

Perspectives from Business Economic Science

Symposium

Europe Meets U.S. and Others: Current Developments in Procurement Law With a Focus on the Selection, Qualification, and Exclusion of Tenderers

Munich, July 2nd / 3rd

Agenda

- Compatibility of procurement law and economic understanding on economic effectiveness
- Economic layers of analysis:
Macro- and micro-economic considerations
- Business procurement concepts in procurement law context:
First empirical evidence

Compatibility of procurement law and economic understanding on economic effectiveness

Concerning the „clearness“ of understanding on cost-effectiveness in german procurement law:

- „Award to the most economically advantageous tender.“ § 97 (5) GWB
- „Award to the most economically advantageous tender under consideration of all necessary factors. The lowest price is not crucial.“ § 18 (1) bzw. § 21 (1) VOL/A

Concerning the „ambiguity“ in the new EU-Directive 2014/24/EU, p. 18, preliminary note (89):

- “The notion of award criteria is central to this Directive. It is therefore important that the relevant provisions be presented in as simple and streamlined a way as possible. This can be obtained by using the terminology ‘most economically advantageous tender’ as the overriding concept, since all winning tenders should finally be chosen in accordance with what the individual contracting authority considers to be the economically best solution among those offered. *In order to avoid confusion* with the award criterion that is currently known as the ‘most economically advantageous tender’ in Directives 2004/17/EC and 2004/18/EC, a different terminology should be used to cover that concept, the **‘best price-quality ratio’** ...”

Compatibility of procurement law and economic understanding on economic effectiveness

Concerning the „clearness“ in the new EU-Directive 2014/24/EU, Art. 67 (1) and (2)

- “ (1) Without prejudice to national laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the **most economically advantageous tender**.
(2) The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question.”

Compatibility of procurement law and economic understanding on economic effectiveness

Value/Value-Relation Economic effectiveness =
$$\frac{\text{Output Values (performance or sales volume)}}{\text{Input Values (cost or expenses)}}$$

Quantity/Value-Relation

Performance effectiveness =
$$\frac{\text{Output Values (performance)}}{\text{Input Quantity}}$$

Cost effectiveness =
$$\frac{\text{Output Quantity}}{\text{Input Value (cost or expenses)}}$$

Quantity/Quantity-Relation Productivity =
$$\frac{\text{Output Quantity}}{\text{Input Quantity}}$$

Compatibility of procurement law and economic understanding on economic effectiveness

Pair of concepts for economic effectiveness in Economics:

economic / not economic (in the sense of profit orientation)

versus

economic / uneconomic (in the sense of efficiency)

⇒ Public procurement is (under normal conditions) not commercially orientated, but it is targeted to not being uneconomic

Compatibility of procurement law and economic understanding on economic effectiveness

The necessity of a strategic supply management was recognized in business economics since the 1990s:

Case study Volkswagen:

Balance data 2012:	Turnover	192,7 bn. Euro,
	Procurement volume:	128,7 bn. Euro (procurement depth: 67%)
	Result after tax:	21,8 Mrd. Euro

Exemplary target of BoD for fiscal year 2013: 10% increase of the result after tax (=2,1 bn. Euro) to 23,9 bn. Euro

- 1. Possibility: 10% increase of turnover
- 2. Possibility: 1,6% decrease of input material

