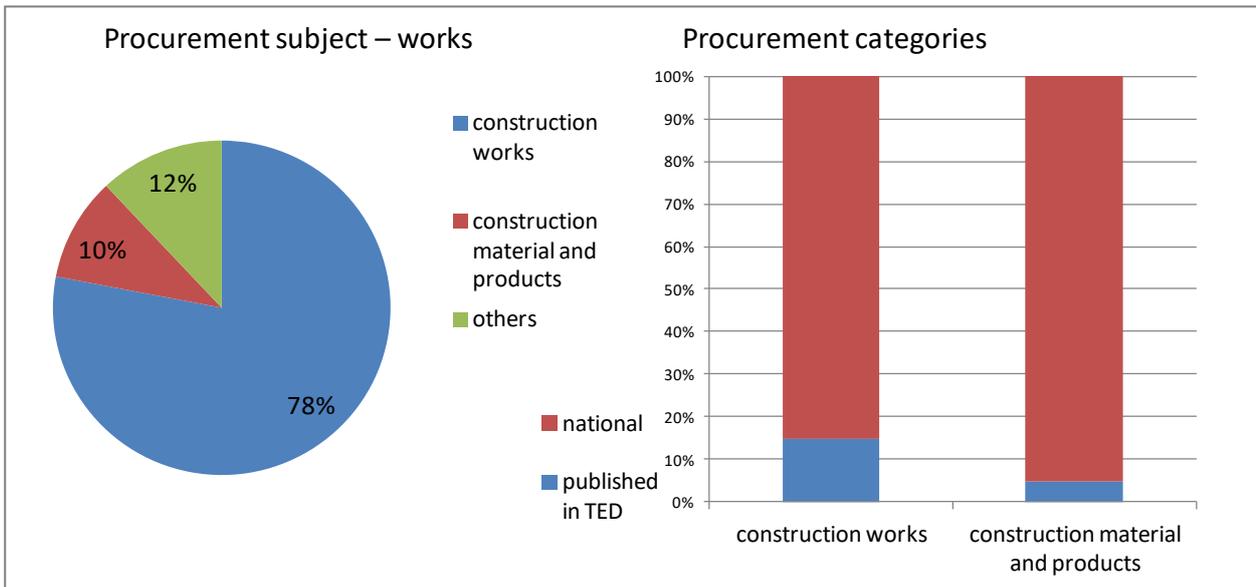
As a result a distinct east-west differential was to be seen. The number of contracts notices in the former East German *Länder* was almost double that of the other *Länder*. However, these differences were primarily in relation to nationally published contract notices, whereas the number of awards tendered EU-wide per 100 000 inhabitants was roughly the same everywhere. Relatively speaking, the percentages of contract notices at the EU level (in terms of numbers) tended to be lower in the former East German *Länder*.

**2.3.5. Assessment based on subcategories per procurement subject**

The TED system uses CPV codes to describe the contents of the procurement subjects of contract notices. CPV codes are also allocated to EU-wide contract notices in the DTAD data base. However, these codes are not used or are rarely used for classifying national contract notices. Instead, DTAD uses its own classification system for EU-wide and national contract notices. The analysis of contract notices was therefore carried out using the DTAD system.<sup>27, 28</sup>

The evaluation of the procurement subject works showed that 78% of the contract notices for works fall within the subcategory ‘construction works’ (ratio of EU-wide procurements: 15%) and a further 10% within ‘construction material, construction products’ (ratio of EU-wide procurements: 5%). The remaining 12% of works contract notices were widely distributed among the remaining subcategories. (see Figure 13).

Figure 13: Number of contract notices for works in the period 2011 to 2015 by subcategories and publication levels [in %]



Source: DTAD

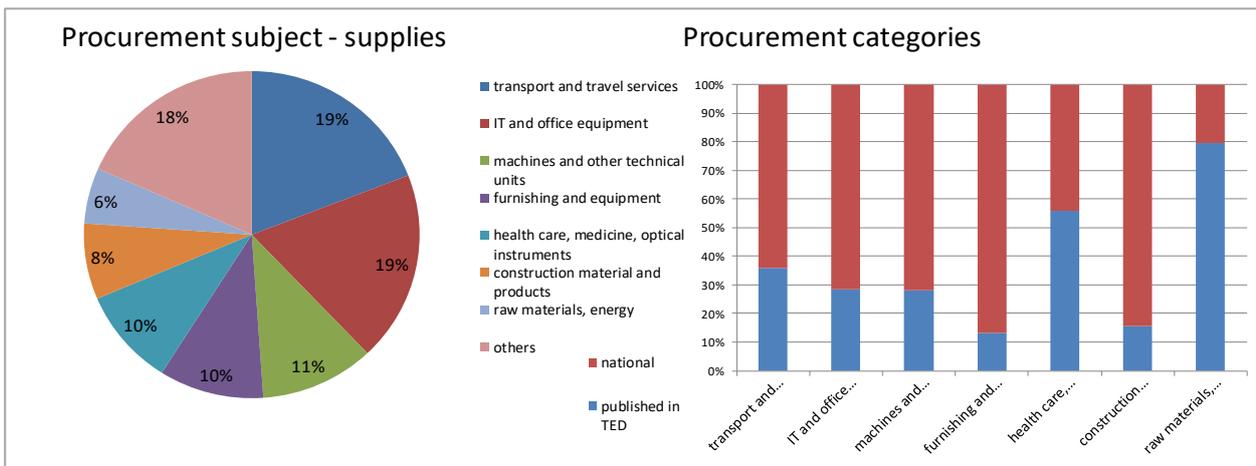
The analysis of the procurement subject supplies showed a much wider distribution among the subcategories. Areas of concentration were found in the subcategories ‘transport and travel

<sup>27</sup> The DTAD system uses a scheme similar to the CPV but with fewer subcategories. It uses 16 principal categories and 325 subcategories.

<sup>28</sup> A contract notice might be assigned to more than one category in order to describe the procurement subject more precisely and to increase the user’s chances of finding it. The analyses made in this study do not take into account multiple assignments. They rely on the first category used since it is likely to be the ‘closest’ one and therefore the most determinative.

services’ and ‘IT and office equipment’ (around 19% each). Each of the subcategories ‘machines and other technical units’, ‘health care, medicine, optical and measurement instruments’, and ‘furnishing’ was around 10%; ‘construction materials’ and ‘raw materials, energy’ range somewhere between 6% and 8% each. The contract notices published EU-wide were, in terms of their percentages, widely spread out as well. The subcategories ‘furnishing’ and ‘construction materials’ at 15% were at the lowest end of the spectrum, whereas 80% of the contract notices for ‘raw materials, energy’ were published at the EU level (see Figure 14).

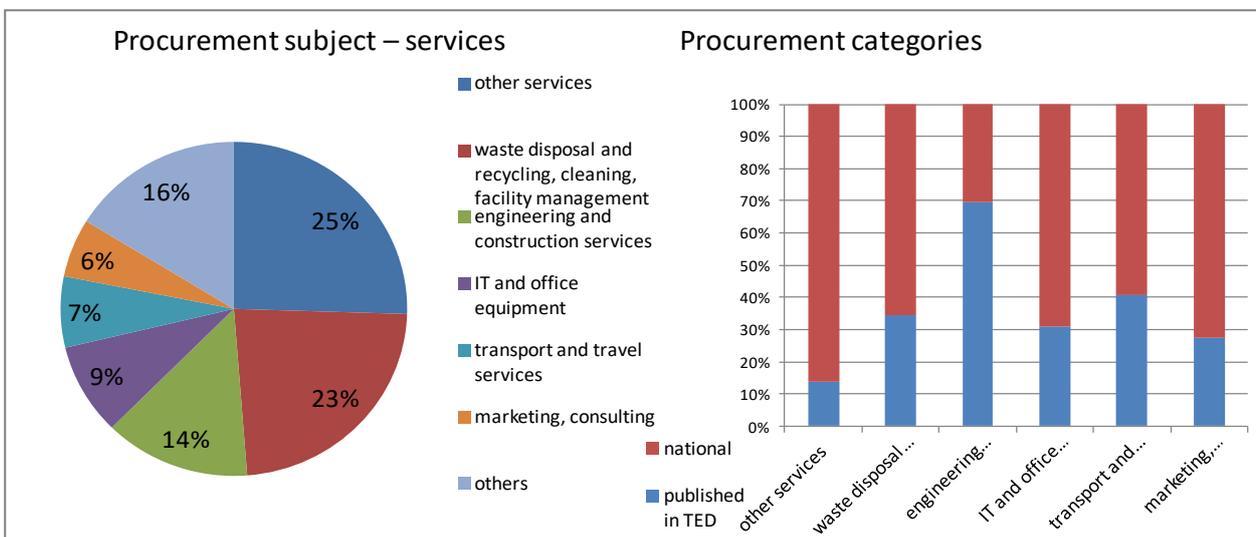
Figure 14: Number of total contract notices for supplies in the period 2011 to 2015 by subcategories and percentages of publication levels [in %]



Source: DTAD

This analysis similarly revealed a wider distribution among the subcategories of the procurement subject services. Concentrations were found, however, in the subcategories ‘other services’ (25%), ‘disposal, cleaning, facility services’ (23%), and ‘engineering and construction services’ (14%). ‘IT and office equipment’ was represented at around 9%, ‘transport and travel services’ at 7%, and ‘marketing, consulting’ at 6%; nearly 16% was spread out among other categories. The largest share of contract notices published at the EU level was for ‘engineering and construction services’ (70%) and the smallest share was found for the subcategory ‘other services’ (15%) (Figure 15).

Figure 15: Number of total contract notices for services in the period 2011 to 2015 by subcategories and percentages of publication levels [in %]



Source: DTAD

## 2.4. Analysis of statistical data

Although the Federal Statistical Office does not provide explicit procurement statistics, one can regard the public expenditure for procurements as being equivalent to the total government procurement volume of works, supplies, and services. This is also the approach taken by the EU, which regards the total government expenditure for works, supplies, and services as the equivalent of the (national) total public procurement volume in PPI 2015 (Anon., 2016).

This study therefore used statistical data on the public expenditure on works, supplies, and services to calculate the total public procurement volume in Germany.

It is to be noted, that the figures included in the calculation of the procurement volume also contain procurements that were not governed by procurement law. They also include double payments (e.g. through payments within government levels), and although these may very well represent substantial amounts, they cannot be eliminated from the calculation on the basis of the statistical data available.

The public-budget statistics of the Federal Statistical Office were good sources from which reasonable inferences could be drawn. The specific sources relied on in the study were the ‘calculation results of the public budget’ for the years 2007 to 2011 and the ‘quarterly treasury results of the public budget’ for the years 2012 to 2015. This data was published annually albeit somewhat delayed.<sup>29, 30, 31</sup>

Important to bear in mind here, however, is that a substantial portion of procurement spending was not made directly by the administrative authorities but by outsourced public funds and institutions and by other public entities (collectively referred to here as ‘public entities’). The German term is ‘*FEU*’, which stands for ‘*öffentliche Fonds, Einrichtungen, and Unternehmen*’. Information on the expenditures and investments made by these was found in the publications ‘Statistical Yearbook’ for the years 2013 to 2016. Because this kind of information was published with a two-year delay, only the yearbooks up to 2013 were available in any kind of detailed way for this study.<sup>32</sup>

Since publicly owned sector contractors (so-called ‘*Sektorenauftraggeber*’ under the [German] Sector Regulation (SektVO)) were included in the public entities statistics, they were also included in the estimate of total German procurement volume. But since there was no official statistical data available for privately owned sector contractors, these contracting authorities could not be included in the following estimates of the total German procurement volume.

### 2.4.1. Analysis of procurement volumes of public authorities (core administration)

The official fiscal statistics [‘*amtliche Statistik*’] contained all the expenditures made by the public authorities as per their public budgets. Included in these were the costs of administration (mainly labour costs) as well as external costs and transfer payments. For estimating procurement volumes, the relevant individual items for recurring operating expenses and real investments were combined. These included the costs of maintaining real property, other material administrative expenses, military procurements and facilities/equipment, reimbursements made to other areas, and other contributions for recurring purposes (collectively material administrative expenses) as well

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<sup>29</sup> Source: (Bundesamt, 2007; 2008; 2009; 2010; 2011).

<sup>30</sup> Source: (Bundesamt, 2012; 2013; 2014).

<sup>31</sup> Quarterly data was used in some cases instead of annual data due to an unreliable availability of data.

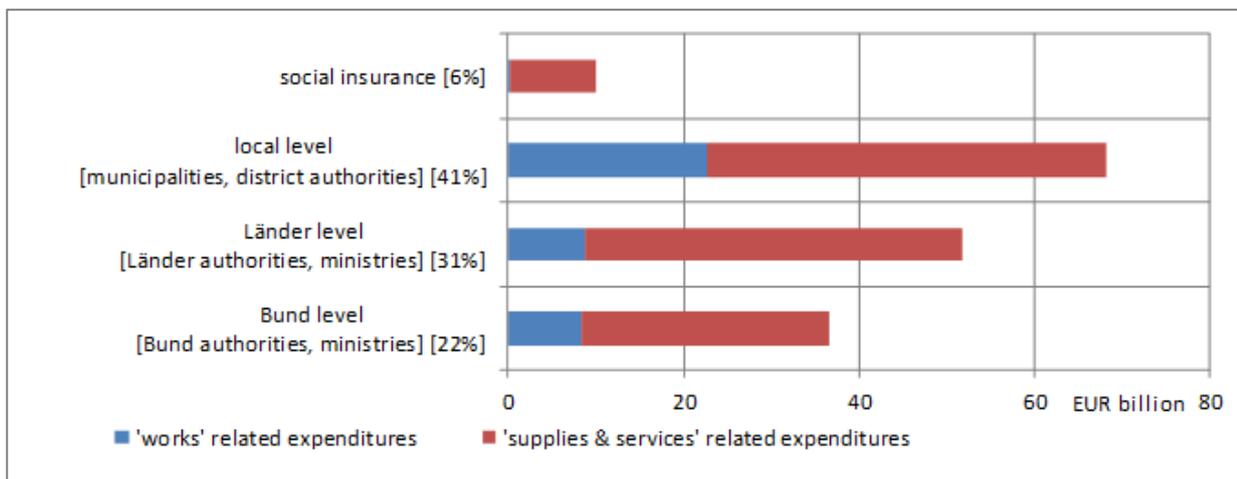
<sup>32</sup> Source: (Bundesamt, 2010; 2011; 2012; 2013; 2014; 2015; 2016).

as the items building investments and acquisitions of fixed assets (real investments). The individual items were then combined in procurement volumes for works and procurement volumes for supplies and services. It is to be noted here, that this classification was not necessarily completely correct since the classification did not distinguish items in the same way than the procurement system.

For the year 2013, the estimated procurement volume of public authorities was EUR 167 billion. In 2013, local authorities (municipalities and district authorities) accounted for 41% of this, the *Bund* level for 22%, and the *Länder* level for 31% (Figure 16).

Works-related volume (respectively property investments) accounted for EUR 40 billion and supplies and services-related volume for EUR 127 billion.<sup>33</sup>

Figure 16: Percentages of procurement volumes of public authorities per administrative level (derived from the 2013 public budget)



Source: Federal Statistical Office<sup>34</sup>

For informational purposes only, the total public budget in 2015 showed supplies and services-related expenditures of EUR 137 billion and property investments of EUR 47 billion, an increase of around 10%. However, the proportional distribution of the partial totals for administrative expenditures and property investments among the administrative levels was basically the same as 2013.

A review of distribution based on administrative levels clearly showed that the item 'other materials expenditures' was considerably higher at the *Bund* and *Länder* levels than it was at the local level. This was consistent with the fact that these costs also included state expenditures particularly for such things as defence and security, which played a larger role at the *Bund* and *Länder* levels. What also became apparent, however, was that expenditures for construction measures were significantly higher – proportionately and absolutely – at the local level than at the *Bund* and *Länder* levels. The same applied to the expenditure item supplies and services. It could generally be

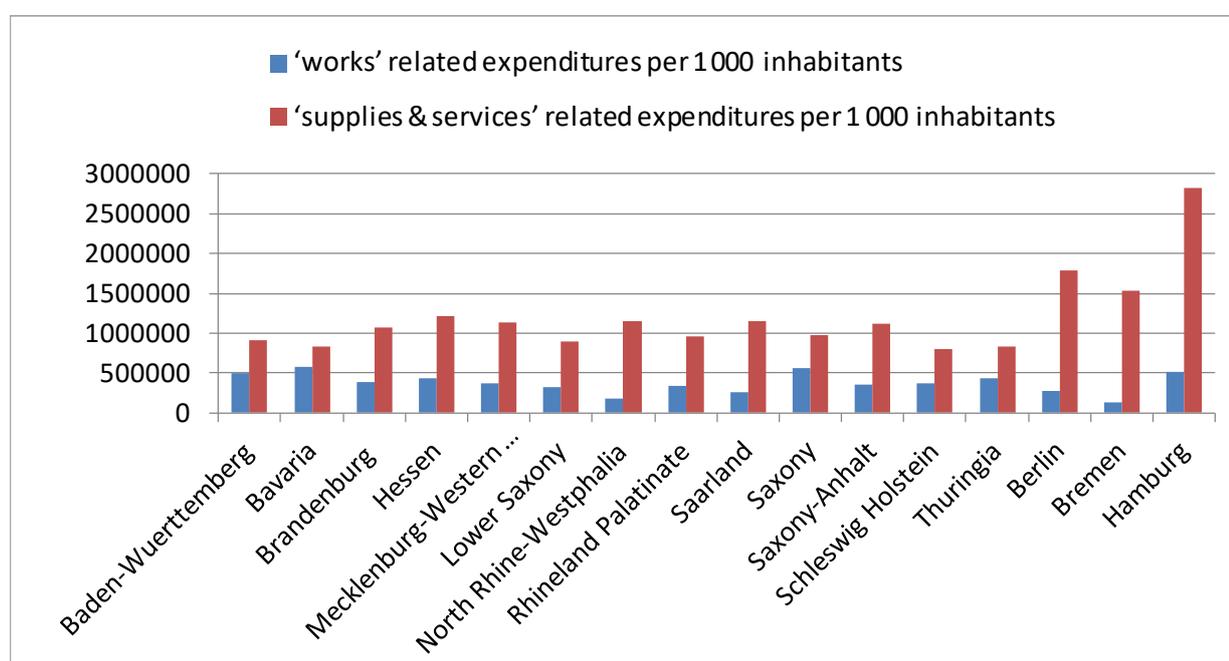
<sup>33</sup> The most current statistics regarding public entities (the significance of which is already shown by the evaluation of the DTAD data) were available for the year 2013 only. The analyses shown here therefore only relate to public budgets for the period 2010 to 2013 even though corresponding figures were available up to 2015.

<sup>34</sup> See Table 33.

inferred from this that the majority of responsibilities in relation to real estate (construction and operation) were carried out at the local level (see Table 33).

The expenditures made by the *Länder* and at the local levels also showed regional differences (see Figure 17). However, the regional distribution did not include expenditures made at the *Bund* level so that a concrete comparison with the number of contract notices (including procedures at *Bund* level) would have been inexact. It can nevertheless be seen that the three municipalities that are simultaneously *Länder* (i.e. city-state Hamburg, Berlin, city-state Bremen) had the highest expenditures for supplies and services per 1 000 inhabitants. Nothing specifically relevant to the study could be inferred from the comparison of the other *Länder* or from a comparison in relation to works.

Figure 17: Regional distribution of estimated procurement volumes of public authorities per *Land* (derived from the 2013 public budget)



Source: Federal Statistical Office

#### 2.4.2. Analysis of procurement volume of public entities

Since the 1990s, public responsibilities in Germany have been widely privatised or removed from the areas of competence of the core administrations through the establishment of public entities in a variety of legal forms. And although there has been an increasing trend in recent years towards bringing public services back into the organizational structures of the public authorities (the so-called '*Rekommunalisierung*'), the Federal Statistical Office showed that there were still 15 314 of such public entities in 2013. Because 2013 is the last year for which the statistic was available in adequate detail, the following analysis refers to this year.<sup>35</sup>

The estimated procurement volume of public entities was derived from the expenditure item supplies and services-related expenditures plus the 'increase in property assets' (referred to as 'property investments'). The respective numbers are presented in Table 3. Accordingly, the total

<sup>35</sup> Although the statistics only cover entities using economic accounting, the number of entities using fiscal accounting has been decreasing steadily in recent years. The statistics also cover sector contractors in the area of public property regardless of their legal form.

estimated procurement volume allocable to public entities was EUR 302.8 billion for 2013. Property investments (attributable to works) once again accounted for approximately 17% of the total procurement volume.

Table 3: Expenditures, investments and estimated procurement volume of public entities in 2013

	<b>Property investments (works-related expenditures) (in EUR million)</b>	<b>supplies and services-related expenditures (in EUR million)</b>	<b>Procurement volume (Sum of property investments and supplies and services-related expenditures) (in EUR million)</b>	<b>Number of entities</b>
<b>Total</b>	<b>51 036</b>	<b>251 792</b>	<b>302 828</b>	<b>15 314</b>
<b>Percentage</b>	<b>17%</b>	<b>83%</b>	<b>100%</b>	

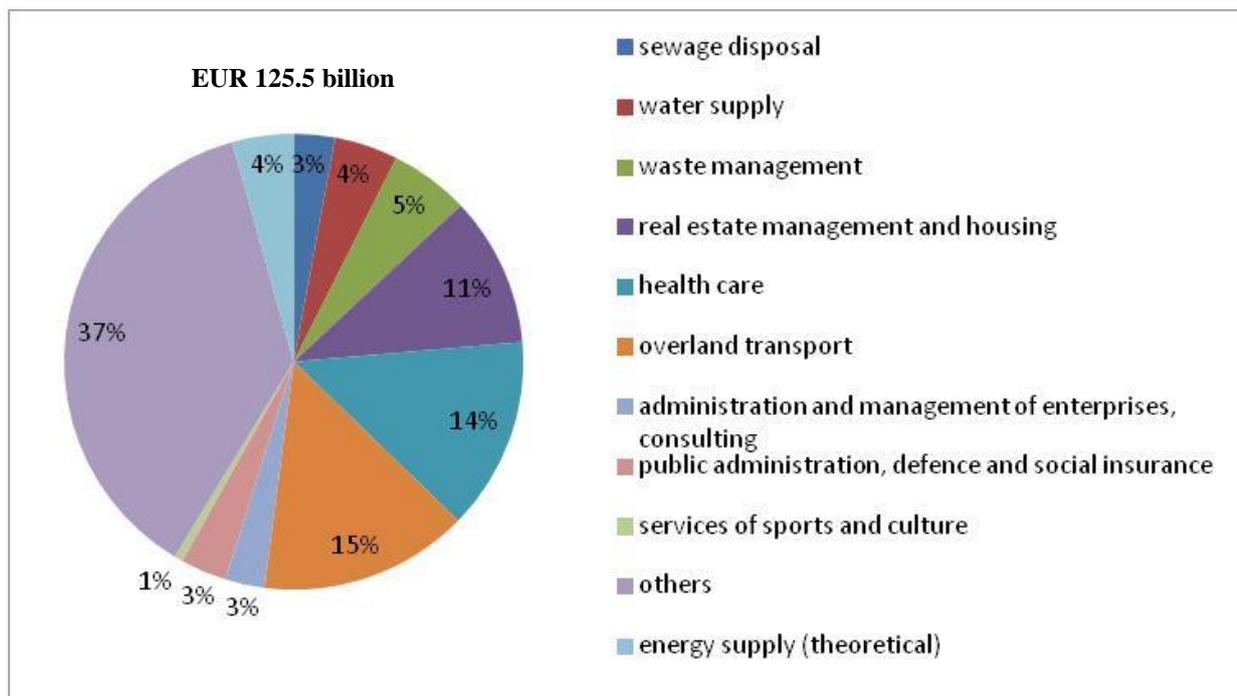
Source: Federal Statistical Office

The statistics on the public entities unfortunately did not allow any inferences to be drawn about the regional distribution of the expenditures. It was therefore not possible to make an overall presentation of this together with the results of the public budgets.

The statistics on public entities did allow, however, a differentiation according to sectors. But because the financial statements of the public budgets did not identify these sectors, it was not possible to make an overall presentation here either. The following presentation is therefore based exclusively on the expenditures of the public entities.

The major share (about 60% or EUR 150 billion) of supplies and services-related expenditures was attributable to public entities in the energy supply sector. This can only be explained by the fact that the core business activity in the energy supply sector is the purchasing and distribution of energy, referred to as energy trading. The only way to resolve this distortion was to eliminate energy trading expenditures from the calculation. For our calculation, the material expenditures of public entities in the energy supply sector were stated using the average expenditures of other utilities. This had to be done on account of the absence of relevant information.

Figure 18: Percentages of supplies and services-related expenditures made by public entities in 2013 per economic sector (without energy trading); SUM of expenditures is EUR 125.2 billion



Source: Federal Statistical Office

When energy trading was eliminated from the overall picture, ‘health care’, ‘real estate management and housing’, and ‘overland transport’ each accounted for more than 10% of total material expenditures (see Figure 18). The sectors in the item ‘others’ were also very relevant for the overall amounts.<sup>36</sup>

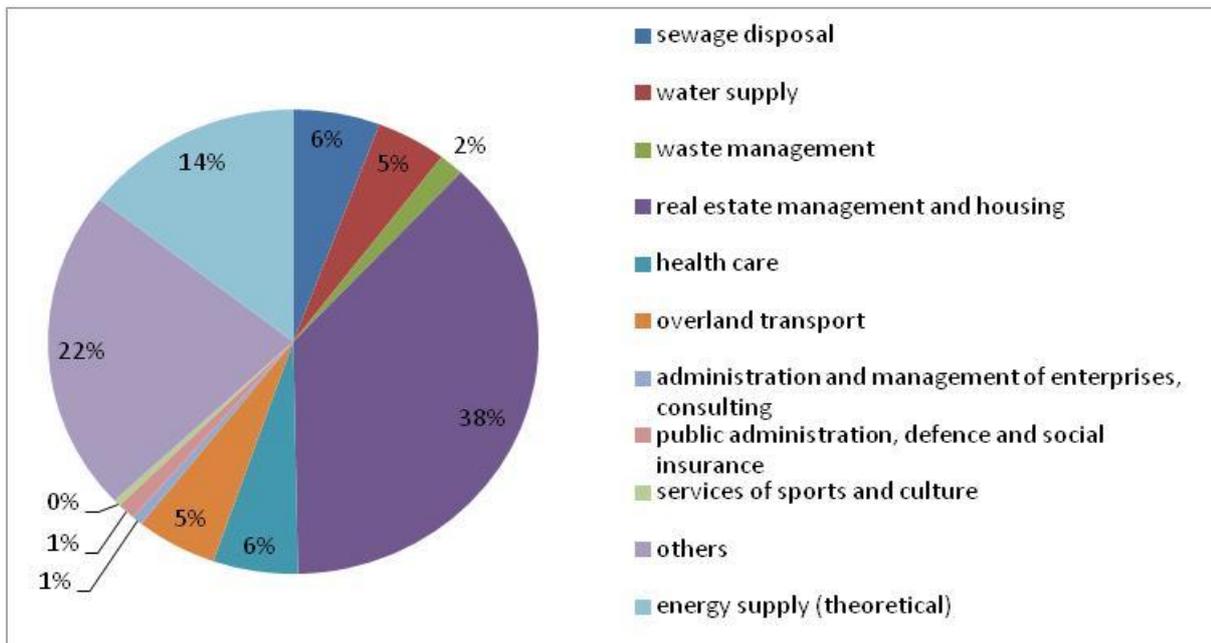
In Chapter 2.3.5 the number of contract notices in the subcategories of supplies and services, the areas ‘health care’, ‘transport and travel services’, ‘engineering and construction services’, and ‘waste disposal’ were strongly represented (see Figure 6). These corresponded to the shares of the expenditures of the public entities presented here, each of which was significant.

A different picture emerged with respect to the item ‘property investments’. Here, 38% of expenditures were for ‘real estate management and housing’. The sectors in the item ‘others’ were once again of importance (see Figure 19). The sector ‘others’ contains those institutions responsible for providing significant aspects of the public infrastructures, examples of which include the:

- water supply system,
- sewage disposal system,
- energy supply system, and
- road and rail networks.

<sup>36</sup> ‘Others’ includes a variety of different sectors such as agriculture, mining, construction, information and communications, education, etc. A more detailed set of data comparing the sectors was not available.

Figure 19: Percentages of property investments made by public entities in 2013 per economic sector



Source: Federal Statistical Office

According to the Federal Statistical Office, 88% of all public entities in 2013 were owned at the local level (municipalities and districts), 10% were owned at the *Länder* level, and 1% was owned each by the *Bund* level and by the social welfare insurers.<sup>37</sup>

Although public entities were found at the local level in all of the sectors listed above, nearly all public entities in the utilities and waste-disposal sectors belonged to municipalities and district authorities. This clearly corresponded to the public-service responsibilities of the public administrations at the local level, whose core areas of responsibility include the supplying of utilities and waste-disposal services.

Public entities at the *Länder* level were found in the areas of ‘real estate management and housing’, ‘public administration, defence, social insurance’, ‘health care’, and ‘transport’. However, the data on the allocation of public entities to a particular administrative level only included the number of entities.

#### 2.4.3. Estimate of the total public procurement volume

Based on the analysis of the data on expenditures for works and supplies and services reported in the statistics for the public budget and for the public entities, presumptions could be made about the total procurement volume in the public sector.<sup>38</sup> Accordingly, the estimated total public procurement volume could be calculated as the sum of the respective total expenditures for works and supplies and services .

<sup>37</sup> Source: (Bundesamt, 2014).

<sup>38</sup> It should be noted once again that no information about privately owned entities can be included. But since publicly owned contractors are included in the context of public entities data, the calculation gap is likely to be negligible for the purposes of this examination.

The most recent – and sufficiently detailed – statistical data available for both the public budget and for public entities was for 2013. According to the most recent data available, the estimated total German public procurement volume in 2013 was EUR 469 billion with energy trading and EUR 324 billion without energy trading (see Table 4).<sup>39</sup>

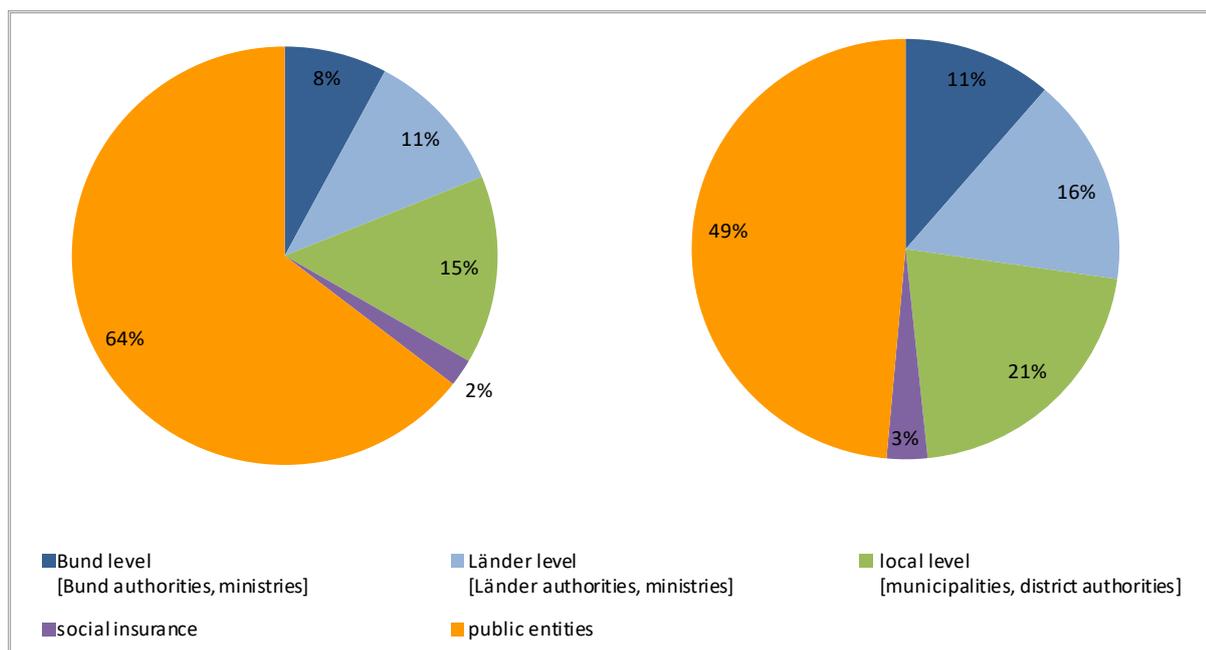
A projection with the consumer price index for Germany between 2013 and 2015 of 1.1% resulted in a total procurement volume of EUR 327 billion, rounded off to EUR 330 billion.<sup>40</sup>

Table 4: Estimate of total public procurement volume in Germany in 2013

	<i>Bund</i> level	<i>Länder</i> level	Local level	Social insurance	Public entities	Total
Procurement volume (in EUR billion) with energy trading	36.6	51.8	68.3	10.0	302.8	<b>469.5</b>
Procurement volume (in EUR billion) without energy trading	36.6	51.8	68.3	10.0	157.5	<b>324.2</b>

Source: Federal Statistical Office

Figure 20: Percentages of estimated total procurement volume in 2013 with energy trading (left) and without energy trading (right)



Source: Federal Statistical Office

A breakdown in terms of percentages is shown in Figure 20. It is clear that 49% (without energy trading) and 64% (with energy trading) of the estimated total procurement volume related to public

<sup>39</sup> The figures included in the calculation of the procurement volume also contain procurements that are not governed by procurement law. They also include double payments (e.g. through payments within government levels), and although these may very well represent substantial amounts, they cannot be eliminated from the calculation on the basis of the statistical data available.

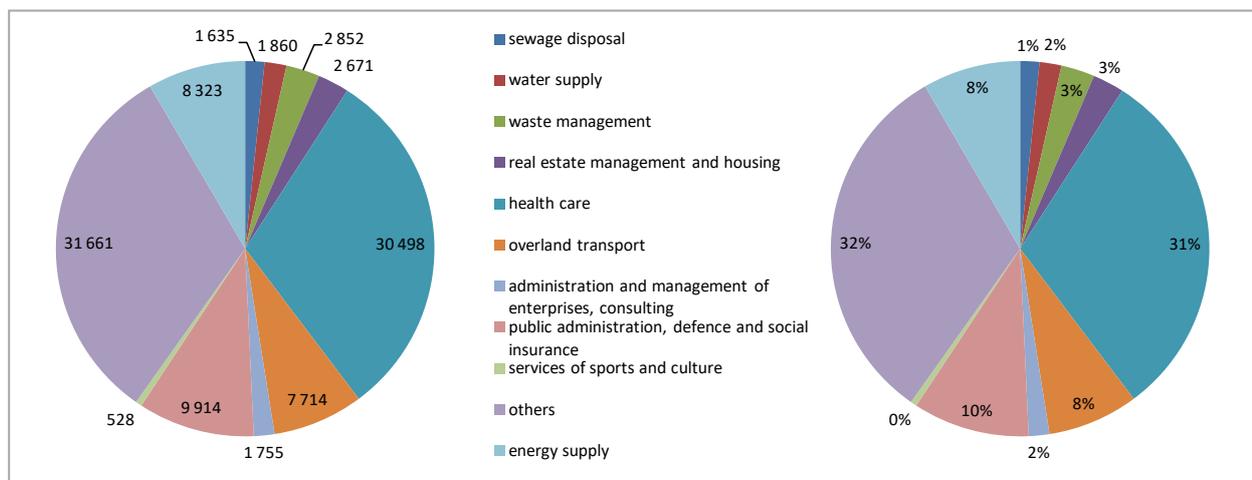
<sup>40</sup> Other effects, such as increases or decreases in state spending, are being ignored here.

entities. The authorities at the *Bund* level, *Länder* levels, and social insurance together accounted for around one-third of the total procurement volume (without energy trading). Assuming that around 85% of local public entities were also accountable for around 85% of procurement volume, then approximately 63% of the total procurement volume in Germany was found at the local level.

The procurement volume shown already includes works and supplies and services procured externally on the open market by the public authorities and by their associated public entities. Not included are services provided internally by the public entities themselves, which logically were not procured on the market. Although such services are not basically regarded as ‘in-house’ services, the labour costs expended on them by the public entities serve as indicators of the potential market values of such services.

Figure 21 below shows the labour costs expended by public entities in the individual economic sectors (EUR 99.4 billion). To be kept in mind when interpreting the graph is that only a portion of the labour costs could be used as a basis for determining potential additional procurement volume. This is because some of the services provided by public entities had – for organisational reasons – been outsourced to economic units external to the public administration. If for whatever reason such ‘in-house’ organised outsourcing was no longer allowed, a large number of public entities would most certainly be reintegrated back into the public administration. The recent trend towards re-municipalisation would be drastically intensified in such a case.<sup>41</sup>

Figure 21: Labour costs of public entities in 2013 per economic sector in EUR billion (left) and % (right)



Source: Federal Statistical Office

Nonetheless, the services that public entities provided using their own employees could theoretically be regarded as the maximum ‘in-house’ expenditures and could therefore be added to the total procurement volume.<sup>42</sup>

Therefore, the estimated total procurement volume for 2013 – including the estimated maximum ‘in-house’ expenditure – would total EUR 424 billion: EUR 324 billion (without energy trading) plus EUR 100 billion in labour costs for public entities for the economic sectors. This amount is

<sup>41</sup> See Libbe, Jens et al., *Rekommunalisierung – Eine Bestandsaufnahme* [Remunicipalisation – The Current Situation], Difu-Papers, 2011.

<sup>42</sup> This would be of particular importance when international comparisons would be made pursuant to which total procurement volumes and volumes within individual sectors would be compared. Particularly in ‘others’, ‘health care’, ‘overland transport’ and ‘public administration, defence and social insurance’, large percentages of internally provided services are found, which may be organised differently in other countries.

roughly equivalent to the EUR 426 billion expenditure calculated by the EU as the procurement volume for Germany.

## 2.5. Attempt to estimate the shares of the various procurement procedures of the total procurement volume

A purpose of this study was to estimate the number and the overall value of contracts that were not tendered on an EU-wide basis. Since no statistics capable of providing a holistic picture of the quantity and the values of such contracts were available, the number (of contracts not tendered EU-wide) being sought could only be indirectly inferred from the number of contract notices (see Chapter 1.2), the estimated total procurement volume (see Chapter 2.4), and from several other individual statistics.

Based on the data presented in Annex 1B, the following estimates were made.

### 2.5.1. Estimate of the value of contracts awarded via public procurement procedures

#### Value of contracts awarded EU-wide via public procurement procedures

In PPI 2015 (Anon, 2016), a contract value of contracts awarded EU-wide for 2015 was estimated at EUR 27.57 billion (excluding utilities and defence). If this nearly EUR 30 billion is deducted from the potential total procurement volume estimated for 2015 (EUR 330 billion, see chapter 2.4.3), then the overall contract value for nationally awarded contracts is around EUR 300 billion.

As an alternative to the PPI 2015 estimates an estimation was calculated based on values from the procurement statistics available for the contracting authorities (see Table 5). For this calculation the result was an EU-wide contract value in the range of EUR 20 billion (averages from Dresden) to EUR 55 billion (averages from Leipzig). The numbers of contract notices for calculation were taken from Table 6.

Table 5: Average contract values of contracts awarded EU-wide and estimated totals of contract values<sup>43</sup>

Authority providing the statistic	Works [in EUR '000s]	Supplies [in EUR '000s]	Services [in EUR '000s]	Contract value [in EUR billion]
NPI 2015 (excluding contracts > EUR 100 million)	955	1 098	1 073	
Federal Ministry of Economic Affairs and Energy (BMWi) <sup>44</sup>	1 596	1 462		43.1
State Government of Saxony	No information available			
City of Leipzig <sup>36</sup>	464	3 144		55.7
City of Dresden	672	572		17.5
City of Eberswalde <sup>36</sup>	207	1 595		27.9

Source: Procurement statistic PPI 2015, BMWi, State Government of Saxony, Leipzig, Dresden, Eberswalde

<sup>43</sup> Services and supplies were not differentiated in the procurement statistics of the contracting authorities.

<sup>44</sup> The averages were calculated from a detailed analysis of procurement statistics during the elaboration of the case studies according to Chapter 5.

Table 6: Number of contract notices in TED in 2015

	Works	Supplies	Services
Number of contract notices in TED in 2015	12 462	6 679	9 199

Source: DTAD

Value of contracts awarded nationally via public procurement procedures

As a result of the preceding estimation, the total procurement volume not being awarded via EU-wide public procedures can be presumed in the range of around EUR 275 billion to EUR 310 billion.

It cannot be inferred from this, however, that this procurement volume had to have been procured via national public procurement procedures. This is because the presumed total procurement volume—to a considerable albeit unidentifiable extent—includes procurements that were awarded via non-public procedures or are not subject to procurement law or are double payments.<sup>45</sup>

Accordingly, it was necessary to estimate the average contract values for contracts awarded nationally by public or non-public procurement procedures. Taking into account the limitations discussed in Annex 1B, the analysis of the procurement statistics gave rise to the following average contract values for the period 2011 to 2015:

Table 7: Average contract values for contracts awarded nationally by public or non-public procurement procedures in the period 2011 to 2015

Authority providing the statistic	Works [in EUR '000s]	Supplies [in EUR '000s]	Services [in EUR '000s]
State Government of Saxony			
National public procedures	217	45	
<i>Beschränkte Ausschreibung</i> procedures (non-public procedure)	48	13	
<i>Freihändige Vergabe</i> procedures (non-public procedure)	4	4	
City of Leipzig			
National public procedures	107	745	
<i>Beschränkte Ausschreibung</i> procedures (non-public procedure)	64	44	
<i>Freihändige Vergabe</i> procedures (non-public procedure)	32	352	
City of Dresden			
National public procedures	269	94	

<sup>45</sup> The figures included in the calculation of the procurement volume also contain procurements that are not governed by procurement law. They also include double payments (e.g. through payments within government levels), and although these may very well represent substantial amounts, they cannot be eliminated from the calculation on the basis of the statistical data available.

<i>Beschränkte Ausschreibung</i> procedures (non-public procedure)	40	40
<i>Freihändige Vergabe</i> procedures (non-public procedure)	22	8
City of Eberswalde		
National public procedures	104	111
<i>Beschränkte Ausschreibung</i> procedures (non-public procedure)	35	31
<i>Freihändige Vergabe</i> procedures (non-public procedure)	14	18

Source: procurement statistics State Government of Saxony, Leipzig, Dresden, Eberswalde

There was an extremely wide spread not only among the average contract values. As already stated, the lack of data made it impossible to identify the reasons for this.

The contract values in the three cities included in the study were affected for example by the following – counteracting – factors:

- The respectively applicable city-specific procurement policies stipulated the threshold values up to or below which *Freihändige Vergabe* procedure and/or *Beschränkte Ausschreibung* procedure were permitted. The lower these thresholds are, the lower the average values for all three types of awards derived from the statistics will tend to be.<sup>46</sup>
- The contract values for determining inclusion (or not) in the statistics varied from one city to the other.
- The statistics also include those awards that were not, or that in certain cases were not, subject to a tender obligation (e.g. *Freihändige Vergabe* procedures instead of a public procurement procedure, national instead of EU-wide invitations to tender). The contract values of such awards were often quite high (e.g. service concessions), which tended to raise the average values derived for contract values.
- Very large individual contracts (e.g. for emergency rescue services, security services, landscaping, accommodation of refugees, etc.) significantly influenced the ascertaining of average values.
- The number of awarded contracts could differ from the number of conducted procurement procedures (contract notices) in the case of several lots.<sup>47, 48</sup>

The authors nonetheless presume that the average values presented are closer to the lower end of the representative range expectable for Germany. This is because the purchasing power index – a

<sup>46</sup> In Leipzig, for example, public invitations to tender were generally required upwards of EUR 25 000. Upwards of EUR 25 000 an exemption for example in the form of a *Beschränkte Vergabe* procedure is only possible if there are reasons for it.

<sup>47</sup> See Chapter 2.3.1 for explanation.

<sup>48</sup> In the case of the procurement statistics of the State Government of Saxony – even when requested by the Saxon State ministry for economic affairs, labour and transport – it was not possible to ascertain whether the statistics contain the number of procurement procedure (contract notices) or the number of awarded contracts (in the case of multi-lot tendering procedures, this is the number of lots).

close indicator of economic discrepancies among *Länder* – in the Free State of Saxony and Brandenburg was below the *Länder* average. Another reason is that the regional municipalities included here tended to have very low threshold values for compulsory national public procedures (e.g. the threshold in Leipzig for supplies and services is EUR 25 000), while the thresholds in other *Länder* were considerably higher.<sup>49</sup>

It is being presumed that the works, supplies, and services being requested in one *Land* by each of the contracting authorities were the same. On the basis of the results of the per *Land* analysis of the DTAD data (see Chapter 2.3.4), it is also being presumed that the statistics available for the State Government of Saxony and the City of Eberswalde (*Land* Brandenburg) were representative of a larger number of smaller awards rather than a small number of larger awards. This means that when the average contract values derived from the statistics for the State Government of Saxony are adjusted with the purchasing power differences between the other respective *Länder* an over-estimation of the contract values will not occur.

