



G. Public Procurement

**Vorlesung Grundlagen des privaten Wirtschaftsrechts –
Grundbegriffe des Wettbewerbsrechts
Sommersemester 2024**



Economic Significance

- **14 % of EU GDP (ECA 2023)**
- **525 bn EUR governed by EU law**



Public Procurement in the WTO Framework

I. Public Procurement under GATT

Article III National Treatment on Internal Taxation and Regulation

8. (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

Article XVII State Trading Enterprises

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods* for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment.



Public Procurement in the WTO Framework

I. Public Procurement under GATT

II. Government Procurement Agreement (GPA)

1. Plurinational agreement in Ann. IV WTO agreement
2. over 20 contracting parties, EU among them
3. only public procurement activities, the economic value of which exceeds specific threshold values
 - a) Goods and services: 130.000 SDR (*special drawing right*, currency unit of the IMF (1 € equivalent 0,81 SDR) for goods and services purchased by central government agencies, 200.000 SDR for goods and services purchased by local and regional agencies, 400.000 SDR for goods and services purchased by public service suppliers
 - b) Construction contracts: 5 m SDR
4. Scope of application: harbours, airports, water, electricity, public transportation
5. Revised in 2012, entered into force 2014



Public Procurement in the EU Framework

I. European secondary law

1. Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC, OJ 2014 no. L 94/65
2. Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ 2014 no. L 94/243
3. Directive 2014/23/EU on the award of concession contracts, OJ 2014 no. L 94/1
4. Directive 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, OJ 2009 no. L 216/76
5. Directive 89/665/EEC on the application of review procedures to the award of public supply and public works contracts, OJ 1989 no. L 395/33
6. Directive 92/13/EEC on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, OJ 1992 no. L 76/14
7. Directive amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, OJ 2007 no. L 335/31



Public Procurement in the EU Framework

I. European secondary law : Goals of 2014 modernisation

- Simplification and more flexibility
- Improve market access of SME
- Increased consideration of societal and environmental criteria („life cycle costs“)
- Improved possibilities of combating corruption



Public Procurement in the EU Framework

I. European secondary law

II. Goals

1. Transparency
 2. Non-discrimination
 3. Competition
- Less competition in public procurement between 2011 – 2021
(European Court of Auditors; ECA, Special Report 28/2023,
Public Procurement in the EU)



Public Procurement in German Law

- **initially: Vergabe- und Vertragsordnung für Bauleistungen/Teil A (VOB/A)**
- **Consequences of the European Directives**
 - Initially implementation within Budgetary law (1993; HaushaltsgrundsätzeG)
 - Following infringement proceedings and ECJ judgment Implementation within Competition law (1999) including scrutiny proceedings, secs. 97 ff. ARC + further provisions in Public Tender Regulation and public procurement provisions (VOL, VOF)
- **Modernisation of Public Procurement law 2016**
 - Extension of Provisions in Act against Restraints of Competition (ARC)
 - Provisions in Public Tender Regulation (Vergabeverordnung; VgV) + VOB/A
 - No more VOL, VOF!
 - Distinction of tenders above and below thresholds