Economic layers of analysis: Macro- and micro-economic considerations

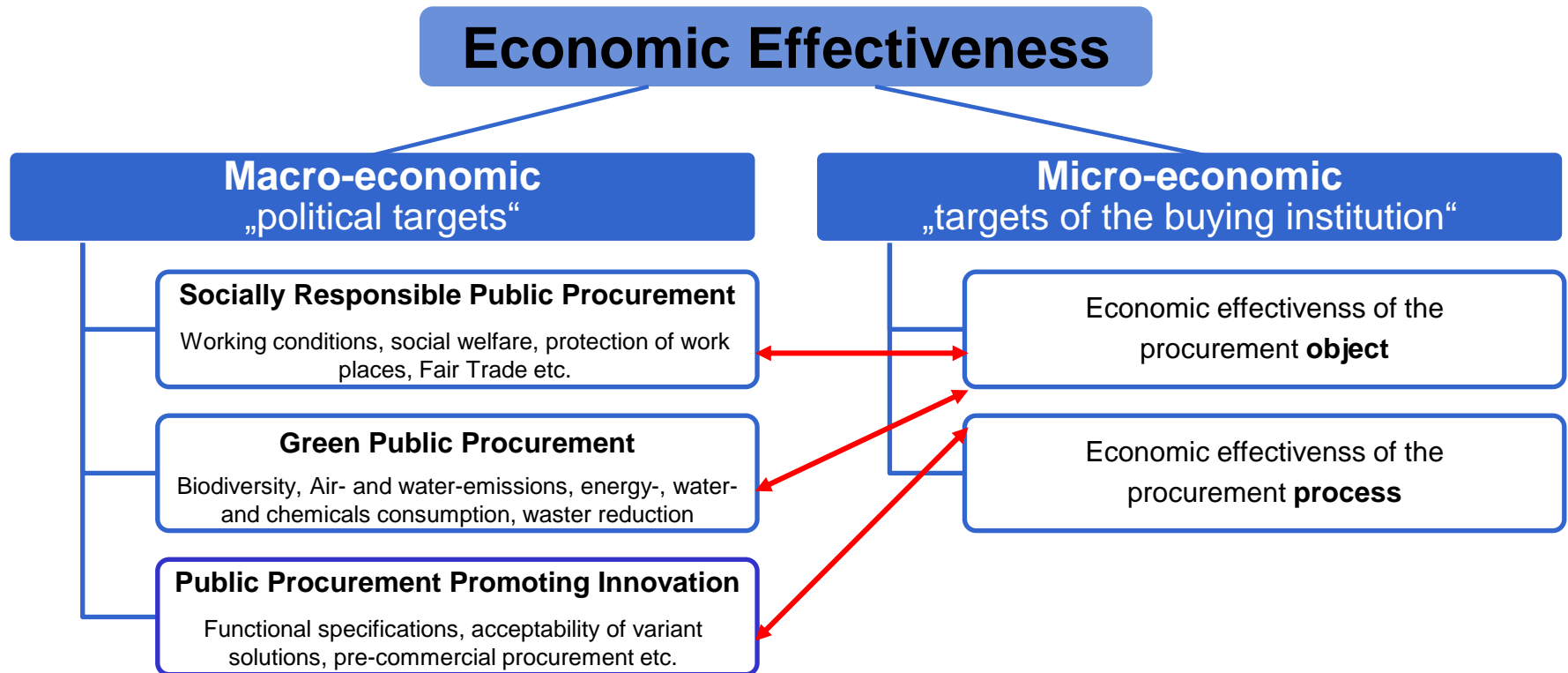
The necessity of a strategic supply management is also proofed in the public sector by empirical evidence:

Public Procurement Volume in Germany: approx. 300 bn. €

Efficiency increase in %	Savings in bn. €	Relates to:
0,5	1,5	EEG: 20% Reduction of EEG-allocation for private households (2013, approx. 1,5 bn. €)
1,0	3	Flood damages: Insured damages of the 2013 flood in Germany (cost of approx. 2, 7 bn. €)
1,5	4,5	Development aid: 50% budget increase for economic collaboration and development (2012, cost of approx. 4,9 bn. €)
2,0	6	Tax reform: 5% decrease of VAT (2012, tax deficit of approx. 5,2 bn. €)
3,5	10,5	Educational expenses: 10% Increase of education budget for federal, state and local authorities (2012, cost of approx. 11 bn. €)
5,0	15	Tax reform: Abolition of solidary surcharge (2012, tax deficit of approx. 13,6 bn. €)