It is therefore not to be presumed that for example Saxony-Anhalt, in relation to the other *Länder*, had a significantly higher-than-average procurement volume in relation to national procurement procedures even though it had – in the *Länder* comparison of the number of contract notices per 100 000 inhabitants – a significantly higher number of national awards (see Figure 8). What is to be presumed instead is a procurement volume below the average of the other *Länder* due to its relatively low GDP and weaker purchasing power. What the comparison indicates is that the average contract values in Saxony-Anhalt were particularly low and that the contracts were being divided up in smaller units than in the other *Länder*. The same is true for Brandenburg.

Because of the aforementioned uncertainties with respect to the representative nature of the average contract values, the overall contract value in Germany is being estimated as a range of values.

In estimating awarded contract values procured in national public procedures at the ‘lower’ end of this range, the overall nationally awarded contract values for supplies and services and for works tend to be underestimated. Therefore, the average national contract values for Eberswalde are used for national awards.

At the ‘upper’ end of the range there is a tendency to overestimate the overall nationally awarded contract values for works and supplies and services. Therefore, the average values for Leipzig are being used.

The average values initially used for the estimates are indexed in the extrapolation with the purchasing power indices of the various *Länder* in order to take the different economic strengths in the *Länder* into account. In doing so, the average contract values used for the city-state Hamburg are increased by 25% since the purchasing power index in the city-state Hamburg is around 25% higher than it is in the Free State of Saxony.

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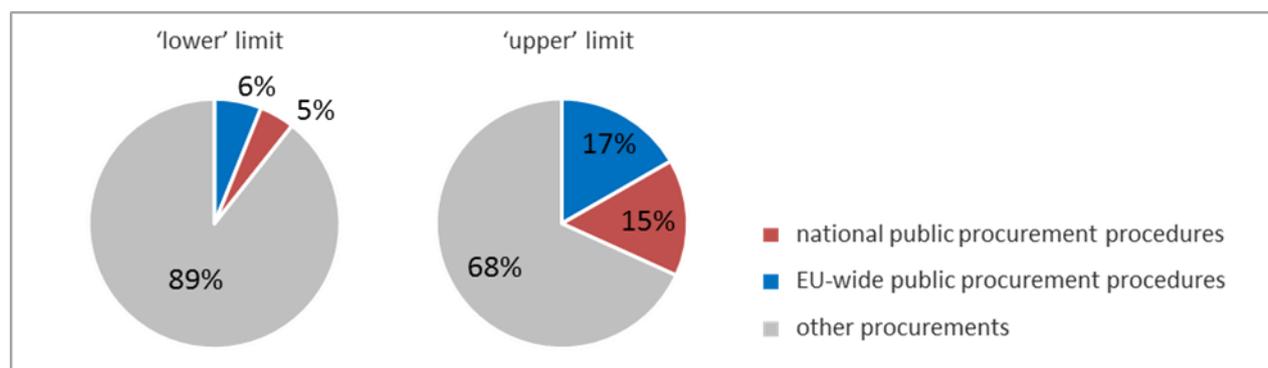
<sup>49</sup> The *Länder*-specific procurement regulations make no reference to the basic requirements that must be observed when procuring contracts with internal-market relevance, such requirements being inferred from the provisions and principles of the Treaty Establishing the European Community. The extent to which the contracting authorities nevertheless actually do or do not observe such principles is a point that could not be determined within framework of the study.

According to Table 34, the range of the total value of contracts awarded through national public procurement procedures (counted by published contract notices) was from around EUR 15 billion to EUR 50 billion annually<sup>50</sup>.

Value of contracts awarded via public procurement procedures (EU-wide and national)

As a result of the preceding estimation, the total value of contracts awarded via public procurement procedures (EU-wide and national) was between EUR 105 billion ('upper' limit) and EUR 35 billion ('lower' limit) annually (see Figure 22).

Figure 22: Shares of public procurement procedures (EU-wide, national) in the total procurement volume [in %]



Source: Own calculation based on procurement reports, DTAD data and Federal Statistical Office data

**2.5.2. Attempt to verify the value of contracts awarded via non-public procurement procedures**

If one assumes a total procurement volume for Germany of around EUR 330 billion for 2015 (as ascertained in Chapter 2.4.3), the annual procurement volume not being awarded via public procurement procedures was in the range of EUR 225 billion<sup>51</sup> (68%) to EUR 295 billion<sup>52</sup> (90%).

It cannot be inferred, that the share of potential procurement volume not being awarded via public procurement procedures was fully procured via non-public procurement procedures. This is because the presumed total potential procurement volume—to a considerable albeit unidentifiable extent—includes procurements that are not subject to procurement law and double counting of payments. Therefore, the following will attempt to verify – on the basis of a rough projection – the overall contract value that was not subject to an obligation for public tendering.<sup>53</sup>

The total value of contracts being awarded via non-public procurement procedures could be estimated based on average contract values for contracts awarded by *Freihändige Vergabe* procedures and by *Beschränkte Ausschreibung* procedures. For this purpose, these average contract values will

<sup>50</sup> The exact numbers were rounded.

<sup>51</sup> i.e. EUR 330 billion – EUR 105 billion = EUR 225 billion.

<sup>52</sup> i.e. EUR 330 billion – EUR 35 billion = EUR 295 billion.

<sup>53</sup> Double payments can be e.g. payments within government levels. They cannot be eliminated from the calculation on the basis of the statistical data available.

be assumed to be 50% of the thresholds applicable to these forms of procedures in the various *Länder* (see Table 39).<sup>54</sup>

For ascertaining the number of awarded contracts, the available procurement statistics are being relied on as representative of the procurement practices of the *Bund* contracting authorities or of the contracting authorities of the *Länder* (statistics of the State Government of Saxony), of municipalities with more than 200 000 inhabitants (City of Leipzig), and of municipalities with less than 200 000 inhabitants and district authorities (City of Eberswalde). These statistics show the following numbers of contracts awarded in the period 2011 to 2015:

Table 8: Number of contracts awarded nationally by public or non-public procurement procedures in the period 2011 to 2015 by the individual contracting authorities

Contracting authority	Total	Number of national contract awards 2011-2015					
		Public procedure		Non-public			
				<i>Beschränkte Ausschreibung</i> procedure		<i>Freihändige Vergabe</i> procedure	
		Works	Supplies and services	Works	Supplies and services	Works	Supplies and services
State government of Saxony	456 202	4 012	5 214	5 249	3 900	104 020	333 807
City of Leipzig	3 995	1 784	229	419	77	1 259	227
City of Eberswalde	1 078	247	77	59	54	194	447
<b>Total</b>	<b>460 197</b>	<b>6 043</b>	<b>5 520</b>	<b>5 727</b>	<b>4 031</b>	<b>105 473</b>	<b>334 481</b>
Share – works		5.2%		4.9%		90.0%	
Share – supplies and services			1.6%		1.2%		97.2%

Source: procurement statistics for State Government of Saxony, Leipzig, Eberswalde

It can be seen here that around 5.2% of works contracts were awarded nationally by public procurement procedures, whereas only 1.6% of contracts for supplies and services were awarded in this way. It is remarkable, that 90.0% of works contracts and close to 97.2% of contracts for supplies and services (see Table 35) were awarded pursuant to *Freihändige Vergabe* procedures.<sup>55</sup>

On this basis, a presumption can be made as to the number of contracts awarded pursuant to *Freihändige Vergabe* procedures and those awarded by *Beschränkte Ausschreibung* procedures using the number of nationally published contract notices stated in the DTAD data base. From this extrapolation, the total value of contracts awarded via non-public procurement procedures as per calculation of Table 36 is around EUR 540 billion for the period 2011 to 2015 and around EUR 110 billion on average in relation to 2015.

When interpreting this extrapolation, one must not forget the aforementioned limitations of the procurement statistics used. The contracting authorities of the State Government of Saxony – based

<sup>54</sup> Even if the resulting average contract values appear quite high, it is important to note here again that there is a range of services that, for a variety of reasons, were not under an obligation for public procurement procedures. These awards (e.g. service concessions) may raise the average contract value above the thresholds, as is the case in Leipzig with the average contract value of contracts for *Freihändige Vergabe* procedures.

<sup>55</sup> Please note, that Table 8 refers to contract awards while the evaluations of DTAD data in Chapter 2.1 refer to contract notices. The number of awarded contracts can differ from the number contract notices in the case of several lots.

on the number of awarded contracts – very often did not award contracts via public procurement procedures. In contrast, the procurement statistics from Leipzig and Eberswalde show significantly higher percentages of contracts that were awarded via public procurement procedures. One reason for this might be the fact that Leipzig did not document contract awards for supplies and services until 2013 under EUR 13 000 and after 2013 under EUR 25 000. The procurement statistics from Eberswalde did not contain contract awards under EUR 5 000. In addition, this extrapolation neglects to include those contracts that pursuant to special regulations in the period under investigation were not subject to a tendering obligation (e.g. service concessions), although these can significantly raise the average contract value of contracts awarded pursuant to *Freihändige Vergabe* procedures. This is the case for example in Leipzig (see Table 8).

## 2.6. Indicative findings

### 2.6.1. *The total procurement volume of the public sector*

Based on the statistical data on the core- and extra-budgetary activities of the public authorities and public entities, a total procurement volume of the public sector of around 330 billion euros in 2015 can be presumed. This figure includes investments and recurring operating expenses, but no expenditures for energy trade.<sup>56</sup>

Of the 330 billion euros, 170 billion euros (52%) were allocated to the core- and extra-budgetary activities of the public authorities, and 160 billion euros (48%) to public entities. Of the procurement volume, 70 billion euros of the core- and extra-budgetary activities were attributed to municipalities and administrative districts. The procurement volume of public entities would also have to be primarily allocated to the local level, considering that 88% of the public entities were local-level entities. Therefore, up to 63% (210 billion euros in 2015) of the total procurement volume could be allocated to the local level.

The personnel costs of the public entities can be interpreted as the value of services performed by the entities themselves, and therefore as the value of the procurement volume not procured on the open market on account of the so-called in-house provision. The statistics showed a figure of 100 billion euros for this in 2015. If these services were to be procured on the open market, the total procurement volume of the public sector would increase accordingly. The amount for 2015 would then be 430 billion euros instead of 330 billion euros.

### 2.6.2. *The procurement activities of the public sector*

For the period 2011 to 2015, the DTAD data base contains 682 042 contract notices. The analyses made in this study are based on these. Approximately 60% of the contract notices were for works, 16% for services, 13% for supplies, and 12% for unspecified things.

Based on the total number of all public procurement procedures (EU-wide or national procedures that were not restricted from the outset to certain participants) in the period 2011 to 2015, 82% were effected nationally and only 18% EU-wide. (see Table 2).<sup>57</sup>

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<sup>56</sup> The figures included in the calculation of the procurement volume also contain procurements that were not governed by procurement law. They also included double payments (e.g. through payments within government levels), and although these may very well represent substantial amounts, they could not be eliminated from the calculation on the basis of the statistical data available.

<sup>57</sup> Note that EU-wide publications also included EU-wide published below threshold procurement procedures.

What is striking is that 58% of the total number of contract notices was allocated to works, whereas in the public budgets and in the financial statements of the public entities only around 25% of the procurement volume was allocable to procurement of works. With regard to the number of contract notices, works were obviously being awarded far more frequently by public tender procedures than supplies and services. The larger share of public tender procedures in works is presumably attributable to the common practice in Germany of awarding construction works by lots.<sup>58</sup>

However, although the majority of all public procurement procedures involved contracts for works, their share of EU-wide procedures was lower (46%) than for supplies and services (54%). Conversely, works tended to account for a higher percentage of national public procurement procedures (86% national, 14% EU-wide) than supplies and services (66%/68% national, 34%/32% EU-wide). Such a tendency could also be seen in the analysed procurement statistics of Leipzig and Eberswalde.

The public contracting authorities at the local levels (municipalities, district authorities, and their public entities) were clearly the main actors in procurement activities in Germany. 36% of the public procurement procedures were effected by the administrations of the municipalities and districts, and a further 30% by public entities. Since around 88% of the public entities are found at the local level, it can be presumed that their relatively large share of all contract notices will mainly be found at the local level as well. In total, up to around 66% of all public procurement procedures were therefore made at the local level. The share effected at the *Länder* level by the public contracting authorities was 18%. The *Bund* level plays a subordinate role only (5%).

The analysis of the different *Länder*, at all levels of public contracting authorities, showed that the number of EU-wide public procurement procedures per 100 000 residents was very similar for all of them. What is striking, however, is that far more national public procurement procedures per 100 000 residents were carried out in the *Länder* of the former East Germany. This picture is mirrored in all types of procurement subjects (works, supplies, services) albeit to different degrees.<sup>59</sup>

The analysis of the subcategories sometimes showed large variances in the significance of EU-wide contract notices across the categories.

No comprehensive data sources were available regarding the number of contracts awarded through non-public procurement procedures (all procedures that are not open to all market participants<sup>60</sup>). But from the few that were available (procurement statistics of some municipalities and of the State Government of Saxony, statistics of the Federal Ministry for Economic Affairs and Energy (BMWi)), it was evident that the number of procurements made via non-public procedures (*Beschränkte Ausschreibung* or *Freihändige Vergabe* procedures) clearly exceeded the number made via public procedures. Overall, the procurement statistics basically show that only 5% of

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<sup>58</sup>The common practice in Germany of awarding construction works by lots generally results in the building project being divided up into smaller units. The fact that the lots are not necessarily bundled into one tender results in a relatively large number of contract notices but a contract value that is not necessarily all that high. The contracting authorities are free to decide how many lots they wish to tender, which can lead to large variations.

However, the threshold values relevant to the choice of procedures are those applicable to the total value of the construction project. This means, that the estimated costs of all individual construction measures involved in producing a building structure have to be added.

<sup>59</sup> This was only in reference to the number of publications. The reason for the differences in the number of procedures could have been because the procurements were carried out in different ways or because of differing total contract values (per 100 000 residents).

<sup>60</sup> Procedures that are restricted from the outset to certain participants.

contracts for works and only 2% of contracts for supplies and services are awarded nationally on the basis of public procurement procedures.<sup>61</sup>

### 2.6.3. Shares of the various procurement procedures of the total procurement volume

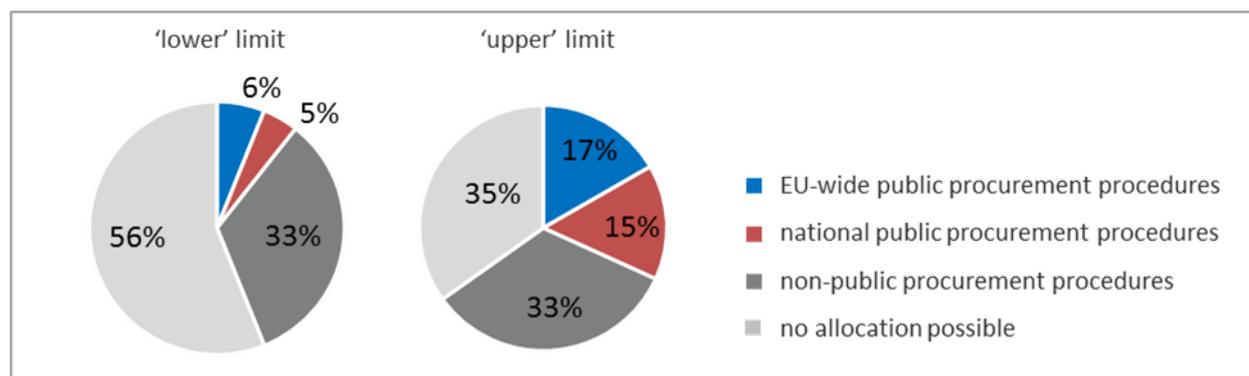
Depending on the underlying assumption, the analysis allowed the indirect inference that around one-eighth to one-third of the total procurement volume (35 to 105 billion of the 330 billion euros in 2015) was awarded via public procurement procedures.

The contract value of the contracts awarded EU-wide via public procurement procedures in 2015 was in the range of 20 to 55 billion euros (6% to 17% of the total procurement volume). Of this, between 9%<sup>62</sup> and 46%<sup>63</sup> was for works, again depending on the assumptions relied on. The contract value of public procurement procedures at the national level was estimated as somewhere between 15 and 50 billion euros. Of this, between 18% and 59% was for works. Even though these spans are wide, they still show that, with respect to EU-wide public procedures, the share of contracts awarded for supplies and services tended to far outweigh those for works. This tendency was reversed at the national level. There the share of contracts for works was higher.

Based on the total procurement volume of EUR 330 billion, an overall contract value of between EUR 225 billion and EUR 295 billion (68% to 90%) is presumably not being publicly tendered at the national level. Of this, it is estimated that around 110 billion euros in 2015 (one-third of the total procurement volume in 2015) were awarded via non-public procurement procedures. Of this, 41% was for works and 59% for supplies and services.

A total of 44% to 65% (145 to 215 billion euros) of the total procurement volume was thereby procured via procedures governed by procurement law (public or non-public procurement procedures) (see Figure 23).

Figure 23: Shares of public (EU-wide, national) and non-public procurement procedures in the total procurement volume [in %]



Source: Own calculation based on procurement reports, DTAD data and Federal Statistical Office data

The nature of the available data did not allow an allocation of the remaining 115 to 185 billion euros (35% to 56%) to either public or non-public procurement procedures. It cannot be inferred from this, however, that the unallocable procurement volume had to have been procured via public

<sup>61</sup> One example is the State Government of Saxony: In 2011, there were 926 EU-wide procedures and 2 276 national public procedures as compared to 116 302 non-public procedures in the form of *Freihändige Vergaben* or *Beschränkte Ausschreibungen*.

<sup>62</sup> Based on average contract values for EU-wide procedures from the procurement statistics for the City of Eberswalde.

<sup>63</sup> Based on average contract values for EU-wide procedures from the procurement statistics of the *BMW*.

procurement procedures. This is because the presumed total procurement volume—to a considerable albeit unidentifiable extent—includes procurements that are not subject to procurement law and double payments.

#### **2.6.4. Availability and equivocalness of the data**

The data available for the investigations in conjunction with this study was very limited. Particularly for information on contract values (values of awarded contracts) and procurement volumes (procurement volumes derived from public expenditures set out in public budgets and financial statements of the so-called public entities), the data was very unreliable and was in no way adequately comprehensive or detailed.

There are to date no central procurement statistics in Germany that contain joint statistics about one or several administrative level/s with the total number and contract values of awarded contracts. Neither are there any publicly accessible central statistics on the number of contracts awarded. Still only a few individual contracting authorities keep procurement statistics on numbers and contract values. And even if statistics are kept, the award procedures are not being documented uniformly, the depth of detail varies, and they are all structured differently.<sup>64</sup>

There are nevertheless a variety of private undertakings, such as the DTAD, that provide interested companies with information about current procurement procedures. They operate their own procurement platforms through which the contracting authorities can transact their procurement procedures.

Also regarding the procurement volume of the public sphere as a whole, no statistics are available from which the kind of award procedure, the number of contracts, or the regional distribution can be extrapolated. All that could be inferred from the information provided by the Federal Statistical Office is information about the procurement volume, which is based on the public budgets of the public authorities and the financial statements of the so-called public entities.

The DTAD data base does, however, provided a valuable basis for analysing the basic composition of all EU-wide and national contract notices, particularly regarding the breakdown according to types of contracting authorities, regional distributions, and the three types of procurement subjects, i.e. works, services, and supplies, and their subcategories. What it did not provide is estimates of overall value of contracts since its data sets contain virtually no data about the contract value.

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<sup>64</sup> Of the 16 state administrations approached with the request to provide information about their public procurement practices in relation to procurements above and below the thresholds (e.g. procurement volumes and the share allocations of the volumes, or shares of the kinds of procurement procedures), seven *Bundesländer* did not respond at all. Eight *Bundesländer* merely said that it was the Federal Ministry for Economic Affairs and Energy (*BMWi*) that was responsible for compiling statistics on procurements above the threshold. In a similar vein, they stated that no data on procurements was being collected or evaluated. Only the Free State of Saxony compiles annual statistics for the procurements carried out by its state administration. And these cover below threshold procurements only and not those above them.

### **3. DATA ANALYSIS OF PUBLIC PROCUREMENT ACTIVITIES IN GERMANY AS A WHOLE – LEGAL ANALYSIS**

Subjects of this chapter are the legal position and the reports of the government auditing authorities regarding the issue of lack of publication.

#### **3.1. Data sources**

The study relied on the leading online national data bases for legal information, such as beck-online (<https://beck-online.beck.de>), juris (<http://www.juris.de>), and veris (<https://www.bundesanzeiger-verlag.de/vergabe/vergabedatenbank-veris.html>). These contain well over 500 000 judicial decisions starting from 2011. The data originates in part from the actual courts involved, from the courts' websites, and from other sources.

These data bases provide access to published judicial decisions on national and pan-European procurement procedures, including information on the facts surrounding the issues, the nature of the contracting authority and the reasons for the decisions.

#### **3.2. Decisions of appeal bodies (public procurement boards and public procurement chambers)**

The legal assessment in the study is based on a variety of judicial decisions dealing with the current issue, namely the absence of publication in public procurement procedures.

In Germany, the primary bodies for seeking legal redress in relation to procurement matters are the so-called '*Vergabekammer*', the public procurement boards. Appeals from the decisions of the public procurement boards are brought to the so-called '*Vergabesenate*', public procurement chambers, as appeal instances at the level of the higher regional courts.

The legal assessment is limited to decisions handed down by the German public procurement boards between 2011 and 2015.

In line with the aim of this project – i.e. a statistically substantiated evaluation of the issue of lack of publication – the assessment has been limited to decisions issued by the public procurement boards. It does not draw on decisions of the public procurement chambers or decisions of the supreme courts. This is because every legal matter on which a public procurement chamber has to decide must first have been brought before a public procurement board for a decision by it. For the case studies here, reference to the same legal matter at several different instances would not be beneficial but would instead only obscure the results. That being said, the data set will occasionally include decisions of the public procurement chambers where a decision of the public procurement board was unavailable.

In addition, to be kept in mind here is that uniform legal protection for bidders only exists in Germany for EU-wide procurements. Therefore, this part of the study can only deal with cases of public contracts whose values are above the threshold amounts, or with cases where the value of such is in dispute. This is because the public procurement boards only have jurisdiction to hear procurement cases where the contract value is above the threshold amount. For cases below the threshold amount, there is no homogeneous system of legal redress in Germany.

According to the *Federal Ministry for Economic Affairs and Energy (BMW)*, the total number of claims filed with the public procurement boards concerning award procedures in the period 2011 to 2015 is set out below.

Table 9: Number of claims filed and decisions handed down by the public procurement boards at *Bund* and *Länder* level

Year	Claims filed	Decisions
2011	989	532
2012	893	487
2013	817	446
2014	751	444
2015	864	510
<b>Total</b>	<b>4 314</b>	<b>2 419</b>

Source: beck-online, juris and veris.

As shown, a total of around 4 300 claims were filed for which around 2 400 decisions were handed down. The rest were settled in other ways, for example by a withdrawal of the claim.

### 3.2.1. *Overview of the total number of decisions per judicial body*

Annex 3 contains a list of all of the procurement decisions handed down by the public procurement boards regardless of whether publication was an issue or not. The issue of non-publication is therefore completely unrepresented in this context.

The reason why these numbers differ from the numbers previously presented by the *Federal Ministry for Economic Affairs and Energy (BMWi)* is because not all decisions are published in the legal data bases, particularly those decided outside the courts. The study did, however, have access to around 1 700 decisions.

Based on the available sources, Annex 3 first lists all of the public procurement boards in Germany. It then sets out the number of decisions handed down by them in the period 2011 up to and including 2015. It also shows the total number of decisions handed down in 2016, which may be of special interest considering that public procurement law in Germany was reformed at the beginning of 2016. These latter decisions were not included in the assessment of the decisions.

Some positions are marked with the number 0. These are cases where either the public procurement boards did not deal with the relevant subjects or the public procurement board was abolished in the respective period on account of constitutional changes.

### 3.2.2. *Decisions dealing with the issue of non-publication*

Overall 1 719 judicial decisions of 23 public procurement boards were screened to find decisions with contextual relevance for this study.

Relevant court cases were those that were not decided on the basis of German competition law because either no publication was made at a European level, a procedure was chosen that was outside the rules of competition law, or no invitation to tender was issued at all.

The classification of these cases was made on the basis of pre-selected search criteria, such as:

- de-facto award
- contracts between contracting authorities [*interkommunale Zusammenarbeit*]
- in-house

- contracts awarded on the basis of an exclusive right [*Ausschließlichkeitsrecht*]
- interim award
- contracts awarded without an award procedure [*Direktvergabe*]
- negotiated procedure without a prior invitation to competition [*Verhandlungsverfahren ohne Teilnahmewettbewerb*]
- *Freihändige Vergabe* procedure [*freihändige Vergabe*]
- national award [*nationale Vergabe*]
- contracts awarded without award procedures for reasons of urgency [*Dringlichkeit*]

These criteria are the types of procurement constellations used for the study.

The following brief analysis of the contents of the relevant decisions is meant to demonstrate the specific characteristics of the facts or the frequency of the cases of interest for the study.

Annex 4 is divided into three main sections.

The first section concerns the contracting authority and comprises two columns. The first column contains the name of the *Land* in which the procurement procedure was made; the second column states the level at which procurement was made (local, *Land*, or *Bund*). Also contained here, if available in the published decision, is what kind of public contracting entity (within the meaning of Paragraph 98 of the [German] Act Against Restraints of Competition (GWB) (former version, see Art. 1(9) of Directive 2004/18/EC) was responsible for the invitation to tender. Usually the exact name of the contracting authority is not available due to the fact that names are anonymized in court decisions.

The second section contains information in relation to the public procurement itself and comprises four columns. The first column specifies the procurement subject (supplies, services or works) as categorised by the court; the second column sets out the resulting sector involved; the third column names the German contracting regulations (the VOB, VOL, VOF, SektVO, VSVgV) that should have governed the procurement had the procurement subject been correctly categorised by the public entity; the fourth column sets out whether an actual contract or a concession was involved.

The third section concerns the claim itself and comprises four columns. The first column relates to the issue of publication and states whether the deciding court agreed (yes) or disagreed (no) with the complaint that the award had not been published. This may differ from the final outcome of the case, but it is not stated here because it is irrelevant to this study; the second column contains the subject of the claim, i.e. the alleged reason for non-compliance with competition law, which is not necessarily the same as the reasons given by the claimant; the third column states the public entity's reasons for its chosen procurement procedure; the fourth column contains the date of the decision.

### **3.2.3. *Assessment of case summaries and representative samples of cases***

The analysis of the overall number of decisions shows nothing particularly conspicuous in the years 2011 to 2015. If looked at in terms of a trend, then the overall number has decreased.

The screening based on the search criteria resulted in a sample of 191 relevant published decisions for the first stage of the study.

The assessment brings to light connections between factual and quantitative aspects.

In the majority of the cases, a public authority (Paragraph 98 no. 1 GWB (old version)) was responsible for the procurement.

Most issues relate to services that should have been awarded pursuant to the rules contained in the [German] Regulations on Contract Awards for Public Supplies and Services (VOL/A). As a rule, the services are based on a contract, because until the procurement reform in 2016, concessions were not the subject of an award. Annex 4 only notes a concession if the claimant had mistakenly taken issue with a concession and the public procurement board decided in favour of the public entity. If the board found in favour of the claimant, the invitation to tender is referred to as a contract regardless of the name assigned to it by the procurement authority.

Table 10: Number of cases reported per procurement subject

Type of procurement subject	Number of cases (including multiple references)
Services	140
Supplies	30
Works	27
Framework agreements	7

Source: beck-online, juris and veris.

What is noticeable are the uncertainties in the health care sector in particular, independent of the procurement subject. In this sector it is the subject-matter of the agreement that generally under dispute. An increasing number of cases involve ambulance services, medical equipment, and pharmaceutical supplies. Such cases of uncertainty on the part of the awarding parties also seem to be increasing in the transport, waste management, and IT service sectors.

Approximately one-quarter of the cases involve awards and assert that they were not tendered EU-wide. The other cases involve awards where either no procurement procedure was carried out at all or where the procedure chosen violated competition law.

The tables provide a solid basis from which inferences can be drawn about why publication had not been done. But as already discussed, the absence of a uniform system of legal redress for below-the-threshold awards makes it impossible to transfer these inferences to them. Therefore, no persuasive findings can be made about the non-publication issue in respect of below-the-threshold awards.

### 3.3. Additional publicly available information

The reports of the German auditing authorities for the years 2011 to 2016 were reviewed to identify any references to a disregard of obligations to tender in procurement matters. Table 11 shows the number of references identified by the different *Länder* and by the *Federal Auditing Office [Bundesrechnungshof]*.

Table 11: References identified by the auditing authorities in the period 2011 to 2016

Auditing authority	Number of references
Federal Government [ <i>Bund</i> ]	10
Baden-Württemberg	4
Free State of Bavaria	2
Brandenburg	1

City-state Bremen	3
City-state Hamburg	12
Hesse	1
Lower Saxony	3
North Rhine-Westphalia	5
Rhineland Palatinate	4
Saarland	5
Free State of Saxony	8
Saxony-Anhalt	11
Schleswig Holstein	3
Free State of Thuringia	4
<b>Total</b>	<b>76</b>

Source: German auditing authorities

The publications of the Federal Performance Commissioner [*Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung*] were also analysed in terms of their relevance for this study. A detailed bibliography listing the reports of the auditing authorities and other relevant documents containing such references is found in Annex 2. The list contains the following information:

- source
- characteristics of the contracting authority (level, name, sector)
- characteristics of the public procurement (sector, contracting regulations, type of contract, subject of procurement)
- issues raised

Initially, the analysis does not seem to provide very detailed statements of the auditing authorities. But a total of 76 sufficiently specific references were identified and included in the bibliography (see also Table 11).

When the list is looked at more closely, however, there are a large number of references (54) to rather doubtful or even inadmissible *Freihändige Vergabe* awards. But only 9 of these explicitly emphasised that an EU-wide tender should have been made.

The list contains 11 references in which it was expressly stated that an EU-wide rather than a national invitation to tender should have been made on account of the respective thresholds having been exceeded (see Table 12). The issue of a potentially unlawful in-house allocation is mentioned four times.

Table 12: Number of references to the fact that thresholds were exceeded

Procurement subject	Number of references (including multiple references)
Construction works	5
Construction planning	8
Supply and/or disposal (waste, water, energy, heat)	2
Others	2

Source: German auditing authorities

With respect to the procurement subject, the distribution of the 76 references among the types works, services, and supplies is as follows:

Table 13: Number of references per procurement subject

Type of procurement subject	Number of references
Works	13
Services	44
Supplies	11
Services, supplies	5
Works, supplies	1
Works, services	2
<b>Total</b>	<b>76</b>

Source: German auditing authorities

With respect to the specific category of the procurement subject, the 76 references show a certain density of references in which the auditor criticised the way the contract was awarded:

Table 14: Numbers of references according to the specific category of procurement subject

Category of procurement subject	Number of references (including multiple references)
Construction works	15
Construction planning	18
Equipment (IT, technical ...)	9
Services in the area of events and media	7
Supply and/or disposal (waste, water, energy, heat)	3
Consulting and research services	8

Source: German auditing authorities

The range of projects in which the auditing authorities objected to the type of award used is quite broad. What is striking is that in 10 references clinical projects are involved.

What also becomes clear from reviewing the court reports is the variety of problems confronted with the proper application of the law. There does not appear to be a clear pattern to these and they concern different levels and sectors of public procurement. Striking, however, is that the erroneous applications of the law that were identified in the references frequently relate to the area of services (in 51 of 76 references). Nothing noticeable in this regard is found in the area of construction works; 22 of the references involve services in relation to construction activities (architectural and engineering services). For the other services, there are no specific clusters of typical characteristics.

### 3.4. Indicative findings

Notable is that, in comparison to contracts for works or for supplies, **contracts for services** were **more often the subject of procurement complaints** or of criticism from the German public audit offices on account of breaches of an obligation to use public procurement procedures.

**But in relation to the total number of procurements** by the public sector and of EU-wide procurements, **the absolute number of reported and relevant cases was low**. Moreover, the individual facts and circumstances surrounding the identified violations were very diverse and, despite a degree of concentration with respect to certain below-mentioned causalities, followed no general pattern on the whole.

It must be kept in mind, however, that this analysis does not include those awards that fall below the threshold values due to the absence of a homogenous form of legal redress for them. In any event, no one-to-one transfer of the results to these references can be made.

However, the legal analysis of the tables gave rise to the following (summarised) reasons for the lack of publication. Annex 4 shows that there are recurring reasons for the problem of non-publication, some of which appear to occur with particular frequency:

- Difficulties in ascertaining the threshold value results in the contracting authority refraining from publishing at the EU level because it assumes that thresholds under Paragraph 100 GWB (old version) (see Article 7 of Directive 2004/18/EC) have not been reached. What is notable here, however, is that the assumptions were not the result of calculation errors but were due to incorrect classifications of the procurement subject as either services, supplies, or works. A classic example is the incorrect classification (or treatment) of the subject and its lots as ‘construction works’. Because construction works have considerably higher threshold values than services and supplies, no EU-wide tender was made.
- Another frequently occurring problem stems from the distinction between public contracts and concessions; the latter was exempt from the rules of procurement until 2016.
- An additional problem is the difficulty in interpreting the legal exemption rights. Reference is often being made to the exemptions for urgency [*Dringlichkeit*] (Paragraph 3(4)(d) EG VOL/A, see Article 31(1)(c) Directive 2004/18/EC) and the exclusive rights (Paragraph 3(4)(c) and (e) EG VOL/A, see Article 3(1)(b) and (2)(d) Directive 2004/18/EC).
- When modifications or adjustments are made to a tender or to an existing contract, similar weight should be given to the importance of these. It appears to be entirely unclear at which point a modification is considered essential and whether it must be tendered separately or tendered at all.

These four reasons are those most commonly given for the lack of publication.

Other reasons include:

- the services involved had been non-priority services that were privileged and not subject to EU-wide tendering obligations before 2016 and were therefore (erroneously) only tendered nationally.
- the in-house procurement procedures prevent competitive procurement—most noticeable in the education sector and prominent in the waste sector.
- previous procedures had been unsuccessful (e.g. because no or no acceptable bids were made) and this is used as an (impermissible) reason to choose *Freihändige Vergabe* procedures.

Table 15: Number of references according to reasons for non-publication

Reasons for non-publication	Number of references (including multiple references)
Threshold not reached	54
Service not subject to tender obligation	30
Legal exemption	40
Modification of the contract	12
Non-priority services	9
In-house award	23
Previous proceeding failed	8
Other	16

Source: beck-online, juris and veris.

The findings of the analysis of the decisions of the Federal Audit Office are partly the same as those of the analysis of the decisions of the public procurement boards. In both, such things as an increasing lack of clarity in the health sector and the prominence of services were found.

## 4. IDENTIFICATION OF CASE STUDIES

### 4.1. Integration of results and findings from the data analysis of public procurement activities in Germany as a whole

On the basis of the TED data, the European Commission was of the opinion that the number and value of German procurements via TED were far below the European average. The case studies aimed to examine public procurement practices in Germany in order to identify the reasons for the significantly lower shares of EU-wide tenders in comparison to other countries.

Due to the lack of statistics in Germany, particularly regarding the value of awarded contracts, it first necessary to ascertain the percentage awarded in Germany pursuant to procurement proceedings published at the national level. To be borne in mind as well is that substantial values of contracts were not, on account of *Länder* and *Bund* regulations (e.g. legally defined thresholds), being awarded by way of public tender procedures but by *Freihändige Vergabe* procedures or by *Beschränkte Ausschreibung* procedures.

And although some of the decisions of the public procurement boards [*Vergabekammern*] and some of the reports of the public auditing authorities [*Rechnungshöfe*] criticised the fact that the law was being incorrectly applied in some individual procurement cases, there are no sufficiently identified indications whatsoever that this is a systemic problem in respect of specific types of procurement subjects, procurement authorities, administrative levels, etc. or in respect of the procurement system as a whole. And though it may be true that services were more frequently referred to than supplies or works, the diversity of the affected procurement areas is still very broad and unspecific.

The aim of the case studies set out below was therefore to:

- (1) describe procurement practices on the basis of sector-specific samples or samples involving different administrative levels.
- (2) draw inferences about the number and value of awards by public tender procedures on the one side and awards by way of *Freihändige Vergabe* or *Beschränkte Ausschreibung* procedures on the other side at specific administrative levels and in specific sectors.
- (3) verify (adjust or confirm) the estimated procurement expenditure anticipated for Germany in national and EU-wide tendering procedures, which had been done in an approximate manner in the interim report.

For the aforementioned reasons, we selected cases that were expected to allow differences, similarities, and notable features to be identified on the basis of the analysis of the DTAD data base with regard to the number of publications and by comparison with the public budgets of the contracting authorities.

The analysis of the DTAD data base did not provide any information on the individual contracting authorities that would warrant a more in-depth investigation. What became obvious, however, were the regional differences in tendering practices in the context of the comparisons of the *Länder*. These differences relate to:

- numbers of tenders in general
- number of EU-wide proceedings in comparison to national proceedings
- regional differences in tendering practices

The focus when selecting the case studies was therefore primarily on regional aspects. Because of the absence of more detailed data, the selection of the individual contracting authority to be investigated in the context of a case study had to be done randomly. However, the selection of contracting authorities was meant to enable a representative regional distribution and to include a wide range of *Länder*. Because of their significance (as can be seen by the discussion in the economic analysis of public procurement activities in Germany as a whole), the contracting authorities at the local level were the main focus of one set of case studies. Individual contracting authorities at the *Länder* level were the subject of analysis as well since this level too was recognised as sufficiently relevant.

Another group of case studies focused on the relevant sector-specific areas of interest, which were analysed according to individual contracting authorities. Our selection of the areas of interest was based on the data analysis of public procurement activities in Germany as a whole, our consulting practice, and the discussions with the Commission. We have taken into account the fact that the sectors selected should have a market size significantly large to be of relevance for the European market. The specific procurement practices of the respective contracting authorities were also analysed.

