

Legal aspects of the implementation of dynamic lighting

Module III – Promoting the concrete implementation of dynamic lighting within the EU

Cesena, 24 October 2018

Content

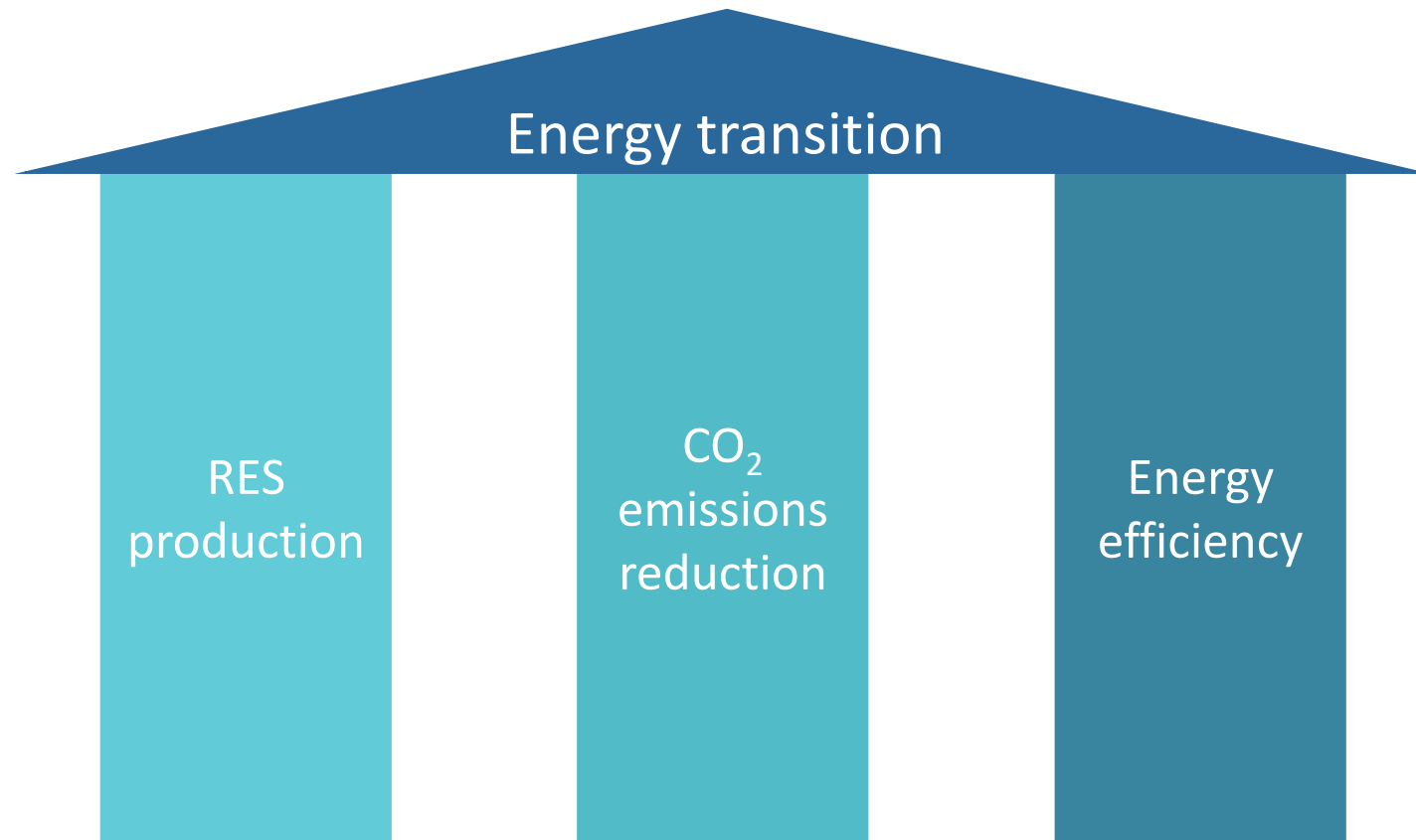
- I. The energy transition in the EU: legal aspects
- II. Introduction to EU energy efficiency law
- III. Introduction to EU public procurement law
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- VI. Strategy for DL integration

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The energy transition in the EU: legal aspects

Why energy efficiency?