Economic layers of analysis: Macro- and micro-economic considerations

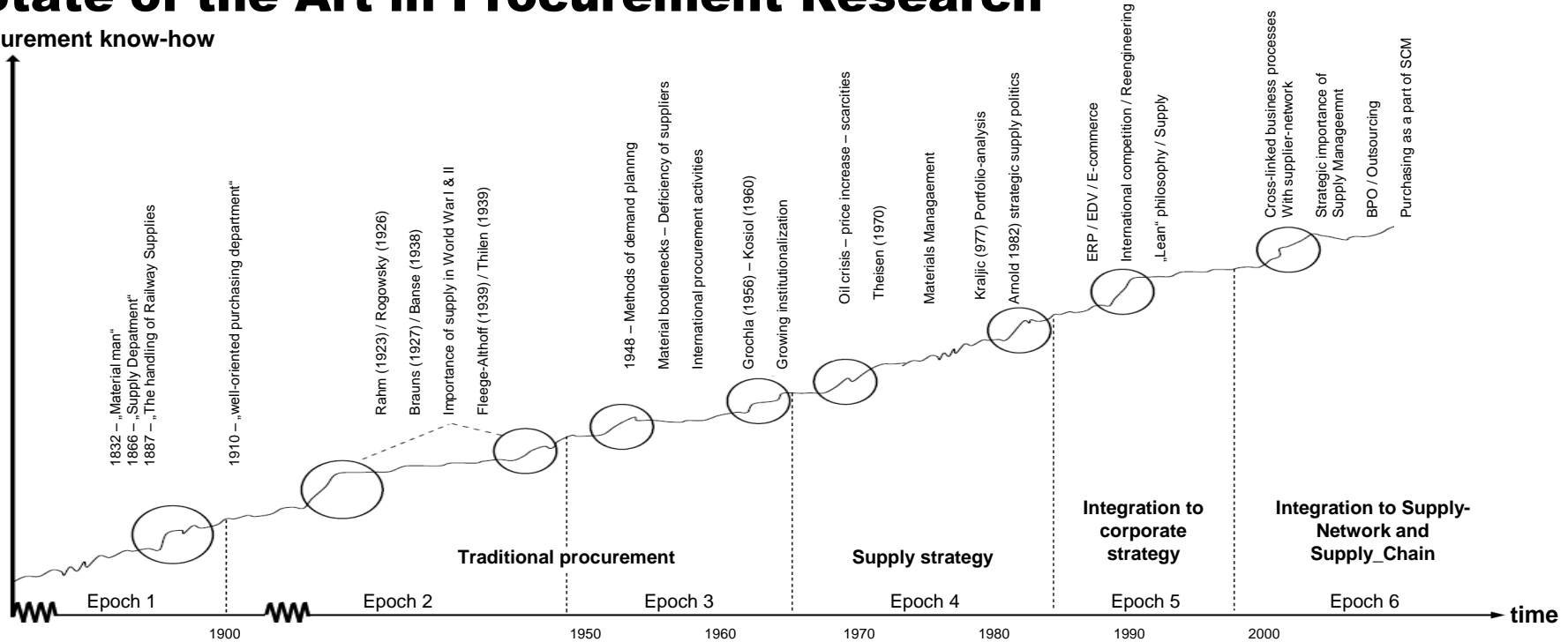
Economic Effectiveness



„Dovetailing“ of external effects via lifecycle-cost-calculation acc. to Art . 68 2014/24/EU (internalizing an externality)