#### 4.2. Selection of the case studies to be investigated

The following case studies were selected by agreement with the EU Commission:

For the local authorities:

- G1: Eberswalde; city in Brandenburg (East Germany) with up to. 50 000 inhabitants
- G2: Ettlingen; city in Baden-Württemberg with up to. 50 000 inhabitants
- G3: Aurich; city in Lower Saxony with up to. 50 000 inhabitants
- G4: Leipzig; city in the Free State of Saxony (East Germany) with more than 500 000
- G5: Nuremberg; city in Free State of Bavaria with more than 500 000 inhabitants
- G6: Essen; city in North Rhine-Westphalia with more than 500 000 inhabitants
- G9: Stadtwerke Erfurt; local public entity (public utility company [*Stadtwerk*]) in Free State of Thuringia (East Germany)
- G10. Stadtwerke Groß-Gerau; local public entity (public utility company [*Stadtwerk*]) in Hesse

For the *Länder*:

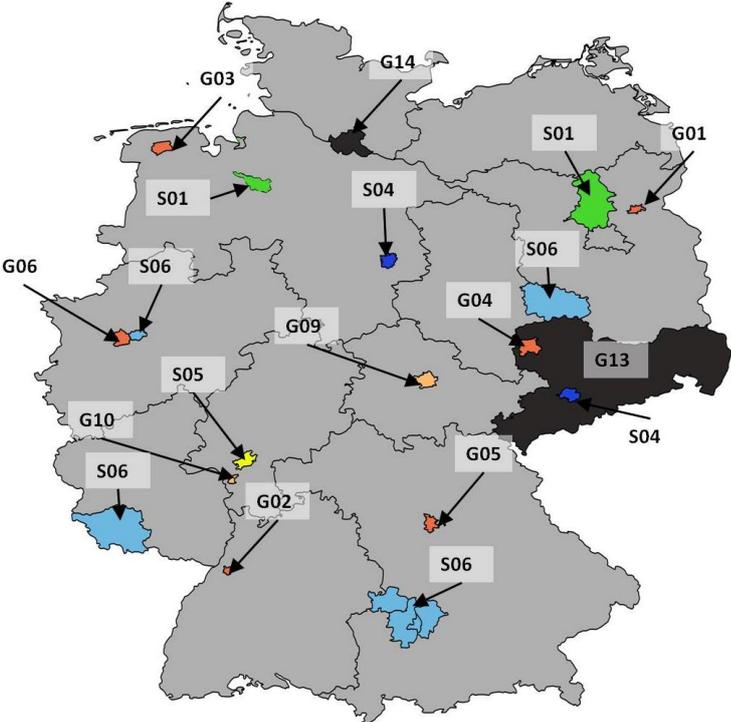
- G13: State Government of Saxony; *Land* from East Germany (*Länder* ministerial authorities)
- G14: City-state Hamburg; *Land* (*Länder* ministerial authorities);

For the sectors:

- S1 services in the field of collection and disposal of household waste (e.g. district in Free State of Thuringia, city in Schleswig-Holstein, city in Free State of Bavaria)
- S4 procurement of consumables for hospitals using purchasing associations [*Einkaufsgemeinschaften*] (e.g., in Brandenburg, Rhineland-Palatinate or Schleswig-Holstein)
- S5 provision of services (construction works and construction related services) for the construction or renewal of a large hospital building (e.g. in Hesse)

- S6 regional public transport services on roads (bus transport) (e.g. City or district in Saxony-Anhalt, in North-Rhine Westphalia, in Free State of Bavaria)
- S8 construction and real estate management at local level by public entities (e.g. KIS, Potsdam)

Figure 24: Map Case Studies



Source: Authors of the study

No.	Issue	Level	Approach of analysis	Description of expected outcome
<b>Case studies analysing procurement behaviour of individual contracting authorities</b>				
G1	city in Brandenburg (East Germany <i>Land</i> ) with up to. 50,000 inhabitants	local	<ul style="list-style-type: none"> <li>• Analysis of DTAD data 2011-2015 for the contracting authority with regard to national and European proceedings,</li> <li>• Compilation of the number of awards by type of procurement subject (works, services, supplies) and 16 categories (construction works, building materials, engineering, disposal, etc.)</li> <li>• Comparison of the number of awards with a procurement statistic as far as available,</li> <li>• Compilation of the respective national value limits [<i>Wertgrenzen</i>] that set the framework for selection of the award procedure,</li> <li>• Analysis of the budget of the contracting authority from 2011 to 2015 or respectively the economic plan of the public entity to compile the entire procurement volume (e.g. expenditure on supplies and services, investments in property, plant and equipment) and differentiation into product areas (e.g. Internal administration, Culture and science, Social services, Children, youth and family aid, Sports promotion, Public planning, Supply and disposal, Transport, Nature and landscape care, Environmental protection, Tourism and Economy),</li> <li>• Differentiation of the budget or economic plan into products for the most populous or otherwise conspicuous product area (where available)</li> <li>• Comparison of budgeting in the period from 2011 to 2015 with the number of awards</li> <li>• Search for additional relevant information on the procurement behaviour, e.g. as far as available:                             <ul style="list-style-type: none"> <li>- Press articles on procurement proceedings</li> <li>- Sampling of the minutes of relevant committee meetings (if available)</li> <li>- Clarification of uncertainties with the authority by contacting them if necessary</li> </ul> </li> </ul>	<p>The case studies counterbalance the budgets of the contracting authorities with the number of awards according to the categories of awards. The aim of this analysis is to identify the differences, similarities and specificities of the investigated authorities with regard to their procurement behaviour as well as to explain peculiarities as far as possible.</p> <p>If similarities prevail, it would be conceivable to extrapolate the procurement statistics that are available for individual authorities to other comparable authorities. As far as the respective procurement statistics do include differentiation between European and national proceedings as well as <i>freihändige Vergabe</i>, a corresponding differentiation would also be conceivable.</p> <p>It is to be discussed on the basis of the results of the studies to what extent the figures could be used for further extrapolation. For example, depending on the level of detail of the available budget plans it might be possible to draw conclusions for specification of procurement volumes in regard to expenditure categories.</p> <p>Provided that the contracting authorities display significant differences in budgetary system or procurement behaviour, they will be further analysed and clarified. Accordingly, structural causes may be of relevance such as the organisation of public services (through core administration and / or third parties), legal framework conditions (for example, thresholds for use of procurement proceedings, budget constraints in the process of budget consolidation) or other differences (such as politically-motivated priorities, promotion programs).</p>
G2	city in Baden-Württemberg (West Germany <i>Land</i> ) with up to. 50,000 inhabitants	local		
G3	city in Lower Saxony (West Germany <i>Land</i> ) with up to. 50,000 inhabitants	local		
G4	city in the Free State of Saxony (East Germany <i>Land</i> ) with more than 500,000 inhabitants	local		
G5	city in Free State of Bavaria (West Germany <i>Land</i> ) with more than 500,000 inhabitants	local		
G6	city in North Rhine-Westphalia (West Germany <i>Land</i> ) with more than 500,000 inhabitants	local		
G7	district in Saxony (East Germany <i>Land</i> )	local		
G8	district in Lower Saxony (West Germany <i>Land</i> )	local		
G9	local public entity (type of entity: <i>Stadtwerk</i> ) in Free State of Thuringia (East Germany <i>Land</i> )	local		
G10	local public entity (type of entity: <i>Stadtwerk</i> ) in Hesse (West Germany <i>Land</i> )	local		
G11	local public entity (no <i>Stadtwerk</i> ) in Schleswig-Holstein (West Germany <i>Land</i> )	local		
G12	local public entity (no <i>Stadtwerk</i> ) in Saxony-Anhalt (East Germany <i>Land</i> )	local		
G13	East Germany <i>Land</i> ( <i>Länder</i> ministerial authorities) (e.g. Free State of Saxony)	<i>Land</i>		
G14	West Germany <i>Land</i> ( <i>Länder</i> ministerial authorities); (e.g. city-state Hamburg)	<i>Land</i>		

No.	Issue	Level	Approach of analysis	Description of expected outcome
G15	West Germany <i>Land</i> ( <i>Länder</i> ministerial authorities); (e.g. Saarland)	<i>Land</i>		
G16	three local authorities with up to 10,000 inhabitants (e.g. in Hesse, Baden-Wuerttemberg and Free State of Saxony)	local	<ul style="list-style-type: none"> <li>• Analysis of the DTAD data 2011 to 2015 for three authorities with regard to national and European proceedings,</li> <li>• Compilation of the number of awards by type of procurement (works, services, supplies) and 16 categories (construction, construction, engineering, disposal, etc)</li> <li>• Comparison of household budgets as far as available, without differentiation according to product areas, where appropriate procurement volumes (material expenditure and investments) can be differentiated</li> </ul>	The comparison initially aims to identify differences, similarities and conspicuous features among themselves and in relation to other local authorities. It is aimed to discuss whether the findings allow for reasonable transfer of assumptions or conclusions from the analysis amongst several local authorities and for the whole of small municipalities.
<b>Case studies analysing procurement behaviour in several sectors of public procurement</b>				
S1	services in the field of collection and disposal of household waste (e.g. district in Free State of Thuringia, city in Schleswig-Holstein, city in Free State of Bavaria)	waste	<ul style="list-style-type: none"> <li>• Evaluation of the DTAD data from 2011 to 2015 with the keyword "household waste" or "recovery / treatment" with regard to national and EU-wide publications,</li> <li>• Compilation of a regional distribution of tender documents and allocation to categories of local authorities (city/municipality, joint association, public entity etc.),</li> <li>• Rough description of the legal framework for services in the field of collection and disposal of household waste and their general organisation in Germany,</li> <li>• Research of the market volume,</li> <li>• Sample comparison (3 local authorities) of different size, regional location and / or different tendering activity <ul style="list-style-type: none"> <li>- Presentation of the organisation of the specific organisation of relevant services within the authority,</li> <li>- Compilation of the procurement activity 2011 to 2015 from the DTAD data</li> <li>- Identification of the relevant budget (for example, by means of the fees, the relevant investment and the staffing),</li> <li>- Comparison of procurement activity and budget,</li> <li>- Random sampling of relevant committee protocols regarding the relevant services (if available),</li> <li>- If necessary, contact of the local authorities for clarification or further information.</li> </ul> </li> </ul>	The case studies provide an overview of the activity in Germany in the designated areas, the organisation of the market, the framework conditions and the potential market value. In addition, the concrete procedure for covering needs in the field of household waste disposal as well as waste recovery / treatment is presented by 3 local authorities.
S2	services in the field of waste recovery / treatment (e.g. district in Lower Saxony, city in Hesse and city-state Bremen)	waste	<ul style="list-style-type: none"> <li>• Evaluation of the DTAD data from 2011 to 2015 with the keyword "job centre" and / or e.g. "adult education", "external vocational training" with regard to national and EU-wide publications and types of contracting authorities,</li> <li>• Identify and delimit the relevant educational offers,</li> <li>• Compilation of a regional distribution,</li> <li>• Description of the legal and institutional framework (e.g. legal basis, support framework, responsibilities, organisation),</li> <li>• Identification of available procurement statistics,</li> <li>• Sample comparison (3 job centre) of different size, regional location and / or different tendering activity,</li> </ul>	A rough snapshot of some municipal budgets shows significant expenditures in such services compared to other procurement activities. The job centres contract third parties to carry out qualification/education measures and trainings (adult education). The case study first shows the importance of this relevant education market for Germany and describes the corresponding framework conditions. On the basis of 3 examples, the procurement activities are compared with the budget estimates and the significance of the expenditure in
S3	services in the field of municipal job centres, in particular external education and training services (e.g. district in Free State of Saxony, city in North Rhine-Westphalia, Berlin)	education/social	<ul style="list-style-type: none"> <li>• Evaluation of the DTAD data from 2011 to 2015 with the keyword "job centre" and / or e.g. "adult education", "external vocational training" with regard to national and EU-wide publications and types of contracting authorities,</li> <li>• Identify and delimit the relevant educational offers,</li> <li>• Compilation of a regional distribution,</li> <li>• Description of the legal and institutional framework (e.g. legal basis, support framework, responsibilities, organisation),</li> <li>• Identification of available procurement statistics,</li> <li>• Sample comparison (3 job centre) of different size, regional location and / or different tendering activity,</li> </ul>	A rough snapshot of some municipal budgets shows significant expenditures in such services compared to other procurement activities. The job centres contract third parties to carry out qualification/education measures and trainings (adult education). The case study first shows the importance of this relevant education market for Germany and describes the corresponding framework conditions. On the basis of 3 examples, the procurement activities are compared with the budget estimates and the significance of the expenditure in

No.	Issue	Level	Approach of analysis	Description of expected outcome
			<ul style="list-style-type: none"> <li>- Compilation of the procurement activity 2011 to 2015 from the DTAD data,</li> <li>- Identification of the relevant budget (for example, from the respective economic plan (if available))</li> <li>- Reconciliation of the budget estimates for the relevant services with the overall budget of the local authority,</li> <li>- Comparison of procurement activity and budget,</li> <li>- If necessary, contact of the contracting authorities for clarification or further information.</li> </ul>	<p>relation to the total budget is derived. Special features are documented.</p>
S4	procurement of consumables for hospitals using purchasing associations [ <i>Einkaufsgemeinschaften</i> ] (e.g., in Brandenburg, Rhineland-Palatinate or Schleswig-Holstein)	health care	<ul style="list-style-type: none"> <li>● Evaluation of DTAD data from 2011 to 2015 for the procurement of consumables for public hospitals with regard to national and EU-wide publications, the type of contracting authorities and other available characteristics,</li> <li>● Compilation of a regional distribution and allocation to categories of contracting entities,</li> <li>● Sample comparison (2 hospitals and a purchasing association as contracting authorities of different sizes, regional distribution and different tendering activities); <ul style="list-style-type: none"> <li>- Description of the respective organisation</li> <li>- Identification of the budget for relevant consumables as far as possible via evaluation of the economic plans and comparison with procurement activity in different products (E.g. anaesthesia and resuscitation, drugs and vaccines, imaging equipment and X-ray equipment, services, various medical equipment, photographic equipment, functional diagnostics, hospital equipment, measurement, control, testing and navigation instruments, Surgical technique, optical instruments)</li> <li>- If necessary, contact of the contracting authorities for clarification or further information.</li> </ul> </li> </ul>	<p>According to media reports, purchasing associations have achieved a noticeable market penetration in recent years. It is unclear which values are being implemented by purchasing associations [<i>Einkaufsgemeinschaften</i>], which procurement items are affected and how the procurement takes place. The study is intended to enable sample-based conclusions to be drawn on procurement volumes procured with purchasing associations, procurement practices and the organisation of procurement.</p>
S5	provision of services (construction works and construction related services) for the construction or renewal of a large hospital building (e.g. in Hesse)	health care	<ul style="list-style-type: none"> <li>● Evaluation of all available DTAD data with regard to all assignments to be allocated to the project,</li> <li>● Identification of information on the construction project as far as available (project structure, procurement model, contractor, values),</li> <li>● Compilation of project-specific services according to a suitable order pattern (for example according to DIN276, subcategories in the DTAD allocation catalogue or other),</li> <li>● Compilation of procured contracts by type of contract (works, services, supplies) and national / European tender,</li> <li>● Description of the responsibilities for the project as far as available (for example, funding, planning, tendering and tendering, implementation, accounting),</li> <li>● Review of the contract notices for particularities (E.g. definition of lots, separation of services and construction work etc),</li> <li>● Research of press articles and other information</li> </ul>	<p>Hospital buildings are regularly complex and require a large number of construction works and construction related services until commissioning. The study undertakes the attempt to compile these and draw conclusions about the national or EU-wide procurement volume. This is to be compared with available costs for the project. In the concrete example the procedure of the authority is to be shown.</p>

No.	Issue	Level	Approach of analysis	Description of expected outcome
S6	regional public transport services on roads (bus transport) (e.g. City or district in Saxony-Anhalt, in North-Rhine Westphalia, in Free State of Bavaria)	local public transport	<ul style="list-style-type: none"> <li>• Analysis of the DTAD data 2011 to 2015 for three authorities with regard to national and European proceedings and their contracting authorities,</li> <li>• Compilation of a regional distribution of tender documents and allocation to categories of local authorities (city/municipality, joint association, public entity etc.),</li> <li>• Description of the specific legal framework for the provision and award of such services (separate EU Directive, national application, SME support),</li> <li>• Sample comparison (3 authorities) of different size, regional location and / or different tendering activity                             <ul style="list-style-type: none"> <li>- Compilation of the procurement activity 2011 to 2015 from the DTAD data</li> <li>- Identification of the relevant budget (for example, from the identified tender proceedings),</li> <li>- Comparison of procurement activity and budget,</li> <li>- Random sampling of relevant committee protocols regarding the relevant services (if available),</li> <li>- If necessary, contact of the local authorities for clarification or further information.</li> </ul> </li> </ul>	Regional public transport services are regularly provided by private market participants. However, some public entities are involved in competition with the provision of services. The study will work on the procurement activity visible at European or national level. The samples are used to concretise the procurement activity on the 3 examples and identify differences and similarities.
S7	construction and real estate management at state level by public entities (e.g. BLB NRW) <i>(Länder level is responsible for: administration buildings at Länder level, universities, police, etc; furthermore the state agencies act as agents responsible also for Bund buildings[“Auftragsverwaltung”])</i>	state FM	<ul style="list-style-type: none"> <li>• Compilation of the characteristics of the agency (e.g. supervised objects, population numbers, organisation, etc.),</li> <li>• Analysis of the DTAD data from 2011 to 2015 for a respective agency,</li> <li>• Allocation of published awards by service area (construction, engineering, maintenance, testing, cleaning, caretaker services, etc.),</li> <li>• Analysis of the economic plans for the identification and compilation of the respective budget,</li> <li>• Comparison of budgets and procurement activities.</li> </ul>	The case studies will highlight the procurement practices in the field of public real estate management. As far as procurement statistics are available, the lot sizes for European, national and private awards are estimated. The responsibilities and the organisational set up within the owning public body will be described and the procurement practices are compared with the budgets.
S8	construction and real estate management at local level by public entities (e.g. KIS, Potsdam) <i>(Municipalities are responsible for: administration buildings, schools, Kindergartens, leisure and sports facilities etc.)</i>	local FM		

## 5. CASE STUDIES

For the preceding investigation of Germany as a whole and for the case studies, quantitative and qualitative analyses were made and the results of these were correlated with each other. The sources analysed included the data of the largest German tendering platforms, the statistical data of the public administrations and public entities, public budgets and annual financial statements, procurement statistics, a large number of text sources, and the direct questioning of the contracting authorities and other institutions.

### 5.1. Case studies of the regional authorities at the local and *Länder* levels

The case studies investigated six municipalities (three medium-sized and three large cities) and two *Länder* administrations including their public entities.

#### 5.1.1. *Spectrum and organisation of tasks*

The strong administrative autonomy of the municipalities is intrinsic to Germany. The German municipal level is the most important governmental level for implementing public services and laws. An abundance of different public tasks are performed at this level. The main tasks include the provision and maintenance of the public infrastructure (roads, public transportation, supply and disposal facilities, public buildings, etc.) and the provision of administrative services, supply and disposal services, public transportation services, social care services, and social welfare services. Added to this are the responsibilities delegated to them by the *Länder*, especially in the areas of public safety and public order (environmental protection, building regulation, permit procedures, etc.). Therefore despite the differences in the sizes of the cities investigated in the case studies, the tasks performed by them are relatively the same. But in the way and the intensity in which they carry out their procurement activities there are considerable differences depending on their size and their individual organisational structures.

As can be seen in Figure 25, public entities play an important role in the provision of public services. The cases studies showed that many tasks, especially in the large cities, are performed by the so-called *Eigenbetriebe*. (These are municipal enterprises without legal personality that are operated by the local authorities.) The large cities investigated have between 16 and 59 public entities (municipal undertakings with and without legal personality). In the medium-sized cities, on the other hand, the tasks tend to be performed more often by the public administrations themselves. This is evident from the fact that the medium-sized cities have only 3 to 5 public entities. But with respect to some kinds of tasks, the medium-sized cities investigated cooperate with other local public authorities, such as district authorities or other municipalities. They set up special-purpose associations [*Zweckverbände*] or inter-municipal undertakings [*interkommunale Unternehmen*] for reasons of cost efficiency, for example in the area of public transportation.<sup>65</sup>

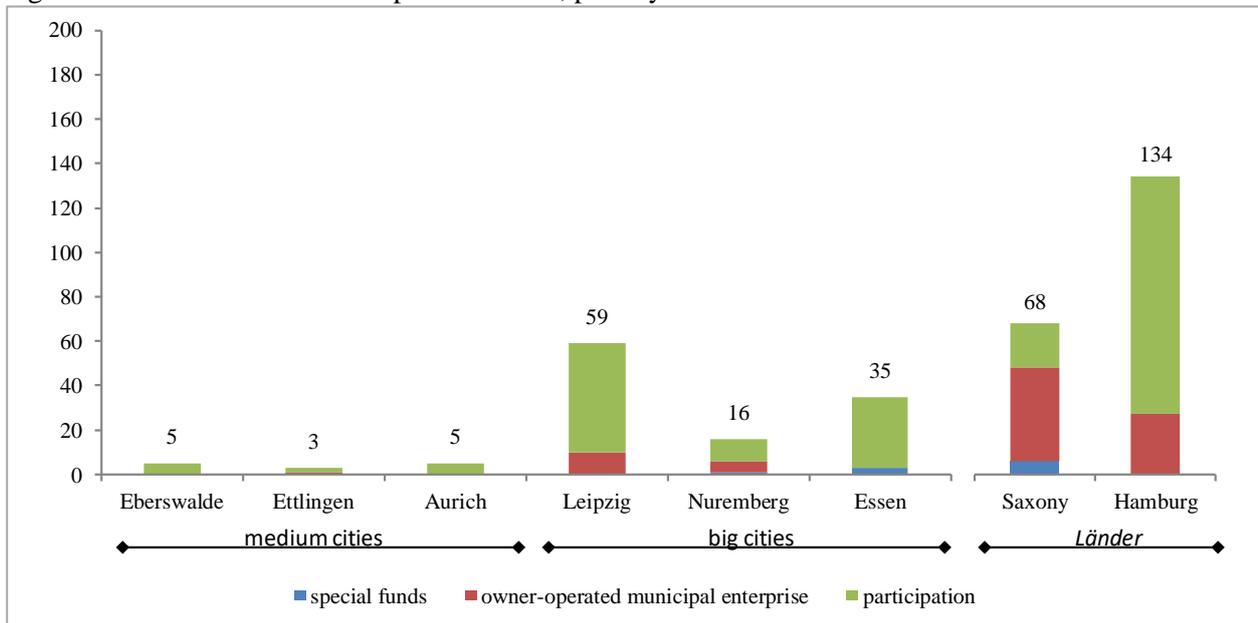
The *Länder* are primarily responsible for the areas of education, research and science, culture, the police force, regional passenger rail services, and regional business development. A considerable number of tasks are also performed by the public entities at the *Länder* level. In the period 2011–2015, the State Government of Saxony had 68 public entities and the city-state Hamburg had 134. The larger number of public entities in the city-state Hamburg is probably attributable

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<sup>65</sup> The so-called *Zweckverbände* or *interkommunale Unternehmen* also provide services of their own and/or manage procurement procedures.

to the fact that, because the city-state Hamburg is both a city and a state, the local level tasks and the *Länder* level tasks are combined.

Figure 25: Number of evaluated public entities, per city or Land



Source: Own representation, based on information from budget and accounting reports for the period 2011-2015

### 5.1.2. Procurement volumes

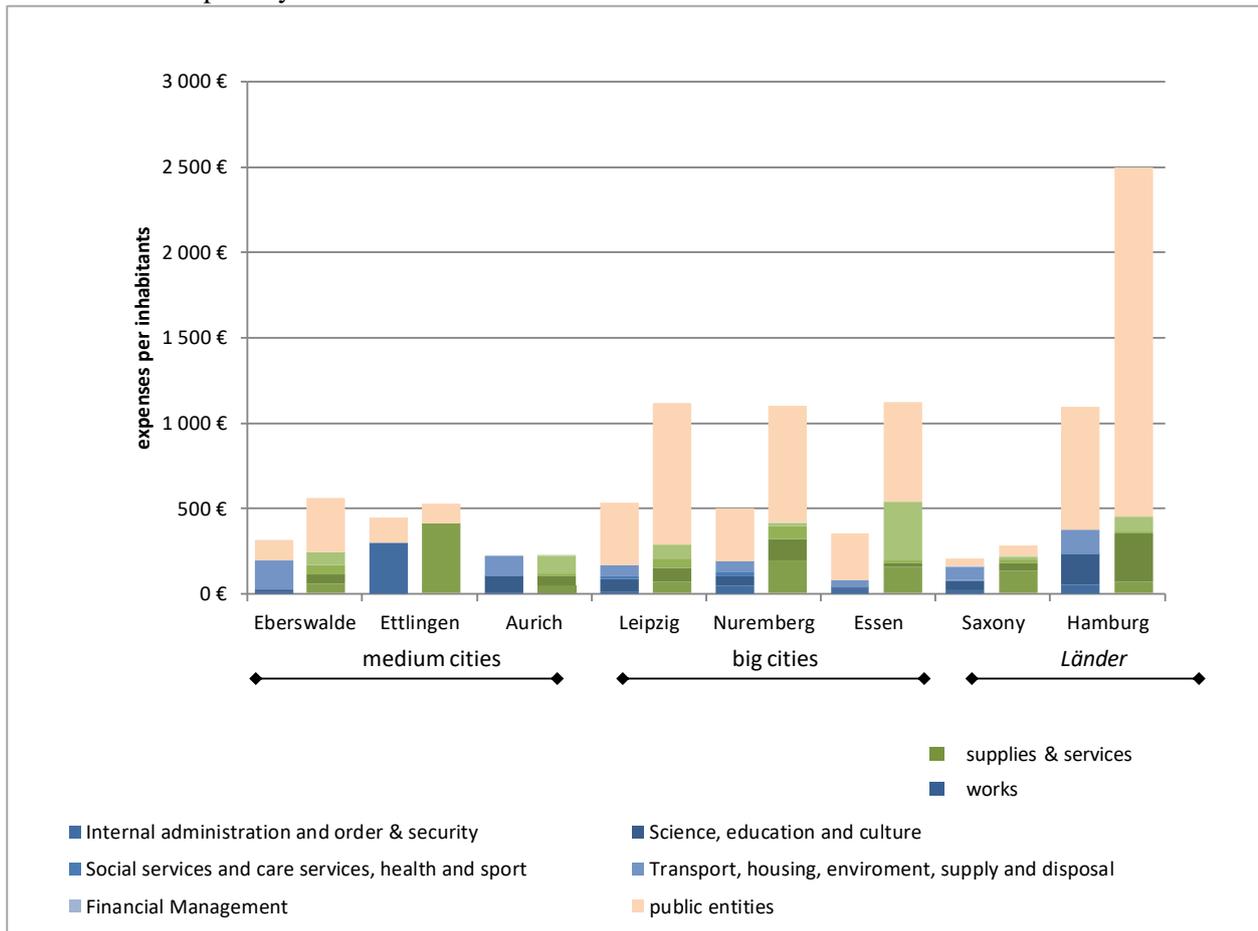
The procurement volume of each city or *Land* was derived from the expenditures reported for construction measures (‘works’ or ‘construction works’) and expenditures for tangible assets and services (‘supplies and services’) in the budgets or financial statements of the core administrations and public entities. In the following Figure 26, the average procurement volumes per resident are set out according to product sectors and procurement subjects.

In the period 2011 to 2015, the municipalities of similar sizes demonstrated similar procurement volumes per resident. However, the procurement volume in the large cities (Essen, Leipzig, Nuremberg; more than 500 000 residents) was approximately 50% higher than in the three medium-sized cities (Aurich, Eberswalde, Ettlingen; up to 50 000 residents). This difference resulted primarily from the fact that the procurement volume for supplies and services was higher. There were essentially two reasons for this. For one, a variety of tasks are carried out in the rural areas by the administrative districts [*Kreise*] as a kind of supra-local autonomous administrative level. The expenditures for these tasks are not included in the procurement volumes of the medium-sized cities. For another, some tasks/services tend to be carried out predominantly in the large cities (e.g. cultural activities) or to a larger extent/at a higher quality in the large cities (e.g. public passenger transportation).

For the administrations of the city-state Hamburg and the Free State of Saxony, no uniformity could be seen. The procurement volume per resident of the administration of Saxony was lower than that of the medium-sized cities. The city-state Hamburg on the other hand is both a city and

a state [*Land*]. Its procurement volume is therefore significantly higher. It is more than double that of the other large cities.<sup>66</sup>

Figure 26: Procurement volumes in EUR per resident and procurement subject; average in the period 2011–2015 per city or *Land*



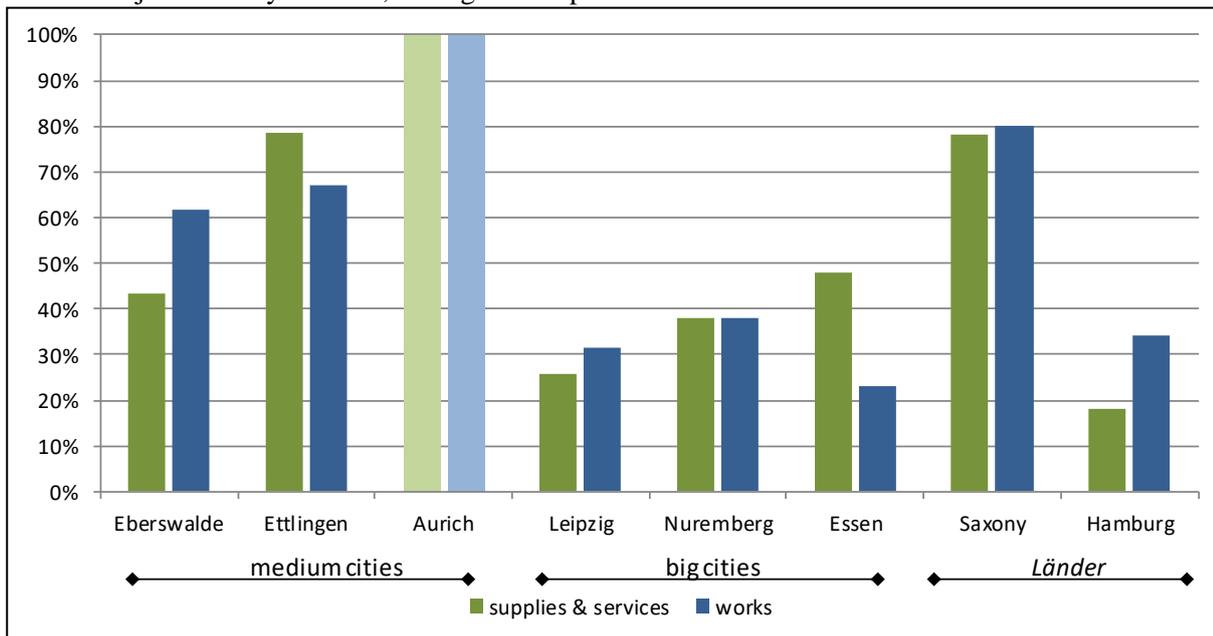
Source: Own representation, based on information from budgets/financial statements for the period 2011–2015<sup>67</sup>

Figure 26 and Figure 27 show that, especially in cities with more than 500 000 residents, the share of the procurement volumes expended by the public entities was significantly higher than that expended by the core administrations. The same is true for the city-state Hamburg. But for the State Government of Saxony and in the three medium-sized cities, much lower shares of the procurement volumes were expended by public entities.

<sup>66</sup> While the category ‘works’ was subject to considerable annual fluctuations, the expenditures in the category ‘supplies and services’ was relatively constant over time.

<sup>67</sup> The public entities of the city of Aurich could not be evaluated because financial statements were not available for it.

Figure 27: Average share of public procurement volume of the core administrations per procurement subject and city or *Land*; average in the period 2011–2015



Source: Own representation based on information from budgets or financial statements for the period 2011–2015<sup>68</sup>

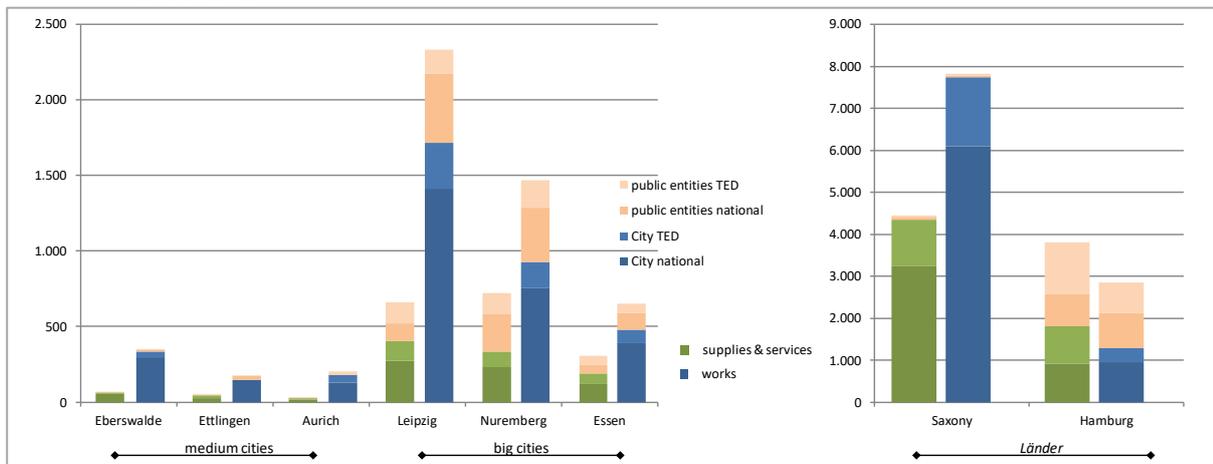
### 5.1.3. Number and contract values of the procurement procedures

The analysis of the DTAD data showed that similar procurement volumes of the cities of the same size was not mirrored by similar numbers of public procurement procedures (Figure 28). Essen, for example, had only around one-third the number of such procedures that Leipzig had. Particularly significant was the difference between the State Government of Saxony and the city-state Hamburg. Although the procurement volume of the city-state Hamburg was three times the size of the State Government of Saxony, the State Government of Saxony carried out 50% more public procurement procedures. Also striking is the fact that in the Free State of Saxony and in all of the cities, the share of public procedures for works is considerably higher than the share of public procedures for supplies and services.<sup>69</sup>

<sup>68</sup> Because no financial statements were available for the public entities of the city of Aurich, the share of the public authority expenditures was set at 100% for each procurement subject.

<sup>69</sup> The DTAD data contains very little information on contract values. The data could therefore only be analysed in relation to the number of public procurement procedures.

Figure 28: Number of public procurement procedures per procurement subject and city or *Land*; period 2011–2015



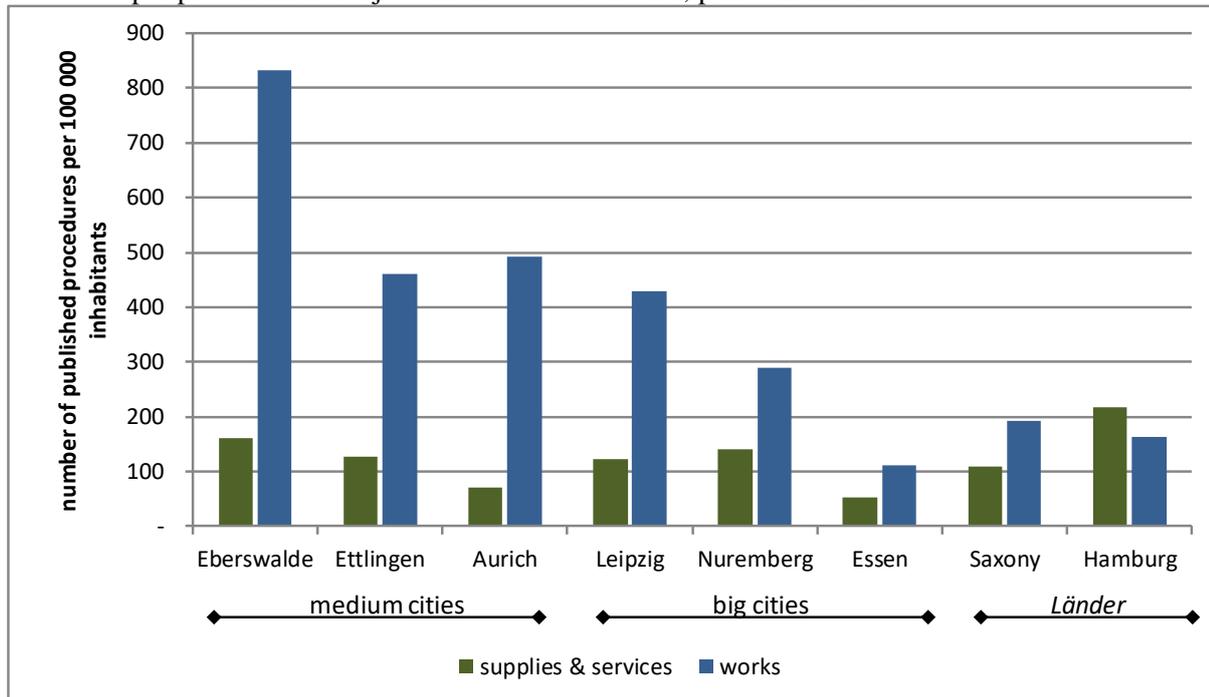
Source: DTAD

The figures also revealed that in the medium-sized cities and in the State Government of Saxony, the largest share of public procurement procedures is allocable to the core administrations. But in the large cities and in the city-state Hamburg, a substantial share of procedures is allocable to the public entities. This correlates with the finding that it is the public entities in the large cities and in the city-state Hamburg that are expending substantial shares of the procurement volumes.

But what is true for all of the cities and the *Länder* is that the percentage of the total number (core administrations + public entities) of public procurement procedures carried out by the public entities is lower than the percentage of the total (core administrations + public entities) procurement volume attributable to them. This generally indicates that the contract values of the public procurement procedures of the public entities tend to be higher than those of the core administrations. This is supported by the fact that, in comparison to the core administrations, the share of EU-wide procedures carried out by the public entities is, in relation to the total number of public procurement procedures, higher. The findings of the case studies therefore corresponded to those for Germany as a whole (Figure 3). There too it was found that the public entities carry out EU-wide public procurement procedures more frequently than the core administrations at the local level.

All in all, the number of public procurement procedures per 100 000 residents for supplies and services was more or less the same in all of the cities. And in all of the cities, the number of public procurement procedures per 100 000 residents for works was considerably higher than for supplies and services. The two cities in the *Länder* of the former East Germany (Eberswalde and Leipzig) showed a higher number of public procurement procedures for works than the other two cities of the same size (Figure 29). No such clear difference was identifiable, however, on the *Länder* level in the two case studies. Therefore, for works on the local level only, the findings of the case studies were consistent with the findings for Germany as a whole, i.e. that the public authorities in the former East German *Länder* tended to publish more contract notices per 100 000 residents than the other *Länder* (see Figure 10). Accordingly, and in light of the minor differences between the case studies at the level of the *Länder* administrations, the findings indicate that the regional differences as set out in Figure 9 to Figure 12 were mainly attributable to differences at the local level.

Figure 29: Number of public procurement procedures (regional authorities including their public entities) per procurement subject and 100 000 residents; period 2011–2015



Source: DTAD

It was only for the cities of Eberswalde (up to 50 000 residents) and Leipzig (more than 500 000 residents) and for the State Government of Saxony that procurement statistics were available for analysis for the period 2011–2015.<sup>70 71</sup>

Figure 30 sets out the annual average contract values and the number of contracts awarded as documented in the procurement statistics of Eberswalde, Leipzig, and the State Government of Saxony. In addition, the respective shares of the procurement procedures used are shown separately for works and for supplies and services.<sup>72</sup>

<sup>70</sup> The procurement statistics contained information on the contract values of public procurement procedures and on the numbers and values of contracts procured by non-public procurement procedures (the so-called *Beschränkte Ausschreibung* and the *Freihändige Vergabe*). For Leipzig and the State Government of Saxony, the procurement statistics also contained the procurements of the public entities. For Eberswalde, the statistics only contained the procurements of the public authorities (without their public entities). The procurement statistics in Eberswalde listed all procurements with a contract value of more than 5 000 euros. The Leipzig statistics contained all awarded contracts with a contract value above 13 000 euros, or above 25 000 euros for the years 2014/2015. For the city-state Hamburg, the reports of the Federal Ministry for Economic Affairs and Energy (*BMWi*) on EU-wide procurement procedures were used for the analysis. No procurement statistics were available for the other cities.

<sup>71</sup> The procurement statistics for the State Government of Saxony for the years 2015/2016 allow for no differentiation between the two years, and therefore no analysis could be made for 2015 alone.

<sup>72</sup> The values for the city-state Hamburg are not included, because the only reports available for EU-wide procurement procedures were the reports of the Federal Ministry for Economic Affairs and Energy (*BMWi*). On the average, 191 contracts with an annual total contract value of 498 million euros were awarded in the city-state Hamburg for supplies and services, and 74 contracts with an annual total contract value of 313 million euros for works.

Figure 30: Annual average numbers and contract values of contracts awarded as documented in the procurement statistics of Eberswalde, Leipzig and the State Government of Saxony; Period 2011-2015



Source: Procurement statistics Eberswalde, Leipzig, State Government of Saxony, BMWi

Two things are particularly notable regarding supplies and services. The first is the dominance, in terms of numbers, of the non-public procedures (the *Beschränkte Ausschreibung* and the *Freihändige Vergabe*), and the dominance, in terms of total contract values of public procedures (EU-wide procurements and national). The second is that when Eberswalde and Leipzig are compared, the total number of contracts awarded per year are nearly equal, but the total value of contracts awarded is considerably higher in Leipzig than in Eberswalde. Consequently, the share of public procedures, in relation to the total value of contracts awarded, is clearly higher in Leipzig than in Eberswalde. The same is true for the subset of EU-wide procedures. Based on the foregoing findings, i.e. that the number of public procedures per 100 000 residents was more or less the same in all of the cities, the conclusion can be drawn that—at the local level—more residents, which means more responsibilities, tends to lead to larger average contract values.<sup>73</sup>

Consequently, the average contract values of contracts awarded in Leipzig were considerably higher than in Eberswalde with respect to national and EU-wide procurement procedures (see Table 16).<sup>74</sup>

<sup>73</sup> As to whether size also plays a role when comparing the municipal level and the *Land* level or when comparing the various *Länder* per se is a point that cannot be commented on due to the insufficiency of the available data.

<sup>74</sup> According to the information taken from the procurement statistics for the city of Leipzig, a variety of factors surrounding the accommodation of the refugees in 2015 have to be taken into account. At that time, service contracts had to be awarded at short notice because of the urgency of the situation. The services awarded via the *Freihändige*

Table 16: Average contract values of contracts awarded per type of procurement procedure for supplies and services; period 2011–2015

Supplies and services	EU-wide public procedures [in EUR 1 000]	National public procedures [in EUR 1 000]	National non-public procedures	
			<i>Beschränkte Ausschreibung</i> [in EUR 1 000]	<i>Freihändige Vergabe</i> [in EUR 1 000]
Leipzig	3 144	745	44	352
Eberswalde	1 595	111	31	18
State Government of Saxony	1 334	45	13	4
City-state Hamburg	2 610			

Source: Procurement reports of Eberswalde, Leipzig, State Government of Saxony, BMWi (TED Saxony, Hamburg)

For procurements below the EU-thresholds, each individual *Land* has defined its own thresholds. For contracts with contract values below these thresholds, the *Beschränkte Ausschreibung* and the *Freihändige Vergabe* are permitted (see Table 39). The higher these thresholds are, the higher the average contract values tend to be for national procurement procedures, *Beschränkte Ausschreibungen*, and for *Freihändige Vergaben*.

A more homogeneous picture is presented in the case of works (see Table 17). The respective average contract values for Leipzig, Eberswalde, and the State Government of Saxony are similar. What is notable in relation to EU-wide procedures is that the contract values for works are not only much smaller in comparison to supplies and services but are also far below the EU-threshold. This can be explained by the common practice of dividing construction projects up into lots according to the different trades and the awarding of them via separate procurement procedures. By contrast, procurement projects for supplies and services are less frequently divided up and awarded in lots.

The average contract value of EU-wide procurements is much higher in the city-state Hamburg than it is in the other cities. The absence of any further information made it impossible, however, to clarify the reasons for this. But considering that the values were derived from the BMWi reports, it may well be possible that the individual, lot-wise procurements of projects were added together, and reported as total value per respective project by the Länder to the BMWi.

Table 17: Average contract values of contracts awarded for works per type of procurement procedure according to the procurement statistics for Eberswalde and Leipzig; period 2011–2015

Works	EU-wide public procedures [in EUR 1 000]	National public procedures [in EUR 1 000]	National non-public procedures	
			<i>Beschränkte Ausschreibung</i> [in EUR 1 000]	<i>Freihändige Vergabe</i> [in EUR 1 000]
Leipzig	464	107	64	32
Eberswalde	207	104	35	14
State Government of Saxony	628	227	48	4
City-state Hamburg	4 208			

*Vergabe* procedures comprised contracts for surveillance services, management services, and for social care. This included a framework contract for surveillance services totaling 11 million euros. According to the information in the procurement statistics, offers were received from three bidders.

Source: Procurement reports for Eberswalde, Leipzig, State Government of Saxony, BMWi (TED Saxony, Hamburg)

On the whole, the procurement statistics indicated that the average contract values of the non-public procurement procedures were very low. This was very pronounced in the procurement statistics of the State Government of Saxony. Although 97% of all non-EU-wide procurement procedures in Saxony were non-public procedures, they only represented 28% of the total contract value of all non-EU-wide procedures.

#### **5.1.4. Comparison between procurement volume and procurement procedures**

The correlating of the total contract values with the respective procurement volume of each case study does not give rise to an overall, uniform picture (Figure 31).<sup>75</sup>

The differences between the respective procurement volumes and the extrapolated total contract values of public procurement procedures vary considerably from one case study to another. The differences range between 32% and 75% for supplies and services and between 10% and 70% for works. Common to all case studies, however, is that the average difference is substantially lower for works than it is for supplies and services (30% to 50%).

But here too it must be taken into account that the procurement volume also includes procurements that are not subject to procurement law. Since the procurement volume for supplies and services was derived from the item 'recurrent operating expenses', the findings of the case studies can therefore also be interpreted to mean that procurements not subject to procurement law are included primarily in this statistical item. The large differences in the case of supplies and services can therefore not be interpreted as a direct indication of a possible systematic violation of procurement law specifically in relation to these procurement subjects.

Across all of the case studies, an average of around 34% of the procurement volume was procured via public procurement procedures at the EU level, 8% via national public procurement procedures, and another 8% via national non-public procurement procedures. Thus the total contract value of all of these procurement procedures constitutes 50% of the procurement volume. In comparison to the values ascertained for Germany as a whole, the case studies showed a significantly higher share of the volume of EU-wide public procurement procedures, but significantly lower shares of public and non-public national procurement procedures.

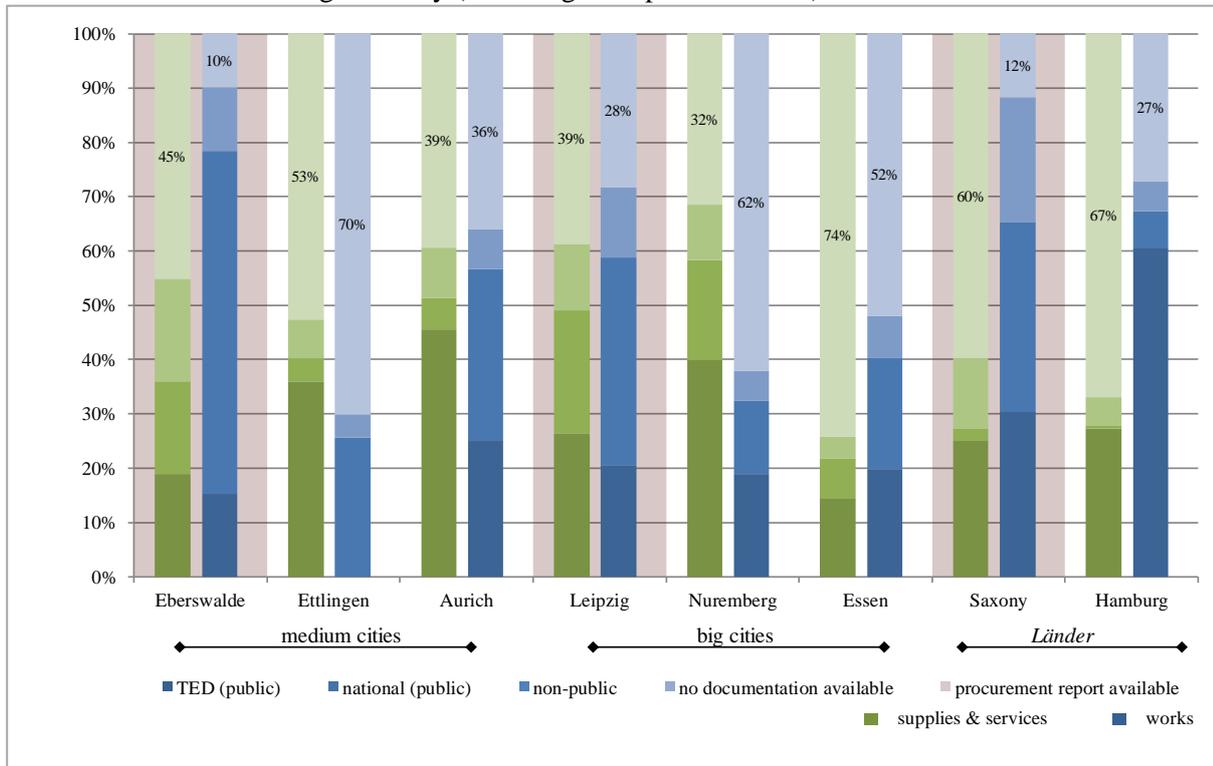
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<sup>75</sup> The projections of the total contract values are based on the average contract values taken from the procurement statistics (Eberswalde, Leipzig, and the State Government of Saxony) and from the numbers of public procurement procedures documented in the DTAD database for each case study.

The average contract values for Eberswalde were used for the projections in relation to all three medium-sized cities. The average values of Leipzig were used for the projections of all three large cities. For the city-state Hamburg, the values derived from the BMWi reports were used for projecting EU-wide procedures. For Saxony, the average contract values were used for projecting national procedures.

The shares of non-public procurement procedures (*Beschränkte Ausschreibung* and/or the *Freihändige Vergabe*) were derived from the respective shares extrapolated from the procurement statistics (Eberswalde, Leipzig, and the Free State of Saxony).

