

Germany

Current national procurement legislation/standards

One general procurement legal standard exists in Germany for public procurement. It includes procurement procedures for all product groups covered in "Buy Smart".

The "interpretative" communication on 4th July 2001 of the European Commission (EC) with the member states as well as the judgements of the European Court of Justice on 17 September 2002 (Case C-513/99 - Concordia Bus, Finland) and 4 December 2003 (C-448/01 - Wien electricity, Austria) have opened up procurement standards for green procurement on European level.

The framework for the national legislation on public procurement is the European Directive 2004/18/EC (on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts) and the European Directive 2004/17/EC (procurement procedures of entities operating in the water, energy, transport and postal services sectors). The directives enlarge the possibilities for adopting environmental considerations in the selection of technical specifications, award criteria and also contract performance clauses for public procurement.

The EC directives only apply to public procurement contracts that will probably exceed fixed thresholds as stated in the EC directives (regulation 1422/2007):

- for construction works: 5.000.000 Euro
- For products and services:
 - 130,000 Euro for federal state authorities
 - 200,000 Euro for other public authorities and entities
 - 400.000 Euro for water, energy, transport and postal services sectors.

Below the threshold values mentioned in the EC Directives the procurement procedures are laid down in the German competition law. Germany has transposed the Directives 2004/18/EC and 2004/17/EC into German law.

For procurement procedures important are:

- fourth chapter of the competition law against distortion of competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB),
- award ordinance (Vergabeverordnung VgV),
- contracting rules for awarding public services and works (Verdingungsordnungen VOL/A, VOF and VOB/A), and
- law on budgetary funds.

The possibility to implement green criteria into the procurement process is laid down in national law in:

- § 97 Abs. 4 GWB
- § 8 a Abs. 3 VOL/A
- § 25 a Abs. 1 VOL/A.

In January 2008 the Federal Ministry of Economics and Technology enacted a regulation which states, the federal institutions have to procure products and services with criteria of environmental labels and with regarding life-cycle-costs.

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

Current national practice

In Germany there are about 30.000 contracting authorities. The procurement standards vary widely

according to the purchasing policies of the institution and individuals.

If an administration wants to consider environmental criteria for goods, services and materials it has to set out the criteria clearly in the tender documents. It's necessary to avoid discrimination of products or goods or supplier from abroad. Depending on the threshold values mentioned in the Directives and respectively in the German ordinances there is a difference whether the tender documents are published in national official journals or in the European Tenders Electronic Daily (TED).

Recognised barriers

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

The main barriers can be summarised as follows:

- Scarce diffusion of a co-ordinated green public procurement among public authorities.
- The culture of filing a formal protest in procurement process by those who did not win it lead to the fact that procurers are rather cautious and prefer to define their specifications very detailed, which can lead to a lack of products on the market.
- Environmental aspects need to be integrated into strategic goals, procurement policies and practices more systematically.
- The responsibilities for purchase costs and operational costs in public administrations are often still shared between different public departments.
- Specific issues on green procurement demand specific knowledge, that is why trained personnel is needed to be able to identify opportunities, set targets, and draw out the most promising options.
- Green procurement is seen as extra work, resulting in resistance to change habits and procedures of procurement.
- Low level of awareness regarding life cycle costs and the idea of receiving benefits later in time. This is a difficult perspective especially for administration staff in public institutions.
- There is not sufficient or widespread enough information available; targeted promotion activities are needed, led by recognized institutions. Purchasers need information, guidance and training on the environmental aspects of products and services, life cycle costs analysis and the possibilities and limitations of integrating environmental aspects into procurement.
- Developed tools are not easy to implement into daily purchasing procedures without additional support and tender preparation time.
- Even when using the criteria of well-established environmental and energy labels, the availability of updated criteria and databases on efficient products is still very limited; respective information has to be adapted and updated since.
 - Label criteria are sometimes being updated, resulting in the need to adapt guidelines and tools
 - Label criteria are not being updated, although the technical developments would ask for it, resulting in the need to look for different, more up-to-date criteria from other or own sources.

Opportunities

Additional Political Support

Additional legal requirements, beginning with public authorities, should push professional purchasers to give systematically more attention to green procurement. The European Energy Star regulation is a good

example for the product group of IT equipment and the Directive 2009/33/EC for road vehicles. Similar initiatives should be considered for further product groups. In the context of the National Energy Efficiency Action Plans in the context of the Energy Services Directive, requirements on the national level could be foreseen additionally. National and international agreements, policies and programmes (both compulsory and voluntary) help to push the agenda and raise awareness.

Institutional responsibility

Needed are more good examples of institutional role models. If some governmental body formally supports green procurement, but its own procurement criteria consist only of the lowest price request, then this green proclamation is probably not a good example. Pilot projects should be implemented in influential institutions. More institutional encouragement and additional institutional support from central and regional authorities is needed. Good practice cases with the procedures, advantages, results, impacts of green procurement should be promoted and disseminated. The implementation of green procurement (although usually gradually introduced) may require the re-organisation and re-definition of the overall purchasing policy. This must be done with a good knowledge of the real qualitative and quantitative needs and of the (green) criteria to be considered.

Trained personnel

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

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

Knowledge about environmental and cost benefits

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

Building up green markets

One of the barriers is that for some products no or only niche markets for green products and services exist. However, the existence of at least a niche market for greener products of a certain product group is essential for engaging into green procurement. A tender that does not attract any offers is

counterproductive. It is true to a certain extent, that demand creates supply. However, in today's world with the strong position of large multinational companies, it needs very strong purchasing power to make a large company develop a new or redesign an existing product.

This is an area, where again political initiatives are needed, and some very promising ones are under way. The implementing measures in the context of the Energy-using Products (EuP) Directive and the reorganisation and reclassification of the European Energy Label will help enormously to ban inefficient products from the markets and highlight excellent appliances and products for the customer.