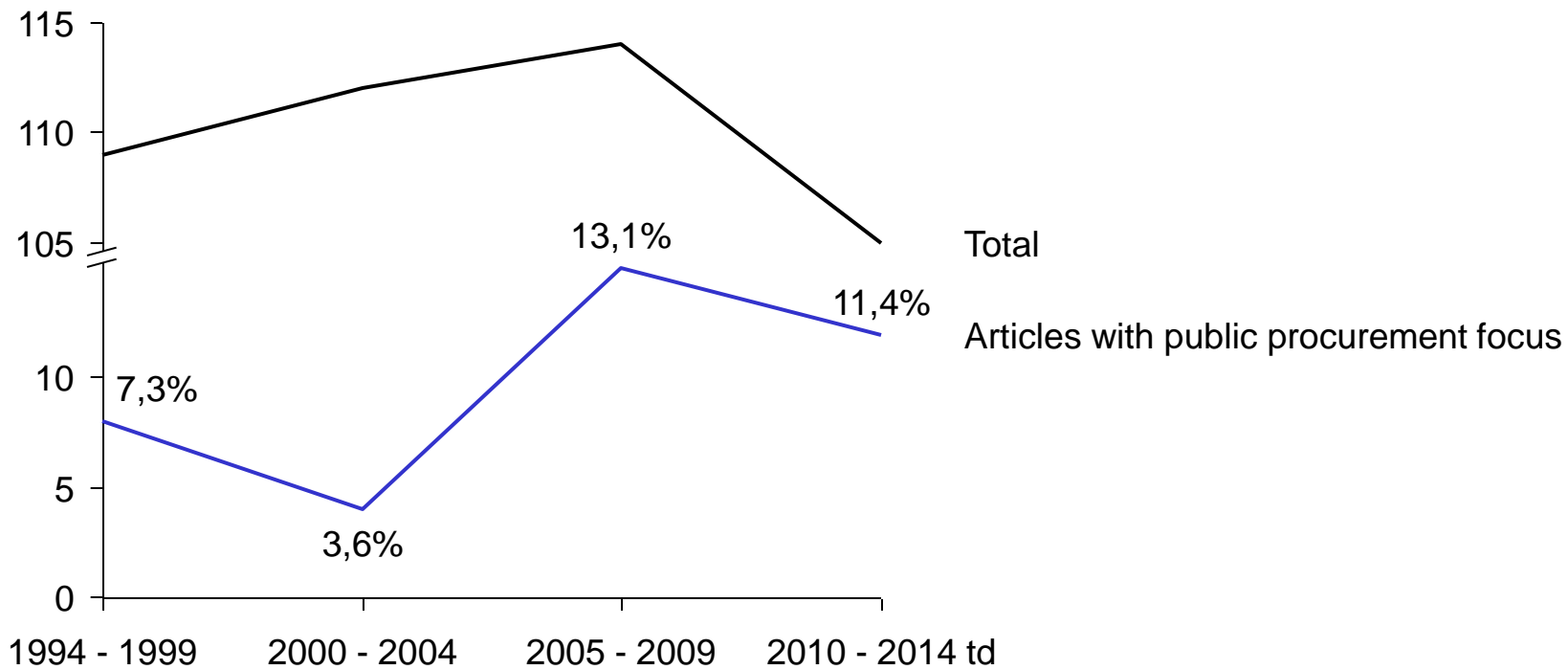
State of the Art in Procurement Research

procurement know-how



PERSPECTIVE	Traditional procurement		Supply strategy		Integration to corporate strategy		Integration to Supply-Network and Supply_Chain	
	1900	1950	1960	1970	1980	1990	2000	2000
Organization	specialist department, line organisation	matrix organisation	matrix organisation	decentralisation/ centralisation	decentralisation/ centralisation	hybrid, institutional arrangements	hybrid, institutional arrangements	hybrid, institutional arrangements
Employee Requirements	order processing („Buyer“)	material experts	material experts	technological expertise	technological expertise	interdisciplinary know-how, moderation	interdisciplinary know-how, moderation	interdisciplinary know-how, moderation
Controlling Comprehension	availability, price	quality, cost	quality, cost	TCO, time to market	TCO, time to market	time to money, cash cycle time	time to money, cash cycle time	time to money, cash cycle time
Supplier Relationship	auxiliary agent	market-orientation	market-orientation	dyadic win-win-relationship	dyadic win-win-relationship	partnership in the value creation-network	partnership in the value creation-network	partnership in the value creation-network