Figure 31: Percentages of each type of procurement subject for the projected contract value awarded per local contracting authority (including their public entities)



Source: Author’s own calculations<sup>76</sup>

While comparing the public procurement procedures made in the investigation period with the budgets and investment plans of the city of Ettlingen, one particular construction project stood out. Even though expenditures of around 7 million euros (net) were reported for construction works in relation to this project, no EU-wide procurement procedure was carried out. The submissions regarding the facts of this case are closely linked to the topic of procurements of construction works and real estate-related services, which is the subject of another case study. They are therefore discussed in chapter 5.3.3.

## 5.2. Case studies of Stadtwerke (public utility companies)

### 5.2.1. Spectrum and organisation of tasks

The model of the ‘all-inclusive jurisdiction to administer local affairs’ at the local level characteristically produces municipalities in Germany that traditionally engage in strong economic pursuits of their own. This is why many services are largely performed by themselves. Services such as waste disposal, the supply of water, gas and electricity, and the operation of local public transportation services are performed by the so-called *Stadtwerke* (public utility companies). *Stadtwerke* are public entities that take one of two legal forms. The one is called an *Eigenbetrieb*, a municipal enterprise without legal personality that is operated by the municipality. The other is called an *Eigengesellschaft*, a municipal company with a legal personality of its own that is wholly owned by the municipality. This institution of the municipal *Stadtwerke* is unique to Germany in the European context.

<sup>76</sup> For Eberswalde, the proportion of non-documented procurements is lower, if applicable, as the construction cooperative could be a commercial company which is therefore not a public contracting authority.

Two of the case studies therefore focused on public entities in the form of *Stadtwerke*. In order to provide a representative picture of cities of different sizes and legal forms, or of organisational structures of different kinds, the Stadtwerke Groß-Gerau (a public utility company in the form of an *Eigenbetrieb* of the town of Groß-Gerau, 25 000 residents) and the SWE Stadtwerke Erfurt GmbH (a limited liability company wholly owned by the city of Erfurt, 200 000 residents) were chosen for the case studies. The fields of activities of each of the *Stadtwerke* are set out in Table 18.

Table 18: Overview of the sectors in which the *Stadtwerke* operate

Sector	Stadtwerke Groß-Gerau	Stadtwerke Erfurt
Supply (electricity, water, thermal energy)	X	X
Sewage	X	X
Disposal		X
Transportation (Mobility / ÖPNV)		X
Leisure (baths; gardens)	X	X
Environment	X	
Other	X	X

Source: Consolidated financial statements; in-house bylaws.

The reason why Groß-Gerau and Erfurt chose different legal forms for their *Stadtwerke* (namely a municipal undertaking without legal personality and a limited liability company) is most likely due to their sizes. Choosing a limited liability company as the legal form for the Stadtwerke Erfurt GmbH is also reasonable in light of the fact that it functions as a management holding for 17 subsidiaries.

Being public contracting authorities, the *Stadtwerke* are bound by the various directives, statutes, and regulations governing public procurements. And with respect to their business activities in the water supply, energy supply, and transportation sectors, *Stadtwerke* and their subsidiaries are regarded as sector-specific contracting authorities [*Sektorenauftraggeber*].

### 5.2.2. Procurement volumes

The difference in the sizes of the two *Stadtwerke* is also mirrored in the sizes of their procurement volumes. (Table 19)

Table 19: Procurement volumes of the *Stadtwerke*

	Procurement volume [in EUR '000]		Procurement volume per resident [in EUR '000]	
	Stadtwerke Erfurt	Stadtwerke Groß-Gerau	Stadtwerke Erfurt	Stadtwerke Groß-Gerau
Works	202 889	17	964.89	0.67
Supplies and services	478 103	24	2 273.75	0.94

Source: 2011–2015 consolidated financial statements of the Stadtwerke Erfurt GmbH, annual financial statements and economic plans of the Stadtwerke Groß-Gerau.<sup>77</sup>

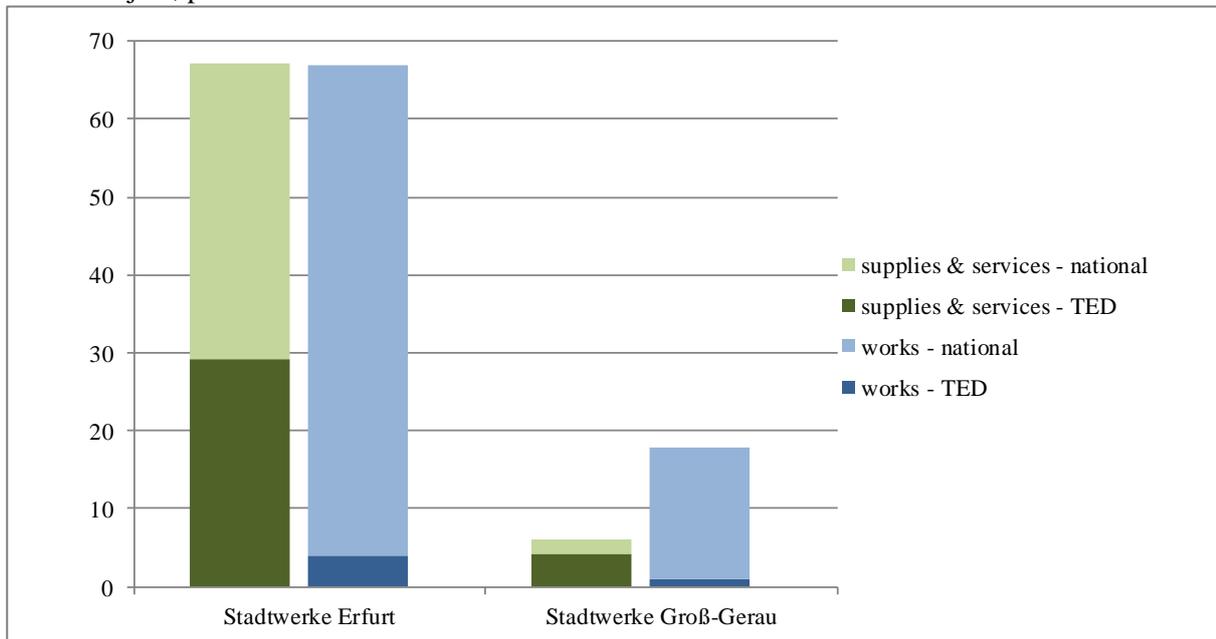
### 5.2.3. Number and contract values of the procurement procedures

According to the DTAD, the Stadtwerke Erfurt GmbH carried out considerably more public procurement procedures than the Stadtwerke Groß-Gerau. What is noticeable, however, for the Stadtwerke Groß-Gerau is that in terms of the number of procedures, procedures in relation to

<sup>77</sup> exclusive of energy and water consumption

works dominate. For the Stadtwerke Erfurt GmbH, the share of procedures for works is the same as for supplies and services.

Figure 32: Number of public procurement procedures carried out by the *Stadtwerke* per procurement subject; period 2011–2015



Source: DTAD

#### 5.2.4. Comparison between procurement volume and procurement procedures

Based on the estimated total value of contracts awarded, the Stadtwerke Groß-Gerau procured 85% of its procurement volume via public procurement procedures nationally or EU-wide. By contrast, the Stadtwerke Erfurt GmbH only procured 30% (without energy and water consumption) of its procurement volume via public procurement procedures, again based on the estimated total value of contracts awarded.<sup>78</sup>

As far as can be inferred from the limited data available, it would seem that large projects above the EU-thresholds were correctly procured EU-wide.

### 5.3. Sector case studies

The sector-specific case studies focused on:

- the collection and disposal of household waste
- the procurement of medical consumables for hospitals
- construction works and real estate management
  - the construction of hospital buildings
  - construction and real estate management at the local level by public entities
- regional public bus transportation services.

<sup>78</sup> No procurement statistics were available, and the DTAD data rarely included contract values.

### 5.3.1. Collection of household waste

#### *Spectrum and organisation of tasks*

Household waste includes residual waste, bulky waste, and separated recyclable materials (organic, paper, metal, plastic, and glass). According to Paragraph 20 of the Act on the Promotion of the Circular Economy (KrWG), the local authorities (cities, municipalities, districts) are obligated to ensure the disposal of household waste. Disposal comprises the collection and recycling or thermal utilisation/depositing of waste.

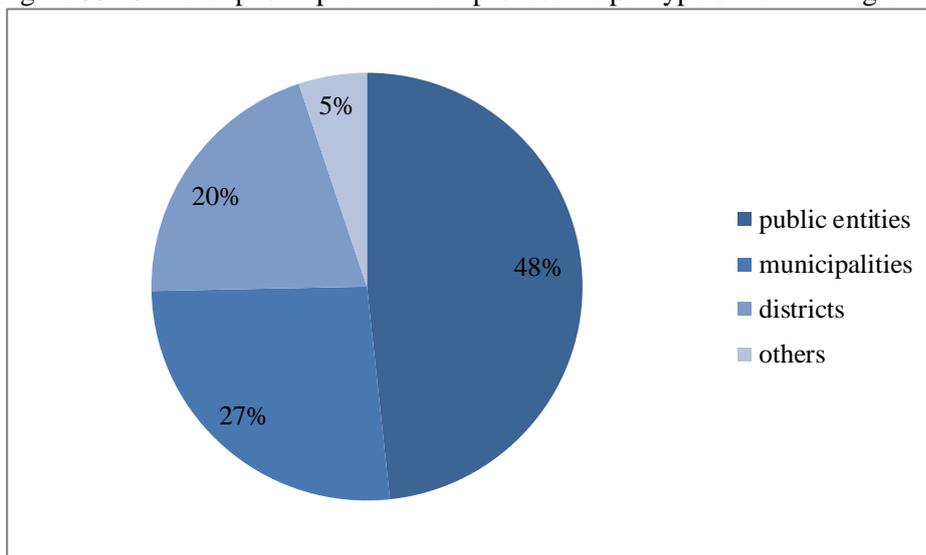
There are different organisational solutions for providing disposal services. These include the use of public entities (e.g. in-house operations), public entities in cooperation with the local authorities [*Zweckverbände*], and private or public-private companies.

In order to provide a representative picture of the various organisational forms, three examples were chosen for the case studies on the procuring of disposal services for private household waste. These were the city-state Bremen (provision of services by private companies), the administrative district of Oberhavel (provision of services by the Abfallwirtschafts-Union Oberhavel GmbH (public-private company)), and Saarland (provision of services by the Entsorgungsverband Saar, a *Zweckverband*).

#### *Number and shares of public procurement procedures*

For the whole of Germany in the period 2011 to 2015, the DTAD data showed 1 911 relevant public procurement procedures, of which 1 577 (83%) were carried out EU-wide and 344 (17%) nationally. The procedures almost exclusively involved service contracts. Framework contracts were awarded in 884 cases via public procurement procedures, of which 703 (80%) were procured EU-wide and 181 (20%) nationally. The contracting authorities in approximately 50% of the public procurement procedures were public entities (see Figure 33).

Figure 33: Share of public procurement procedures per type of contracting authority; period 2011–2015



Source: DTAD

#### *Volume of services in Germany and in the three examples*

Based on the average values of waste disposal per resident, which were derived from the three example case studies, the total annual costs for the disposal of household waste in Germany ranged from 5.2 billion euros to 6.8 billion euros. The making of any projections or comparisons of these

annual costs on the basis of the DTAD data was not possible particularly because of the wide disparity of the terminology used for the various public procurement procedures in the DTAD database.

Figure 34: Key figures of waste disposal in the case studies

	City-state Bremen	Saarland (Entsorgungsverband Saar)	Oberhavel (Abfallwirtschafts-Union Oberhavel GmbH)
Number of residents	661 888	997 855	205 832
Household waste in Mg	290	485	77
Household waste per resident in kg	438	486	374
Total costs for disposal in EUR	55 000 000	76 000 000	13 000 000
Costs per resident in EUR	83	76	63

Source: Own research.

### *Special aspects of the studied examples*

**City-state Bremen:** Since the privatisation of the Bremer Entsorgungsbetriebe in 1998 (city-owned public entity for waste disposal services), the disposal of household waste in the city-state Bremen has been carried out by private companies. The majority of these services—measured by total costs (75%)—has since then been performed by the Nord GmbH & Co KG (a subsidiary of the Nehlsen Group) on the basis of a 20-year contract. Another 15% of the services are carried out on the basis of framework contracts. The remaining 10% of the costs could be assigned to the Umweltbetrieb Bremen, an *Eigenbetrieb* of the the city-state Bremen.

According to the data available, the city-state Bremen was planning a reorganisation of waste disposal via remunicipalisation measures once the 20-year contract with Nord GmbH & Co KG expires in 2018. The reason for such remunicipalisation was to enable the city-state Bremen to have greater influence to end the monopolistic situation.

**Entsorgungsverband Saar:** The Entsorgungsverband Saar is a special-purpose public-law association [*Zweckverband*] under the Saarland Waste Disposal Act. According to the Act on Reorganisation of the Saarland Waste and Water Economy, all municipalities in Saarland are members of the Entsorgungsverband Saar. Although the municipalities are free to perform waste disposal independently, they remain a member of it. In addition to the collection the Entsorgungsverband Saar is also responsible for waste-water purification in Saarland (although this was not the subject of the case study). The DTAD data contains a total of 22 (including 21 EU-wide) public procurement procedures of the Entsorgungsverband Saar in the period 2011–2015. It can therefore be assumed that the disposal of residual waste is carried out completely by the Entsorgungsverband Saar.

Abfallwirtschafts-Union Oberhavel GmbH: The administrative district Oberhavel is responsible for the collection, transportation, and utilisation or storage of waste in the administrative district. The municipalities belonging to the district have delegated these tasks to it.

In 2003, the district contracted with the Abfallwirtschafts-Union Oberhavel GmbH (AWU). The administrative district Oberhavel holds 51% of the shares in it and the other 49% are held by the ALBA Group plc & Co. KG. The contract with the AWU (a public-private company or so-called *gemischtwirtschaftliches Unternehmen*) was publicly tendered in 2003. Through the process of not terminating the contract, it was automatically renewed in 2013 for ten years. In the public minutes of the council meetings of the administrative district (*Landkreis*), no mention whatsoever was made to any deliberations or decisions having been made in relation to a further renewal of the contract. It must therefore be assumed that the renewal was made by tacit agreement.<sup>79</sup>

### Conclusions

Although very few public procurement procedures were carried out in the investigation period, the majority of them were carried out EU-wide. The analysis of the structures underlying the sector revealed that one main reason for the small number of procedures is the fact that in-house provision is being carried out on a large scale. The majority of the in-house provision activities are carried out by the public entities and less frequently by the core administrations. In Saarland, for example, the public Entsorgungsverband Saar (a so-called *Zweckverband*) reported total costs of 76 million euros for its services in 2015. This amount can be interpreted as the value of services not procured on the open market. In comparison, such services were awarded by the city-state Bremen to a private service provider. The expenditures for these services in 2015 were reported at 55 million euros.

Another important reason [for the low number of public procurements] is that these services are being performed by public-private companies [*gemischtwirtschaftliche Unternehmen*] that are partly owned by the public authorities. Contracts with waste disposal service providers often have very long contract terms. Many of such contracts also contain automatic renewal clauses. This was also one of the main reasons for the relative rarity of public procurements for services in the waste disposal sector in the investigation period.

The case study is most likely not an isolated case. The problem presented by contracts with longer contract terms, and the option they often contain to automatically extend the term, play a role in the entire waste disposal sector. Drawing on experiences from the consulting field and on information derived from a variety of publications, options to renew contracts without public tendering obligations are intentionally created and used.<sup>80 81</sup>

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<sup>79</sup> As to the extent to which this procedure complied with procurement law was something that could not be reviewed within the scope of the case study. But from the point of view of budgetary law, the tacitly agreed renewal of the contract was problematic. Then the complete absence of any documentation of the reasons for the renewal implies that no review was made to determine the cost-efficiency of it.

<sup>80</sup> Especially in the case of public-private service providers, there are often no incentives for the parties to change the contractual situation.

<sup>81</sup> See such online sources as: <https://www.muellundabfall.de/ce/entsorgungsvertragsverlaengerung-ohne-ausschreibungspflicht/detail.html>; <https://www.bundesanzeiger-verlag.de/vergabe/aktuelles/nachrichten-vergaberecht/nachrichten-detail/artikel/er-laeuft-und-laeuft-und-laeuft-vertragsverlaengerungen-und-das-vergaberecht-10808.html>; [https://www.gpabw.de/fileadmin/user\\_upload/pdf/GPA\\_Mitte-lungen/2001/MIT122001.pdf](https://www.gpabw.de/fileadmin/user_upload/pdf/GPA_Mitte-lungen/2001/MIT122001.pdf).

### 5.3.2. *Procurement of medical materials for hospitals*

German hospitals expend around 13 billion euros each year on medical materials (including implants). The case study investigated the procurement of medical materials via public procurement procedures for Germany as a whole and in three concrete examples: a public hospital, a regional purchasing association for public hospitals, and a private purchasing association as a service provider for private and public hospitals.

In all of the examples in the investigation period, very few public procurement procedures were carried out. For both of the purchasing associations, the estimated percentage of the procurement volume procured in this way was even as low as 2% of the total purchasing volume of the associations. This seems very low considering that the procuring of goods via purchasing associations does not release public hospitals from their obligations to comply with procurement law. But as to whether or how this obligation was actually being complied with was something that could not be judged on the basis of the scarce information available. Equally unclear is which amounts of supplies and services that are not subject to procurement law are being procured by the purchasing associations.

It must therefore be concluded that because of the scarcity of the available information, no qualified portrayal of the procurement activities of public hospitals in Germany was possible. The number of the documented procurement procedures in relation to the estimated procurement volume appears to be too low. This specific area clearly needs to be investigated in more depth than what was possible in a case study. This investigation should focus on the structures and the practices of the purchasing associations. It would also be in the interests of the public hospitals to have legal uncertainties clarified and regulatory gaps closed.

### 5.3.3. *Procurement of construction works and real estate-related services*

#### *Construction of hospital buildings*

Neither the public statistics nor the other sources contain any key figures on the annual volume of investments in new buildings and in the renovation of public hospitals. Therefore, all that can be done is to draw indirect inferences from other informational sources about the scale of the annual investments in new buildings or in the renovation of public hospitals.

In 2015, for example, 85 building permits were issued for new buildings with an estimated total volume of 930 million euros. One problem here is that this volume also contains projects for non-public hospitals, which means that it does not fully represent procurements subject to public procurement law. Another problem is that renovation projects are not necessarily included in it.<sup>82</sup>

Another issue is that of the long-term investments in hospitals made by the *Länder* through the so-called individual funding [*Einzelförderung*]. Such individual funding includes but is not limited to funding for larger construction and renovation projects. The volume of such investments in 2015 was around 1.6 billion euros. But in many municipalities, the municipalities also contribute to the investments in public hospitals. In addition, investment projects are also partially financed out of the hospitals' own capital funds. The total volume is therefore at least around 1.6 billion euros, although the actual amount is probably much higher.

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<sup>82</sup> Destatis building activities, Series 5, Part 1; in 2016, planning permission was granted to 124 new hospital construction projects, with an estimated total value of around 1 900 million euros.

The DTAD data contained 4 289 public procurement procedures for construction projects for hospitals. Of these, 3 957 (92%) were procured EU-wide.

The 237 million euro construction project for a new hospital building of the Klinikum Frankfurt Höchst was analysed in the context of the case study. The DTAD data showed that public procurement procedures were carried out for this hospital project. All procedures were procured EU-wide. Considering the German preference for awarding contracts in individual lots and the large volume of the project, the number of procurement procedures was actually quite small. The reason for this lay in the fact that a general contractor had been commissioned.<sup>83</sup>

Because the project involved the construction of the first *Passivhaus* hospital worldwide, the procurement procedures were carried out as ‘competitive procedures with negotiation’ pursuant to EU procurement law. There was nothing in the case study to indicate that procurement obligations were not complied with.

#### *Construction and real estate management at the local level by public entities*

The case study focused on the Kommunale Immobilien Service (KIS) Potsdam. KIS Potsdam is a public entity of the city of Potsdam. It is responsible for managing Potsdam’s public real estate and infrastructure in accordance with the city’s own statutes. The tasks and services carried out by KIS comprise the construction, renovation, maintenance, and management of building structures. KIS’ main task is to provide the public-building infrastructure—schools, kindergartens, social care facilities, social and cultural institutions, and administrative buildings. According to its financial statements, KIS’ total procurement volume for the period 2011 to 2015 was around 207 million euros, the annual average being 41.4 million euros.

The procurement statistics that KIS has published since 2012 contain the contracts it has awarded for both works and services. The quality of these reports only allowed for a reliable analysis of 2015, however, and not for the whole period 2012 to 2015.<sup>84</sup>

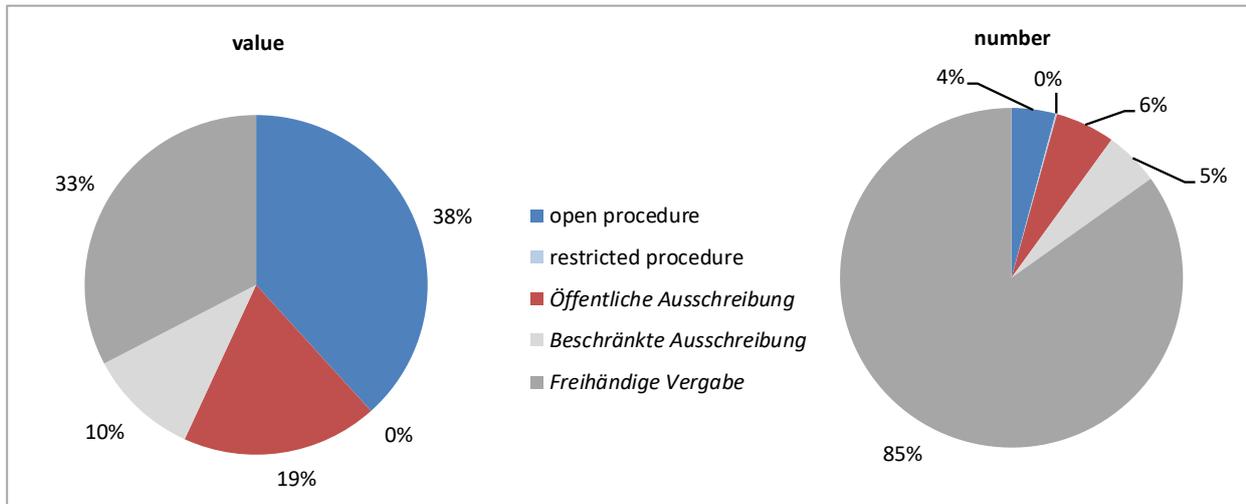
The 2015 report showed a total value of awarded contracts of around 28 million euros for the procurement of works. This total volume comprises 676 procurement procedures. Approximately 38% (10.7 million euros) of the total value was procured via 29 EU-wide procurement procedures, approximately 19% (5.2 million euros) via 38 national public procurement procedures, and 43% (12 million euros) via 611 non-public procurement procedures (see Figure 35 and Table 20).

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<sup>83</sup> According to our research, 160 companies were involved as subcontractors in the project.

<sup>84</sup> The procurement reports do not contain contracts KIS has awarded for supplies.

Figure 35: Contracts for works in 2015; percentages per type of procurement procedure of total contract value (left) and total number of contracts (right)



Source: 2015 KIS Potsdam procurement statistics<sup>85</sup>

The report showed average contract values of 381 000 euros for EU-wide public procurement procedures (open procedure) and 136 000 euros for national public procurement procedures [*öffentliche Ausschreibungen*]. The average contract value for non-public procedures was 19 663 euros.

Table 20: Procurement of contracts for works in 2015; percentage per type of procedure (in EUR)

Procurement procedure	Contract value	Percentage of total contract value	Number of contracts awarded	Percentage of total number of awards	Average contract value
Open procedure	10 666 348	38%	28	4%	380 941
Restricted procedure	1 224	0%	1	0%	1 224
Öffentliche Ausschreibung	5 157 564	19%	38	6%	135 725
Beschränkte Ausschreibung	2 920 455	10%	35	5%	83 441
Freihändige Vergabe	9 093 471	33%	574	85%	15 842
<b>Total</b>	<b>27 839 064</b>	<b>100%</b>	<b>676</b>	<b>100%</b>	<b>41 182</b>

Source: 2015 KIS Potsdam procurement statistic.<sup>86</sup>

With respect to the procurement of services, the analysis of the procurement statistic for 2015 showed a total contract value of around 6.0 million euros, procured via 429 procurement procedures. Approximately 23% of the total contract value was procured via EU-wide public procurement procedures and 8% via national public procedures. The average contract values of contracts for services awarded via public procedures are similar to those for contracts for works. With respect to the total contract value of contracts for services, 69% were awarded via a large number of

<sup>85</sup> Source: <http://kis-potsdam.de/service/auftragsvergabe>; Document: KIS procurement statistics from 01.01.2015 – 31.12.2015 for works contracts

<sup>86</sup> Source: <http://kis-potsdam.de/service/auftragsvergabe>; Document: KIS procurement statistics from 1 January 2015 to 31 December 2015 for contracts for works.

non-public procedures with average contract values of 10 000 euros.<sup>87</sup> It is apparent from these the figures that KIS rigorously adheres to its maxim of safeguarding the interests of and endeavouring to provide business opportunities to SMEs, especially regional ones.<sup>88</sup>

The total value of the projected procurement volume for 2011 to 2015 was 167 million euros. This was calculated on the basis of the projected average contract values derived from the procurement statistics and from the number of public procedures documented in the DTAD, plus the assumption that the contract values of non-publicly procured contracts in 2015 were of a comparable dimension. According to the KIS business reports, this is set against approximately 207 million euros in expenditures for materials and construction measures. Taking into account the uncertainties associated with the use of average values and the expenditures for rentals, leases, raw materials, and operating materials (which are not clearly identifiable) in the business reports, a deviation of approximately 20% would appear reasonable.

What the KIS Potsdam case study clearly shows is that the vast majority of projects have small to very small total volumes that come nowhere near exceeding EU-thresholds. And the majority of the contracts were awarded via non-public procedures.

The defining of the projects was generally done per real estate property, i.e. per school or kindergarten (real estate assets in 2015: 174 properties). There was nothing to indicate that the defining of the individual projects had not been done in compliance with procurement law.

*Restoration of the castle in Ettlingen (taken from the case study of the city of Ettlingen)*

At this point a construction project that came to our attention during the course of the case study of the city of Ettlingen is worth mentioning. In Ettlingen, around 7 million euros (net) were spent over the course of three years on a construction project to restore a castle. Before the project was tendered, however, the project had been divided up into two construction phases, the cost estimate for each of which was below the EU-threshold. The information available allowed the conclusion to be drawn that the underlying cost estimates had been very optimistic. The actual costs for the first construction phase alone were more than 50% higher than the estimate, and therefore clearly above the EU-threshold.<sup>89</sup>

The reason given for dividing it up into construction phases was that the project had to be realized in successive phases in dependence on the public budget situation. The documents also revealed that the tendering of the first construction phase stood under time pressure in order to take advantage of an expiring incentive programme. No EU-wide procurement was made. As it turned out, the two construction phases were realized one after the other in close succession of time. But as to whether the dispensing with the EU-wide procurement procedures and the calculation of the contract values were correct were matters that could not be verified within the scope of the case study.

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<sup>87</sup> EU-wide public procedures: 347 000 euros; national public procedures: 160 000 euros; non-public procedures: 10 000 euros.

<sup>88</sup> *'As a public contracting authority, the Kommunale Immobilien Service (KIS) awards contracts for construction works and for supplies and services in excess of 40 million euros per year. All of the contracts awarded by KIS are procured in compliance with the provisions of German and European procurement law. We constantly endeavour to provide SMEs and regional service providers with fair competitive opportunities. Even in the case of larger investment projects, we procure the work/services separately in individual lots and in lots per type of trade...'*; Source: <http://kis-potsdam.de/service/auftragsvergabe>; as of 9/2017.

<sup>89</sup> 5.9 million euros (net) instead of the original 3.8 million euros (net).

## *Conclusions*

The case study of the building of a new public hospital is an example of cases that involve the commissioning of a general contractor. Such procurements quickly exceed the thresholds, and therefore the services for managing and executing such projects generally must be procured via EU-wide procurement procedures.

The KIS Potsdam case study is illustrative of the common German practice of procuring construction works on the basis of lots. This is done in the interests of the small and medium-sized business sector. The building projects in that case were divided up into a large number of lots. But those projects whose total volume exceeded the EU-thresholds were procured EU-wide in compliance with procurement law. The procurement maxim of KIS—i.e. to always procure the work/services of a project separately in individual lots and in trade-specific lots—and the defining of projects in smaller units per real estate property allow the assumption of a tendency not to bundle work/services or parts of a project into one unit.

The building project involving the castle in Ettlingen is also a good example of another common practice in relation to the management of public building projects, which is to divide large building projects up into several construction phases to be realised successively. Budgetary reasons are often cited for this, especially insufficient investment funding or the ‘gradual’ allocation of funds. What the Ettlingen example also suggests is that there may be difficulties in such cases with calculating the total costs of a project. Also evident was the fact that the original cost estimates were very far below what the later costs actually were. Both of these findings are problematic because it is the total costs that are relevant for determining whether EU-thresholds have been exceeded.

### **5.3.4. *Public bus transportation services***

#### *Spectrum and organisation of tasks*

The local authorities (cities, municipalities, districts) are obligated to provide public transportation services. A major part of such services is public bus transportation. These bus services include urban bus transportation [*Linienerkehr*] and special kinds of scheduled services, for example school buses.

There are different organisational solutions for providing public bus transportation. These include the use of public entities (e.g. in-house operations of cities, municipalities, or districts), public transportation associations, (transportation associations, public entities in cooperation with the local authorities), and private or public-private companies.

The procurement of bus transportation services is primarily governed by the provisions on procurements in Directive 2004/17/EC and in Regulation (EC) No 1370/2007. These provisions define the factual circumstances and the economic participants that are subject to procurement law obligations. There are also thresholds stipulated for the various factual circumstances, the exceeding of which triggers the mandatory application of the respective provisions.

Bus transportation services can be procured by public authorities or by a group of public authorities without the use of procurement procedures to an entity under public control (Article 5(2) of Regulation (EC) No 1370/2007). If the services are to be provided by private companies, the public authorities must use a competitive procurement procedure. In the exceptions set out in Article 5(4) and (5) of the Regulation, direct awards may be made. Direct awards are permitted if the estimated contract value is below 1 million euros (2 million euros for SMEs) per year, or if the annual average passenger-kilometres is below 300 000 km (600 000 km for SMEs). Therefore, in the exceptions defined by the Regulation, the Regulation overrides the common EU-thresholds. Another special

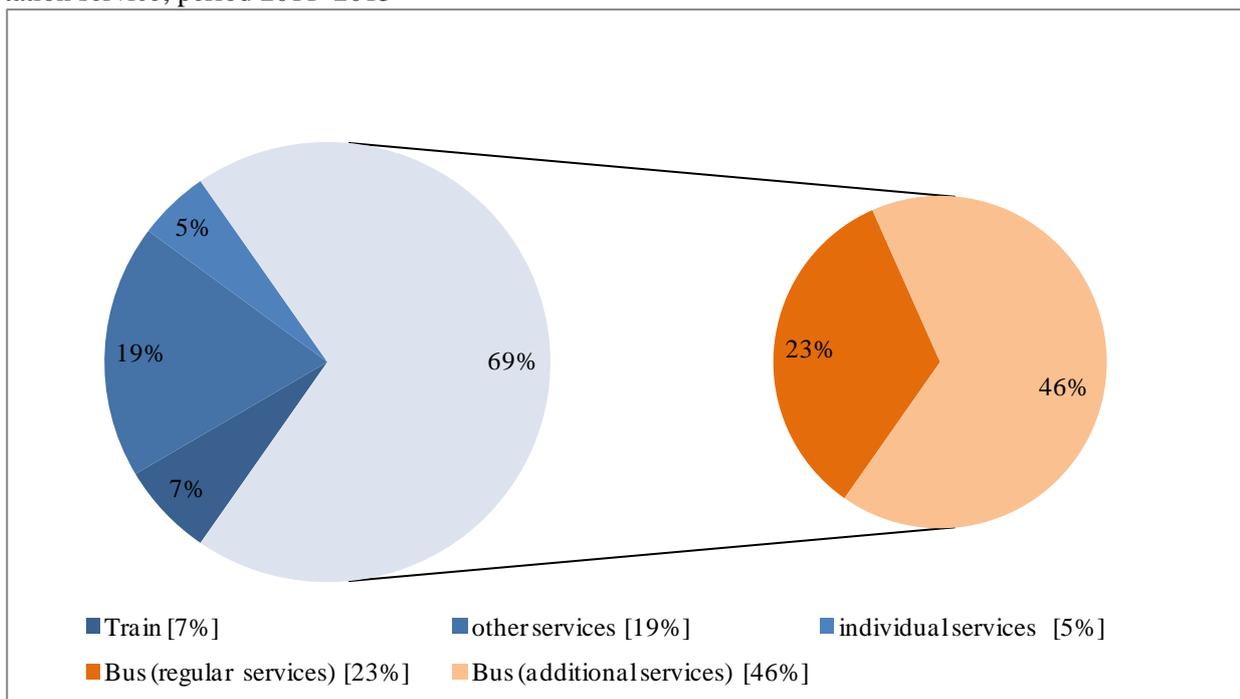
feature in the public transportation sector is the concept of a licence for providing urban bus transportation services (*Linienverkehrsgenehmigung*). Private service providers can apply for such licences if the provision of such services by a private provider is expected to be more economical.<sup>90</sup>

In order to provide a representative picture of the various organisational forms, three examples were chosen for the case studies of the procurement of public bus transportation services. These were the city of Bochum (use of a public entity owned by the municipality), the administrative district of Wittenberg (use of private companies), and in Augsburg the Augsburger Verkehrs- und Tarifverbund GmbH (use of a public transportation association in the Free State of Bavaria).

*Number and shares of public procurement procedures*

According to the DTAD data, the contracting authorities at the local level (core administrations and public entities) are the major procurers of public transportation services. Of the different types of transportation services, bus transportation services constitute the largest share (69%). As evident from Figure 36, around one-third of public procurements for bus transportation services is for regular urban bus services; the other two-thirds is for special forms of bus services such as school buses or buses for special categories of people.

Figure 36: Public transportation services; number of public procurement procedures per type of transportation service; period 2011–2015



Source: DTAD

The DTAD data also showed that in the case of regular bus services, the number of EU-wide public procedures made up 93% of all public procedures. But in the case of special forms of services, the share of EU-wide procurements was considerably lower (42%) (see Table 21).

<sup>90</sup> The contracts for such services are awarded via competitive procedures for which both public and non-public procurement procedures can be used.

Table 21: Number of public procurement procedures according to procurement level, annually

Number of procurements	2011	2012	2013	2014	2015	Total	Total (%)	Annual average
Bus (regular services)	141	179	284	360	385	1 349	100%	269.8
of which national	10	15	23	20	22	90	7%	18
of which EU-wide	131	164	261	340	363	1 259	93%	251.8
Bus (special form)	317	409	579	651	697	2 653	100%	530.6
of which national	119	224	377	397	417	1 534	58%	306.8
of which EU-wide	198	185	202	254	280	1 119	42%	223.8

Source: DTAD

#### *Volume of services in Germany and in the three examples*

Based on the key figures for the whole bus transportation market in 2015, an inference can be drawn as to which share of the bus transportation services [ÖPNV] was accounted for by private bus companies and which share by public bus companies. Public companies (in-house operations of cities, municipalities, or districts, public entities in cooperation with local authorities) accounted for around 76%, and private companies for only 24% of the passenger-kilometres performed.<sup>91</sup>

The annual expenditures for public bus transportation services in Germany in the investigation period were around 4.77 billion euros. Based on the shares of performed passenger-kilometres, the volume of insourced services would be around 3.62 billion euros, and the procurement volume for the services of private providers around 1.15 billion euros.<sup>92</sup>

#### *Special aspects of the studied examples:*

In the city of Bochum, regular bus services were provided by a municipally owned public entity. Only contracts for special transport services, such as the transportation of schoolchildren with physical or mental disabilities, were awarded to private service providers via competitive procurement procedures. The total value of contracts awarded to private service providers in the period 2011 to 2015 was around 16.2 million euros according to the information provided in the publications. This total contract value corresponds to a share of around 3.5% of all bus transportation services in Bochum. The case study therefore shows that the actual procurement volume is very low due to the in-house provision of regular bus services.

In the district of Wittenberg, the bus transportation services were performed by private companies. In the investigation period 2011 to 2015, a total of 18 public procurement procedures were documented in the DTAD data, of which 11 (61%) were carried out EU-wide. In three cases, these involved the issuing of licences to provide urban bus transportation services [*Linienverkehrs-genehmigung*] pursuant to Paragraph 42 in conjunction with Paragraph 13 of the Passenger Transportation Act (PBefG) (i.e. preliminary information, competition notification, and issuing

<sup>91</sup> Cf. bdo 2017: Economic Factor Bus, online at <http://www.bdo.org/themen-und-positionen>, accessed on 19 August 2017, 13:27 CET.

<sup>92</sup> Own estimations based on the shares of passenger-kilometres.

of the licence). The remaining 15 cases involved the transportation of persons (schoolchildren including those with physical or mental disabilities). In four of these cases, negotiation procedures without prior notification were used. The districts claimed that the negotiation procedure without prior notification had been chosen because no bids, or no suitable bids, had been submitted pursuant to an open procedure. The research and inquiries showed no evidence that this procedure would not have been correct.

Transportation services for the Augsburger Verkehrs- und Tarifverbund (AVV) were provided by 25 transportation companies. These included both private companies and companies partially owned by municipalities. The DTAD data showed that 61 procurement procedures had been carried out by the AVV, all of which EU-wide. Noteworthy here was that 13 were carried out via negotiated procedures without prior publication of a contract notice. The reason given by the AVV as justification for choosing this type of procedure was the conversion of the existing cooperation contracts [in the AVV bus transportation region] in order to implement the requirements of Regulation (EC) no 1370/2007 within the framework of a gradual transition to competitive procurements. The decision to do this had been taken by the responsible authorities in 2011/2013.<sup>93</sup> The AVV claimed that the temporary transitional arrangements had to be made with the previous contractors in order to avoid the simultaneous expiration of a number of existing contracts. According to the AVV, this was necessary in order to maintain AVV regional bus transportation until the complete transition to a competitive environment.

### *Conclusions*

The investigations showed that bus transportation services are hardly ever being publicly procured EU-wide. This is due to the large amount of in-house provision of these services by the public sector in this area (76% of passenger-kilometres; equivalent to a procurement volume of around 3.6 billion euros). The vast majority of procurements were made directly via in-house awards of the services to public entities. The examples showed that the number of competitive procurement procedures at the national or European levels was lower when the district administrations or the cities had their own transportation companies.

Only 24% of the service volume was carried out by private service providers. The analyses showed that regular urban bus transportation services were procured via EU-wide procurement procedures in 93% of the cases. A definite increase in contract notices was, however, identified over the course of the investigation period.

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<sup>93</sup> See online at: <https://www.TED.eu>, TED Notice 348578-2014, accessed on 15 August 2017, 10:57 CET.

## 6. KNOWLEDGE GAINED THROUGH LEGAL ADVISORY ACTIVITIES

From the many years of advising large numbers of contracting authorities at the local, *Länder*, and *Bund* levels, it cannot generally be stated that the contracting authorities are systematically circumventing the procurement laws that compel the use of public procurement procedures. There are, however, factors that certainly do impact the low rate of public, especially EU-wide, procurement procedures. These are:

- 1) The very large number of procurement bodies at the *Bund*, *Länder*, and particularly at the local levels. This gives rise to procurements in small units whose individual contract values rarely exceed certain thresholds.
- 2) The wide diversity of laws and the uncertainties produced by this lead to divergent interpretations, which consciously or unconsciously lead to the circumventing of public, especially EU-wide, procurement procedures. These are largely the result of:
  - the divergencies of the laws on below threshold procurements of the local authorities, the *Länder*, and the *Bund*, which is occasioned by the federal structure of the Federal Republic Germany,
  - the absence of uniform and unambiguous models and definitions of legal terms and procurement law provisions, and
  - the ceaseless churning up of procurement law in response to the numerous decisions of the national and European courts.
- 3) The fact that many contracting authorities regard public procurement procedures, especially EU-wide procedures, as a burden. They see them as entailing additional procedural costs and risks that are regarded as uneconomical. This provides the incentive to avoid such procedures whenever possible.

The following is a more detailed discussion of these factors.

### 6.1. Procurements made in small units by a large number of procurement bodies at the *Bund*, *Länder*, and particularly at the local levels

The federal structure of the Federal Republic of Germany engenders a system of coexisting procurement bodies at the local, *Länder*, and *Bund* levels. The *Bund*, the *Länder*, and the local authorities all have their own budgets. Each of these is competent to make its own procurements on the basis of such budgets within the bounds of the existing laws.

Therefore, the procurement of almost all supplies and services is most definitely not carried out centrally at the higher *Bund* or *Länder* levels. Instead, the vast majority of procurements are carried out decentrally at the respective levels at which the needs arise. This factor alone admittedly does not allow inferences to be drawn about procurement practices per se or about the reasons for the purported absence of procurements. But what must be taken into account here as well is the fact that the individual procurement bodies (contracting authorities) are probably only procuring those supplies and services that they themselves need to fulfil the tasks assigned to them. Also important in this connection is the fact that the contracting authorities have wide discretionary powers when it comes to *determining what needs to be procured*. And these procurement needs are quite often defined restrictively due to the budget constraints imposed by the annual budgets.

What can therefore be concluded on the basis of the knowledge gained through advisory activities is that procurements are being made in large numbers of individual procurements with generally lower contract values. Strategical considerations, such as obtaining price discounts through

purchases of larger volumes, play a subordinate role here. Because procurements are often made in smaller units, the respective thresholds for EU-wide procurement procedures are less frequently exceeded.

## 6.2. Divergency of laws gives rise to divergent interpretations and legal uncertainties

### 6.2.1. Large number of divergent laws

Unlike other European countries, German law still has no uniform procurement code. National procurement law (which actually does not exist in a standardised codified form) is in fact a highly fragmented affair. This makes it not only very difficult to determine just what the law is in many cases, but it also makes it completely impossible to have a uniform procurement practice.

One reason for this fragmentation is found in the federal structure of the Federal Republic of Germany. Another has to do with historical developments in Germany.

The legal bases for below threshold procurements are the respective public budgetary laws of the *Bund*, the *Länder*, and the local authorities. There is in effect only one single statutory provision that regulates the awarding of public contracts (e.g. Paragraph 55(1) of the Federal Budgetary Code (BHO)). And all this provision does is impose a general obligation on public authorities to observe the principles of frugality and economic efficiency when using public funds. Nothing more and nothing less.

With respect to the details of such public awards, Paragraph 55(2) BHO does very promisingly refer to ‘uniform regulations’. But on closer examination, there is nothing whatsoever ‘uniform’ about them. Then the actual details of these regulations are being fleshed out predominantly by the *Länder’s* and the local authorities’ own procurement decrees. These decrees order, among other things, that the VOB/A [general provisions on the awarding of construction contracts] and the VOL/A [general provisions on the awarding of services] apply in the sense of administrative regulations that dictate how certain laws are to be interpreted. While such a regulatory structure could have created a certain degree of uniformity in relation to procurement practices, the large number of additional regulations that have been added to it in the last years have thrown a wrench in the works. They have complicated what for the most part were initially uniform procurement practices. If one wanted to be provocative, one could even describe these new regulations as ‘alien to procurement’.

Nearly every *Land* today (except for Free State of Bavaria) has its own procurement code or procurement act. These procurement statutes, being statutory instruments that govern below threshold procurements, rank higher—in terms of applicable law—than the VOB/A or the VOL/A, which are (merely) administrative regulations that dictate how certain laws are to be interpreted. They contain additional procurement law requirements and prerequisites, and particularly the so-called privileged circumstances [*Priviligierungstatbestände*]. The latter enable the public contracting authorities to dispense with public procurements in conjunction with the use of public funds.

In addition, each *Land* currently has a multitude of other statutes, administrative regulations, directives, circulars, notifications, etc. that have to be observed by the procurement bodies.<sup>94</sup>

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<sup>94</sup> Table 38 in the Annex lists the decrees, regulations, and circulars in effect at the *Länder* level alone in the 2011 to 2015 investigation period.

On top of this are also the numerous circulars, directives issued by the central organisations for local authorities (e.g. *Deutscher Städtetag*), professional organisations (e.g. Chamber of Architects), and a diversity of procurement rules imposed by the administrations on themselves.

