

Legal Framework for Innovation Procurement in Europe & Bird & Bird

Martin Conrads

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From the Introduction to the Workshop Agenda:

*"Yet little public
procurement in Europe
is aimed at innovation,
despite the
opportunities under the
European legal
framework."*

"This Part shall not apply to [...] contracts for research and development services other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting entity."

Potential issues hampering Innovation Procurement?

In principle public procurement law already provides effective tools to make the procurement of innovative requirements legally unobjectionable, e.g.:

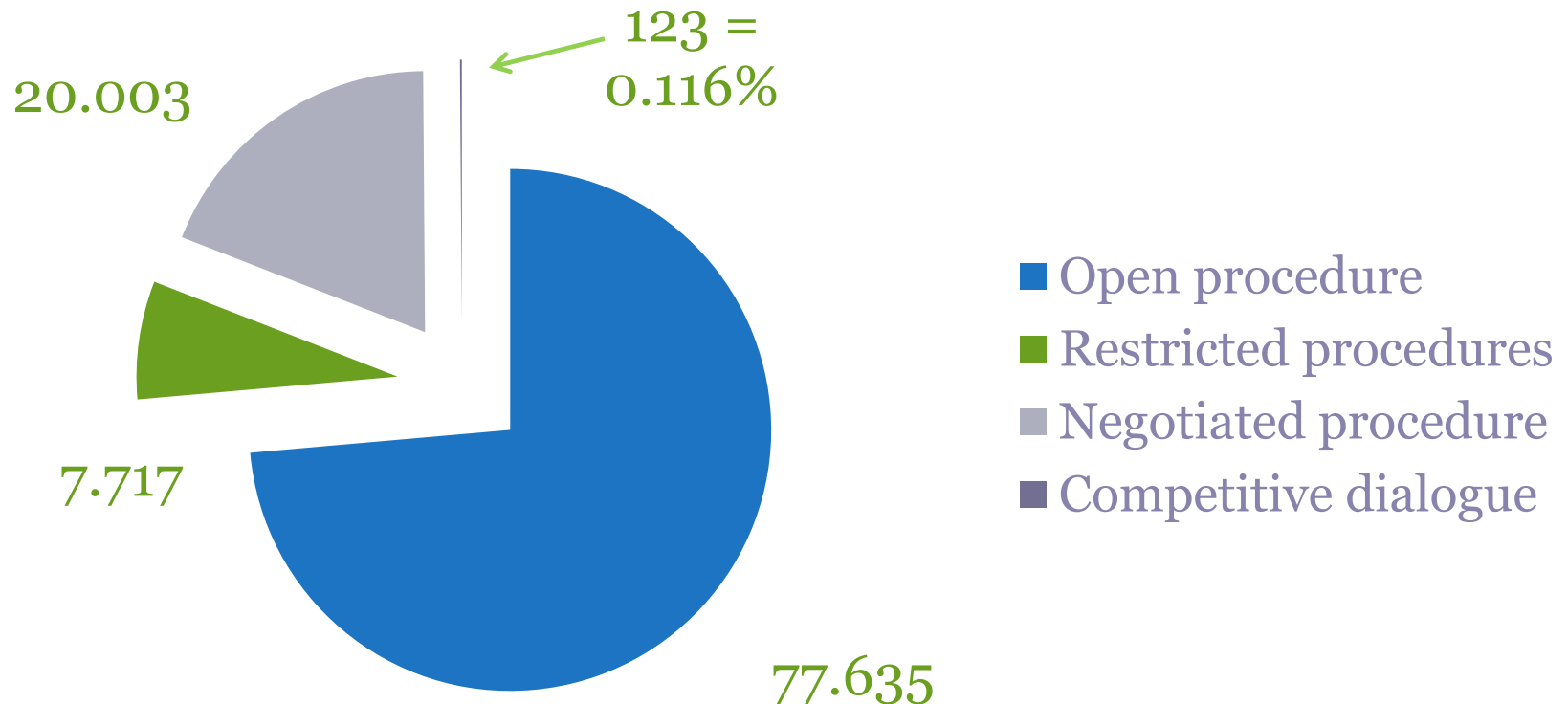
- Competitive dialogue (& Innovation partnership)
- PCP and PPI
- Use of functional technical specifications
- Allowing alternative offers

What is hampering Procurement of Innovative Solutions?

- Knowledge
- Time
- Uncertainty

Situation of the Innovation Procurement in Germany (1)

No. of awarded contracts between 2011 and 2015 (as published):



Situation of the Innovation Procurement in Germany (2)

Federal Ministry for Economic Affairs and Energy established the "Competence Centre for Innovative Procurement" (<http://en.koinno-bmwi.de/>) in 2013:

- to ensure the focus of public purchasing on innovation in the long term
- to establish at least three PCP pilot projects

The "KOINNO" offers:

- Networking opportunities
- Seminars
- Project database
- Best practice solutions

Status of the transposition of the new EU Procurement Directives in Germany

- 17 April 2014 Entry into force of the new directives
- 7 January 2015 Cabinet decision to the vertices of the reform
- 8 July 2015 Cabinet decision to the government draft of the new law
- 25 September 2015 Statement of the "*Bundesrat*"
- 7 October 2015 Counter-statement of the federal government
- 16 October 2015 First reading in the "*Bundestag*"
- Winter 2015 Completion of the legislative procedure
- 9 November 2015 Draft of the ministerial orders regarding procurement
- Winter 2015/2016 Cabinet decision to the ministerial orders
- Winter 2015/2016 Approval of the "*Bundesrat*" to the ministerial orders
- 18 April 2016 Entry into force of the new procurement regulations

Ways to motivate procurers to launch more Innovation Procurements

Within the scope of the current framework:

- Good counsel and guidance

For the future:

- Less regulation in general
- More or more generous exclusions from the directives

Thank you & Bird & Bird

**Großer Grasbrook 9
D-20457 Hamburg
www.twobirds.com**

**Telefon: +49 (40) 46063 - 6275
Telefax: +49 (40) 46063 - 6011
Mail: martin.conrads@twobirds.com**



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