The energy transition in the EU: legal aspects


✓ The EU Clean Energy Package:

✓ Proposals of the EU Commission for an **extensive reform of EU energy law**

✓ Issued end of 2016

✓ Entry into force: scheduled early 2019

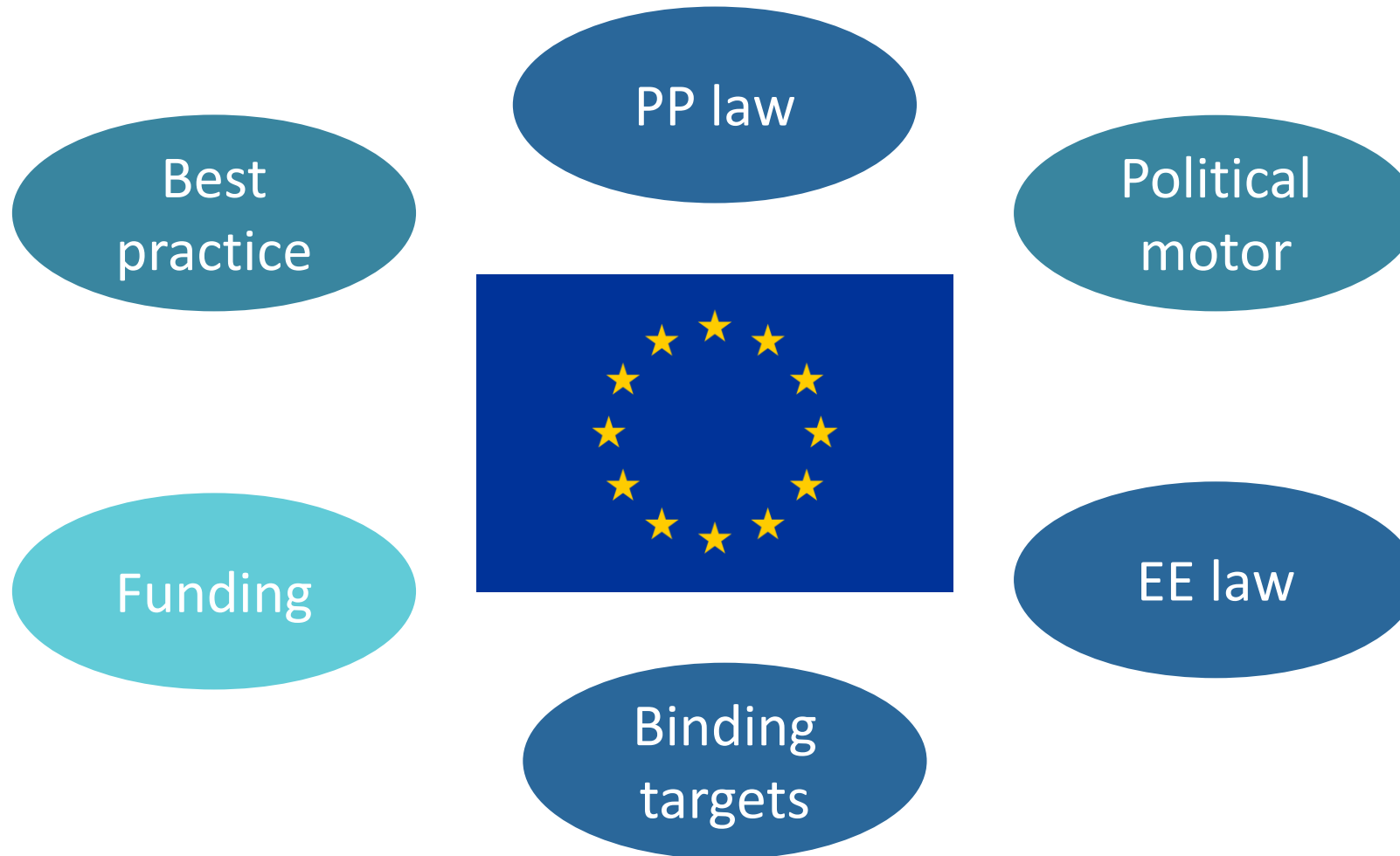
✓ Motto: *energy efficiency first*

	European Commission Proposal	EU Inter-institutional Negotiations	European Parliament Adoption	Council Adoption	Official Journal Publication
Energy Performance in Buildings	30/11/2016	Political Agreement 	17/04/2018	14/05/2018	19/06/2018 - Directive (EU) 2018/844
Renewable Energy	30/11/2016	Political Agreement	Committee approval	-	-
Energy Efficiency	30/11/2016	Political Agreement	Committee approval	-	-
Governance	30/11/2016	Political Agreement	Committee approval	-	-
Electricity Regulation	30/11/2016	Ongoing	-	-	-
Electricity Directive	30/11/2016	Ongoing	-	-	-
Risk Preparedness	30/11/2016	Ongoing	-	-	-
ACER	30/11/2016	Ongoing	-	-	-