In effect, there is *no underlying uniform legal framework* for below threshold procurements. There is not only no uniformity, but the applicable laws of the *Bund*, the *Länder*, and the local authorities also differ from each other in the extreme, especially in relation to the question of the areas of applicability of the different procurement procedures. On the one hand this makes it more difficult—in some cases extremely difficult—for the contracting authorities to apply the law and on the other hand it leads to divergent interpretations of the law. Such divergent interpretations often lead to divergent applications of the exceptions afforded by procurement law. In our experience, these exceptions are being applied more extensively rather than restrictively as demanded by legal doctrine and are ultimately being used to remove the matter from the scope of application of procurement law and thereby to circumvent the obligations associated with it.

### **6.2.2. Absence of uniform and unambiguous models and definitions of the legal terms and provisions of procurement law**

Along with the large number of divergent laws, the different ways the legal terms and provisions of procurement law are being interpreted—both below and above the thresholds—makes a uniform application of procurement law even more difficult.

Uncertainty often already exists in relation to the estimating of the contract value pursuant to Paragraph 3 of the Regulation on the Awarding of Public Contracts (VgV), which means uncertainty as to whether European law or national procurement law applies. According to Paragraph 3 VgV, the estimation of the contract value of the anticipated total value of the designated work/services/supplies must be a net figure, i.e. without German value-added tax. Because the decisions of the European and national courts in this area are often closely tied to the specific facts of the individual cases, they are not clearly comprehensible for the contracting authorities. Especially in the case of contracts executed in multiple phases (particularly works contracts) or in the case of large procurement projects, it is sometimes doubtful whether one can speak of a ‘uniform character’ of the contract. The question of whether several (partial) contract values are to be aggregated to form one total contract value is crucial, however, to the question of whether a threshold has been exceeded. It therefore has a direct impact on the frequency of which EU-wide procurement procedures are being used.

A good example of this is the case example of the construction project in Ettlingen. In this case, the restoration of a public building was executed in several construction phases and no EU-wide procurement was made.

Particularly in the area of procurements below the thresholds, the large number of procurement laws spoken of gives rise to an equally large number of vague legal terms. This leads to divergent interpretations of them, sometimes significantly so.

For example, whether a so-called *freihändige Vergabe* pursuant to the VOL/A is permitted depends on the existence of such factors as the ‘inappropriateness’ [*Unzweckmäßigkeit*] of a public procurement procedure, on the ‘special urgency’ [*besondere Dringlichkeit*] of the procurement, or on the fact ‘that due to the inability to clearly and exhaustively describe the nature and extent of the services prior to the tendering of them, no sufficiently comparable bids can be expected’ [*die nach Art und Umfang vor der Vergabe nicht so eindeutig und erschöpfend beschrieben werden kann, dass hinreichend vergleichbare Angebote erwartet werden können.*]. These descriptive qualities of the prerequisites are not flanked by any concrete and hence unambiguous criteria. The fact

that isolated circulars and communications on the interpretation of such terms are being circulated is no doubt a good idea.<sup>95</sup> In our experience, they are extremely helpful in the field because they address specific topics and events (e.g. refugee situation) and are therefore very useful and practical. But since the number of such interpretational aids—especially in the case of below threshold procurements—is very small, the problems mentioned are not being solved. Then as long as these provisions are not being properly (i.e. uniformly) applied, they cannot be deemed to have a binding meaning and the contracting authorities will be forced to (continue to) interpret them either because they have to or simply because they can.

The individual procurement statutes of the *Länder* also contain a variety of vague legal terms as well. An example of such is found in Paragraph 10(2) of the Act on Procurements and Compliance with Collective Bargaining Agreements of the State of Hesse (HVTG). This provision stipulates that, regardless of whether certain thresholds exempting the use of public procurement procedures have been reached, a *freihändige Vergabe* or a *beschränkte Ausschreibung* is always permitted in ‘justified exceptional cases’ [*in begründeten Ausnahmefällen*]. But as to when such ‘justified exceptional cases’ exist is not defined more precisely by the legislator. In this situation as well, the contracting authorities are given wide room for interpretation.

In the end result, these widely divergent interpretations of the legal provisions give rise to a great deal of uncertainty on the part of the contracting authorities and therefore serve as a source of serious potential errors in the application of the law. What they especially do, however, is pave the way for the unconscious or conscious use of them to circumvent public, especially EU-wide, procurement procedures.

### 6.2.3. *Ceaseless churning up of this area of the law*

A common complaint of the contracting authorities in our consulting practice is their extreme uncertainty when it comes to knowing which legal requirements actually currently apply to procurement procedures. This uncertainty comes from the constant churning up of this legal area through the large number of decisions of the national and European courts. This is a very valid complaint, in our opinion, and in light of the daily needs of the procurement bodies, it is not one that should be dismissed too readily.

At the national level in the investigation period alone, around 5 200 decisions were handed down by the procurement review bodies. For the most part, these decisions were closely tied to the specific facts of the individual cases and were therefore not of general relevance to all procurement cases. However, the sheer number of cases clearly shows in itself just how wide a spectrum the decisions cover and what specialized legal knowledge the public contracting authorities must have if they want to structure their procurements in a legally conform manner.

In our experience, the vast majority of the contracting authorities just do not have such high levels of legal expertise. The only choice they have in many cases is to obtain the advice of experts (lawyers, chartered accountants, etc.) on a project-related basis. This of course increases the expenditures—administrative, financial, and time—for implementing the procurement procedures.

What is also partially missing in our opinion in this relatively young area of procurement law with its steadily growing number of judicial decisions on it is an established framework, as found in other areas of the law, pursuant to which the fundamental guidelines for procurement practitioners

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<sup>95</sup> See for example the *Bund* circular of 9 January 2015 and the EU COM (2015)454 communication on the interpretation of the term ‘urgency’.

are being created by the leading experts or the highest decision-making bodies in this area of the law. Because even though there are decisions from a large number of public procurement review chambers, they relate solely to the facts of the individual cases and have no general relevance per se.

On the whole, this profusion of decisions based on all their specific facts is a situation that the procurement bodies (contracting authorities), as the parties responsible for applying the law, can hardly be expected to keep track of. In many cases, they are therefore unable to ascertain all of the legal risks that their concrete procurement projects may be exposed to, or to take the necessary precautions to ensure that the procedures are being implemented in a legally conform manner. What this does, in the end result, is provide the contracting authorities with incentives to circumvent public, especially EU-wide, procurement procedures.

### **6.3. Procedural costs and procedural risks perceived as uneconomical**

In our long years of advising public contracting authorities on the structuring of their procurement projects, a rather surprising and striking discovery was made – procedural costs and procedural risks perceived as uneconomical. This is often cited in the fiscal or political discussions as a justification for categorically abstaining from carrying out procurement procedures altogether or as a justification for ‘only’ circumventing EU-wide procedures.

We are confronted with this problem particularly in conjunction with the awarding of follow-up contracts and/or with contractual changes to already existing contractual relationships. In such case scenarios, it is our experience that the contracting authorities often see no relevant economic benefit in carrying out new procurement procedures. Then from their perspective, the time, the administrative resources, and the costs involved with such procedures are regarded as disproportionate. They also assume that the carrying out of competitive procedures will mean lost time, something that should be avoided whenever possible. Arguments are often invented in such cases to avoid carrying out what are actually compulsory new public procurement procedures, arguments such as the lack of economic efficiency, or the purported unique selling points or (irredeemable) competitive edge of the present contractor.

In our experience, contracting authorities which seldom (have to) implement EU-wide procedures in particular are sceptical of such procedures. They expect such procedures to be overly formal in their implementation, which in their eyes means unnecessary expenditures of time, administrative resources, and funds.

A major factor in this connection is the role played by bidder protection. Because the bidder protection regulations of the majority of the *Länder* only apply to procurements governed by EU procurement law, the risks associated with bidder protection—e.g. delays and additional costs caused by interrupted procedures on account of bidder review applications—only exist in most *Länder* for procurements above the thresholds. In our experience, this potential ‘burden of additional procedural costs and risks’ serves to strengthen the contracting authorities in their resolve to circumvent—within the bounds of the existing interpretations of the law—EU-wide procurements.

## 7. FINDINGS ON THE REASONS FOR THE LOW RATE OF EU-WIDE PROCUREMENT PROCEDURES

The quantitative and qualitative analyses of procurement activities in Germany as a whole and in the randomly sampled case studies allowed inferences to be drawn about why EU-wide procurement procedures in Germany are so low. These are presented below.

### 7.1. Strong autonomy of the municipalities

Germany's federal structure gives rise to a very highly decentralized form of administration. The *Länder* and the local authorities (municipalities in particular) have very high levels of competence, including for the implementation of *Bund* laws. The majority of procurements are made at these levels, especially at the municipal level.

In addition, both the *Bund* and the *Länder* do not always resort to of their own underlying administrations. They generally delegate the implementation of *Bund* and *Länder* laws to the administrative districts and municipalities. Between 70% and 85% of all *Bund* and *Länder* laws and the majority of EU laws that require implementation are implemented by the municipalities. Two-thirds of all public investments are administered via the municipal authorities.

The strong administrative autonomy of the municipalities is intrinsic to Germany. The local level (municipalities in particular) is the most important government level for implementing public services and laws. The German municipalities also perform an abundance of different tasks. These cover a wide spectrum of functional tasks and services ranging from urban planning to social and cultural affairs and to the supplying of public utilities (provision of the infrastructure for energy supply, waste collection, traffic, etc.). Added to this are the responsibilities delegated to them by the *Länder*, especially in the areas of public safety and public order (environmental protection, building regulation, permit procedures, etc.). This model of an 'all-inclusive jurisdiction to administer local affairs' is characteristic of the public administration system in Germany. The nature of the local administrative level and the fact that the local regional authorities and their public entities are responsible for performing such an abundance of tasks are therefore major determinants of procurement activities in Germany.<sup>96</sup>

The investigations showed that the average size of procurement projects increases proportionate to the number of residents of a local regional authority. The more residents a regional authority has, the more often procurement projects exceed the thresholds for mandatory EU-wide procurement procedures. This phenomenon was far more evident in the case of supplies and services than it was for works.

However, in Germany, around 60% of all residents live in municipalities with less than 50 000 residents, and more than half of these in municipalities with less than 20 000 residents. The **small size of many local regional authorities** gives rise not only to small infrastructure units and infrastructure sizes but also to small budgets with little freedom in terms of budgetary spending. This alone is one of the main reasons why the procurements of many regional authorities are of rather limited sizes. These limitations are intensified even further through the additional financial restrictions that have been imposed on many municipalities in the last years (e.g. measures restricting

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<sup>96</sup> Source: *Verwaltung in Europa*, pp. 58 to 60.

the free use of budgets in stressed financial situations). For example, projects will then only be planned for one year at a time.<sup>97</sup>

In the aggregate, these structural factors are the reason why the **average sizes of the procurement projects of the majority of the local regional authorities were rather small** and therefore why the EU-thresholds were relatively rarely reached.<sup>98</sup> It can be deduced from this that the largest share of the procurement volume at the local level must have been made up of few, or even very few, EU-wide procedures.<sup>99, 100</sup>

The large number of local regional authorities with relatively small numbers of residents is therefore a primary reason for the low rate of EU-wide procurement procedures at the local level.

This has a direct effect on the total share of EU-wide procurement procedures in Germany. Then up to 63% of the total procurement volume in Germany is allocable to the local level.

## 7.2. Large share of in-house provision of services by the public sector

The **in-house provision of public services** by the administrations themselves or by their public entities plays a significant role in Germany, **particularly at the local level**. This is because the model of the ‘all-inclusive jurisdiction to administer local affairs’ also produces municipalities that traditionally engage in strong economic pursuits of their own and that perform many services (especially the supply of public utilities) largely on their own. A large degree of in-house provision is found particularly in the areas of public utilities and waste disposal (water, heating, energy), waste management, city sanitation services, maintaining the municipal infrastructure (streets, public spaces, administration buildings, schools, day-care facilities, etc.), and public local/regional passenger services.

There are many reasons for so much in-house provision by the municipalities. The most important, however, include the ability to collect municipal fees/charges (for ‘municipal cross-financing’) and the ability to directly influence matters in connection with this. Another reason for this ‘do-it-yourself’ approach is the scepticism frequently felt towards the privatisation of public functions. The **remunicipalisation** trend, which has evidently been happening in the last years, has caused the share of in-house provision to increase even more.

The regional authorities use their own administrative units or their own publicly owned entities to perform the services. They sometimes have long-term contracts with public-private entities (participated in by private shareholders).

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<sup>97</sup> Monitoring Report of the *Bund*, 2017, Berlin, p. 54: ‘The reason for the small number of EU-wide procurement procedures in Berlin lies in the decentralized organisation of its public administration with correspondingly low contract values. Due to drastic austerity measures ... the contract value was also below the average contract value of other large German cities.’

<sup>98</sup> In the example of the mid-sized city Eberswalde (around 50 000 residents), EU-wide procurement procedures made up 17% of the total procurement volume as compared to 26% in the large city Leipzig.

<sup>99</sup> 60% of the procurement volume of the local level equaled 126 billion euros in 2015.

<sup>100</sup> ‘In addition ... the public authorities [of some *Landratsämter*] responsible for monitoring compliance with the law have reported that many of the smaller municipalities feel uncertain ... on account of the general complexity of procurement law. However, procurements in the upper threshold area occurred rather rarely, especially in smaller municipalities.’ (Monitoring Report of the *Bund*, 2017, Baden-Württemberg, p. 49); *Komplexität des Vergaberechts und Formalismus bei EU-weiten Verfahren als Problem für kleinere Kommunen* (Monitoring Report of the *Bund*, 2017, Bavaria, p. 50).

However, the public contracting authorities do not restrict themselves in many cases to management tasks alone but perform a major part of the value chain themselves. Therefore, the share of services that are publicly procured on the open market is correspondingly low.

In-house provision occurs more often in areas that involve the charging of fees. The case studies concerning the areas of waste management and public bus transportation showed for example that procurement activities in these areas were especially low.

The large amount of services insourced by the public sector in Germany directly impacts the total procurement volume. This volume would be higher if the services performed by the public sector were procured on the open market. It can therefore be concluded that the large amount of in-house provision also affects the procurement volume procured via EU-wide procurement procedures.

### 7.3. Motives for administrative actions and procurement practices

If the analysis results are contemplated in a wider context, then it can be concluded that certain **legal and organisational conditions relevant to procurements of the public sector and certain traditions or motivating forces underlying administrative actions** have an indirect impact on the share of public, especially EU-wide, procurement procedures.

**Limited budgetary freedom** in relation to public budgets is not the only thing that concretely induces (or that dictates) the splitting up of complex projects preferably into several stages or into smaller more manageable projects to be implemented one after another. Another major reason is that the public authorities often just **do not have the human resources** needed to manage such projects. Projects are therefore divided up into what the administration perceives as manageable and budget-compatible components. Notions about such things as obtaining **price discounts through the bundling of volumes play a rather subordinate role** in the operative dealings of the administrations. Moreover, EU-wide procedures are often thought to have no added economic value because other European or international competitors are present on the local market via their own establishments anyway.

Other factors **encourage the making of overly low estimates of project costs**. For example, in situations of competing procurement needs, the obtaining of budget approval tends to be easier the lower the estimated costs of a project are. What may also encourage such practices is the dismissive attitude of the German public audit offices and the audit review boards towards the pricing-in of procurement risks in the estimated project costs. The idea of putting pressure on bidders by reporting that budgets are tight may also provide an additional system-related inducement for underestimating costs, which might affect the choice of procurement procedure.

Another likely factor is the **scepticism felt towards EU-wide procurement procedures**. Such scepticism results from actual experiences and from preconceptions. For example, it is expected that EU-wide procedures will **involve a larger number of documents**, which is often perceived as an **extra burden**. Another reason for this sceptical attitude towards EU-wide procurement procedures arises from the fact that, unlike EU-wide procurement procedures, there is no uniform bidder protection in Germany for procurements below the EU-thresholds. For procurements below the EU-thresholds, it is therefore far more difficult for potential or for unsuccessful bidders to have the procurement procedures of the procurement bodies reviewed. The **bidder protection** afforded by EU-wide procedures is thus **associated with a higher risk of delays and additional expenditures** caused by possible requests for reviews brought by the bidders.

For one thing, this provides an incentive for the administrations to procure their contracts in smaller units. The system-caused phenomenon that already exists, i.e. that individual contract

values rarely tend to exceed certain thresholds; is thereby being reinforced. For another thing, reasons for circumventing public, especially EU-wide, procurement procedures were identified. The conclusion can therefore be drawn that all of these incentives taken together contribute to the low rate of EU-wide procurement procedures in Germany.

#### **7.4. Legal framework as a source of potential errors and divergent interpretations**

The procurement laws governing public-sector procurements in Germany are characterised by a diversity of regulatory content and by the legal uncertainty produced by them.

For one thing, there are no uniform laws for procurements below the thresholds. Instead, the laws of the *Bund*, the *Länder*, and the local authorities differ in some cases in the extreme. The exceptions provided for by the procurement laws are applied in a variety of different ways, the tendency being a broader rather than a restrictive application of them.

For another thing, the absence of uniform and unambiguous models and definitions of the legal terminology and the provisions of procurement law produces uncertainty. It is also an area of the law that is constantly being churned up.

The diversity of the laws and the legal uncertainty produced by them lead to uncertainty on the part of the contracting authorities and are a source of considerable potential for errors in the application of the law. They also produce divergent interpretations of the laws, which can be used—consciously or unconsciously—to circumvent public, especially EU-wide, procurement procedures.

#### **7.5. Sector-specific approaches**

##### *Automatic renewals of contracts*

The **option to automatically renew existing contracts** deprives the market of contract value for long periods of time and in incalculable amounts. Old contracts with such provisions are common in such areas as waste removal and public bus transportation.

Experiences gained particularly in the advising of contracting authorities have also shown that public-sector clients often see no relevant economic advantage in carrying out a new procurement procedure. Then the focus of their administrative actions is the warranting of the smooth continuation of services and the avoidance of risks posed by switching to a different service provider. They also want to save on the transaction costs that a new procurement procedure would entail. For these reasons, options to renew contracts without public tendering obligations are often intentionally created and used.

##### *Procurements through purchasing associations*

The case study on the procurement of medical consumables showed that this sector has a particularly low rate of public procurement procedures. The number of public procurement procedures in relation to the procurement volume would appear to be too low. The case study also revealed that the practice of procuring supplies through purchasing associations has grown significantly in this sector. However, the procuring of supplies through purchasing associations does not release public hospitals from their obligations to comply with procurement law. As to how or whether these obligations are actually being complied with is an issue in need of further investigation. And the question as to which amounts of supplies and services that are not subject to procurement law are being procured by the purchasing associations also needs further study.

## 7.6. Deficiencies in the availability and equivocality of the data

The data sources that were available in Germany for the study were inadequate for ascertaining which share of the procurement volume was actually made up of EU-wide procurement procedures. Therefore, the extent to which the proposition—the share is too low—is actually true could not be conclusively decided and was not the subject of the investigation anyway. What the study did uncover, however, were serious **deficiencies in the availability and equivocality of the data**.

These deficiencies existed in relation to such things as the total volume of public task fulfilment (works, supplies, services (without utilities)) in Germany, the actual volume and share of public procurement, and the volume and share of insourced services. There were too many gaps in the data sources even for making a qualified estimate of the actual total contract value of EU-wide procurement procedures (and all other types of procurement procedures).

In the investigation period, the only database available for analysing the procurement activities was, to a large extent, the database of the private provider DTAD. During that time period, there was no platform operated by the public sector on which all of the contract notices of the public contracting authorities were being listed systematically and in full.<sup>101</sup>

Help was supposed to be provided by the Code of Procedure for Procurements of Supplies and Services Below the EU-Thresholds [UVgO], which was enacted in 2017. The Code stipulates in Paragraph 28(1) that all notifications of contracts must be centrally published on the Internet platform [www.bund.de](http://www.bund.de). This would certainly increase transparency, as this information would be reliable and would be independent of the privately-operated Internet platforms. But to really increase transparency, the information on the platform would have to be complete, structured, and unambiguous in order to enable the statistical analysis of it. As to the extent to which this has actually been done in the interim was not something answerable within the scope of this study.<sup>102</sup>

In the investigation period, **procurement statistics** were **only available for certain regional authorities** (e.g. State Government of Saxony, some municipalities in the Free State of Saxony, Eberswalde), although the procurement procedures were not uniformly documented. Furthermore, the data-collection methods underlying the statistics were inconsistent and/or unclear, which left much room for interpretation.

With the enactment of the Procurement Statistics Regulation [VergStatVO] in 2016, Germany laid the cornerstone for a central body of procurement statistics covering all administrative levels (*Bund, Länder, local*). The regulation stipulates that all contract awards must be reported to the Federal Statistical Office and evaluated centrally there. These statistics do not yet exist, however, because the IT infrastructure needed for it is not yet ready.

While evaluating the budgets and the financial statements of the public authorities and public entities it became evident that these sources were not comprehensive enough for the purposes of the investigation and that the depth of their **detail was often inadequate**. For example, the **treatment**

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<sup>101</sup> The DTAD database is nevertheless a valuable source for analysing the basic composition of EU-wide and national contract notices, particularly in terms of the types of contracting authorities, regional distributions, and the three types of procurement subjects works, services, and supplies and the subcategories of these. But because it contains virtually no information about contract values, it cannot be used for estimating the overall contract value. It was also discovered that the individual records were not always unequivocal, accurate, and complete.

<sup>102</sup> As to the extent to which this has actually been done in the interim was not something answerable within the scope of this study.

**of expenditures** for facilities operated by public entities often **lacked transparency** with respect to cash flows. It was not always possible to classify payments as procurement volume or as payments to other administrative units (internal settlements). Furthermore, the classification of payments was made pursuant to accounting principles and not explicitly pursuant to procurement law categories.

The data structures and data classifications also differed among the different *Länder* on account of *Länder*-specific requirements. The concrete implementations were also different from one public contracting authority to another. These deficiencies made comparisons between the various contracting authorities more difficult. They were also present in the combined data of the Federal Statistical Office.<sup>103</sup> The discontinuity of the presentation and structure of the data also made comparisons of the data from different years more difficult.

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<sup>103</sup> The Federal Statistical Office states in its explanations: ‘Because payments are made between the individual administrative levels, double payments are present when the results of several entities or groups of entities are consolidated at one reporting level. The financial-statistical adjusting of these double payments is not made with the individual kinds of expenditures or earnings but rather globally with the total expenditures and earnings in that the therein contained payments made between the individual entities or groups of entities are being deducted—in an amount equal to the received payments—as one sum.’ For example, the *Ausgaben der laufende Rechnung* (expenditures for the current account) in 2015 were adjusted by 32%. The *Ausgaben der Kapitalrechnung* (expenditures for investments) in the same year were adjusted by 24%. As to what impact these adjustments have on the expenditure positions used for the study is unknown.

## 8. FINAL CONCLUSIONS AND RECOMMENDATIONS

### 8.1. Shares of the various types of procurement procedures, especially the share of EU-wide procedures, of the total procurement volume in Germany

The data sources formerly available in Germany were inadequate for making exact ascertainties of which share of the procurement volume was actually made up of EU-wide procurement procedures. The study uncovered serious deficiencies in the availability and equivocalness of the data.

However, from the quantitative analyses made in this study it can be indirectly inferred that, in the investigation period 2011 to 2015, around one-eighth to one-third of the annual total procurement volume was procured via public procurement procedures. For 2015, this would mean between 41 and 110 billion euros of the total procurement volume of 330 billion euros.

The contract value of the contracts awarded via EU-wide public procurement procedures in 2015 was in the range of 20 to 55 billion euros. This is equivalent to 6% to 17% of the total procurement volume.

The contract value of public procurement procedures at the national level was estimated as somewhere between 15 and 50 billion euros in 2015. This is equivalent to 5% to 15% of the total procurement volume.

It is estimated that around a third (110 of the 330 billion euros in 2015) of the total procurement volume was awarded via non-public procurement procedures. Of this, 41% was for works and 59% for supplies and services. A total of 44% to 65% (145 to 215 billion euros) of the total procurement volume was thereby procured via procedures governed by procurement law (public or non-public procurement procedures).

The nature of the available data did not allow an allocation of the remaining 115 to 285 billion euros (35% to 56%) to either public or non-public procurement procedures. It cannot be inferred from this, however, that the unallocable procurement volume had to have been procured via public procurement procedures. This is because the presumed total procurement volume—to a considerable albeit unidentifiable extent—includes procurements that are not subject to procurement law and double payments.

### 8.2. Three spheres of causes of the low rate of EU-wide procurement procedures

The causes of the low rate of EU-wide procurement procedures in Germany can be classified in three spheres:

#### 1. *Legal structure underlying the competence for public task fulfilment*

Germany is legally structured as a federal system with a highly decentralized administration. In this system, budget and subject-matter competencies are widely split up among the various administrative levels. The local level (municipal level) in particular has competence for a wide range of tasks, which is referred to as an ‘all-inclusive jurisdiction to administer local affairs’. This often gives rise to procurements being made in small units.

#### 2. *Organisational structure underlying procurement responsibilities in the individual administrations and public entities*

The organisational structure is also a system in which responsibilities are widely split up among the individual administrative units. The in-house provision of services also plays a major role.

#### 3. *Motives for administrative actions and procurement practices*

Historically rooted traditions, situationally conditioned real or presumed constraints, or scepticism are also inducements for making procurements in smaller units and on short-term bases. Things such as limited spending authority, scarce human resources, and other (municipal-) political aims all play a role here. Often legal considerations are the source of additional motives for dispensing with EU-wide procurement procedures whenever possible.

The legal structure per se from which the public sector derives its competence for public task fulfilment in Germany is not under attack here. What spheres 2 and 3 imply, however, is that there are other influenceable, and therefore modifiable, factors that also contribute to the low rate of EU-wide procurement procedures, or even to the favouring of national or non-public procedures. Factors such as long-standing organisational and administrative practices, preconceptions, uncertainties, lack of experience, lack of knowledge, etc. all play a role here, not to mention actions induced or dictated by the budgetary system and by the law. Particularly in the area of procurements below the threshold, the laws of the various *Länder* differ greatly. And what is completely missing in Germany is system transparency in relation to the procurement and tendering practices of the public contracting authorities. Moreover, EU-wide procurement procedures are often seen as having no added value, because in the eyes of the public contracting authorities, the potential national and European market participants are already present on the local market.

### **8.3. Areas where improvement measures are needed**

Based on the conclusions drawn from the analyses made in this study, measures should be taken in the following areas:

1. *Standardisation of procurement and public budgetary law for below threshold procurements and clarification of ambiguous legal terms to eliminate uncertainty.*
2. *Introduction of bidder protection in the case of below threshold procurements to improve external control measures and to eliminate possible motives for circumventing EU-wide procurement procedures.*
3. *Emphasizing economic efficiency as a parameter for an organisation-wide procurement strategy and for the concrete designing of procurement projects; implementing the corresponding imperatives and incentives, including in procurement law.*
4. *Creation of more transparency in procurement and budgetary practices, especially the creation of a database from which reliable information on the volume of public task fulfilment (works, supplies, services), on the procurement volume, and on the procurement practices of the public sector can be extracted; nationwide for all public contracting authorities and all types of procurement procedures.*
5. *More in-depth investigations of problematic sector-specific aspects or approaches.*

#### **8.3.1. Standardisation of procurement and public budget law for below threshold procurements and clarification of ambiguous legal terms**

It would be advisable to standardise the procurement laws for procurements below the EU-thresholds. Standardisation would serve to eliminate the uncertainties produced by the current differences between the laws of the different *Länder*. The bidders, the contracting authorities, and especially the law makers could develop a set of uniform interpretations. These could be developed analogous to the laws applicable to EU-wide procurements.

With the introduction of the ‘Code of Procedure for Procurements of Supplies and Services Below the EU-Thresholds’ [UVgO] in 2017, very significant steps have already been taken in Germany.

The *Länder* laws remain in force, however. It also remains to be seen whether the new regulations go far enough and whether the results the amendments are striving for can actually be achieved.

Independent of this, other measures additional to the amendments should be considered for procurements above and below the thresholds. These should be aimed at significantly reducing the legal uncertainties arising from the lack of uniform and unambiguous models and definitions of the legal terminology and the provisions of procurement law. Examples of this much-needed clarification are found in relation to the determination of contract values in cases of procurements made in stages (e.g. completing construction projects in several successive construction phases) and in relation to formulations such as ‘uniform character of the service’, [*einheitlicher Charakter der Leistung*], ‘inappropriateness of a public procurement procedure’ [*Unzweckmäßigkeit einer öffentlichen Ausschreibung*], ‘special urgency’ [*besondere Dringlichkeit*], or ‘absence of a comprehensive definability of the service’ [*fehlende umfassende Beschreibbarkeit der Leistung*].

Parallel to this, a review should be made to see whether procedures can be made more economical by simplifying the publication or documentation requirements or by shortening the length of the procedures (e.g. through the introduction of (simplified) standard forms similar to those used for EU-wide procurements).

The assumption being made here is that appropriate amendments to the laws applicable to below threshold procurements will, in the long run, reduce the ‘soft’ inducements for (lawful) circumventions of EU-wide procurements.

### **8.3.2. Introduction of uniform legal protection for bidders**

It is deemed advisable to introduce legal protection for bidders in all *Länder* for below threshold procurements analogous to the provisions applicable to EU-wide procurements. For one thing, this would eliminate the ‘soft’ inducements for circumventing EU-wide procurement procedures. For another, it would provide potential or unsuccessful bidders with better and especially easier possibilities for having procurement procedures reviewed. The introduction of bidder protection for below threshold procurements would therefore also serve to improve the transparency of the procurement practices of the public contracting authorities.<sup>104</sup>

In order to make bidder protection effective, an obligatory and sanctionable form of ex post transparency should be introduced for procurements both above and below the thresholds. Minimum information requirements should be established, which in addition to the contractor’s name should also include information about the fundamental terms and conditions of the contract and especially the contract value.

### **8.3.3. Stronger emphasis on economic efficiency as a parameter for procurement strategies and for concrete procurement projects**

The study revealed that the economic efficiency aspect of procurement projects has lost significance for many public contracting authorities for a variety of reasons. Despite the fact that the

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<sup>104</sup> Reviews by review boards, including the powers to impose the relevant sanctions, are currently only possible in Free State of Thuringia, Free State of Saxony, and Saxony-Anhalt. Bidder protection for below threshold procurements was introduced in these *Länder* during the course of the investigation period. The extent to which this protection has impacted procurement practices there is something that could not yet be inferred from the available data. It is likely that any impact on procurement practices during the investigation period was either not strong enough to make itself visible or was eclipsed by other factors.

basic principles of economic efficiency and frugality are anchored in budgetary law, they are often interpreted by the administrations as meaning price comparisons ‘only’.

Given the urgent need for a consolidation of public budgets, the topic of procurement procedures has increasingly become the focus of the discussions on optimisation measures in the last years. This is manifesting itself more and more, for example in disciplines such as ‘purchasing management’ the aim which is the optimisation of procurement processes. But such initiatives are still rather sporadic and unsystematic. And it is not uncommon that such organisational optimisations are initiated in response to a scarcity of human resources.

An expressly strong emphasizing of the economic efficiency aspect in the procurement laws or a systematic anchoring of it in the rules governing budget practices has not yet really taken place.

What is therefore needed is the implementation of integral optimisation principles for procurement processes and for developing a conscious economical procurement strategy. The procurement management teams of the public contracting authorities should thereby be given more extensive powers to optimise purchasing practices, and the contracting authorities should be organisationally upgraded from performers of mere service functions to performers of managerial tasks. This ‘new definition’ of the tasks could be bolstered through supplementary provisions in budget law.

Incentives from the area of procurement law could also provide new momentum. For example, a privileging of framework agreements would lead to increases in EU-wide procurement activities.

#### **8.3.4. *Improving the transparency of procurement and budgetary activities and creating a reliable database***

The transparency of the measures already described should be increased even further. The transparency of public procurement practices is essential for showing the public that procurement is practiced in a responsible manner and for facilitating internal and external reviews.

The focus here should be the creation of a comprehensive and reliable database from which conclusions can be drawn regarding procurement volume, the contract value, and the procurement practices of the public authorities and their entities. Data from all administrative levels and public authorities and about all types of procurement procedures should be collected and processed. The keeping of uniform procurement statistics should be made mandatory. This data is needed for evaluation purposes.

A number of measures have already been introduced since the investigation period of this study.

One of these was the so-called ‘soft harmonisation’ approach taken in 2016/2017 in conjunction with the modernisation of procurement law. This was done through the enactment of the Code of Procedure for Procurements of Supplies and Services Below the EU-Thresholds [UVgO] by the Federal Ministry for Economic Affairs and Energy. The aim of it is to impose transparency obligations in cases of public procurements of supplies and services below the EU-thresholds. The UVgO is in this respect very closely aligned with the provisions of the Regulation on the Awarding of Public Contracts [VgV]. Certain provisions of the procurement law for EU-wide procurements are incorporated in the UVgO by way of reference to them. In terms of the transparency requirements, however, a *de minimis* limit (trivial threshold) applies to *ex ante* or *ex post* notifications. This is meant to ensure the proportionality of organisational and economic efforts for low value procurements.

Another measure was the enactment of the Procurement Statistics Regulation [VergStatVO]. This regulation is aimed at creating the legal framework for a central and comprehensive collection of

statistical procurement data and the evaluation of it at the national level. The provisions of this regulation are meant to apply to procurements both above and below the EU-thresholds. They are also meant to meet the informational needs of the *Bund*, the *Länder*, and the local authorities and to satisfy the public's need for greater transparency.<sup>105</sup> This new regulation is expected to significantly improve the available data from which the procurement practices of the German public contracting authorities can be inferred. The implementing of the VergStatVO will have to wait, however, until the IT infrastructure needed to uniformly collect and transmit procurement data is operable.

Based on the evaluations made of the procurement statistics available for this study, it is clear that the forthcoming procurement statistics will have to meet certain essential requirements. Of utmost importance is the uniform classification and collection of the data. For example, the number of contracts awarded per procurement procedure must be clearly indicated in order to ensure clarity in cases where awards are made by lots. There should be sanctioning mechanisms in place for inadequate fulfilments of statistics-related obligations. For ensuring the uniformity of the statistics, it would be useful to introduce standardised forms with minimum documentation obligations. These should come with supplementary guidelines explaining the reasons and the specific procedures for data collection.

In addition to the creation of uniform procurement statistics, the monitoring of procurement practices would be enhanced if there was more uniformity with respect to the budgets and financial statements of the public entities, especially with respect to allocating expenditures and identifying payments made to third parties. One recommendation would be to separate expenditures according to whether procurement law applies to them or not. What would also be useful would be summaries of expenditures based on predefined and uniform *Länder* reports (e.g. on education, culture, traffic, etc.). This would facilitate transparent comparisons of the local contracting authorities.

### **8.3.5. *More in-depth investigations of problematic sector-specific aspects or approaches***

The problematic sector-specific aspects or approaches that could not be investigated in more depth in this study should be the subject of further investigations. The following are examples of these.

With respect to construction contracts, the way total contract values are being calculated should be looked at in more depth, especially when the contracts are being implemented in several construction phases, as should the feasibility of cost estimates for reviewing whether an EU-wide procurement obligation exists.

The automatic renewal of procurement contracts, especially in the waste management and public transportation sectors, is potentially problematic because services are being permanently withdrawn from the market and the economic efficiency aspect of services is being ignored. This is the case, for example, when the prices/fees agreed on include investments that have already been amortised or when cost optimisations are not undertaken due to the absence of the efficiency factor. New technologies will probably not be introduced on time or will be introduced too early, and the costs will be passed on to the customers or the citizens. The further investigations should therefore focus on how a reasonable term of contract can be achieved in an abstract contractual provision or how impending contract renewals should be dealt with.

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<sup>105</sup> Legal justification for Section 114(2) sent. 1 of the Act Against Restraints of Competition (GWB), Procurement Law Modernisation Act (VergRModG) 2016, BT-Drs. 18/6281, 56, 91.

It would appear advisable that a review be made of whether procurements of medicinal supplies in hospitals, with and without purchasing associations, are being carried out in compliance with procurement law. In doing so, compliance with procurement law must be examined here against the backdrop of the economic efficiency of purchasing via purchasing associations. Furthermore, in light of the fact that ordering is done in hospitals on an ongoing basis, it may be necessary to concretise the parameters stipulated by procurement law for determining the contract values applicable for reviewing whether an EU-wide procurement obligation exists.

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The procurement practices of the public contracting authorities are shaped by the legal and organisational frameworks applicable to them. They are rooted in historically developed procedures and are impacted by the current needs of the administration. The legal and organisational frameworks, particularly the extensive splitting up of responsibilities in the German federal system, foster a tendency to make procurements in small units. The measures suggested in certain areas could help to improve procurement practices in Germany. The reducing of improper inducements, of knowledge and regulatory gaps, or of organisational impediments that nurture the making of procurements in small units would indirectly lead to an increase in the rate of EU-wide procurement procedures. Germany has already taken the first steps in this direction—with the enactment of the Code of Procedure for Procurements Below the Threshold and the Procurement Statistics Regulation. But further measures are still needed to standardise, simplify, and to make procurement processes more transparent.

## **ANNEXES**

## Annex 1: Tables and Figures

Table 22: Number of documents recorded in DTAD in the period 2011 to 2015

Year	Documents in the context of EU-wide tendering procedures		Documents in the context of national tendering procedures		Total documents	Total contract notices
	Total	Number of contract notices	Total	Number of contract notices		
2011	48 218	22 323	124 306	94 830	172 524	117 153
2012	49 630	22 648	151 907	106 930	201 537	129 578
2013	52 560	24 109	172 566	117 595	225 126	141 704
2014	54 754	25 232	184 182	123 703	238 936	148 935
2015	61 481	28 340	190 330	116 332	251 811	144 672
<b>Total</b>	<b>266 643</b>	<b>122 652</b>	<b>823 291</b>	<b>559 390</b>	<b>1 089 934</b>	<b>682 042</b>

Table 23: Number of contract notices for the period 2011 to 2015 per type of procurement subject

Type of procurement subject	2011	2012	2013	2014	2015	Total
Works	30 119	83 045	92 596	96 242	93 366	395 368 (58%)
Services	10 956	21 685	24 445	26 446	28 885	112 417 (17%)
Supplies	8 626	16 310	20 156	21 879	22 374	89 345 (13%)
without specification	67 445	8 432	4 402	4 289	8	84 576 (13%)
Mixed contracts	7	106	105	79	39	336 (0%)
<b>Total</b>	<b>117 153</b>	<b>129 578</b>	<b>141 704</b>	<b>148 935</b>	<b>144 672</b>	<b>682 042</b>

Table 24: Number of contract notices for the period 2011 to 2015 per type of procurement subject and whether national or EU-wide

Type of procurement subject	2011	2012	2013	2014	2015	Total	%
Works (EU-wide)	10 928	10 628	11 052	11 289	12 462	56 359	8.3
Works (national)	19 191	72 417	81 544	84 953	80 904	339 009	49.7
Services (EU-wide)	5 902	6 431	6 903	7 853	9 199	36 288	5.3
Services (national)	5 054	15 254	17 542	18 593	19 686	76 129	11.2
Supplies (EU-wide)	5 493	5 589	6 154	6 090	6 679	30 005	4.4
Supplies (national)	3 133	10 721	14 002	15 789	15 695	59 340	8.7
Mixed contracts	7	106	105	79	39	336	0.0
without specification (EU-wide)	0	0	0	0	0	0	0.0
without specification (national)	67 445	8 432	4 402	4 289	8	84 576	12.4
<b>Total</b>	<b>117 153</b>	<b>129 578</b>	<b>141 704</b>	<b>148 935</b>	<b>144 672</b>	<b>682 042</b>	<b>100.0</b>

Table 25: Number of contract notices for the period 2011 to 2015 per type of contracting authority

Type of contracting authority	EU-wide	National	Total
Public entities	53 443	149 966	203 409
Confessional institutions	327	1 477	1 804
Municipalities	24 421	183 399	207 820
District authorities	7 330	30 784	38 114
<i>Länder</i> authorities	18 093	106 464	124 557
<i>Bund</i> authorities	5 928	27 390	33 318
Ministries ( <i>Bund</i> or <i>Länder</i> )	1 957	6 280	8 237
International organisations	62	47	109
Without specifications	11 091	53 583	64 674
<b>Total</b>	<b>122 652</b>	<b>559 390</b>	<b>682 042</b>

Table 26: Number of national contract notices for the period 2011 to 2015 per year and type of contracting authority

Type of contracting authority	2011	2012	2013	2014	2015	Total
Public entities	21 313	31 288	33 018	34 107	30 240	149 966
Confessional institutions	192	406	404	304	171	1 477
Municipalities	26 552	35 622	41 196	40 830	39 199	183 399
District authorities	5 091	6 116	6 674	6 595	6 308	30 784
<i>Länder</i> authorities	18 688	21 253	21 863	22 835	21 825	106 464
<i>Bund</i> authorities	5 254	6 027	5 332	5 397	5 380	27 390
Ministries ( <i>Bund</i> or <i>Länder</i> )	1 220	1 399	1 378	1 178	1 105	6 280
International organisations	23	11	4	6	3	47
Without specifications	16 497	4 808	7 726	12 451	12 101	53 583
<b>Total</b>	<b>94 830</b>	<b>106 930</b>	<b>117 595</b>	<b>123 703</b>	<b>116 332</b>	<b>559 390</b>

Table 27: Number of EU-wide contract notices for the period 2011 to 2015 per year and type of contracting authority

Type of contracting authority	2011	2012	2013	2014	2015	Total
Public entities	9 334	10 473	11 557	10 957	11 122	53 443
Confessional institutions	64	52	61	87	63	327
Municipalities	4 269	4 442	5 142	5 166	5 402	24 421
District authorities	1 605	1 293	1 607	1 433	1 392	7 330
<i>Länder</i> authorities	3 978	3 487	3 280	3 374	3 974	18 093
<i>Bund</i> authorities	1 274	1 114	1 139	1 150	1 251	5 928
Ministries ( <i>Bund</i> or <i>Länder</i> )	407	330	427	441	352	1 957
International organisations	18	5	7	13	19	62
Without specifications	1 374	1 452	889	2 611	4 765	11 091
<b>Total</b>	<b>22 323</b>	<b>22 648</b>	<b>24 109</b>	<b>25 232</b>	<b>28 340</b>	<b>122 652</b>

Table 28: Number of contract notices in the period 2011 to 2015 per type of procurement subject and contracting authority

Type of contracting authority	Works	Services	Supplies	Unspecified	Mixed contract	Total
Public entities	107 839	43 760	35 949	15 732	129	203 409
Confessional institutions	1 560	41	42	160	1	1 804
Municipalities	140 793	21 883	21 953	23 101	90	207 820
District authorities	22 214	6 315	5 221	4 353	11	38 114
<i>Länder</i> authorities	84 562	14 111	9 175	16 668	41	124 557
<i>Bund</i> authorities	8 788	12 702	8 101	3 713	14	33 318
Ministries ( <i>Bund</i> or <i>Länder</i> )	3 529	3 108	701	891	8	8 237
International organisations	18	61	14	16	0	109
Without specifications	26 065	10 436	8 189	19 942	42	64 674
<b>Total</b>	<b>395 368</b>	<b>112 417</b>	<b>89 345</b>	<b>84 576</b>	<b>336</b>	<b>682 042</b>

Table 29: Number of works-related contract notices in the period 2011 to 2015

Type of contracting authority	EU-wide	National	Total
Public entities	23 866	83 973	107 839
Confessional institutions	299	1 261	1 560
Municipalities	11 819	128 974	140 793
District authorities	3 943	18 271	22 214
<i>Länder</i> authorities	11 151	73 411	84 562
<i>Bund</i> authorities	1 096	7 692	8 788
Ministries ( <i>Bund</i> or <i>Länder</i> )	624	2 905	3 529
International organisations	9	9	18
Without specifications	3 552	22 513	26 065
<b>(Works) Total</b>	<b>56 359</b>	<b>339 009</b>	<b>395 368</b>

Table 30: Number of services-related contract notices in the period 2011 to 2015

Type of contracting authority	EU-wide	National	Total
Public entities	14 749	29 011	43 760
Confessional institutions	19	22	41
Municipalities	7 186	14 697	21 883
District authorities	2 075	4 240	6 315
<i>Länder</i> authorities	4 320	9 791	14 111
<i>Bund</i> authorities	2 623	10 079	12 702
Ministries ( <i>Bund</i> or <i>Länder</i> )	1 062	2 046	3 108
International organisations	43	18	61
Without specifications	4 211	6 225	10 436
<b>(Services) Total</b>	<b>36 288</b>	<b>76 129</b>	<b>112 417</b>