State of the Art in Procurement Research – Public procurement publications on the example of the Journal of Purchasing and Supply Management



⇒ Growing importance of public procurement in Supply Management Research over the last 10 years

Business procurement concepts in procurement law context: First empirical evidence

Examples for Supply Management concepts in business administration:

- Global Sourcing
- Modular Sourcing
- Supplier Relationship Management
- Early Purchasing Involvement

Business procurement concepts in procurement law context: First empirical evidence

Example Global Sourcing:

- Agreement on Government Procurement (GPA) of the World Trade Organization (WTO) and introduction of the EU procurement law for public tendering with the target to sustain open public-supply-markets for world- and EU-wide suppliers
- **BUT:** Practical experience show few cross-border contract awarding.
Share of cross-border procurement volume acc. to a PwC-study for the EU-Commission:
Germany: 1,7%
EU-average: 3,2%

Business procurement concepts in procurement law context: First empirical evidence

Example Modular Sourcing:

- In principle the contracting body can choose its demand, but under consideration of the interests of small and medium sized enterprises the demand should be split into lots.
- **BUT:** First empirical evidence show no significant statistical relationship between the split of demand into batches and the possibility of awarding towards SMEs

Business procurement concepts in procurement law context: First empirical evidence

Example Supplier Relationship Management:

Supplier Relationship Management	Procurement Law
<p>Target-oriented <u>steering of supplier-structure</u> (=tenderer-oriented action)</p> <p>Example: Measures for elimination of <u>problematic supplier structures</u> e.g. „existence of redundant occasional suppliers“ or „too high share of standard parts suppliers“</p>	<p>Procurement law is <u>no steering instrument</u> („new game, new luck“);</p> <p>Awarding only to <u>suitable</u> enterprises; those tenderer-oriented criterias are <u>know-how, capacity and reliability</u></p> <p>Acc. to procurement law there can only be suitable and unsuitable tenderers (no differentiation between more or less suitable tenderers is allowed!) in the phase of tender- and contract-evaluation.</p>

Business procurement concepts in procurement law context: First empirical evidence

Example Supplier Relationship Management:

- Supplier Relationship Management „only“ for intensification of supplier competition („Public Customer Attractiveness“)
- **BUT:** In reality there are only few participants in public call for tenders
Average number of tenderers¹: 5,4
Public call for tenders: 85% of all contract awards get ≤ 10 tenders²
Open tender procedure: 87,5% of all contract awards get ≤ 10 tenders²

¹ PwC (2011), Public procurement in Europe. Cost and effectiveness.

² REPROC-Excellence (2012)..

Business procurement concepts in procurement law context: First empirical evidence

Example „Early Purchasing Involvement“: Special importance of demand management

Comprehensive Procurement Process

Procurement Process i.n.s.

Procurement Strategy

Demand Management

Supply-Market Research

Procurement Awarding

Procurement Processing

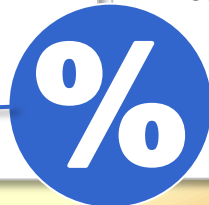
- Demand creation
- Demand research
- Demand testing
- Demand determination

- Market-analysis and -observation
- Forecast of development trends
- Communication with supply markets

- Determination of the procurement procedure
- Preparation of tender documents
- Market notification
- Evaluation and selection of suppliers and offers
- Award of contract

- Specifications after the contract completion
- Organization of logistics
- Product-testing and audit
- Invoice processing

Significant cost/
 performance
 influence



Predominant **strategic** level:

- Not regulated
- Creative freedom, free choice of measures!

Operative level

- Determinated by procurement law
- Hardly creative freedom!



Low cost/
 performance
 influence

operativem Anteil

- Not regulated
- Creative freedom!

Conclusion: A Research Framework