Source: European Commission

The energy transition in the EU: legal aspects

Energy efficiency improvements: the role of the EU



The energy transition in the EU: legal aspects

Legal aspects of the implementation of dynamic lighting



TEU
TFEU

EU Directives
EU Regulations

Commission decisions

Primacy of application of EU law

Member States

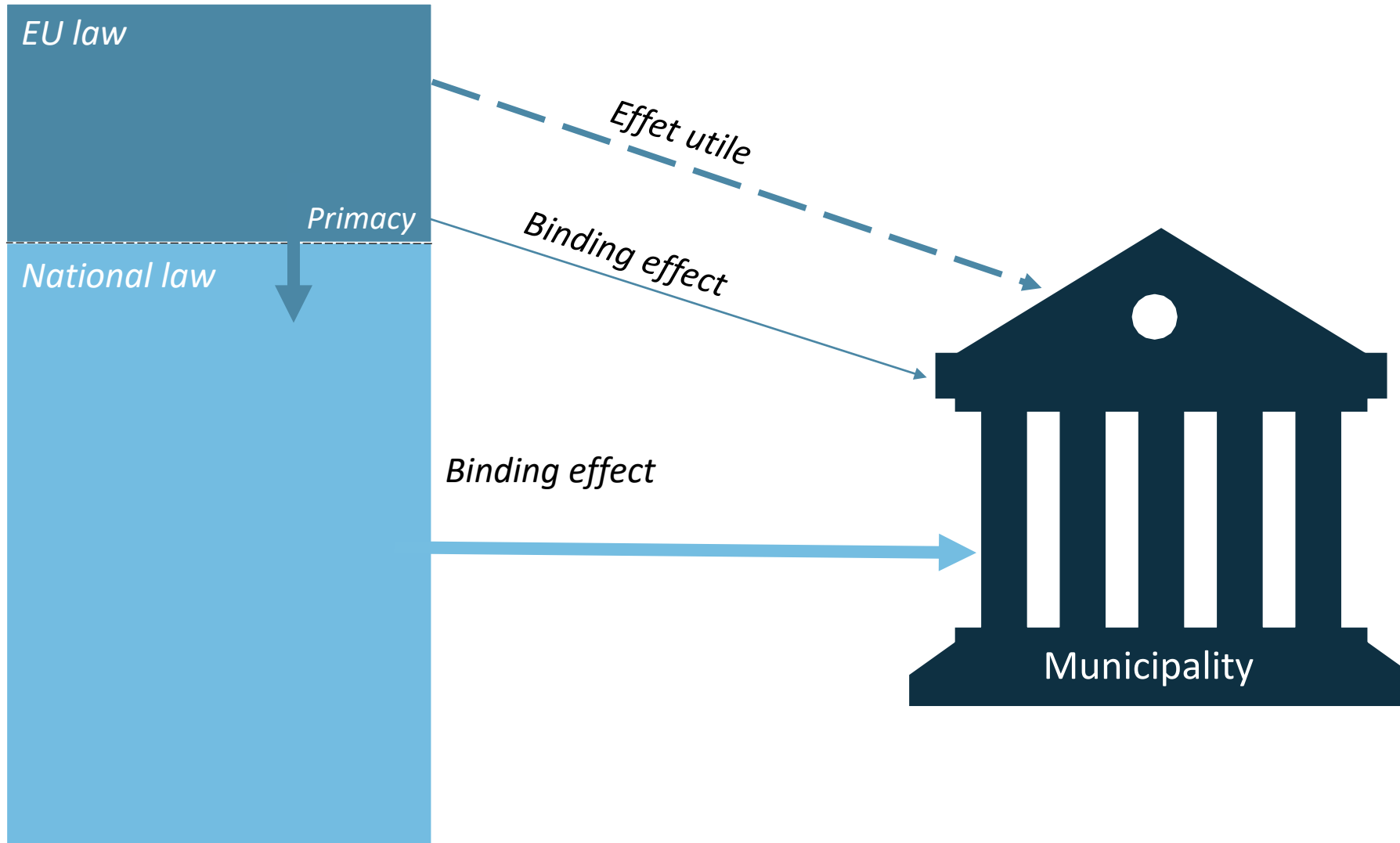
Constitution

Acts of
Parliament

Regulations

Administrative acts

The energy transition in the EU: legal aspects



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Introduction to EU energy efficiency law

- ✓ Particular field of energy law
 - ✓ Contains political / unbinding targets, but also binding objectives!
 - ✓ Directives transposed into national law

- ✓ Main instruments:
 - ✓ **Energy Efficiency** Directive, **Energy Performance in Buildings** Directive
 - ✓ **Energy Labelling** and **Ecodesign** Directives and their implementation regulations
 - ✓ Energy labelling of electrical lamps and luminaires (874/2012)
 - ✓ Ecodesign requirements for directional lamps, light emitting diode lamps and related equipment (1194/2012)
 - ✓ Ecodesign requirements for non-directional household lamps (244/2009)
 - ✓ Ecodesign requirements for fluorescent lamps without integrated ballast, for high intensity discharge lamps, and for ballasts and luminaires able to operate such lamps (245/2009)

Introduction to EU energy efficiency law

✓ Art. 6 Energy Efficiency Directive (2012/27/EU): **Purchasing by public bodies**

Member States ensure that central governments purchase only products, services and buildings with high energy-efficiency performance, insofar as that is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition

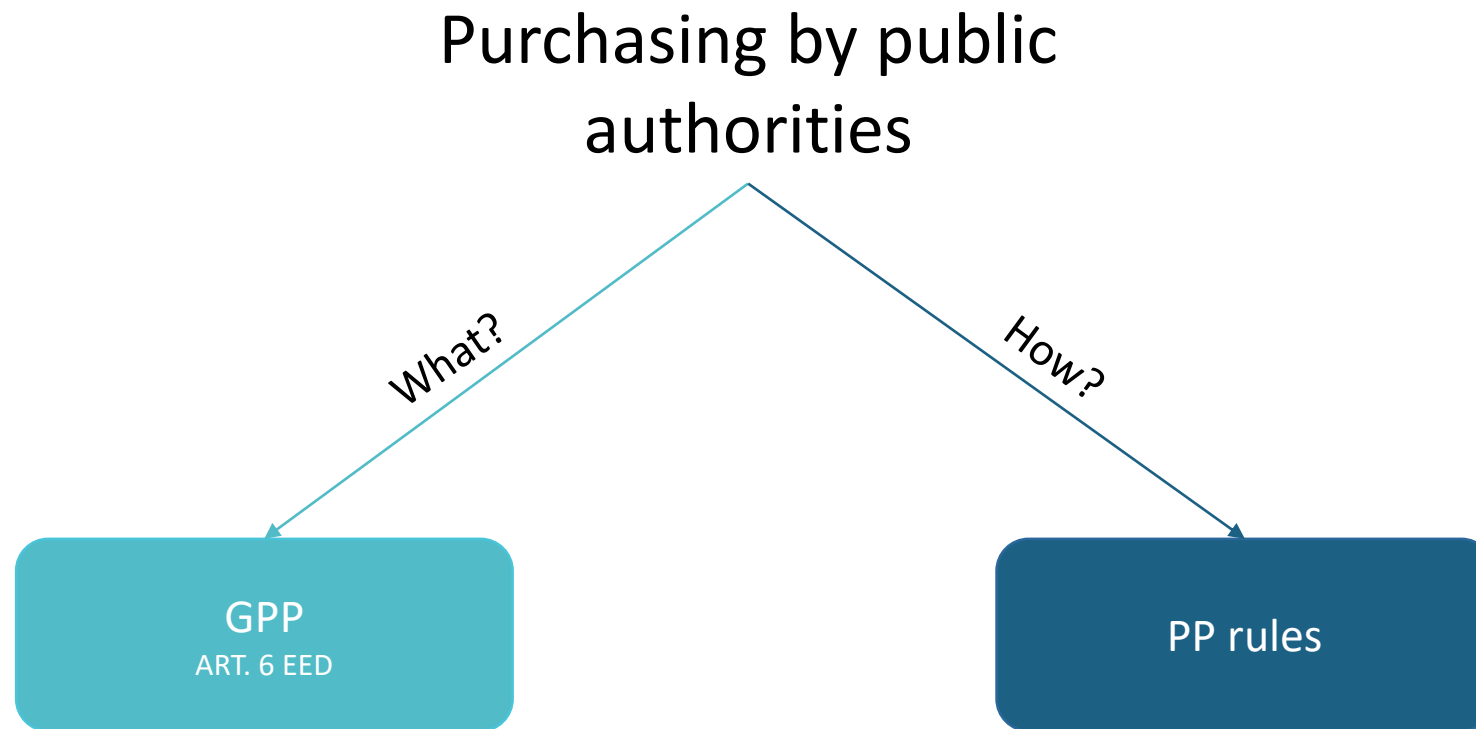
→ **Obligation** applies to contracts above the respective PP thresholds

Member States encourage public bodies, including at regional and local levels to follow this example and purchase only products, services and buildings with high energy-efficiency performance; public bodies should be encouraged, when tendering service contracts with significant energy content, to assess the possibility of concluding long- term energy performance contracts that provide long-term energy savings