Table 31: Number of supplies-related contract notices in the period 2011 to 2015

Type of contracting authority	EU-wide	National	Total
Public entities	14 828	21 121	35 949
Confessional institutions	9	33	42
Municipalities	5 416	16 537	21 953
District authorities	1 312	3 909	5 221
<i>Länder</i> authorities	2 622	6 553	9 175
<i>Bund</i> authorities	2 209	5 892	8 101
Ministries ( <i>Bund</i> or <i>Länder</i> )	271	430	701
International organisations	10	4	14
Without specifications	3 328	4 861	8 189
<b>(Supplies) Total</b>	<b>30 005</b>	<b>59 340</b>	<b>89 345</b>

Table 32: Contract notices in the period 2011 to 2015, summary of evaluation results per *Land* (four segments)

<i>Land</i>	Total contract notices	Total number per 100 000 inhabitants (works, supplies, services)	Total number per 100 000 inhabitants (national)	Total number per 100 000 inhabitants (EU-wide)	Total national (percentage)	Total EU-wide (percentage)	Works (percentage)	Services (percentage)	Supplies (percentage)
Baden-Württemberg	66 130	608	497	111	82%	18%	66%	14%	13%
Berlin	36 055	1 024	799	226	78%	22%	53%	26%	13%
Brandenburg	35 955	1 447	1 305	142	90%	10%	59%	18%	13%
City-state Bremen	4 819	718	604	113	84%	16%	63%	11%	14%
City-state Hamburg	8 602	481	303	178	63%	37%	44%	28%	21%
Free State of Bavaria	99 596	775	553	223	71%	29%	65%	16%	11%
Free State of Saxony	51 309	1 256	1 100	157	88%	12%	63%	12%	12%
Free State of Thuringia	24 638	1 135	1 006	129	89%	11%	61%	12%	12%
Hesse	56 825	920	759	161	82%	18%	60%	20%	11%
Lower Saxony	55 417	699	592	108	85%	15%	62%	15%	13%
Mecklenburg-Western Pomerania	12 882	799	630	169	79%	21%	57%	14%	17%
North Rhine Westphalia	101 775	570	458	112	80%	20%	52%	21%	17%
Rhineland Palatinate	36 317	896	780	116	87%	13%	55%	12%	15%
Saarland	8 850	889	803	86	90%	10%	60%	10%	9%
Saxony-Anhalt	34 328	1 529	1 400	129	92%	8%	63%	17%	13%
Schleswig-Holstein	14 424	505	416	88	82%	18%	58%	17%	15%

<i>Land</i>	Works per 100 000 inhabitants	Works national (per 100 000 inhabitants)	Works EU-wide (per 100 000 inhabitants)	Works national (percentage)	Works EU-wide (percentage)
Baden-Württemberg	398	345	54	87%	13%
Berlin	543	463	80	85%	15%
Brandenburg	860	799	61	93%	7%
City-state Bremen	449	396	53	88%	12%
City-state Hamburg	210	150	60	72%	28%
Free State of Bavaria	501	367	134	73%	27%
Free State of Saxony	790	707	83	89%	11%
Free State of Thuringia	696	644	52	93%	7%
Hesse	554	483	71	87%	13%
Lower Saxony	437	384	52	88%	12%
Mecklenburg-Western Pomerania	456	379	77	83%	17%
North Rhine Westphalia	298	257	41	86%	14%
Rhineland Palatinate	495	450	45	91%	9%
Saarland	532	489	43	92%	8%
Saxony-Anhalt	959	903	56	94%	6%
Schleswig-Holstein	290	256	35	88%	12%

<i>Land</i>	Services per 100 000 inhabitants	Services national (per 100 000 inhabitants)	Services EU-wide (per 100 000 inhabitants)	Services national (percentage)	Services EU-wide (percentage)
Baden-Württemberg	85	56	29	66%	34%
Berlin	267	168	99	63%	37%
Brandenburg	256	208	47	81%	19%
City-state Bremen	80	48	32	60%	40%
City-state Hamburg	135	67	68	50%	50%
Free State of Bavaria	123	72	51	58%	42%
Free State of Saxony	149	111	38	74%	26%
Free State of Thuringia	142	106	36	75%	25%
Hesse	182	129	54	71%	29%
Lower Saxony	106	78	28	73%	27%
Mecklenburg-Western Pomerania	110	76	34	69%	31%

North Rhine Westphalia	117	80	37	69%	31%
Rhineland Palatinate	105	72	33	68%	32%
Saarland	87	65	21	76%	24%
Saxony-Anhalt	264	224	40	85%	15%
Schleswig-Holstein	85	56	29	65%	35%

<i>Land</i>	Supplies per 100 000 inhabitants	Supplies national (per 100 000 inhabitants)	Supplies EU-wide (per 100 000 inhabitants)	Supplies national (percentage)	Supplies EU-wide (percentage)
Baden-Württemberg	78	49	29	63%	37%
Berlin	132	86	46	65%	35%
Brandenburg	182	149	33	82%	18%
City-state Bremen	103	75	28	73%	27%
City-state Hamburg	99	48	51	48%	52%
Free State of Bavaria	88	51	37	58%	42%
Free State of Saxony	152	117	35	77%	23%
Free State of Thuringia	139	98	41	70%	30%
Hesse	100	64	37	64%	36%
Lower Saxony	88	60	27	69%	31%
Mecklenburg-Western Pomerania	134	75	58	56%	44%
North Rhine Westphalia	100	66	34	66%	34%
Rhineland Palatinate	133	96	38	72%	28%
Saarland	78	56	22	72%	28%
Saxony-Anhalt	195	162	33	83%	17%
Schleswig-Holstein	75	51	24	67%	33%

Table 33: Procurement volume of public authorities in 2013 per administrative level in EUR millions

	Total	Percentage	<i>Bund</i>	<i>Land</i>	Local	Social insurance
Property-related material expenditures	9 360	6%	1 467	1 793	5 972	128
Construction works	30 773	18%	6 800	6 958	16 827	189
<b>Works-related expenditures</b>	<b>40 134</b>	<b>24%</b>	<b>8 267</b>	<b>8 752</b>	<b>22 798</b>	<b>317</b>
Other administrative expenditures	87 919	53%	15 599	28 890	35 248	8 182
Other material expenditures	26 221	16%	10 755	9 817	5 025	624
Other investments in tangible assets	12 420	7%	2 009	4 340	5 243	830
<b>Supplies- and services-related expenditures</b>	<b>126 561</b>	<b>76%</b>	<b>28 363</b>	<b>43 047</b>	<b>45 516</b>	<b>9 636</b>
<b>Procurement volume</b>	<b>166 695</b>	<b>100%</b>	<b>36 629</b>	<b>51 798</b>	<b>68 314</b>	<b>9 953</b>

Table 34: Estimate of contract value awarded between 2011 and 2015 and published by national contract notices

Land	National contract notices (Source: DTAD)		Per capita purchasing power (Source: GFK) (in EUR)	'Lower' limit			'Upper' limit		
	Works	Supplies and services		Works (in EUR '000 s)	Supplies and services (in EUR '000s)	Estimated contract value 2011-2015 (in EUR billion)	Works (in EUR '000 s)	Supplies and services (in EUR '000s)	Estimated contract value 2011-2015 (in EUR billion)
Baden-Württemberg	37,481	16,558	22,952	124	133	6.9	136	944	20,7
Free State of Bavaria	47,139	23,857	23,401	127	135	9.2	138	963	29,5
Brandenburg	19,845	12,587	19,197	104	111	3.5	113	790	12,2
Hesse	29,854	17,016	22,858	124	132	5.9	135	940	20,0
Mecklenburg-Western Pomerania	6,114	4,051	17,790	96	103	1.0	105	732	3,6
Lower Saxony	30,461	16,426	21,005	114	121	5.5	124	864	18,0
North Rhine- Westphalia	45,923	35,926	21,458	116	124	9.8	127	883	37,5
Rhineland-Palatinate	18,233	13,379	21,120	114	122	3.7	125	869	13,9
Saarland	4,873	3,118	20,009	108	116	0.9	118	823	3,1
Free State of Saxony	28,863	16,053	18,108	98	105	4.5	107	745	15,0
Saxony-Anhalt	20,285	11,147	17,848	97	103	3.1	105	734	10,3
Schleswig-Holstein	7,309	4,586	21,611	117	125	1.4	128	889	5,0
Free State of Thuringia	13,981	7,864	18,101	98	105	2.2	107	745	7,4
Berlin	16,290	11,825	19,649	106	114	3.1	116	808	11,5
City-state Bremen	2,659	1,400	19,909	108	115	0.4	118	819	1,5
City-state Hamburg	2,686	2,726	23,664	128	137	0.7	140	974	3,0
Unspecified	7,013	21,862	21,449	116	124	3.5	127	882	20,2
<b>Total</b>	<b>339,009</b>	<b>220,381</b>				<b>65.4</b>			<b>232,5</b>
						<b>Per year</b>	<b>13.1</b>	<b>Per year</b>	<b>46.5</b>

Table 35: Numbers of national public and non-public contract awards according to analysed procurement statistics

	National contract notices		<i>Beschränkte Ausschreibung</i>		<i>Freihändige Vergabe</i>		Total	
	Works	Supplies and services	Works	Supplies and services	Works	Supplies and services	Works	Supplies and services
State Government of Saxony	4 012	5 214	5 249	3 900	104 020	333 807	113 281	342 921
Leipzig	1 784	229	419	77	1 259	227	3 462	533
Eberswalde	247	77	59	54	194	447	500	578
<b>Total</b>	<b>6 043</b>	<b>5 520</b>	<b>5 727</b>	<b>4 031</b>	<b>105 473</b>	<b>334 481</b>	<b>117 243</b>	<b>344 032</b>
<b>Percentage of national awards</b>	5.2%	1.6%	4.9%	1.2%	90.0%	97.2%		

Table 36: Estimated numbers and values of non-public contract awards in the period 2011 to 2015 at the national level(see

Table 37)

	National contract notices (public tender procedures)		Estimated non-public national awards (2011-2015)				Thresholds for choosing tender procedure				Value of non-public contract 2011-2015 (in EUR billion)
	(Source: DTAD)		Works		Supplies and services		Works		Supplies and services		
	Works	Supplies and services	<i>Beschränkte Ausschreibung</i>	<i>Freihändige Vergabe</i>	<i>Beschränkte Ausschreibung</i>	<i>Freihändige Vergabe</i>	<i>Beschränkte Ausschreibung</i> (EUR '000)	<i>Freihändige Vergabe</i> (EUR '000)	<i>Beschränkte Ausschreibung</i> (EUR '000)	<i>Freihändige Vergabe</i> (EUR '000)	
Percentage of national awards	$p_{wcn} = 5.15\%$	$p_{scn} = 1.60\%$	$p_{wb} = 4.88\%$	$p_{wf} = 89.96\%$	$p_{sb} = 1.17\%$	$p_{sf} = 97.22\%$					
Baden-Württemberg	37 481	16 558	35 521	654 184	12 092	1 003 322	100	20	50	20	18,7
Free State of Bavaria	47 139	23 857	44 674	822 752	17 422	1 445 600	100	30	100	30	37,1
Brandenburg	19 845	12 587	18 807	346 370	9 192	762 702	1 000	100	100	20	34,8
Hesse	29 854	17 016	28 293	521 064	12 426	1 031 074	1 000	100	207	100	93,0
Mecklenbg.-West. Pom.	6 114	4 051	5 794	106 712	2 958	245 468	1 000	200	100	100	26,0
Lower Saxony	30 461	16 426	28 868	531 659	11 995	995 323	100	25	50	25	20,8
North Rhine- Westphalia	45 923	35 926	43 522	801 528	26 235	2 176 914	1 000	100	100	100	172,0
Rhineland-Palatinate	18 233	13 379	17 280	318 234	9 770	810 692	100	10	40	20	10,8
Saarland	4 873	3 118	4 618	85 052	2 277	188 933	100	10	75	10	1,7
Free State of Saxony	28 863	16 053	27 354	503 768	11 723	972 722	100	25	207	25	21,0
Saxony-An.	20 285	11 147	19 224	354 049	8 140	675 446	100	10	50	25	11,4
Schleswig-Holstein	7 309	4 586	6 927	127 569	3 349	277 886	1 000	100	100	100	23,9
Free State of Thuringia	13 981	7 864	13 250	244 021	5 743	476 514	150	50	50	20	12,0
Berlin	16 290	11 825	15 438	284 322	8 635	716 529	350	35	100	10	11,7
City-state Bremen	2 659	1 400	2 520	46 410	1 022	84 832	100	10	40	10	0,8
City-state Hamburg	2 686	2 726	2 546	46 881	1 991	165 180	1 000	100	100	50	7,8
not specified	7 013	21 862	6 646	122 403	15 965	1 324 714	417	52	100	47	36,3
<b>Sum</b>	<b>339 009</b>	<b>220 381</b>	<b>321 282</b>	<b>5 916 978</b>	<b>160 934</b>	<b>13 353 851</b>					<b>539,8</b>

Table 37: Explanation of estimation of numbers and values of non-public contracts

		National contract notices (public tender procedures) (Source: DTAD)		Estimated non-public national awards (2011-2015)				Thresholds for choosing tender procedure			
		Works	Supplies and services	Works		Supplies and services		Works		Supplies and services	
Percentage of national awards	Works	Supplies and services	<i>Beschränkte Ausschreibung</i>	<i>Freihändige Vergabe</i>	<i>Beschränkte Ausschreibung</i>	<i>Freihändige Vergabe</i>	<i>Beschränkte Ausschreibung</i>	<i>Freihändige Vergabe</i>	<i>Beschränkte Ausschreibung</i>	<i>Freihändige Vergabe</i>	
		$p_{wcn} = 5.15\%$	$p_{scn} = 1.60\%$	$p_{wb} = 4.88\%$	$p_{wf} = 89.96\%$	$p_{sb} = 1.17\%$	$p_{sf} = 97.22\%$				
Estimation	$n_w$	$n_s$	$n_{wb} = \frac{n_w}{p_{wcn}} \cdot p_{wb}$	$n_{wf} = \frac{n_w}{p_{wcn}} \cdot p_{wf}$	$n_{sb} = \frac{n_s}{p_{scn}} \cdot p_{sb}$	$n_{sf} = \frac{n_s}{p_{scn}} \cdot p_{sf}$	$t_{wb}$	$t_{wf}$	$t_{sb}$	$t_{sf}$	
Value of non-public contracts 2011-2015 (in EUR billion)											
$= n_{wb} \cdot \frac{t_{wb}}{2} + n_{wf} \cdot \frac{t_{wf}}{2} + n_{sb} \cdot \frac{t_{sb}}{2} + n_{sf} \cdot \frac{t_{sf}}{2}$											

Table 38: Decrees, regulations, and circulars in effect at the *Länder* level alone in the period 2011 to 2015

<i>Land</i>	Procurement Statute	Abbreviation	Decree/Regulation/Circular
Baden-Württemberg	Act on the Compliance with Collective Bargaining Agreements and on Minimum Wages for Public Contracts in Baden-Württemberg ( <i>Landestariftreue- und Mindestlohngesetz</i> )	LTMG	<ul style="list-style-type: none"> <li>–Administrative regulation of the government of Baden-Württemberg on the awarding of public contracts (<i>VwV Beschaffung</i>) of 17 March 2015, GABl. No. 4 of 29 April 2015</li> <li>–Directive of the Ministry of Finance and Economic Affairs for the awarding and managing of contracts for supplies and services of the Baden-Württemberg state administration of real estate and building matters (<i>VOL-Richtlinie VBV</i>)</li> <li>–Act on the Advancement of SMEs of 19 December 2000 (<i>MFG BW</i>)</li> </ul>
Free State of Bavaria			<ul style="list-style-type: none"> <li>–Notification by the Free State of Bavarian State Government of 16 June 2010, Az.: B II 2- G 3/10, last amended by the Notification of the Bavarian State Government of 6 December 2016, and the Notification of the Bavarian State Ministry of the Interior on the ‘Awarding of contracts in the municipal sector’ of 14 October 2005, Az.: IB3-1512.4-138, last amended by the Notification of the Bavarian State Ministry of the Interior, Building and Transportation of 7 December 2016, Az. IB3-1512-31-16</li> <li>–Act on the Advancement of SMEs and the Liberal Professions (<i>Mittelstandsförderungsgesetz</i>) of 20 December 2007, GVBl. p. 926</li> <li>–Directive on the recognition of environmental aspects when awarding public contracts (<i>öA UmwR</i>) of 28 April 2009 Az. B II 2-5152-15</li> <li>–Directive on the recovering of benefits in cases of serious breaches of procurement law, Az. 11 H 1360-001-44 571/06</li> <li>–Regulation on providing for the organisation and competencies in procurement review procedures for public contracts (<i>BayNpV</i>), GVBl. 1999 p. 2</li> <li>–Directive on the prevention and combatting of corruption in the public administration (<i>Korruptionsbekämpfungsrichtlinie, KorruR</i>) Az. B III 2 515-238</li> <li>–Directive concerning the activities of the <i>Auftragsberatungszentrum Bayern e.V.</i> (AIIMBI p. 624)</li> <li>–IT directive for the Bavarian State Administration; use of the supplementary contractual provisions for the procurement of IT services (<i>EVB-IT</i>)</li> <li>–Requirement of bidder declarations in relation to the awarding of public contracts Az, 41 a/38-S 0270-4/89-3 739</li> <li>–Implementation of procedures for reviewing public contract awards of jointly promoted institutions; Notification of the Bavarian Ministry for Economic Affairs of 18 January 1999 Az. 5813 I/4b-466</li> </ul>
Berlin	Act on Public Tenders and Contract Awards of the State of Berlin	BerlAVG	<p>VOB/A: Circular of the Senate Department for Urban Development and the Environment V M Nr. 01/2015 - V M16/ V M15; VOL/A: Circular of the Senate Department for the Economy, Technology and Research II G Nr. 1/2015 - II G 14</p>

<i>Land</i>	<i>Procurement Statute</i>	<i>Abbreviation</i>	<i>Decree/Regulation/Circular</i>
			<ul style="list-style-type: none"> <li>–Administrative regulation on the application of environmental protection requirements when procuring supplies, construction works, and services (<i>VwVBU</i>)</li> <li>–Act on Establishing and Keeping a Register of Commercial Enterprises Convicted of Corruption in Berlin (<i>Korruptionsregistergesetz, KRG</i>)</li> <li>–Act on the Advancement of the Circular Economy and the Securing of the Ecological Disposal of Waste in Berlin (<i>KrW-/AbfG Bln</i>)</li> </ul>
Brandenburg	Act on the Minimum Requirements for Awarding Public Contracts of the State of Brandenburg ( <i>Brandenburgisches Vergabegesetz</i> )	BbgVergG	<ul style="list-style-type: none"> <li>–<i>Land</i>: Administrative regulation concerning Paragraph 55 of the State Budgetary Code (<i>Landeshaushaltsordnung</i>); Municipalities: Paragraph 30 of the Municipal Budget and Accounting Regulation (<i>KomHKV</i>)</li> <li>–Paragraph 5 of the Act on the Advancement of SMEs of the State of Brandenburg (<i>Brandenburgisches Mittelstandsförderungsgesetz</i>)</li> <li>–Paragraph 27 of the Act on Waste and Soil Protection of the State of Brandenburg (<i>Brandenburgisches Abfall- und Bodenschutzgesetz</i>)</li> </ul>
Bremen	Act on the Securing of Compliance with Collective Bargaining Agreements, Social Standards and Competition in relation to the Awarding of Public Contracts of the Free Hanseatic City of Bremen ( <i>Tariftreue- und Vergabegesetz</i> )	TtVG	<ul style="list-style-type: none"> <li>–Regulation on the implementation of the Act on Compliance with Collective Bargaining Agreements and Procurements of the Free Hanseatic City of Bremen (<i>Bremische Vergabeverordnung, BremVergV</i>)</li> <li>–Regulation on the recognition of the key labour provisions of the <i>Internationale Arbeitsorganisation</i> when awarding public contracts of the Free Hanseatic City of Bremen (<i>Bremische Kernarbeitsnormenverordnung, BremKernV</i>)</li> <li>–Regulation on the organisation of the procurement of construction works and services by the central service and coordination agency of the Free Hanseatic City of Bremen (<i>Bremische Vergabeorganisationsverordnung, BremVergabeOrgV</i>)</li> </ul>
City-state Hamburg	Procurement Act of Hamburg	HmbVgG	<ul style="list-style-type: none"> <li>–Procurement code of the Free and Hanseatic City of Hamburg of 1 March 2009 as amended on 1 June 2013 for VOL procurements;</li> <li>–Circular of the Public Administration for Urban Development and the Environment (BSU) of 19 December 2012 for the VOB area</li> <li>–Guidelines for the procurement of supplies and services (excluding construction works)</li> </ul>
Hesse	Procurement Act of the State of Hesse / Act on Procurements and Compliance with Collective Bargaining Agreements of the State of Hesse	HVTG	<ul style="list-style-type: none"> <li>–Joint circular order of 1 November 2007 consolidated and corrected version 2012 of the Ministry for Economic Affairs, Transportation and State Development of the State of Hesse</li> </ul>
Mecklenburg-Western Pomerania	Act on the Awarding of Public Contracts in Mecklenburg-Western Pomerania ( <i>Vergabegesetz Mecklenburg-Vorpommern</i> )	VgG M-V	<ul style="list-style-type: none"> <li>–Awarding of public contracts with low contract values (<i>Wertgrenzenerlass</i>) – guidelines for implementing Paragraphs 9 and 10 VgG M-V, administrative regulation of the Ministry for Economic Affairs, Building and Tourism of 9 October 2012 – V 140-611-20-03.01.23/001-024</li> <li>–Application of the VOB/A (construction works) and the VOL/A (supplies), administrative regulation of the</li> </ul>

Land	Procurement Statute	Abbreviation	Decree/Regulation/Circular
			Ministry for Economic Affairs, Building and Tourism of 24 October 2012 -Y 140 - 611-00020-20101021 –Directive on strengthening the participation of SMEs when awarding public contracts, decree of the Ministry for Economic Affairs in agreement with the Ministry of Finance and the Ministry for the Interior of 30 June 2003 – V 330-611-20-03.06.20/007
Lower Saxony	Act on the Securing of Compliance with Collective Bargaining Agreements and Competition when Awarding Public Contracts of the State of Lower Saxony ( <i>Tariftreue- und Vergabegesetz</i> )	NTVergG	–Regulation on the contract value thresholds in relation to the NTVergG ( <i>Niedersächsische Wertgrenzenverordnung, NWertVO</i> ) of 19 February 2014, as last amended on 7 December 2016
North Rhine-Westphalia	Act on the Securing of Compliance with Collective Bargaining Agreements and Social Standards and Fair Competition when Awarding Public Contracts ( <i>Tariftreue- und Vergabegesetz Nordrhein-Westfalen</i> ) of 31 January 2017	TVgG - NRW	–Procurement principles for municipalities (GV) pursuant to Paragraph 25 of the Municipal Budget Regulation NRW ( <i>GemHVO NRW</i> ) ( <i>Kommunale Vergabe-grundsätze</i> ), circular order of the Ministry for the Interior and Municipal Affairs of 6 December 2012–34-48.07.01/01-169/12 –Guidelines for the awarding of public contracts below the EU-thresholds in conjunction with VOL/A and VOB/A procurements, joint circular order of the Ministry of Finance, Az: I C 2 - 0055-3/H 4030-1-IV A 3), the Ministry for Economic Affairs, Energy, Building, Housing, and Transportation (AZ: II B 1 – 80 – 00/1), and the Ministry for Innovation, Science and Research (Az: 111-3.02.04-2011) of 23 December 2010 –Procurement manual for the procurement of services pursuant to the VOL ( <i>VHB-VOL</i> ), circular order of the Ministry of Finance of 22 June 2010 H 4090 – 1 – IV A 3 –Act on the Advancement of SMEs in North Rhine-Westphalia ( <i>Mittelstandsförderungsgesetz</i> ) of 18 December 2012
Rhineland-Palatinate	Act on Securing Compliance with Collective Bargaining Agreements and Minimum Wages in relation to Awarding Public Contracts ( <i>Landestariftreuegesetz</i> )	LTTG	–Administrative regulation of the Ministry for Economic Affairs, Transportation, Agriculture and Viticulture, the Ministry for the Interior and for Sport, and the Ministry of Finance of 29 July 2004
Saarland	Act No. 1798 on the Securing of Social Standards, Compliance with Collective Bargaining Agreements, and Minimum Wages when Awarding Public Contracts in Saarland ( <i>Saarländisches Tariftreuegesetz</i> )	STTG	–Directive on the procurement of supplies and services by the state administration of Saarland ( <i>saarländische Beschaffungsrichtlinie</i> )

<i>Land</i>	<b>Procurement Statute</b>	<b>Abbreviation</b>	<b>Decree/Regulation/Circular</b>
Free State of Saxony	Act on the Awarding of Public Contracts in the Free State of Saxony ( <i>Sächsisches Vergabegesetz</i> )	SächsVergabeG	–Directive of the Ministry for Economic Affairs, Labour and Transportation of the Free State of Saxony in relation to the advancement of SMEs ( <i>Mittelstandsrichtlinie</i> of 21 August 2014)
Saxony-Anhalt	Act on the Awarding of Public Contracts in Saxony-Anhalt ( <i>Landesvergabegesetz</i> )	LVG LSA	–Bidder declaration and prequalification, circular order of the Ministry for Economic Affairs and Labour of 21 November 2008
Schleswig-Holstein	Act on the Securing of Compliance with Collective Bargaining Agreements and Social Standards and Fair Competition when Awarding Public Contracts ( <i>Tariftreue- und Vergabegesetz Schleswig-Holstein</i> )	TTG	–State regulation on the implementation of the fourth part of the Act Against Restraints of Competition (GWB) of 20 July 2009
Free State of Thuringia	Act on the Awarding of Public Contracts of the Free State of Thuringia ( <i>Thüringer Vergabegesetz</i> )	ThürVgG	–Administrative regulation on the awarding of public contracts of the Free State of Thuringia of 14 October 2014

**Annex 1a: Detailed analysis of procurement subject categories**

Works

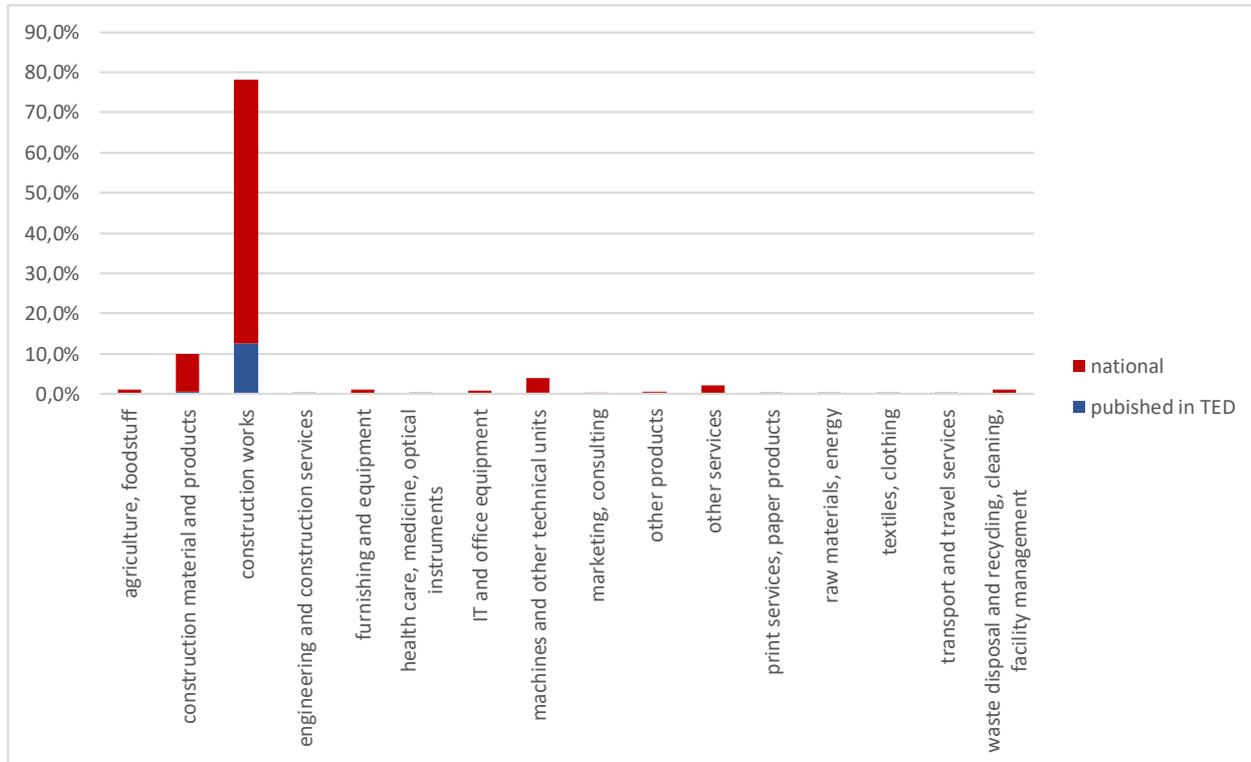


Figure 37: Total percentages of principal individual categories for national and EU-wide tenders for works in the period 2011 to 2015

When broken down by *Land* the evaluation of the category ‘construction works’ shows very clear differences between the *Länder* (see Figure 37).

*National contract notices:* For the category ‘construction works’ it was found that the number of contract notices per 1 000 inhabitants ranges somewhere between 1 and 7 (see Figure 38). The highest numbers (more than 5 per 1 000 inhabitants) are found in Saxony-Anhalt, Brandenburg, and Free State of Thuringia, and the lowest (less than 2 per 1 000 inhabitants) in the city-state Hamburg, Schleswig-Holstein, and North Rhine-Westphalia.

*EU-wide contract notices:* With respect to the number of contract notices per 1 000 inhabitants of EU-wide procurement procedures the differences between the *Länder* are less pronounced. The average is around 0.5. Free State of Bavaria has the highest number at slightly more than 1.

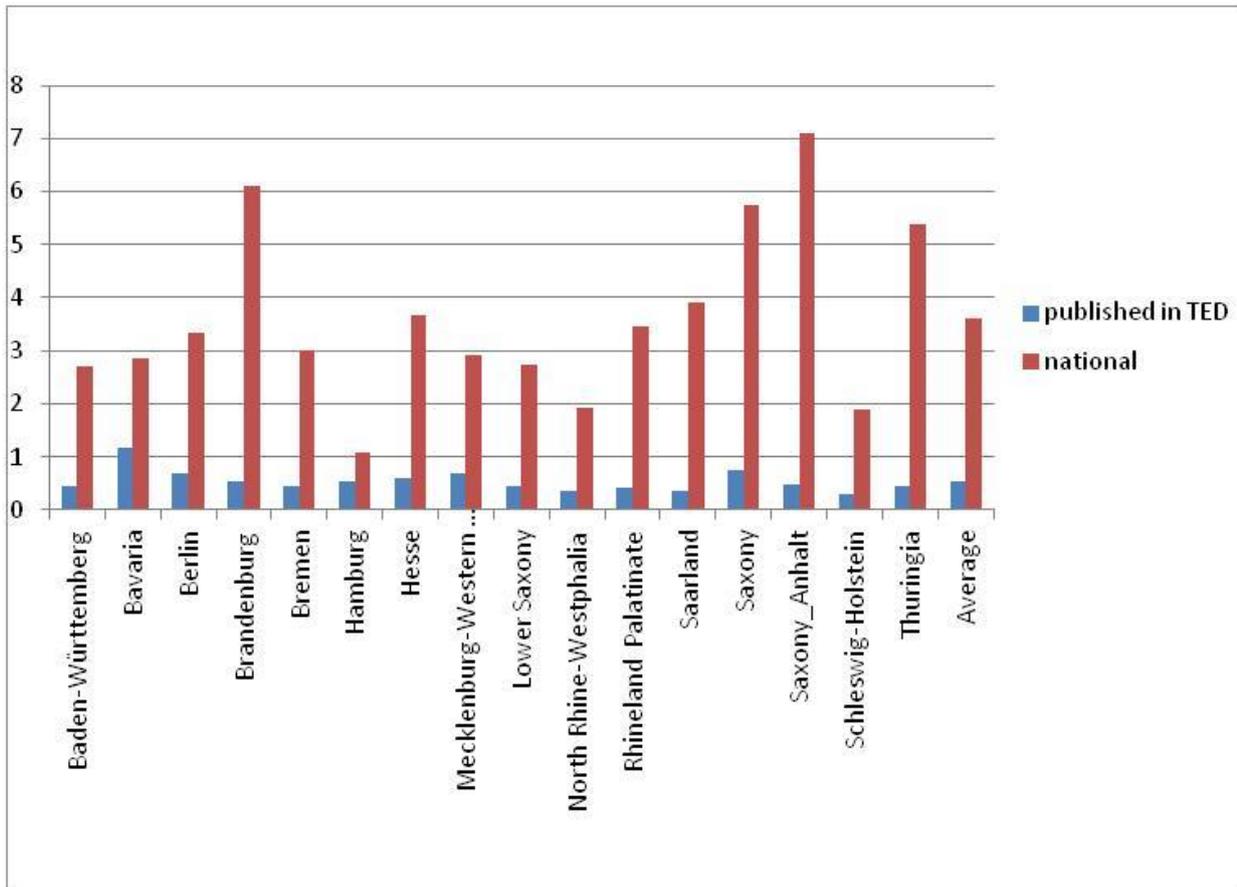


Figure 38: Total number of national and EU-wide contract notices for works per 1000 inhabitants in the determinative subcategory 'construction works' in the period 2011 to 2015 per Land

Supplies

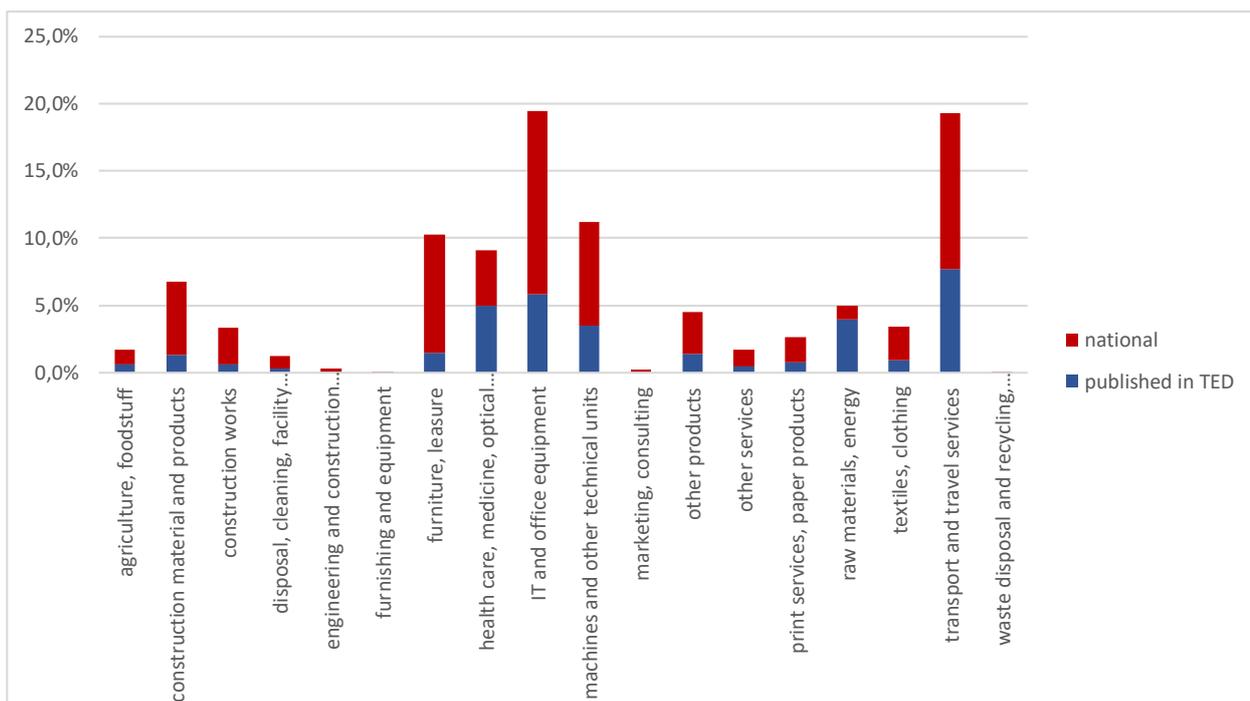


Figure 39: Total percentages of the principal individual categories of national and EU-wide tenders for supplies in the period 2011 to 2015

The differentiated analysis of the individual categories according to *Land* gives rise to the following facts:

- Category ‘IT and office equipment’ (Figure 40)

*National contract notices:* Saxony-Anhalt (0.38) and Brandenburg (0.35) show the highest numbers of contract notices per 1 000 inhabitants; Free State of Saxony (0.24) and Free State of Thuringia (0.24) are also clearly above-average (0.16). Schleswig-Holstein (0.07) and the city-state Hamburg (0.09) are at the lower end of the spectrum.

*EU-wide contract notices:* The range of values here is significantly smaller. Notable is that in the city-state Hamburg the number of EU-wide contract notices is higher than the number of national contract notices. In Free State of Bavaria and Mecklenburg-Western Pomerania, the number of EU-wide contract notices is also much higher than national contract notices.

- Category ‘Transport and travel services’ (Figure 41)

*National contract notices:* Saxony-Anhalt shows the highest values (0.33). The values in Brandenburg, Free State of Saxony, Free State of Thuringia, and Rhineland-Palatinate (each around 0.23) are also clearly above-average (0.145).

*EU-wide contract notices:* The range of values here is significantly smaller. Notable here is that in the Free State of Bavaria, Baden-Württemberg, in the city-state Hamburg, and Hesse, the number of EU-wide contract notices is either higher or only slightly lower than the number of national contract notices. The percentage is much less favourable in the other *Länder* where the number of national contract notices is much higher than the average.

- Category ‘Health care, medicine, optical instruments’ (Figure 42)

The city-state Hamburg, Brandenburg, and Berlin issue by far the most contract notices per 1 000 inhabitants (0.16 and more). The lowest numbers are found in Baden-Württemberg, Schleswig-Holstein, and Lower Saxony (0.06 and less). Over half of the contract notices are EU-wide tenders; in the city-state Hamburg they even make up the vast majority of procurement procedures. Brandenburg, Rhineland-Palatinate, Free State of Saxony, and Saxony-Anhalt are exceptions here in that national contract notices predominate. Especially in Brandenburg and Rhineland-Palatinate, national contract notices very clearly outnumber EU-wide contract notices.

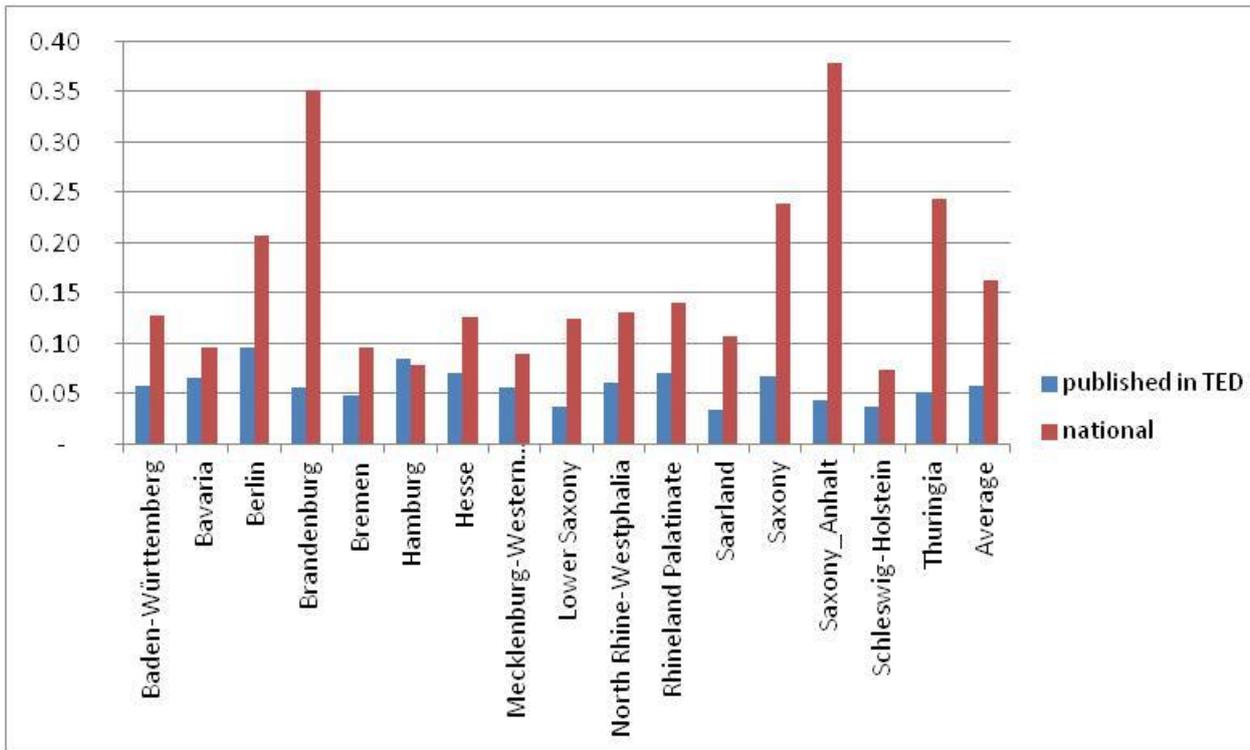


Figure 40: Total number of national and EU-wide contract notices per 1 000 inhabitants for supplies in the category 'IT and office equipment' in the period 2011 to 2015 per Land

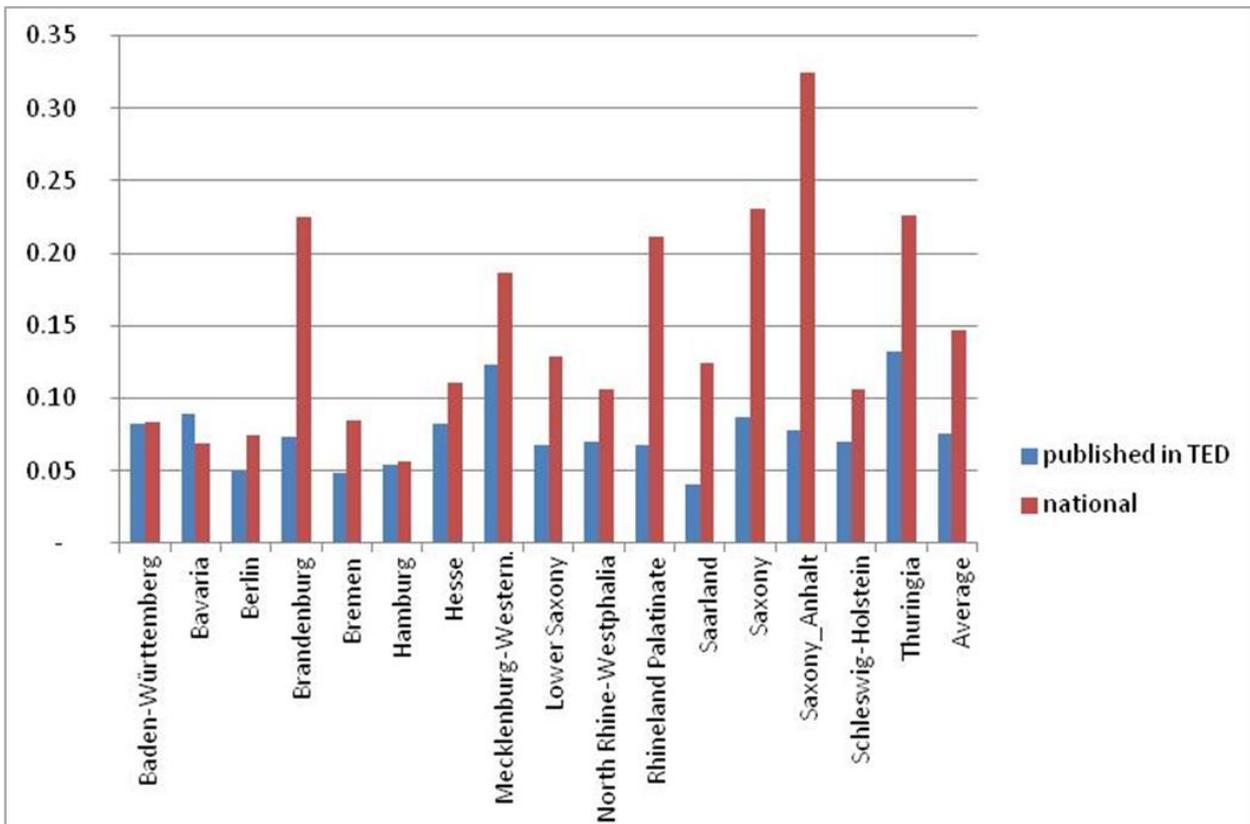


Figure 41: Total number of national and EU-wide contract notices per 1 000 inhabitants for supplies in the category 'transport and travel services' in the period 2011 to 2015 per Land

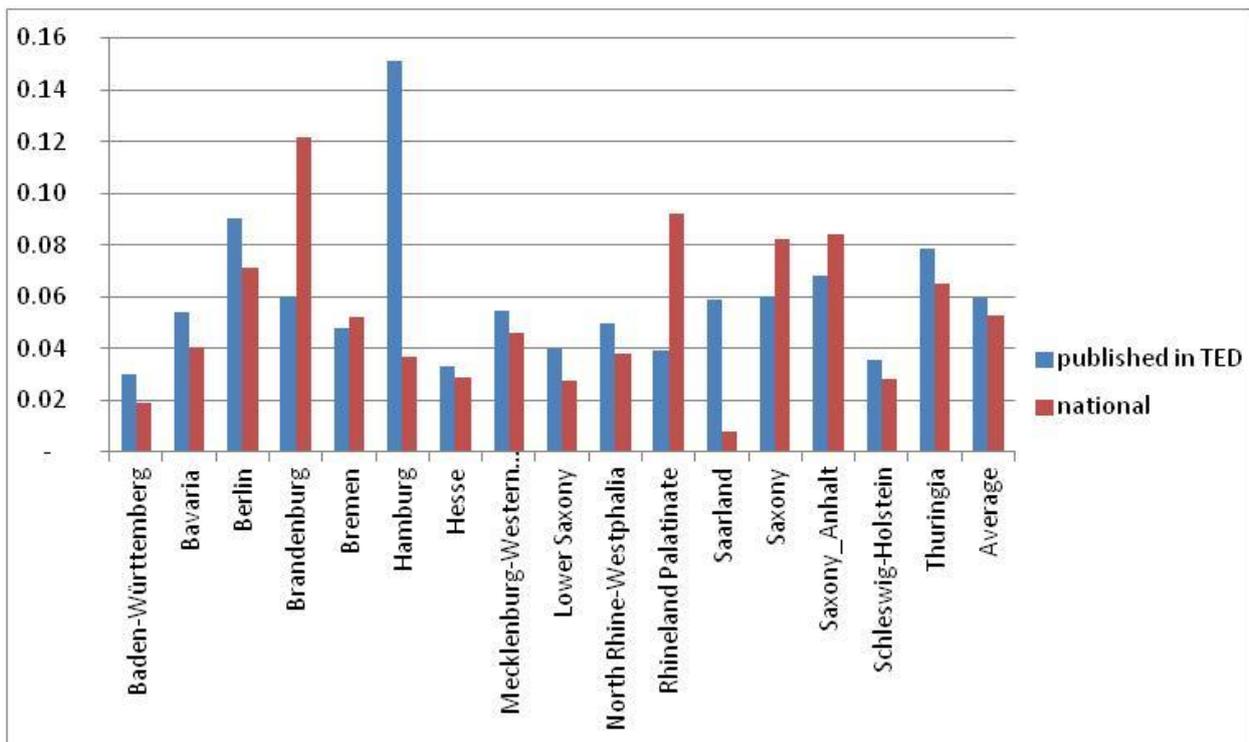


Figure 42: Total number of national and EU-wide contract notices per 1 000 inhabitants for supplies in the category ‘health care, medicine, optical instruments’ in the period 2011 to 2015 per *Land*

### Services

The evaluation also shows a wider distribution among the categories of the procurement subject services. Clear areas of concentration are found in the categories ‘other services’ (26.74%) ‘disposal, cleaning, facility service’ (21.72%), and ‘engineering and construction services’ (13.02%). ‘IT and office equipment’ accounts for 9%, ‘transport and travel services’ for 7%, and ‘marketing, consulting’ for 6% (see Figure 43).

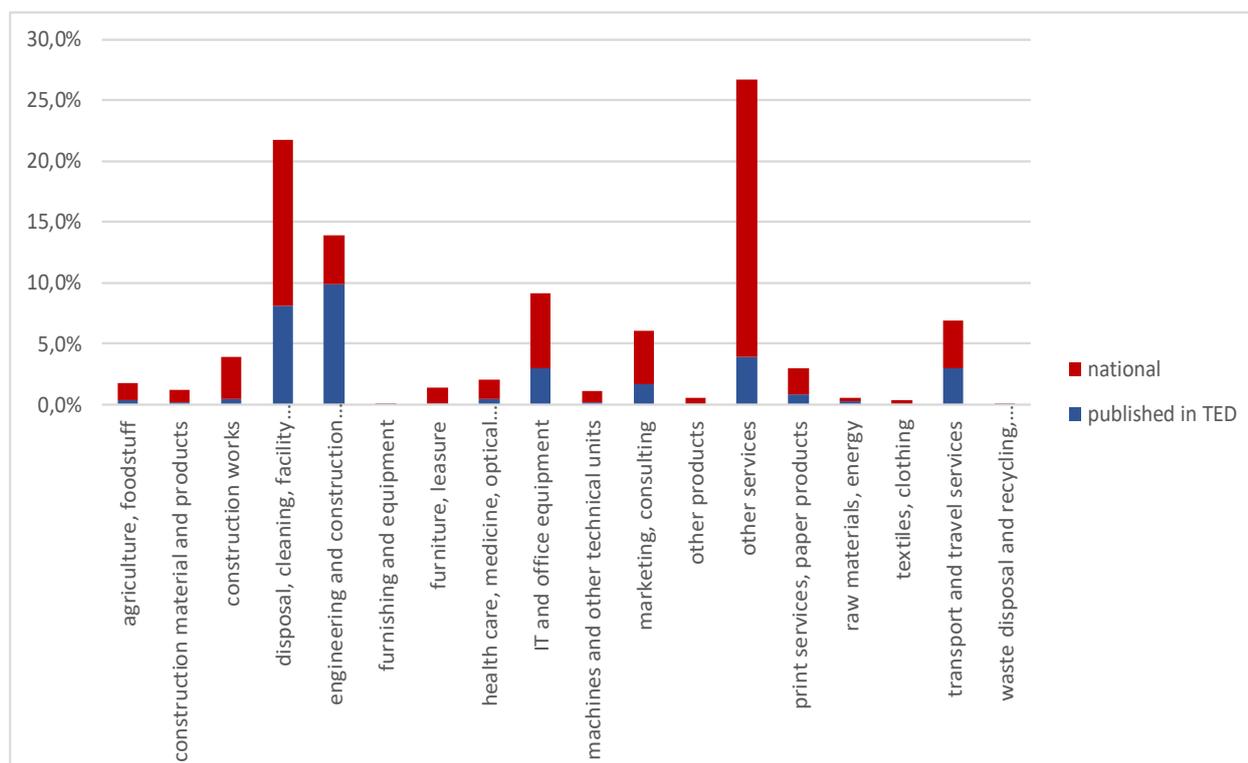


Figure 43: Total percentages of the principal individual categories of national and EU-wide tenders for services in the period 2011 to 2015 for all of Germany

The differentiated evaluation according to the *Länder* gives rise to the following notable factors:

- Category ‘other services’ (Figure 44):

A very wide range of values is evident here. The *Länder* of Brandenburg and Saxony-Anhalt have by far the highest numbers of contract notices per 1 000 inhabitants. Bremen, the city-state Hamburg, Rhineland-Palatinate, and the Free State of Thuringia are at the lowest end of the spectrum with numbers that are very clearly below-average.

- Category ‘disposal, cleaning, facility services’ (Figure 45):

All in all, the values in the *Länder* are relatively consistent in this category. Notable are Saxony-Anhalt (0.65), Free State of Thuringia (0.52), Brandenburg (0.49), and Free State of Saxony (0.4) with the highest total numbers of contract notices per 1 000 inhabitants. Approximately one-third are EU-wide contract notices. In the city-state Hamburg, Berlin, and Free State of Bavaria, the percentage of EU-wide contract notices is distinctly above-average.

- Category ‘engineering and construction services’ (Figure 46):

Except for Brandenburg, it is notable in this category that EU-wide contract notices dominate in comparison to national contract notices. The highest total numbers of contract notices per 1 000 inhabitants are found in Berlin, the city-state Hamburg, Free State of Bavaria, and Brandenburg.

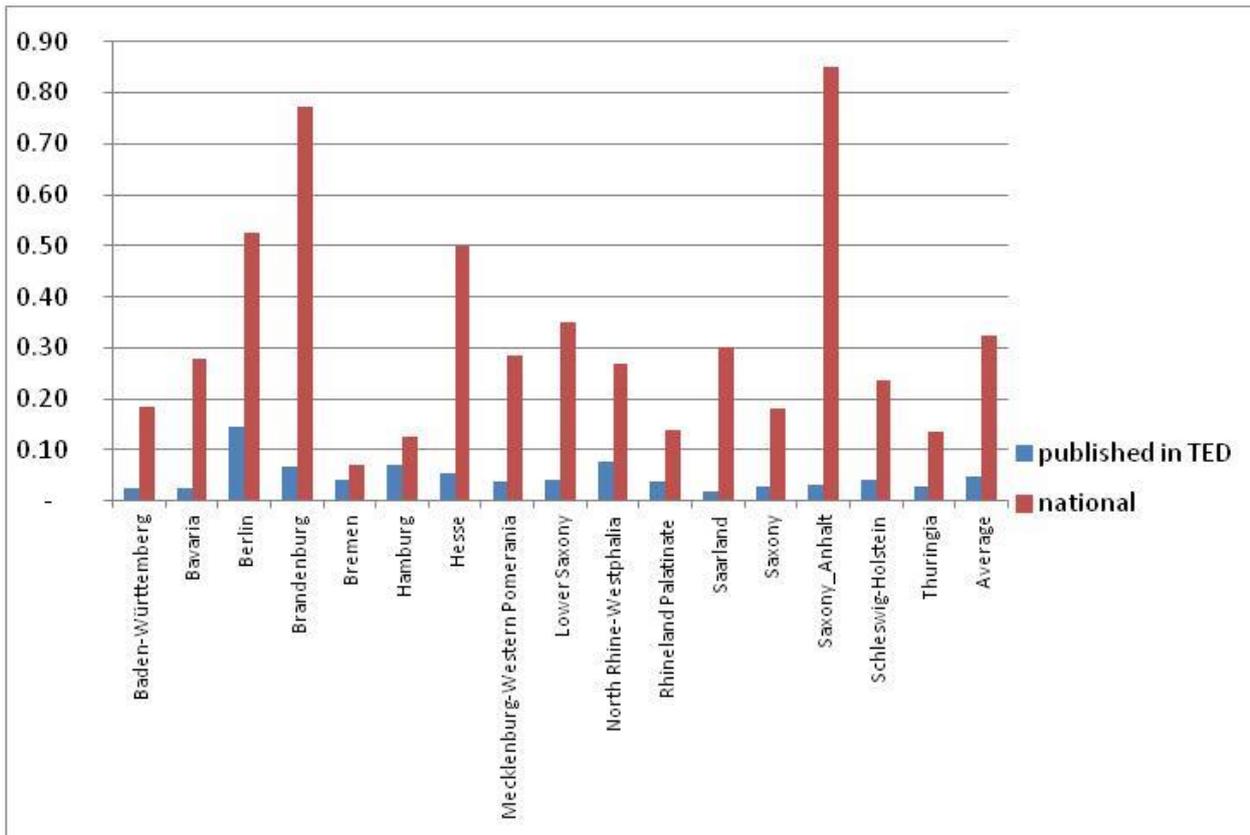


Figure 44: Total number of national and EU-wide contract notices per 1000 inhabitants for services in the category ‘other services in the period 2011 to 2015 per Land

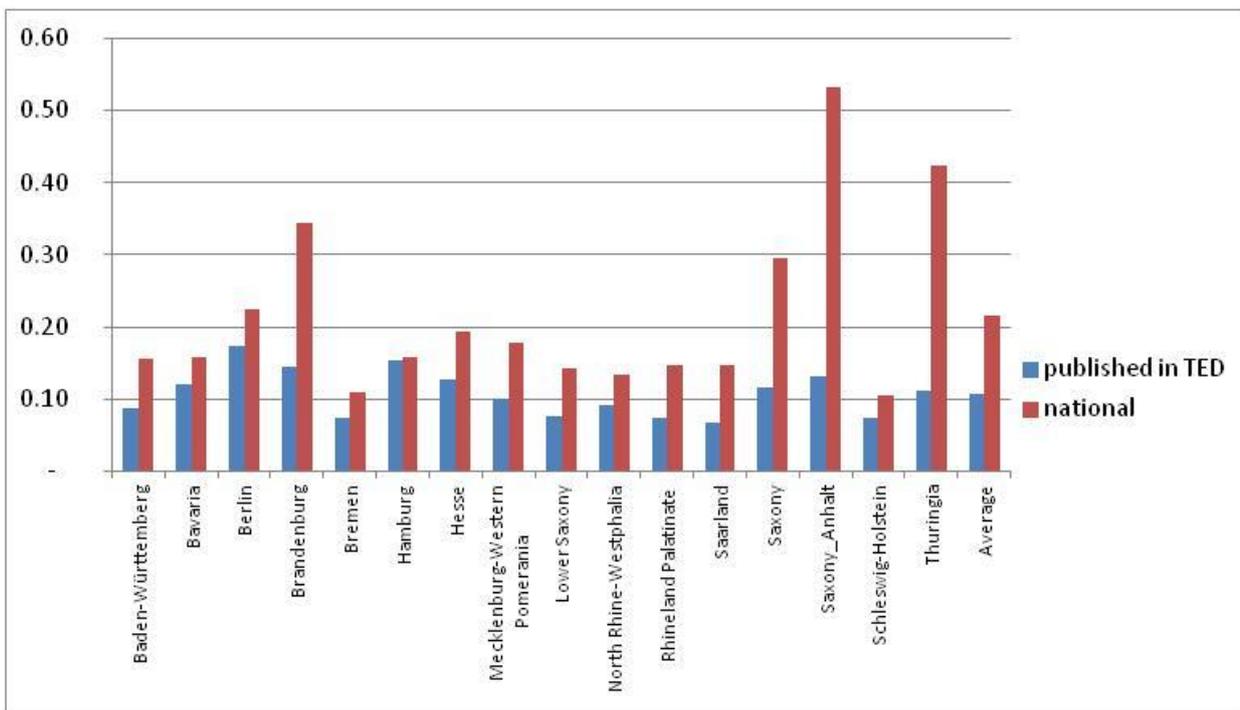


Figure 45: Total number of national and EU-wide contract notices per 1000 inhabitants for supplies in the category ‘disposal, cleaning, facility services’ in the period 2011 to 2015 per Land

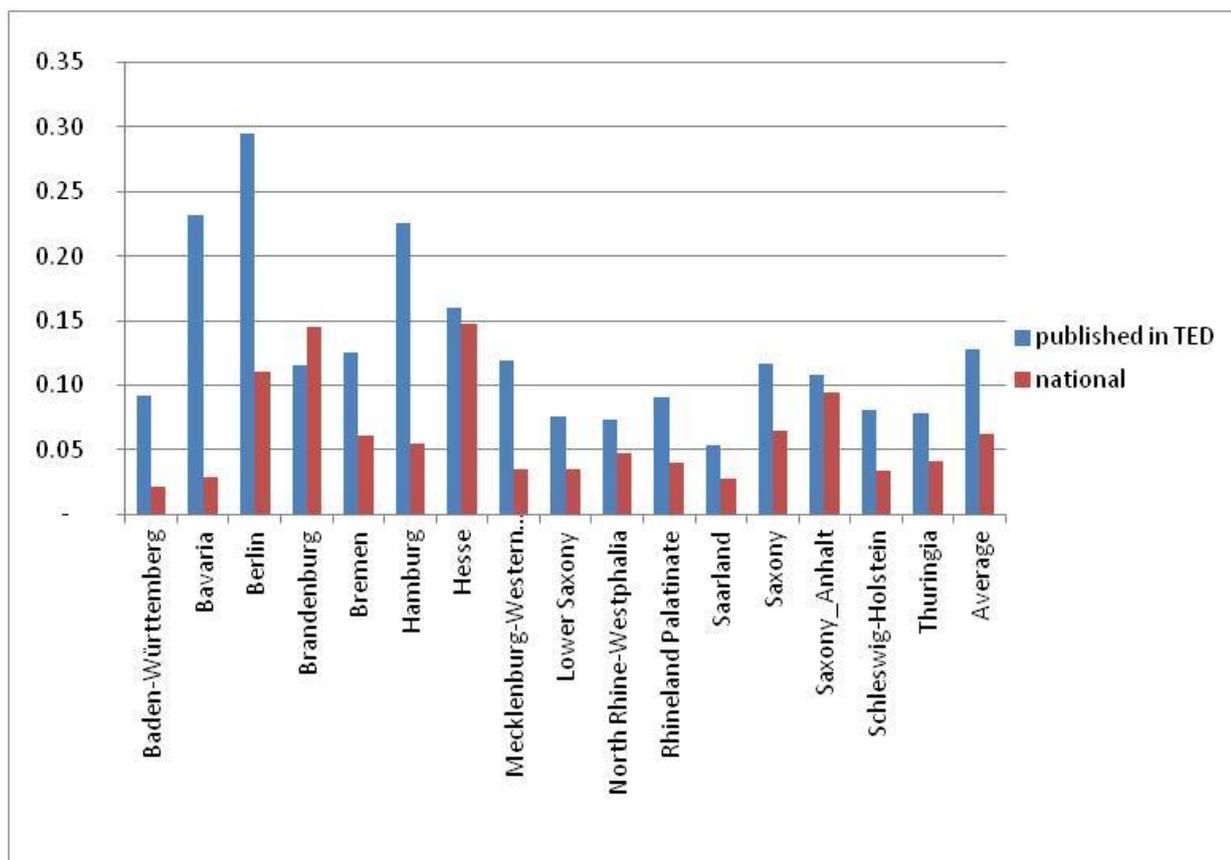


Figure 46: Total number of national and EU-wide contract notices per 1 000 inhabitants for supplies in the determinative category ‘engineering and construction services’ in the period 2011 to 2015 per *Land*

## **Annex 1b: Preliminary comments regarding the estimated lack of publication**

### **Available data and information**

From the work carried out in Chapter 2.3 and 2.4 the data presented below is the data available to us for this study. This data has certain weaknesses with respect to its usefulness for the study.

#### **Number of contract notices published EU-wide and at the national level for Germany**

The statistics contain no information on contract values. The notification levels (EU-wide or national) allow no conclusions to be drawn about the value of the contracts. This is because individual contracts (lots) below the threshold values are being tendered EU-wide if the total sum of the project is above the threshold value, and some contracts tendered nationally could have contract values above the threshold values due to regulatory exceptions.

#### **Public Procurement Indicators 2015 (Anon. 2016)**

This report analyses the contract award notices (CANs) and ascertains for the type of procurement subject (works, supplies, services) average contract values for all CANs below EUR 100 million. Contracts above EUR 100 million are added separately. For Germany in 2015, 25 895 contract notices (see PPI 2015, Table 6) and 12 125 contract award notices (see PPI 2015, Tables 11, 13, 15) are registered and analysed. The contract value of awards published EU-wide is estimated at EUR 27.57 billion.

With respect to approximately 50% of the awarded contracts for which no contract award notices with information about contract values are available, it is completely unclear whether these are above or below the ascertained average values.

#### **Contract notices from the DTAD data base in the period 2011 to 2015**

This data base shows the number of contract notices published EU-wide and nationally. The numbers can be analysed and compiled on the basis of a variety of classification criteria (see Chapter 2.3). No information on contract values can be derived from the contract notices. Contract award notices for EU-wide tenders are analysed by PPI 2015. Contract award notices for national procurement procedures with information about contract values are not available in a statistically relevant form. Contracts awarded without publication (e.g. *Freihändige Vergabe* procedures) are not included in the DTAD data.

#### **Procurement statistics of individual authorities or public entities**

Procurement statistics are available for the *Bund* ministries (Federal Ministry for Economic Affairs and Energy (BMWi)) for the Free state of Saxony, for individual district authorities and municipalities in the Free State of Saxony (Leipzig, Dresden) and Brandenburg (Eberswalde), and for individual public entities. They differ from each other in terms of their aims, structures, depth of detail, and subject-matter.

The BMWi statistics contain the numbers and values of the EU-wide contract awards issued by the Bund ministries and the *Länder*. For national awards only the contract values are included.

The procurement statistics of the *Länder*, the municipalities, and the public entities are not all that representative. This is because they:

- only portray a small section of the total procurement activities in Germany (8% of the public contract notices, 5% of the ascertained awarded value),

- almost exclusively concern the *Länder* Free State of Saxony and Brandenburg,
- contain a variety of omissions (e.g. no documentation of EU-wide procedures or contract values below EUR 25 000),
- sometimes show large numbers of smaller awards (instead of small numbers of larger awards), each of which makes reference to internal procurement regulations that are stricter than those of the governing law.

**Basic comments regarding the estimated contract values**

The total contract value is calculated on the basis of the number of all awarded contracts and the average contract value. Every contracting authority is free—within the parameters of the law—to decide how it wants to place its contracts on the market. Activities can be bundled or subdivided into lots. No requirements exist on the nature or extent of such bundling or subdivision into lots. The contracting authorities have therefore developed their own individual procedures, which are usually stipulated in internal procurement regulations or reflected in the actual procurement practices. The national statutory requirements are being restricted further at the *Länder* levels through the procurement regulations of the latter. An example of this are the threshold values chosen by the *Länder* for *Beschränkte Ausschreibung* procedures or for *Freihändige Vergabe* procedures (see Table 39). The local authorities may in turn restrict these even further through their own procurement regulations.

<i>Land</i>	Works (in '000s)		Services supplies (in '000s)	
	<i>Beschränkte Ausschreibung</i>	<i>Freihändige Vergabe</i>	<i>Beschränkte Ausschreibung</i>	<i>Freihändige Vergabe</i>
Baden-Wuerttemberg	100	20	50	20
Free State of Bavaria	100	30	100	30
Berlin	350	35	100	10
Brandenburg	1 000	100	100	20
Bremen	100	10	40	10
City-state Hamburg	1 000	100	100	50
Hesse	1 000	100	207	100
Lower Saxony	100	25	50	25
Mecklenburg-Western Pomerania	1 000	200	100	100
North Rhine-Westphalia	1 000	100	100	100
Rhineland-Palatinate	100	10	40	20
Saarland	100	10	75	10
Free State of Saxony	100	25	207	25
Saxony-Anhalt	100	10	50	25
Schleswig-Holstein	1 000	100	100	100
Free State of Thuringia	150	50	50	20

Table 39: Threshold values for choosing *Beschränkte Ausschreibung* or *Freihändige Vergabe* procedures according to *Länder* procurement laws

Regional differences or differences between the various federal levels may also exist with respect to the respective relevant procurement volume. Statements about the regional distribution or about distribution at the federal levels using the data analysed in Chapter 2.4 can only be made in relation to the budgets of the public authorities as the statistics particularly on the public entities allow for no regional or *Länder* differentiation. From the various organisational models for fulfilling governmental tasks—either through the core administration or through public entities—, only very limited conclusions can be drawn about the regional distribution of procurement volumes. The regional or *Länder* distributions presumably depend on a number of different variables such as:

- quantity and quality of the public infrastructures
- extent of the public services, the state's percentage
- population size and population density
- relative size of the area
- GDP
- purchasing power
- etc.

However, the effects of the different characteristics of these variables are unknown. They likely have counteracting effects and are being superseded by the individual procurement practices described above. The available data does not allow for an analysis of the described effects.

**Annex 2: Bibliography of relevant references made by auditing authorities' reports**

Source						Characteristics of contracting authority			Characteristics of public procurement				Issues raised
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract	subject of procurement	
1	BW	Denkschrift 2015 zur Haushalts- und Wirtschaftsführung des Landes Baden-Württemberg	Rechnungshof Baden Württemberg	153	Jun 15	Länder	Vermögen und Bau Baden Württemberg	housing	services	facility management	contract	clearing out of flats	doubtful / inadmissible <i>freihändige Vergabe</i>
2	BW	Denkschrift 2015 zur Haushalts- und Wirtschaftsführung des Landes Baden-Württemberg	Rechnungshof Baden Württemberg	165	Jun 15	Länder	Ministerium für Verkehr und Infrastruktur	traffic and infrastructure (state ministry)	services	consulting	contract	consulting for passenger rail transport	doubtful / inadmissible <i>freihändige Vergabe</i>
3	BW	Denkschrift 2016	Rechnungshof Baden-Württemberg	168f	Jun 16	Länder	Zentren für Psychiatrie Baden Württemberg	healthcare	works; supplies	construction, technical equipment	contract	construction of hospitals, technical equipment	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>
4	BW	Denkschrift 2016	Rechnungshof Baden-Württemberg	211f	Jun 16	Länder	Universitätsklinikum Heidelberg	healthcare	works; services	construction, construction planning	contract	construction of university hospital	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>
5	BA	Jahresbericht 2016	oberster Rechnungshof	123	Jan 16	local	Staatstheater am Gärtnerplatz	culture	services	theatre related services	contract	services in the context of theatre (no detailed information)	doubtful / inadmissible <i>freihändige Vergabe</i>
6	BA	Jahresbericht 2011	oberster Rechnungshof	118	Oct 11	local	IHK Schwaben	local administration	supplies	consulting	contract	technical equipment	doubtful / inadmissible <i>freihändige Vergabe</i>
7	BG	Jahresbericht 2015	Landesrechnungshof Brandenburg	211	Sep 15	local	Lausitzer und Mitteldeutsche Bergbau-Verwaltungsgesellschaft mbH	mining	works	mining	contract	mine restoration works	doubtful / inadmissible <i>freihändige Vergabe</i>
8	HB	Jahresbericht 2012 Freie Hansestadt Bremen	Rechnungshof der Freien Hansestadt Bremen	92	Mar 12	Länder	Polizei Bremen	police	supplies	IT	contract	IT equipment (no detailed information)	doubtful / inadmissible <i>freihändige Vergabe</i>

Source						Characteristics of contracting authority			Characteristics of public procurement				Issues raised
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract	subject of procurement	
9	HB	Jahresbericht 2012 Freie Hansestadt Bremen	Rechnungshof der Freien Hansestadt Bremen	108	Mar12	local	Staats und Universitätsbibliothek Bremen	research and education	services	library related services	contract	cataloguing services	doubtful / inadmissible <i>freihändige Vergabe</i>
10	HB	Jahresbericht 2015 Freie Hansestadt Bremen	Rechnungshof der Freien Hansestadt Bremen	103	Mar12	Länder	Farge-Vegesacker Eisenbahn GmbH (FVE)	traffic and infrastructure	works	construction	contract	railway construction	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>
11	FG	Bemerkungen 2011 zur Haushalts- und Wirtschaftsführung des Bundes	Bundesrechnungshof	43; 226	Nov 11	Bund	Amt im Bereich einer Wasser- und Schifffahrtsdirektion	traffic and infrastructure	supplies	IT	contract	IT equipment and other equipment (no detailed information)	doubtful / inadmissible <i>freihändige Vergabe</i>
12	FG	Bemerkungen 2011 zur Haushalts- und Wirtschaftsführung des Bundes	Bundesrechnungshof	204	Nov 11	Bund	Bundesagentur für Arbeit	federal labour office	services	media	contract	media related services	doubtful / inadmissible <i>freihändige Vergabe</i>
13	FG	Bemerkungen 2012 zur Haushalts- und Wirtschaftsführung des Bundes	Bundesrechnungshof	29	Nov 12	Bund	Bundesversicherungsamt	insurances (federal agency)	supplies	IT	contract	IT equipment	doubtful / inadmissible <i>freihändige Vergabe</i> / divers breaches of procurement law
14	FG	Bemerkungen 2012 zur Haushalts- und Wirtschaftsführung des Bundes	Bundesrechnungshof	36; 236	Nov 12	Bund	Bundesanstalt für Straßenwesen	traffic and infrastructure (federal agency)	services	Research and Development	contract	research and development services	doubtful / inadmissible <i>freihändige Vergabe</i>
15	FG	Bemerkungen 2012 zur Haushalts- und Wirtschaftsführung des Bundes	Bundesrechnungshof	206	Dez 12	Bund	Bundesarbeitsministerium	federal ministry of labour	services	event related services	contract	event management, event related services	divers breaches of procurement law, insufficient documentation
16	FG	Bemerkungen 2012 zur Haushalts- und Wirtschaftsführung des Bundes	Bundesrechnungshof	319	Dez 12	Bund	Deutsche Akademie der Technikwissenschaften e. V.	research and education	services; supplies	event related services	contract	miscellaneous services in the context of events	doubtful / inadmissible <i>freihändige Vergabe</i>

Source						Characteristics of contracting authority			Characteristics of public procurement			Issues raised	
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract		subject of procurement
17	FG	Bemerkungen 2014 zur Haushalts- und Wirtschaftsführung des Bundes	Bundesrechnungshof	52;331	Dez 14	Bund	Bundesanstalt für Immobilienaufgaben	property management (federal agency)	works	construction, services	contract	building maintenance, facility management	doubtful / inadmissible <i>freihändige Vergabe</i> ; insufficient documentation
18	FG	Bemerkungen 2015 zur Haushalts- und Wirtschaftsführung des Bundes	Bundesrechnungshof	25	Nov 15	Bund	Bundesministerium für Ernährung und Landwirtschaft	food and agriculture (federal ministry)	services	event related services	contract	hospitality services, event management, event related services	doubtful / inadmissible <i>freihändige Vergabe</i>
19	FG	Bemerkungen 2015 zur Haushalts- und Wirtschaftsführung des Bundes	Bundesrechnungshof	153	Nov 15	Bund	Deutschen Schwimmverbands	sports	services	sports	contract	no detailed information	doubtful / inadmissible <i>freihändige Vergabe</i>
20	FG	Bemerkungen 2015 zur Haushalts- und Wirtschaftsführung des Bundes	Bundesrechnungshof	179	Nov 15	Bund	Bundesministerium für Ernährung und Landwirtschaft	food and agriculture (federal ministry)	services	event related services	contract	hospitality services, event management, event related services	doubtful / inadmissible <i>freihändige Vergabe</i>
21	HH	Jahresbericht 2012 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen zur Haushaltsrechnung 2010	Rechnungshof der Freien und Hansestadt Hamburg	108ff	Jan 12	Länder	HGV Hamburger Gesellschaft für Vermögens- und Beteiligungsmanagement mbH; IMPF Hamburgische Immobilien Management Gesellschaft mbH	property management	works; services	construction, construction planning	contract	police shooting range	doubtful / inadmissible <i>freihändige Vergabe</i> ; exceeded EU-threshold
22	HH	Jahresbericht 2011 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen	Rechnungshof der Freien und Hansestadt Hamburg	165	Jan 11	Länder	Behörde für Wissenschaft und Forschung / Behörde für Stadtentwicklung und Umwelt Hamburg	research and education, urban development	services	construction planning	contract	construction planning for media centre	doubtful / inadmissible <i>freihändige Vergabe</i> ; exceeded EU-threshold

Source					Characteristics of contracting authority			Characteristics of public procurement				Issues raised	
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract		subject of procurement
23	HH	zur Haushaltsrechnung 2009 Jahresbericht 2013 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen zur Haushaltsrechnung 2011	Rechnungshof der Freien und Hansestadt Hamburg	129	Jan 13	Länder	Behörde für Wirtschaft, Verkehr und Innovation Hamburg	traffic and infrastructure	services	security services	contract	security services, no detailed information	doubtful / inadmissible <i>freihändige Vergabe</i>
24	HH	Jahresbericht 2013 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen zur Haushaltsrechnung 2011	Rechnungshof der Freien und Hansestadt Hamburg	106	Jan 13	Länder	Behörde für Wirtschaft, Verkehr und Innovation Hamburg	traffic and infrastructure	Services	event related services	contract	conduction of public festival	inadmissible in-house award
25	HH	Jahresbericht 2013 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen zur Haushaltsrechnung 2011	Rechnungshof der Freien und Hansestadt Hamburg	151	Jan 13	Länder	Behörde für Wirtschaft, Verkehr und Innovation / Hamburg Port Authority AöR / Finanzbehörde	traffic and infrastructure	services	disposal services	contract	disposal of railway demolition materials	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>
26	HH	Jahresbericht 2014 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen	Rechnungshof der Freien und Hansestadt Hamburg	115	Jan 14	Länder	HADAG Seetouristik und Fährdienst AG Hamburg	traffic and infrastructure	supplies	shipbuilding	contract	delivery of new ships	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>

Source					Characteristics of contracting authority			Characteristics of public procurement				Issues raised	
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract		subject of procurement
27	HH	zur Haushaltsrechnung 2012 Jahresbericht 2014 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen zur Haushaltsrechnung 2012	Rechnungshof der Freien und Hansestadt Hamburg	146	Jan 14	Länder	Behörde für Schule und Berufsbildung Hamburg	research and education	services	construction	contract	construction planning, health and safety coordination	doubtful / inadmissible <i>freihändige Vergabe</i> ; exceeded EU-threshold
28	HH	Jahresbericht 2014 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen zur Haushaltsrechnung 2012	Rechnungshof der Freien und Hansestadt Hamburg	150	Jan 14	Länder	Hamburger Friedhöfe AöR	healthcare	services	construction	contract	project coordination, re-development consulting	doubtful / inadmissible <i>freihändige Vergabe</i>
29	HH	Jahresbericht 2014 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen zur Haushaltsrechnung 2013	Rechnungshof der Freien und Hansestadt Hamburg	155	Jan 14	Länder	Behörde für Stadtentwicklung und Umwelt / Behörde für Wirtschaft, Verkehr und Innovation	traffic and infrastructure, urban development	services	construction	contract	construction planning for civil engineering structures	doubtful / inadmissible <i>freihändige Vergabe</i> ; exceeded EU-threshold
30	HH	Jahresbericht 2015 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen	Rechnungshof der Freien und Hansestadt Hamburg	109	Jan 15	Länder	Behörde für Justiz und Gleichstellung / Behörde für Stadtentwicklung und Umwelt	justice, urban development	services	construction	contract	construction planning for correctional facility	doubtful / inadmissible <i>freihändige Vergabe</i> ; exceeded EU-threshold

Source					Characteristics of contracting authority			Characteristics of public procurement				Issues raised	
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract		subject of procurement
31	HH	zur Haushaltsrechnung 2013 Jahresbericht 2015 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen zur Haushaltsrechnung 2013	Rechnungshof der Freien und Hansestadt Hamburg	115	Jan 15	Länder	Behörde für Gesundheit und Verbraucherschutz Hamburg	healthcare	works	construction	contract	works and services in the context of construction of hospital	inadmissible in-house award
32	HH	Jahresbericht 2015 über die Prüfung der Haushalts- und Wirtschaftsführung der Freien und Hansestadt Hamburg mit Bemerkungen zur Haushaltsrechnung 2013	Rechnungshof der Freien und Hansestadt Hamburg	119	Jan 15	Länder	Kulturbehörde Hamburg	culture	services	construction planning	contract	reconstruction of planetarium	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>
33	HE	Bemerkungen 2015 zur Haushalts- und Wirtschaftsführung des Landes Hesse	Hessischer Rechnungshof	247	Mar 15	local	kommunale Arbeitsgemeinschaft	no detailed information	works	construction	contract	construction works for draisine railway	discrimination of bidders
34	LS	Jahresbericht des Niedersächsischen Landesrechnungshofs 2013 zur Haushalts- und Wirtschaftsführung	Niedersächsischer Landesrechnungshof	76	Mai 13	local	Tierärztliche Hochschule Hannover	research and education	services	utilities services	concession	heating supply	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>
35	LS	Jahresbericht des Niedersächsischen Landesrechnungshofs 2014	Niedersächsischer Landesrechnungshof	128	Mai 13	Länder	niedersächsische Hafengesellschaft NPorts GmbH & Co. KG	traffic and infrastructure	services	disposal services	contract	soil decontamination	doubtful / inadmissible <i>freihändige Vergabe</i> ; exceeded EU-threshold

Source					Characteristics of contracting authority			Characteristics of public procurement				Issues raised	
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract		subject of procurement
36	LS	zur Haushalts- und Wirtschaftsführung Jahresbericht des Niedersächsischen Landesrechnungshofs 2015	Niedersächsischer Landesrechnungshof	122	Apr 15	Länder	Landwirtschaftskammer Niedersachsen	food and agriculture	supplies	cars; technical equipment	contract	leasing contracts for cars. Procurement of office materials	doubtful / inadmissible <i>freihändige Vergabe</i>
37	NRW	zur Haushalts- und Wirtschaftsführung Jahresbericht 2011 des Landesrechnungshofs North Rhine-Westphalia über das Ergebnis der Prüfungen im Geschäftsjahr 2010	Landesrechnungshof North Rhine-Westphalia	126	Jul 11	local	RWTH Aachen	research and education	services	construction planning	contract	construction planning for university building	doubtful / inadmissible <i>freihändige Vergabe</i>
38	NRW	Jahresbericht 2013 ÜBER DAS ERGEBNIS DER PRÜFUNGEN IM GESCHÄFTSJAHR 2013	Landesrechnungshof North Rhine-Westphalia	139	Jun 13	local	Verband gefördert durch Bezirksregierung	sports	Services	event related services	contract	event management, event related services	doubtful / inadmissible <i>freihändige Vergabe</i> ; exceeded EU-threshold
39	NRW	Jahresbericht 2013 ÜBER DAS ERGEBNIS DER PRÜFUNGEN IM GESCHÄFTSJAHR 2014	Landesrechnungshof North Rhine-Westphalia	152	Jun 13	local	privates Eisenbahninfrastrukturunternehmen	traffic and infrastructure	works	construction	contract	railway construction	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>
40	NRW	Jahresbericht 2015 des Landesrechnungshofs North Rhine-Westphalia über das Ergebnis der Prüfungen im Geschäftsjahr 2014	Landesrechnungshof North Rhine-Westphalia	164	Aug 15	local	Universitätsklinikum Essen	healthcare	services; supplies	technical equipment	contract	equipment for research purposes	doubtful / inadmissible <i>freihändige Vergabe</i>

Source					Characteristics of contracting authority			Characteristics of public procurement				Issues raised	
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract		subject of procurement
41	NRW	Jahresbericht 2015 des Landesrechnungshofs North Rhine-Westphalia über das Ergebnis der Prüfungen im Geschäftsjahr 2014	Landesrechnungshof North Rhine-Westphalia	165	Aug 15	local	Universitätsklinikum Es-sen	healthcare	services; supplies	technical equipment	contract	equipment for research purposes	doubtful / inadmissible <i>freihändige Vergabe</i> ; exceeded EU-threshold
42	RP	Jahresbericht 2012	Rechnungshof Rheinland Pfalz	151	Jan 12	Länder	Landesbetrieb - Prüfgruppe Zbau	healthcare	services	construction planning	contract	construction planning for hospital	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>
43	RP	Jahresbericht 2013	Rechnungshof Rheinland Pfalz	177	Feb 13	local	Stadt Trier; Stadt Bingen	local administration	works	construction works	contract	works in the context of garden show	non transparent procurement
44	RP	Jahresbericht 2014	Rechnungshof Rheinland Pfalz	158	Feb 14	local	Business + Innovation Center Kaiserslautern GmbH	urban development	services	construction planning	contract	construction planning innovation centre	doubtful / inadmissible <i>freihändige Vergabe</i>
45	RP	Jahresbericht 2015	Rechnungshof Rheinland Pfalz	115	Feb 15	local	Krankenhaus St. Marien-wörth	healthcare	services	construction planning	contract	construction planning for hospital	divers breaches of procurement law
46	SL	Jahresbericht 2011 über die Haushalts- und Wirtschaftsführung des Saarlandes mit Bemerkungen zur Landeshaushaltsrechnung 2010	Rechnungshof des Saarlandes	175	Mai 12	Länder	Landesbetrieb Saarforst	forestry	works	construction	contract	construction works roads	doubtful / inadmissible <i>freihändige Vergabe</i>
47	SL	Jahresbericht 2012 über die Haushalts- und Wirtschaftsführung des Saarlandes mit Bemerkungen	Rechnungshof des Saarlandes	204	Jul 13	Länder	LEG Landesentwicklungsgesellschaft Saarland mbH	urban development	works	construction	contract	restoration works	doubtful / inadmissible <i>freihändige Vergabe</i>

Source					Characteristics of contracting authority			Characteristics of public procurement				Issues raised	
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract		subject of procurement
48	SL	zur Landeshaushaltsrechnung 2011 Jahresbericht 2012 über die Haushalts- und Wirtschaftsführung des Saarlandes mit Bemerkungen zur Landeshaushaltsrechnung 2011	Rechnungshof des Saarlandes	227	Jul 13	Länder	Universitätsklinikum des Saarlandes	healthcare	services	planning	contract	consulting services	doubtful / inadmissible <i>freihändige Vergabe</i>
49	SL	JAHRESBERICHT 2013 zur Haushalts- und Wirtschaftsführung des Saarlandes mit Bemerkungen zur Haushaltsrechnung 2012	Rechnungshof des Saarlandes	203	Jul 14	Länder	Landesamt für Agrarwirtschaft und Landentwicklung Saarland	food and agriculture	works	construction	contract	construction works roads	doubtful / inadmissible <i>freihändige Vergabe</i>
50	SL	JAHRESBERICHT 2015 zur Haushalts- und Wirtschaftsführung des Saarlandes mit Bemerkungen zur Haushaltsrechnung 2014	Rechnungshof des Saarlandes	134	Jun 16	Länder	Landespolizeipräsidium Saarland	police	services	police,	contract	consulting services in the context of traffic accidents	doubtful / inadmissible <i>freihändige Vergabe</i>
51	SY	Jahresbericht 2012; Band II: Kommunal Finanzen, Ergebnisse der überörtlichen Kommunalprüfung	Sächsischer Rechnungshof	120f	Nov 12	local	Landkreis Görlitz; Erzgebirgskreis	local administration	services	construction planning	contract	construction planning for district offices	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>
52	SY	Jahresbericht 2011; Band II:	Sächsischer Rechnungshof	8	Aug 11	local	Gemeinde Neukieritzsch	local administration	supplies	cars	contract	delivery of new cars	doubtful / inadmissible <i>freihändige Vergabe</i>

Source						Characteristics of contracting authority			Characteristics of public procurement				Issues raised
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract	subject of procurement	
53	SY	Kommunal финанzen, Ergebnisse der überörtlichen Kommunalprüfung Jahresbericht 2011; Band II: Kommunal финанzen, Ergebnisse der überörtlichen Kommunalprüfung	Sächsischer Rechnungshof	83	Aug 11	local	Kreisstadt Auerbach/Vogtland	local administration	supplies	education	contract	equipment for schools	doubtful / inadmissible <i>freihändige Vergabe</i>
54	SY	Kommunal финанzen, Ergebnisse der überörtlichen Kommunalprüfung Jahresbericht 2012; Band II: Kommunal финанzen, Ergebnisse der überörtlichen Kommunalprüfung	Sächsischer Rechnungshof	81	Nov 12	local	Eilenburg	local administration	works	maintenance	contract	maintenance works roads	inadmissible inhouse award
55	SY	Haushaltsplan, Haushaltsvollzug und Haushaltsrechnung, Staatsverwaltung Jahresbericht 2013; Band I: Haushaltsplan, Haushaltsvollzug und Haushaltsrechnung, Staatsverwaltung	Sächsischer Rechnungshof	109	Sep 13	Länder	Sächsische Polizei	police	services; supplies	police, IT	contract	software for police	doubtful / inadmissible <i>freihändige Vergabe</i>
56	SY	Kommunal финанzen, Ergebnisse der überörtlichen Kommunalprüfung Jahresbericht 2015 Band II: Kommunal финанzen, Ergebnisse der überörtlichen Kommunalprüfung	Sächsischer Rechnungshof	74	Nov 15	local	Hohenstein-Ernstthal	local administration	services	facility management	contract	maintenance works swimming pool	national tender despite exceeding the threshold; inadmissible <i>freihändige Vergabe</i>
57	SY	Kommunal финанzen, Ergebnisse der überörtlichen Kommunalprüfung Jahresbericht 2015 Band II: Kommunal финанzen, Ergebnisse der überörtlichen Kommunalprüfung	Sächsischer Rechnungshof	74	Nov 15	local	Freiberg	local administration	services	facility management	contract	management services	contract prolongation without procurement
58	SY	Kommunal финанzen, Ergebnisse der überörtlichen Kommunalprüfung Jahresbericht 2016 Band II: Kommunal финанzen, Ergebnisse der überörtlichen Kommunalprüfung	Sächsischer Rechnungshof	98	Oct16	local	Leipzig	local administration	services	construction	contract	kindergarten (leasing contract)	doubtful / inadmissible <i>freihändige Vergabe</i> ; exceeded EU-threshold

Source						Characteristics of contracting authority			Characteristics of public procurement				Issues raised
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract	subject of procurement	
59	SA	Ergebnisse der überörtlichen Kommunalprüfung Haushalts und Wirtschaftsführung im Haushaltsjahr 2013 Teil 1 Denkschrift und Bemerkungen	Landesrechnungshof Saxony-Anhalt	60	Okt 14	local	KiEZ Güntersberge	social	services	hospitality	contract	services in the context of childcare	doubtful / inadmissible <i>freihändige Vergabe</i>
60	SA	Jahresbericht 2015 Haushalts- und Wirtschaftsführung im Haushaltsjahr 2014 Teil 1 Denkschrift und Bemerkungen	Landesrechnungshof Saxony-Anhalt	58	Nov 15	local	Stadt Wolmirstedt	local administration	services	construction planning	contract	construction planning for gymnasium	doubtful / inadmissible <i>freihändige Vergabe</i>
61	SA	Jahresbericht 2015 Haushalts- und Wirtschaftsführung im Haushaltsjahr 2014 Teil 2 Haushaltsrechnung 2014 Überörtliche Kommunalprüfung	Landesrechnungshof Saxony-Anhalt	93	Mai 16	local	Gemeinde Südharz/Ortsteil Stadt Stolberg (Harz)	local administration	works	construction	contract	restoration works	doubtful / inadmissible <i>freihändige Vergabe</i>
62	SA	Jahresbericht 2016 Haushalts- und Wirtschaftsführung im Haushaltsjahr 2015 Teil 1 - Denkschrift und Bemerkungen	Landesrechnungshof Saxony-Anhalt	6	Sep 16	Länder	Landesverwaltung Sachsen Anhalt	state government	services	consulting	contract	consulting services in the context of studies	doubtful / inadmissible <i>freihändige Vergabe</i>
63	SA	Jahresbericht 2016 Haushalts- und Wirtschaftsführung im Haushaltsjahr	Landesrechnungshof Saxony-Anhalt	17	Sep 16	Länder	Ministerium für Justiz und Gleichstellung hat 2010	justice	services	consulting	contract	consulting services in the context of	doubtful / inadmissible <i>freihändige Vergabe</i>

Source					Characteristics of contracting authority			Characteristics of public procurement				Issues raised	
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract		subject of procurement
		2015 Teil 1 - Denkschrift und Bemerkungen										neighbour- hood law	
64	SA	Jahresbericht 2016 Haushalts- und Wirt- schaftsführung im Haushaltsjahr 2015 Teil 1 - Denkschrift und Bemerkungen	Landesrech- nungshof Sax- ony-Anhalt	18	Sep 16	Länder	Ministerium der Finan- zen	finance	services	consulting	contract	consulting services in the context of infor- mation and telecommu- nication	doubtful / inadmissible <i>freihändige Vergabe</i>
65	SA	Jahresbericht 2016 Haushalts- und Wirt- schaftsführung im Haushaltsjahr 2015 Teil 1 - Denkschrift und Bemerkungen	Landesrech- nungshof Sax- ony-Anhalt	59	Sep 16	Länder	Auslandsgesellschaft Sachsen Anhalt	no detailed information	services	facility man- agement	x	facility man- agement	doubtful / inadmissible <i>freihändige Vergabe</i>
66	SA	Jahresbericht 2016 Haushalts- und Wirt- schaftsführung im Haushaltsjahr 2015 Teil 1 - Denkschrift und Bemerkungen	Landesrech- nungshof Sax- ony-Anhalt	71	Sep 16	local	verbundenes Unterneh- men eines Wohlfahrtsverbandes	social	works	construction	contract	construction works for school	discrimination of bidders
67	SA	Jahresbericht 2011 Haushalts- und Wirt- schaftsführung im Haushaltsjahr 2010 Teil 2 Haushaltsrechnung 2010 Finanzsituation der	Landesrech- nungshof Sax- ony-Anhalt	53	Jun 12	local	Stadt Stendal	local admin- istration	services	security ser- vices	contract	security ser- vices	contract prolongation with- out procurement

Source						Characteristics of contracting authority			Characteristics of public procurement				Issues raised
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract	subject of procurement	
68	SA	Kommunen/ Überörtliche Kommunalprüfung Jahresbericht 2011 Haushalts- und Wirtschaftsführung im Haushaltsjahr 2010 Teil 2 Haushaltsrechnung 2010 Finanzsituation der Kommunen/ Überörtliche Kommunalprüfung	Landesrechnungshof Saxony-Anhalt	53	Jun 12	local	Altmarkkreis Salzwedel	local administration	supplies	cars	contract	leasing contracts for cars	doubtful / inadmissible <i>freihändige Vergabe</i>
69	SA	Jahresbericht 2011 Haushalts- und Wirtschaftsführung im Haushaltsjahr 2010 Teil 2 Haushaltsrechnung 2010 Finanzsituation der Kommunen/ Überörtliche Kommunalprüfung	Landesrechnungshof Saxony-Anhalt	58	Jun 12	local	Wasser-verband Gardelegen	water supply	services	utilities services	concession	water supply	doubtful / inadmissible <i>freihändige Vergabe</i>
70	SH	Bemerkungen 2012 des Landesrechnungshofs Schleswig-Holstein mit Bericht zur Landeshaushaltsrechnung 2010	Landesrechnungshof Schleswig-Holstein	173	Apr 12	Länder	Ministerium für Wirtschaft, Arbeit und Verkehr des Landes Schleswig-Holstein	traffic and infrastructure, employment, economy (state ministry)	services	consulting	contract	consulting services	doubtful / inadmissible <i>freihändige Vergabe</i>
71	SH	Bemerkungen 2012 des	Landesrechnungshof	186	Apr 12	local	Universitätsklinikum Schleswig Holstein	healthcare	services	consulting	contract	consulting services in	doubtful / inadmissible <i>freihändige Vergabe</i>

Source					Characteristics of contracting authority			Characteristics of public procurement				Issues raised	
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract		subject of procurement
		Landesrechnungshofs Schleswig-Holstein mit Bericht zur Landeshaushaltsrechnung 2010	Schleswig Holstein									the context of restoration works for hospital	
72	SH	Bemerkungen 2013 des Landesrechnungshofs Schleswig-Holstein mit Bericht zur Landeshaushaltsrechnung 2011	Landesrechnungshof Schleswig Holstein	107	Apr 13	local	Universitätsrat Schleswig Holstein	research and education	services; supplies	public relations	contract	print design, print services, website services	doubtful / inadmissible <i>freihändige Vergabe</i>
73	TH	Jahresbericht 2012 der Abteilung Überörtliche Kommunalprüfung	Thüringer Rechnungshof	40	Jun 12	local	einer Verwaltungsgemeinschaft angehörige Stadt	local administration	supplies	cars	contract	leasing contracts for cars	doubtful / inadmissible <i>freihändige Vergabe</i>
74	TH	Jahresbericht 2012 der Abteilung Überörtliche Kommunalprüfung	Thüringer Rechnungshof	49	Jun 12	local	Landkreis in Free State of Thuringia	local administration	supplies	education	contract	leasing contract for interim building (modular container system)	doubtful / inadmissible <i>freihändige Vergabe</i>
75	TH	Jahresbericht 2015 mit Bemerkungen zur Haushalts- und Wirtschaftsführung und zur Haushaltsrechnung 2013	Thüringer Rechnungshof	94	Jun 15	Länder	Thüringer Ministerium für Infrastruktur und Landwirtschaft; Thüringer Ministerium für Umwelt, Energie und Naturschutz	traffic and infrastructure, agriculture, energy, environment (state ministry)	services	consulting	contract	no detailed information	inadmissible inhouse award
76	TH	Jahresbericht mit Bemerkungen zur Haushalts- und Wirtschaftsführung	Thüringer Rechnungshof	161	Jun 15	Länder	Zuwendungsempfänger der oberste Jagdbehörde beim damaligen Thüringer Ministerium für Landwirtschaft,	forestry	services	forestry	contract	hunting related services	doubtful / inadmissible <i>freihändige Vergabe</i>

Source					Characteristics of contracting authority			Characteristics of public procurement				Issues raised	
No.	Origin	Title	Author	Page	Date of publication	Level	Name	sector	Category	Sector	Type of contract		subject of procurement
		und zur Haushaltsrechnung 2013					Forsten, Umwelt und Naturschutz						

**Annex 3: Total numbers of decisions per remedy body (overview list)**

Level	Land	Award chamber (AC) / Award senate (AS)	Name	Located at	2011	2012	2013	2014	2015	Total	(2016)	Total incl. 2016
<i>Bund</i>		AC	Vergabekammern des Bundes	Bundeskartellamt	74	70	61	59	63	<b>327</b>	80	407
<i>Länder</i>	<b>Baden-Württemberg</b>	AC	Vergabekammer Baden-Württemberg	Regierungspräsidium Karlsruhe	35	15	22	22	14	<b>108</b>	11	119
<i>Länder</i>	<b>Free State of Bavaria</b>	AC	Vergabekammer Nordbayern	Regierung von Mittelfranken	16	18	23	20	20	<b>97</b>	18	115
<i>Länder</i>	<b>Free State of Bavaria</b>	AC	Vergabekammer Südbayern	Regierung von Oberbayern	9	23	27	23	29	<b>111</b>	16	127
<i>Länder</i>	<b>Berlin</b>	AC	<b>Vergabekammer Berlin</b>		11	11	9	2	5	<b>38</b>	2	40
<i>Länder</i>	<b>Brandenburg</b>	AC	<b>Vergabekammer des Landes Brandenburg</b>	Ministerium für Wirtschaft und Europaangelegenheiten	20	24	9	9	11	<b>73</b>	9	82
<i>Länder</i>	<b>Bremen</b>	AC	<b>Vergabekammer der Freien Hansestadt Bremen</b>	Senator für Umwelt, Bau und Verkehr	10	2	2	1	1	<b>16</b>	0	16
<i>Länder</i>	<b>Hamburg</b>	AC	<b>Vergabekammer Hamburg</b>		4	4	2	6	1	<b>17</b>	2	19
<i>Länder</i>	<b>Hesse</b>	AC	<b>Vergabekammer des Landes Hesse</b>	Regierungspräsidium Darmstadt	15	17	16	15	24	<b>87</b>	12	99
<i>Länder</i>	<b>Mecklenburg-Western Pomerania</b>	AC	<b>Vergabekammer beim Ministerium für Wirtschaft, Bau und Tourismus Mecklenburg-Western Pomerania</b>		10	9	19	15	2	<b>55</b>	0	55
<i>Länder</i>	<b>Niedersachsen</b>	AC	<b>Vergabekammer Lüneburg</b>	Niedersächsisches Ministerium für Wirtschaft, Arbeit und Verkehr	34	22	19	25	27	<b>127</b>	21	148
<i>Länder</i>	<b>North Rhine-Westphalia</b>	AC	<b>Vergabekammer Westfalen bei der Bezirksregierung Münster</b>	Bezirksregierung Münster	14	7	7	2	0	<b>30</b>	0	30
<i>Länder</i>	<b>North Rhine-Westphalia</b>	AC	<b>Vergabekammer Detmold</b>	Bezirksregierung Detmold	6	3	4	2	0	<b>15</b>	0	15
<i>Länder</i>	<b>North Rhine-Westphalia</b>	AC	<b>Vergabekammer Düsseldorf</b>	Bezirksregierung Düsseldorf	16	10	5	5	0	<b>36</b>	0	36

Level	Land	Award chamber (AC) / Award senate (AS)	Name	Located at	2011	2012	2013	2014	2015	Total	(2016)	Total incl. 2016
Länder	North Rhine-Westphalia	AC	Vergabekammer Arnsberg	Bezirksregierung Arnsberg	12	12	19	6	0	49	0	49
	North Rhine-Westphalia	AC	Vergabekammer Westfalen		0	0	0	0	19	19	17	36
Länder	North Rhine-Westphalia	AC	Vergabekammer Köln	Bezirksregierung Köln	38	29	29	5	1	102	0	102
Länder	North Rhine-Westphalia	AC	Vergabekammer Rheinland	Bezirksregierung Köln, Bezirksregierung Düsseldorf	0	0	0	0	5	5	2	7
Länder	Rhineland-Palatinate	AC	Vergabekammer Rhineland-Palatinate	Ministerium für Wirtschaft, Klimaschutz, Energie und Landesplanung	6	13	10	11	6	46	2	48
Länder	Saarland	AC	Vergabekammer des Saarlandes		0	1	1	3	0	5	3	8
Länder	Sachsen	AC	1. Vergabekammer des Freistaates Sachsen	Landesdirektion Sachsen	27	20	25	21	18	111	20	131
Länder	Saxony-Anhalt	AC	Vergabekammern beim Landesverwaltungsamt	Landesverwaltungsamt	17	13	34	48	35	147	32	179
Länder	Schleswig-Holstein	AC	Vergabekammer Schleswig-Holstein	Ministerium für Wirtschaft, Arbeit, Verkehr und Technologie	5	12	3	6	7	33	5	38
Länder	Free State of Thuringia	AC	Vergabekammer Free State of Thuringia	Thüringer Landesverwaltungsamt	10	8	18	20	28	84	12	96
				Total (AC)	389	343	364	326	316	1 738	264	2 002

#### Annex 4: Decisions of remedy bodies related to non-publication

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
local	Hesse	services	drinkable water	SektVO	contract	no	no invitation to tender	In-house transaction, concern privilege, exception for lease contract	28.02.2011
/	Hesse	works	airport	SektVO	contract	no	no EU-notice	failed first award procedure, no significant deviation to original contract conditions	18.04.2012
local	Hesse	supplies	energy	SektVO	contract	no	de-facto-award	no use of contract termination is not equal to an award decision	20.02.2013
local	Hesse	services	transport	VOL	contract	yes	unauthorized interim-award, de-facto-award	In-house transaction, interim award because of urgency	15.10.2013
local	Hesse	services, works	engineering, restructuring rail station	VOF	contract	yes	no EU-notice	calculation of threshold values, 20 % quota	06.04.2014
/	Hesse	services	engineering	VOF	contract	yes	no EU-notice	calculation of threshold values	19.11.2014
local	Hesse	supplies, services	operator agreement, road traffic	VOL	contract	yes	no invitation to tender	service concession is not an object of award	20.01.2015
local	Hesse	supplies, services	operator agreement, road traffic	VOL	contract	yes	no invitation to tender	service concession is not an object of award	10.04.2015
local	Hesse	supplies, services	operator agreement, road traffic	VOL	contract	no decision	no invitation to tender	calculation of threshold values	20.11.2014
local	Hesse	services	towing vehicles	VOL	contract	yes	no EU-notice	object of award is a subordinate service	24.03.2015
/	Hesse	services	social welfare services	VOL	contract	no	no EU-notice	sector of social services has special threshold values; object of award is a subordinate service	15.06.2015
local	Hesse	services	waste	VOL	contract	yes	unauthorized interim-award	In-house transaction; RL 2014/24/EU has pre-effects	19.02.2015
local	Hesse	services	transport	VOL	contract	no	no invitation to tender	service concession is not an object to award	29.06.2015

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
Land	Hesse	services	IT-services	VOL	contract	no	de-facto-award	de-facto-award; extension of the realisation term is not a significant deviation to original contract conditions	18.11.2015
local	Baden-Württemberg	services	marketing	/	concession	no	de-facto-award	service concession is not an object to award	01.02.2011
Land	Baden-Württemberg	services	soil protection	VOL	contract	no decision	no EU-notice, but not reprimanded by the applicant	no declaration about choice of procedure	17.08.2011
local	Baden-Württemberg	services	transport	/	contract	no	no invitation to tender	service concession is not an object to award	30.11.2011
local	Baden-Württemberg	services	wastewater disposal	VOL	contract	yes	de-facto-award	inter-municipal cooperation	31.01.2012
Land	Baden-Württemberg	services	mailing services	VOL	contract	no	no invitation to tender	threshold values are not reached	16.03.2012
local	Baden-Württemberg	services	bike renting	VOL	contract	yes	no EU-notice	threshold values are not reached; service concession is not an object of award	25.07.2012
/	Baden-Württemberg	works	reconstruction of a hospital	VOB	contract	no decision	no EU-notice	no declaration about choice of procedure	10.05.2013
Land	Baden-Württemberg	works	housing development	VOB	contract	no	de-facto-award	threshold values are not reached; no public contracting entity	06.03.2013
/	Baden-Württemberg	services	software	VSVgV	contract	no	no invitation to tender	exception because of exclusive rights	24.06.2013
/	Baden-Württemberg	supplies	health care	VOL	contract	yes	no invitation to tender	exception because of exclusive rights	08.08.2013
/	Baden-Württemberg	works	extension hospital	VOB	contract	yes	no EU-notice	construction work; threshold values are not reached	07.02.2014
local	Baden-Württemberg	works	street lighting	VOB	contract	no	no EU-notice	construction work; threshold values are not reached	18.06.2014

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
Land	<b>Baden-Württemberg</b>	services	transport students	VOL	contract	no	unauthorized interim-award	interim-award because of urgency	17.07.2014
local	<b>Baden-Württemberg</b>	services	broadband internet	/	concession	no	de-facto-award	service concession is not an object to award	25.07.2014
local	<b>Baden-Württemberg</b>	works	hotel building	/	contract	no	de-facto-award	no public contract	02.02.2015
local	<b>Free State of Bavaria</b>	services	broadband internet	/	contract	no	de-facto-award	no public contract	19.01.2011
local	<b>Free State of Bavaria</b>	services	laboratory management	/	concession	no	de-facto-award	service concession is not an object to award	11.11.2011
/	<b>Free State of Bavaria</b>	supplies	research and development	VOL	contract	yes	no invitation to tender	exception research and development; exception exclusive rights	20.11.2012
/	<b>Free State of Bavaria</b>	services	laboratory services	VOL	contract	no	no EU-notice	threshold values are not reached	08.04.2013
local	<b>Free State of Bavaria</b>	works	education, culture	VOB	contract	no	no invitation to tender	no public contracting entity	19.10.2015
/	<b>Schleswig-Holstein</b>	services	mailing services	VOL	contract	no	no EU-notice	no need of procurement	14.04.2011
local	<b>Schleswig-Holstein</b>	works	sale of real property	/	contract	no	de-facto-award	no public contract	17.08.2012
local	<b>Schleswig-Holstein</b>	services	food	VOL	contract	no decision	de-facto-award	exception exclusive rights	23.08.2012
local	<b>Schleswig-Holstein</b>	services	emergency medical services	VOL	contract	no	de-facto-award	no public contract because defendant is not a contracting party	26.04.2013
/	<b>Schleswig-Holstein</b>	services	emergency medical services	VOL	contract	no	de facto award	no new contract but instruction within existing contract	05.03.2015
local	<b>Free State of Thuringia</b>	services	wastewater disposal	VOL	contract	yes	no EU-notice	threshold values are not reached, urgency	21.05.2015

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
Land	Free State of Thuringia	works	rental, works	VOB	contract	yes	de-facto-award	rental agreements are not a subject to public procurement; threshold values are not reached	13.04.2015
Land	Free State of Thuringia	supplies	facility for measuring	VOL	contract	no	negotiated procedure without contest	exception because of exclusive rights	16.04.2014
local	Free State of Thuringia	services	hospital food	VOL	contract	yes	no invitation to tender	service concession is not an object to award	23.06.2014
local	Free State of Thuringia	services	waste	VOL	contract	no	negotiated procedure without contest	cancellation of the invitation to tender because of no economic offers	08.10.2014
local	Free State of Thuringia	works	public swimming	VOB	contract	no decision	no EU-notice	exception because of 20 % quota	19.03.2013
/	Free State of Thuringia	works	federal motorway	VOB	contract	no	negotiated procedure without notice	cancellation of the invitation to tender because of no economic offers	04.10.2012
Bund	Free State of Thuringia	works	slope flattening	VOB	contract	no	no EU-notice	exception because of urgency, exception because of 20 % quota	27.05.2011
/	Berlin	works	service	VOB	contract	yes	no EU-notice; no construction work	threshold values are not reached	26.04.2011
Land	Berlin	services	software services youth support	VOL	contract	no	no invitation to tender	cooperation contract, inter-municipal cooperation	30.04.2013
/	Berlin	supplies	ballistic vest	VOL	contract	yes	negotiated procedure without notice	exception because of exclusive rights	30.07.2013
Land	Berlin	services	lease contract broadband internet	/	concession	no	de-facto-award because of essential adjustment	concession is not an object to award	14.11.2014
/	North Rhine-Westphalia	supplies	procurement of medical equipment	VOL	contract	no decision	no invitation to tender	just some defined contractors can fulfil subject of award, exclusive rights	21.02.2011
local	North Rhine-Westphalia	services	waste disposal	VOL	contract	no	no invitation to tender	In-house-award; non-essential adjustment of contract	02.02.2011
local	North Rhine-Westphalia	supplies	canal-inspection vehicle	VOL	contract	yes	no invitation to tender	urgency; just one contractor can fulfil subject to award, exclusive rights	19.01.2012

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
local	<b>North Rhine-Westphalia</b>	services	Day care school	VOL	contract	yes	no invitation to tender	urgency; facility in youth welfare sector and previous exploration of the market	18.07.2012
	<b>Land</b>	services, supplies	administration software university	VOL	contract	yes	no invitation to tender	technical monopole, exclusive rights, inhouse-award	05.08.2013
local	<b>North Rhine-Westphalia</b>	services	ambulance service	VOL	contract	yes	de-facto-award	interim-award, because expected changes in law allow just short contracts	23.10.2012
/	<b>Federal government</b>	services	custody service	VOL	contract	no	de-facto-award	urgency	25.05.2011
<b>Bund</b>	<b>Federal government</b>	framework agreement	pharmaceutical sales discount	VOL	contract	yes	no invitation to tender	no public contract; conscious release of choice of decision; procedure does not cause a change in the market; contractors are conclusively known	10.06.2011
/	<b>Federal government</b>	works	building automation	VOB	contract	no decision	no EU-notice	exception § 100 Abs. 6 Nr. 1; interests of safety	26.10.2012
<b>Bund</b>	<b>Federal government</b>	services	IT-services	VOL	contract	no	no invitation to tender	Inhouse-award	12.12.2012
<b>Bund</b>	<b>Federal government</b>	supplies	pharmaceutical supply	VOL	contract	yes	negotiated procedure without notice	exclusive rights	22.07.2013
<b>Bund</b>	<b>Federal government</b>	services	custody service	VOL	contract	yes	no EU-notice	safety and secrecy reasons; subordinate services	17.02.2011
<b>Bund</b>	<b>Federal government</b>	framework agreement	influenza vaccine, health care	VOL	contract	no	no invitation to tender	no public contracting entity; cooperation contract is not an public contract	23.03.2011
<b>Bund</b>	<b>Federal government</b>	supplies	influenza vaccine, health care	VOL	contract	yes	de-facto-award because of essential adjustment	urgency justifies adjustment of contract; new award procedure causes vaccine shortage	12.11.2012
<b>Bund</b>	<b>Federal government</b>	supplies	health care, pharmaceutical supply	VOL	contract	yes	de-facto-award	no public contract; threshold values are not reached	30.08.2012

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
Bund	Federal government	services	private security	VSVgV	contract	yes	de facto award, alternatively: no information acc.to § 101a GWB (old version)	wrong calculation of threshold value; interim-award because of urgency (§ 12 I Nr. 1 lit. B VSVgV)	10.01.2014
Bund	Federal government	supplies	health care, pharmaceutical sales discount	VOL	contract	yes	de facto award	no award procedure necessary because of "open-house contracts" (offer to contract with anyone according to pre-defined conditions)	20.02.2014
Bund	Federal government	services	facility services, winter road clearance	VOL	contract	yes	unlawful previous proceedings because of 1. unlawful disqualification (1st procedure), 2. no information acc. to § 101a GWB (old version) (2nd procedure)	no further award procedure necessary because of previous lawful procedure	05.11.2014
Bund	Federal government	supplies	military	VSVgV	contract	yes	no EU-notice	essential interests of national security	12.12.2014
Bund	Federal government	services	career entry services	VOL	contract	no	no EU-notice; no complain	no EU-notice because of subordinate services	16.03.2015
/	Federal government	framework agreement	dental supply	VOL	contract	yes	no invitation to tender	no public contract	10.08.2011
Bund	Federal government	supplies, services	military communication	VOL	contract	no	de-facto-award because of invalid prolongation	valid prolongation for permanent supply	25.11.2011
Bund	Federal government	framework agreement	employment market (SGB)	VOL	contract	no	no EU-notice; no complain	subordinate services	12.10.2011
Bund	Federal government	framework agreement	supply with medical equipment	VOL	contract	no decision	de-facto-award	no public contract, because health insurance does not cause supply; it is the funder	04.05.2012
Bund	Federal government	framework agreement	supply with ambulant eye surgery	VOL	contract	yes	de-facto-award	concession is not an object to award	02.09.2013

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
/	<b>Federal government</b>	services, supplies	replacement technical system	SektVO	contract	yes	no EU-notice; no works but sector threshold values	threshold values are not reached	27.05.2014
/	<b>Federal government</b>	works	building services	VOB	contract	yes	de-facto-award	urgency; threshold values are not reached	07.07.2014
/	<b>Federal government</b>	services	bus transport	SektVO	contract	no	no invitation to tender	no declaration to kind of procedure; known negotiated procedure from former treatments; EU-notice with call to contest	12.01.2015
/	<b>Federal government</b>	services	custody service	VOL	contract	no	no EU-notice; no complain	subordinate services	17.08.2015
<i>Bund</i>	<b>Federal government</b>	framework agreement	supply and maintenance with off-road vehicles	VSVgV	contract	no decision	Vergabe der Rahmenverträge wird nicht angegriffen	urgency; maintenance can be fulfilled just by producer, exclusive rights	10.09.2015
<i>Bund</i>	<b>Federal government</b>	services	ambulant palliative care	VOL	contract	yes	no invitation to tender	concession is not an object to award; health insurance has to contract, § 69 Abs. 2 Satz 2 SGB V, so there is no choice of decision (as unwritten element of facts for public contracts)	23.11.2015
<i>Bund</i>	<b>Federal government</b>	services	military	VSVgV	contract	no	negotiated procedure without notice	because of technical reasons just one contractor can fulfil subject of award, exclusive rights	07.12.2015
local	<b>Brandenburg</b>	supplies	company pension scheme	VOL	contract	no	unauthorized interim-award	urgency; threshold values are not reached	07.11.2011
local	<b>Brandenburg</b>	services	mailing services	VOL	contract	no decision	de-facto-award	no statement	18.10.2011
local	<b>Brandenburg</b>	supplies, services	supply, maintenance, installation medical equipment	VOL	contract	no decision	negotiated procedure without contest	urgency	01.08.2011

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
/	<b>Brandenburg</b>	supplies	health care; management and coordination after discharge	/	concession	no	no invitation to tender	concession is not an object to award; threshold values are not reached	13.05.2011
/	<b>Brandenburg</b>	works	renewal communication	VOB	contract	no	no EU-notice; no construction work	threshold values are not reached	18.01.2011
/	<b>Brandenburg</b>	services	disposal windthrow	VOL	contract	no	de-facto-award, essential adjustment	urgency; risk to safety and quality	19.12.2012
/	<b>Brandenburg</b>	works	industry area	VOB	contract	no	no EU-notice	20 % contingent; so threshold values are not reached	04.05.2012
local	<b>Brandenburg</b>	services	mailing services	VOL	contract	no decision	no invitation to tender, at least no EU-notice	threshold values are not reached	10.04.2012
/	<b>Brandenburg</b>	works	construction network	VOB	contract	no decision	no EU-notice	threshold values are not reached	19.12.2013
local	<b>Brandenburg</b>	services	wastewater net	VOL	contract	yes	no EU-notice; no construction work	threshold values are not reached	26.02.2013
local	<b>Brandenburg</b>	services	supply with radio and television	VOL	contract	yes	no invitation to tender	no public contracting entity; no public interests	27.07.2015
local	<b>Brandenburg</b>	services	service and marketing	VOL	contract	yes	unauthorized interim-award	concession is not an object to award	11.03.2015
local	<b>Lower Saxony</b>	services	ambulance service	VOL	contract	yes	de-facto-award; expansion of contract	threshold values are not reached; modulation of contract is not essential	05.10.2015
local	<b>Lower Saxony</b>	services	ambulance service	VOL	contract	no	unauthorized interim-award	change of location is not an essential adjustment; interim-award according to nonessential adjustment	08.10.2014
local	<b>Lower Saxony</b>	services	ambulance service	VOL	contract	no	unauthorized interim-award	adjustments to existing contracts; addition services were not predictable; displacement of existing resources is not an essential adjustment	18.09.2014
local	<b>Lower Saxony</b>	services	ambulance service	VOL	contract	no	no invitation to tender	no subject of requirement	18.07.2014
/	<b>Lower Saxony</b>	supplies	master machine boat	VOL	contract	yes	negotiated procedure without contest	urgency	10.07.2014

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
local	<b>Lower Saxony</b>	services	waste disposal, clothing drive		concession	no	no invitation to tender; services	service concession is not an object to award, no payment	20.06.2014
local	<b>Lower Saxony</b>	services	clothing drive		concession	no	no invitation to tender; services	service concession is not an object to award, no payment	06.03.2014
local	<b>Lower Saxony</b>	services	cleaning services	VOL	contract	yes	no invitation to tender; services	In-house-award	11.11.2013
local	<b>Lower Saxony</b>	services	cleaning services	VOL	contract	yes	no invitation to tender; requirement for In-house are not fulfilled	In-house-award	05.10.2013
local	<b>Lower Saxony</b>	services	waste disposal	VOL	contract	no	de-facto-award; expansion of contract	inter-municipal cooperation; no new contract, foundation of special purpose association with delegation of duties is not an object to award	29.01.2013
local	<b>Lower Saxony</b>	services	waste disposal	VOL	contract	no	de-facto-award; loss In-house ability	inter-municipal cooperation	04.05.2012
local	<b>Lower Saxony</b>	services	ambulance service	VOL	contract	yes	unauthorized interim-award; too long	Interim-award public services	03.02.2012
local	<b>Lower Saxony</b>	services	waste disposal, pollutants	VOL	contract	yes	no EU-notice	threshold values are not reached	01.02.2011
local	<b>Saxony-Anhalt</b>	services	street cleaning		concession	no	no invitation to tender	service concession is not an object to award	21.12.2015
local	<b>Saxony-Anhalt</b>	services	transport students	VOL	contract	yes	de-facto-award, essential adjustment	price adjustment is not an essential adjustment	17.12.2015
local	<b>Saxony-Anhalt</b>	services	security services for applicants for asylum	VOL	contract	yes	no EU-notice	no statement	06.10.2015
local	<b>Saxony-Anhalt</b>	services	security services for applicants for asylum	VOL	contract	yes	no EU-notice	threshold values for social and special services are not reached; urgency	12.05.2015
/	<b>Saxony-Anhalt</b>	services	warehousing	VOL	contract	yes	no invitation to tender	valid direct-award because of failed previous procedure	05.05.2015

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
/	Saxony-Anhalt	services	revision internet platform	VOL	contract	yes	no EU-service; focus of object of agreement is not at sector contract	threshold values are not reached; sector contracting entity	04.09.2014
/	Saxony-Anhalt	works	expansion street	VOB	contract	yes	no EU-notice	separate building phases, so threshold values are not reached	06.05.2014
/	Saxony-Anhalt	services	bus transport	VOL	contract	no	no invitation to tender	no procurement procedure but an administration procedure; subject of contract is not transport but services in transport	19.12.2013
/	Saxony-Anhalt	services	planning services	VOF	contract	yes	de-facto-award	threshold values are not reached; separate building phases	18.12.2013
/	Saxony-Anhalt	works	construction dike	VOB	contract	yes	no EU-notice; no construction work; wrong determination of final costs	urgency	06.09.2013
local	Saxony-Anhalt	services	lease contract	/	concession	no	no invitation to tender; services	service concession is not an object to award	01.08.2013
local	Saxony-Anhalt	services, supplies	thermal and energy supply	VOL	contract	yes	de-facto-award; alteration of contract terms	existing contract had to be adjusted because of frustration of purpose; by existing circumstances prolongation of 10 years is not an essential adjustment	16.01.2013
local	Saxony-Anhalt	services	rail transport	VOL	contract	no decision	no invitation to tender	just one contractor can fulfil subject of award; exclusive rights, beneficial opportunity	11.05.2012
/	Saxony-Anhalt	services	management	VOL	contract	yes	de-facto-award	employment contract; contracting partner has to follow instructions and is organisational integrated	04.01.2012
local	Saxony-Anhalt	services	ambulance service	VOL	contract	yes	de-facto-award; extension of existing contracts	change of law allows prolongation of existing contracts	04.10.2011

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
/	<b>Saxony-Anhalt</b>	services	ambulance service	VOL	contract	yes	no invitation to tender; services	service concession is not an object to award	25.01.2011
/	<b>Saarland</b>	services	culture custody services	VOL	contract	no	unauthorized interim-award	subordinate services	22.08.2013
local	<b>Saarland</b>	services	traffic control	VOL	contract	no	no EU-notice	threshold values are not reached	24.07.2014
local	<b>North Rhine-Westphalia</b>	services	energy	SektVO	contract	yes	no invitation to tender	inter-municipal cooperation	08.06.2012
local	<b>North Rhine-Westphalia</b>	services	planning services for outdoor enclosure	VOF	contract	no	negotiated procedure without contest	threshold values are not reached	10.07.2012
local	<b>North Rhine-Westphalia</b>	services	sludge disposal	VOL	contract	yes	no invitation to tender	no autonomous disposal; exclusive right by law, inter-municipal cooperation	22.07.2011
local	<b>North Rhine-Westphalia</b>	services	mailing services	VOL	contract	yes	de-facto-award	exclusive rights, just one contractor can fulfil subject of award	20.01.2011
local	<b>North Rhine-Westphalia</b>	services	cleaning services	/	contract	no	de-facto-award	inter-municipal cooperation, delegation of duty	13.04.2011
local	<b>North Rhine-Westphalia</b>	services	bus transport	SektVO	contract	yes	no invitation to tender; services	service concession is not an object to award; direct award as emergency measure	23.12.2015
local	<b>North Rhine-Westphalia</b>	services	ambulance service	VOL	contract	no	no invitation to tender	subordinate services, just one contractor can fulfil subject of award, exclusive rights	17.12.2014
local	<b>North Rhine-Westphalia</b>	services	clothing drive	/	contract	no	no EU-notice	threshold values are not reached; service concession is not an object of award	10.12.2014
Land	<b>North Rhine-Westphalia</b>	supplies	software support	VOL	contract	no	no-invitation to tender; requirements for In-house-award are not fulfilled	In-house-award, just one contractor can fulfil subject of award, exclusive rights	22.05.2013

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
local	North Rhine-Westphalia	services	towing vehicles	VOL	contract	no decision	no EU-notice	no statement	11.11.2011
local	North Rhine-Westphalia	services	street cleaning	VOL	contract	yes	no invitation to tender; services	service concession is not an object to award	19.10.2011
local	North Rhine-Westphalia	services	canal inspection and cleaning	VOB	contract	yes	no EU-notice; not works but services	threshold values are not reached	05.08.2015
/	North Rhine-Westphalia	services	pension scheme	VOL	contract	yes	no EU-notice	no public contracting entity; worker protection	01.06.2015
local	North Rhine-Westphalia	services	ambulance service	VOL	contract	yes	unauthorized interim-award	urgency; threshold values are not reached	19.03.2014
local	North Rhine-Westphalia	services	waste disposal	VOL	contract	yes	no invitation to tender; services	service concession is not an object to award	16.05.2011
local	North Rhine-Westphalia	services	legal and planning services for	VOF	contract	no	no EU-notice	planning services do not reach threshold values; legal services are subordinate services	08.03.2011
local	North Rhine-Westphalia	supplies, services, works	installation photovoltaic system, waste disposal	VOB	contract	no	no EU-notice; not works but supplies	building services as focus of assignment; threshold values are not reached	27.09.2013
local	North Rhine-Westphalia	services	clothing drive	/	concession	no	no invitation to tender; services	service concession is not an object to award	09.08.2011
/	North Rhine-Westphalia	services	running reception centre	VOL	contract	yes	no invitation to tender	urgency, just one contractor can comply with subject of award, exclusive rights	25.07.2011
/	North Rhine-Westphalia	services	insurance broker, drinkable water and energy	SektVO	contract	yes	no invitation to tender	threshold values are not reached	08.04.2011
local	Bremen	services	user contract waste recycling	/	contract	no	user contract as anticipated de-facto-award	user contract is lease contract; not a subject to award	31.01.2013
local	Rhineland-Palatinate	works	building services	VOB	contract	no decision	no EU-notice; construction phases cannot be separated	threshold values are not reached; two separate construction phases	03.06.2013

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
local	<b>Rhineland-Palatinate</b>	services	bus transport	VOL	contract	yes	no invitation to tender; services	service concession is not an object to award	17.11.2014
	<i>Land</i>	services	occupational and integration services	VOL	contract	no	no EU-notice	subordinate services, failed previous procedure	10.10.2014
local	<b>Rhineland-Palatinate</b>	services	waste recycling	VOL	contract	no decision	de-facto-award	inter-municipal cooperation, administrative organisation according to authority	05.09.2014
/	<b>Rhineland-Palatinate</b>	services	mailing services	VOL	contract	yes	de-facto-award	interim-award; threshold values are not reached	22.05.2014
local	<b>Rhineland-Palatinate</b>	services	bus transport	/	concession	no decision	unauthorized interim-award	interim-award because of urgency	14.12.2015
local	<b>Rhineland-Palatinate</b>	services	waste recycling	VOL	contract	no	invalid negotiated procedure, because the termination of the previous procedure was not valid either	failed previous procedure	13.11.2015
local	<b>Rhineland-Palatinate</b>	services	mailing services	VOL	contract	yes	unauthorized interim-award	threshold values are not reached	23.02.2015
/	<b>Hamburg</b>	services	IT-university-management services	VOL	contract	yes	de-facto-award	In-house-award	30.11.2011
/	<b>Hamburg</b>	services	relocation university	VOL	contract	yes	no EU-notice; no single orders	six separate contracts, so threshold values are not reached	25.06.2014
/	<b>Hamburg</b>	services, supplies	provision media library	VOL	contract	yes	no invitation to tender	In-house-award, just one contractor offers, threshold values are not reached	18.02.2015
local	<b>Free State of Saxony</b>	services	ambulance service	VOL	contract	no	unauthorized interim-award	urgency	05.12.2011
/	<b>Free State of Saxony</b>	works	health care, disinfection and cleaning automats	VOB	contract	yes	negotiated procedure is the wrong procedure, because there is not prove for just inefficient offers	failed previous procedure, no efficient offer	27.09.2011

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
/	<b>Free State of Saxony</b>	services	ambulance service	VOL	contract	yes	unauthorized interim-award	invitation to tender is suspended because of expected changes in law and facts	31.08.2011
local	<b>Free State of Saxony</b>	services	canal inspection and cleaning	VOB	contract	no	no EU-notice	threshold values are not reached	14.12.2012
local	<b>Free State of Saxony</b>	services	disposal oil on roads	VOL	contract	no	no EU-notice	threshold values are not reached	03.05.2012
local	<b>Free State of Saxony</b>	services	mailing services	VOL	contract	yes	no invitation to tender	public contracting entity prepares valid award procedure already	17.09.2015
/	<b>Free State of Saxony</b>	services	running reception centre	VOL	contract	yes	de-facto-award	no essential adjustments; contract entity uses option, which is applied in existing contract; no concrete procurement purchase	27.04.2015
/	<b>Free State of Saxony</b>	works	repairing and cleaning of installations for rainwater near autobahn	VOB	contract	yes	no EU-notice, no constructing works but services	threshold values are not reached	18.03.2015
local	<b>Mecklenburg-Western Pomerania</b>	/	sale of real property	/	contract	no	no invitation to tender; works	no public works contract; municipal has no direct economical benefit	27.10.2011
local	<b>Mecklenburg-Western Pomerania</b>	services	bus transport	/	contract	no decision	no invitation to tender; services	concession is not an object to award; In-house-award	05.03.2012
/	<b>Mecklenburg-Western Pomerania</b>	services	architect services for public house	VOF	contract	yes	no EU-notice	threshold values are not reached	21.11.2013
/	<b>Mecklenburg-Western Pomerania</b>	services	bus transport	/	contract	no	unauthorized interim-award; too long	valid emergency measure	15.08.2013

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
/	Mecklenburg-Western Pomerania	services	traffic contract	VOL	contract	no	de-facto-award, essential adjustment	cancellation of the procedure allows decision based on original procedure	25.04.2013
local	Mecklenburg-Western Pomerania	services	running heat-producing appliance	VOL	contract	no decision	no EU-notice	no statement	24.01.2013
local	Mecklenburg-Western Pomerania	services	supply with radio and television	VOL	contract	yes	de-facto-award	concession is not an object of award	22.09.2014
/	Mecklenburg-Western Pomerania	works	electrical installation	VOB	contract	yes	invalid negotiated procedure, because the termination of the previous procedure was not valid either	previous procedure failed	18.09.2014
/	Mecklenburg-Western Pomerania	supplies	software	VOL	contract	no decision	negotiated procedure without contest	system-update can just be performed by one contractor, exclusive rights	27.01.2014
Land	Free State of Bavaria	services	planning services for public-private-building	VOF	contract	yes	de-facto-award	no public contracting entity regarding planning services	21.12.2012
/	Free State of Bavaria	works	street building	VOB	contract	yes	no EU-notice	threshold values are not reached	12.11.2012
local	Free State of Bavaria	services	transport students to support centre	VOL	contract	yes	unauthorized interim-award; no EU-notice	urgency because of oncoming begin of school	29.10.2013
/	Free State of Bavaria	supplies, services	pharmaceutical supply, consulting pharmacists, monitoring hospital		contract	no	no invitation to tender	no public contract, because there is personal identity between the contract parties	08.03.2013
/	Free State of Bavaria	services	bus transport	VOL	contract	yes	de-facto-award	In-house-award	22.12.2014

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
Level	Land	Procurement subject (supplies / services / works)	Sector	Contracting rules (how it should have been published)	Type (contract / concession)	Complaint accepted (yes / no) (regarding fact of non-publication)	Subject of complaint	Possible reasons for non-publication	Date of decision
local	Free State of Bavaria	services	electrical waste disposal	VOL	contract	yes	no EU-notice	threshold values are not reached; no public contract because it is free of charge	16.12.2014
/	Free State of Bavaria	supplies	supply with schoolroom furniture	VOL	contract	yes	de-facto-award; change of the contract subject	existing contract covers this kind of change of subject	18.11.2014
local	Free State of Bavaria	services	bus transport	VOL	contract	yes	de-facto-award	threshold values are not reached; exclusive rights and technical specialties	24.07.2014
/	Free State of Bavaria	services	bus transport	VOL	contract	yes	no invitation to tender; transmission of whole duty is not valid	direct-award to internal operator	15.10.2015
/	Free State of Bavaria	services	taxi organisation at airport	/	concession	no	no invitation to tender; services	service concession is not an object to award; even if services, they would be subordinate ( Anhang 1 Teil B zur Sektorenverordnung vor) so there would be no duty for EU-notice	24.09.2015
/	Free State of Bavaria	supplies	supply with medical suture material	VOL	contract	yes	negotiated procedure without contest	failed previous procedure	16.09.2015
local	Free State of Bavaria	services	broadband internet	/	concession	no	no invitation to tender; contract for services	service concession is not an object to award	27.05.2015
local	Mecklenburg-Western Pomerania	services	waste disposal	VOL	contract	yes	no EU-notice	threshold values are not reached	06.11.2015
/	Free State of Bavaria	supplies, services	supply with pharmaceuticals	VOL	contract	yes	no invitation to tender	inter-municipal cooperation	21.02.2013
/	Free State of Bavaria	works, services	planning and building services for palliative centre for children	VOB	contract	yes	no EU-notice	threshold values are not reached	31.10.2012
Land	Free State of Bavaria	services	planning services for campus	/	concession	no	no EU-notice	concession is not an object to award	05.04.2012

Contracting authority		Characteristics of public procurement				Characteristics of complaint			
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local	Free State of Bavaria	services	water supply and waste-water disposal	SektVO	contract	yes	no EU-notice	threshold values are not reached	11.04.2013

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