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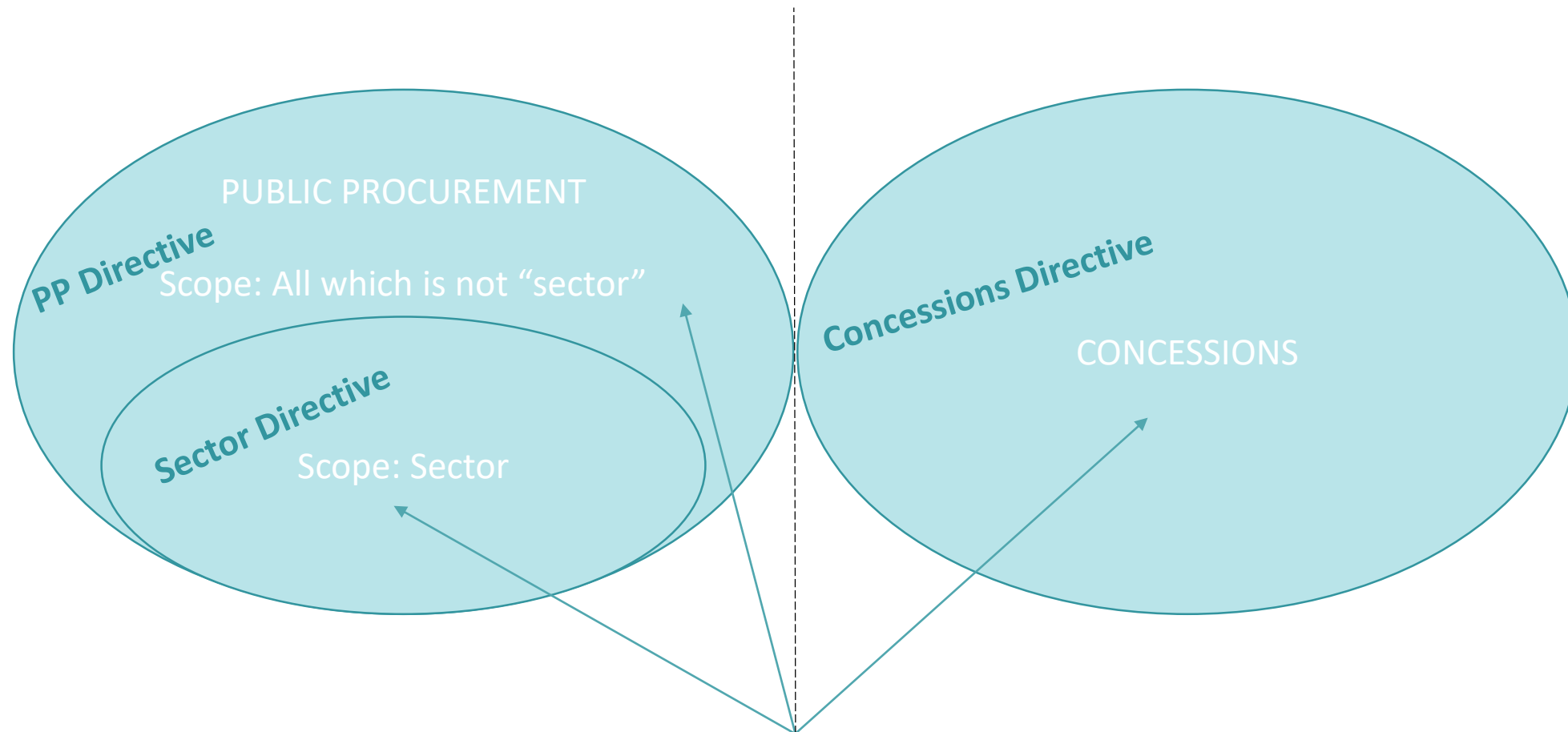
Introduction to EU public procurement law



Introduction to EU public procurement law

- ✓ EU law sets out **minimum harmonised** public procurement rules:
 - ✓ **Concessions Directive**: Directive 23/2014/EU on the award of concession contracts
 - ✓ **PP Directive**: Directive 24/2014 /EU on public procurement
 - ✓ **Sector Directive**: Directive 25/2014/EU on procurement by entities operating in the water, energy, transport and postal services sectors
- ✓ Directives: not directly applicable in the Member States
 - ✓ Must be transposed into national law!

Introduction to EU public procurement law

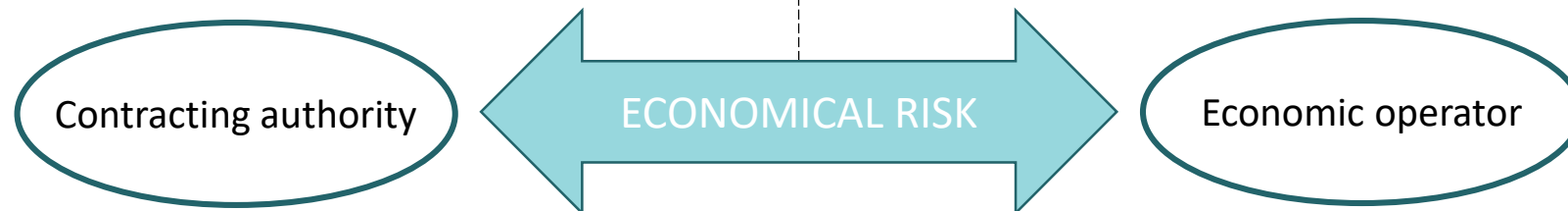


- ✓ The scopes of application are mutually exclusive
- ✓ i.e.: to each case is only one Directive applicable!

Introduction to EU public procurement law

Public procurement: *contract for pecuniary interest [...] having as its object the **execution of works**, the **supply of products** or the **provision of services***

Concession: *contract for pecuniary interest by means of which a contracting authority entrusts the **execution of work or the provision and the management of services** to one or more economic operator the **consideration for which consists either solely in the right to exploit the work or the service that are the subject of the contract or in that right together with payment***

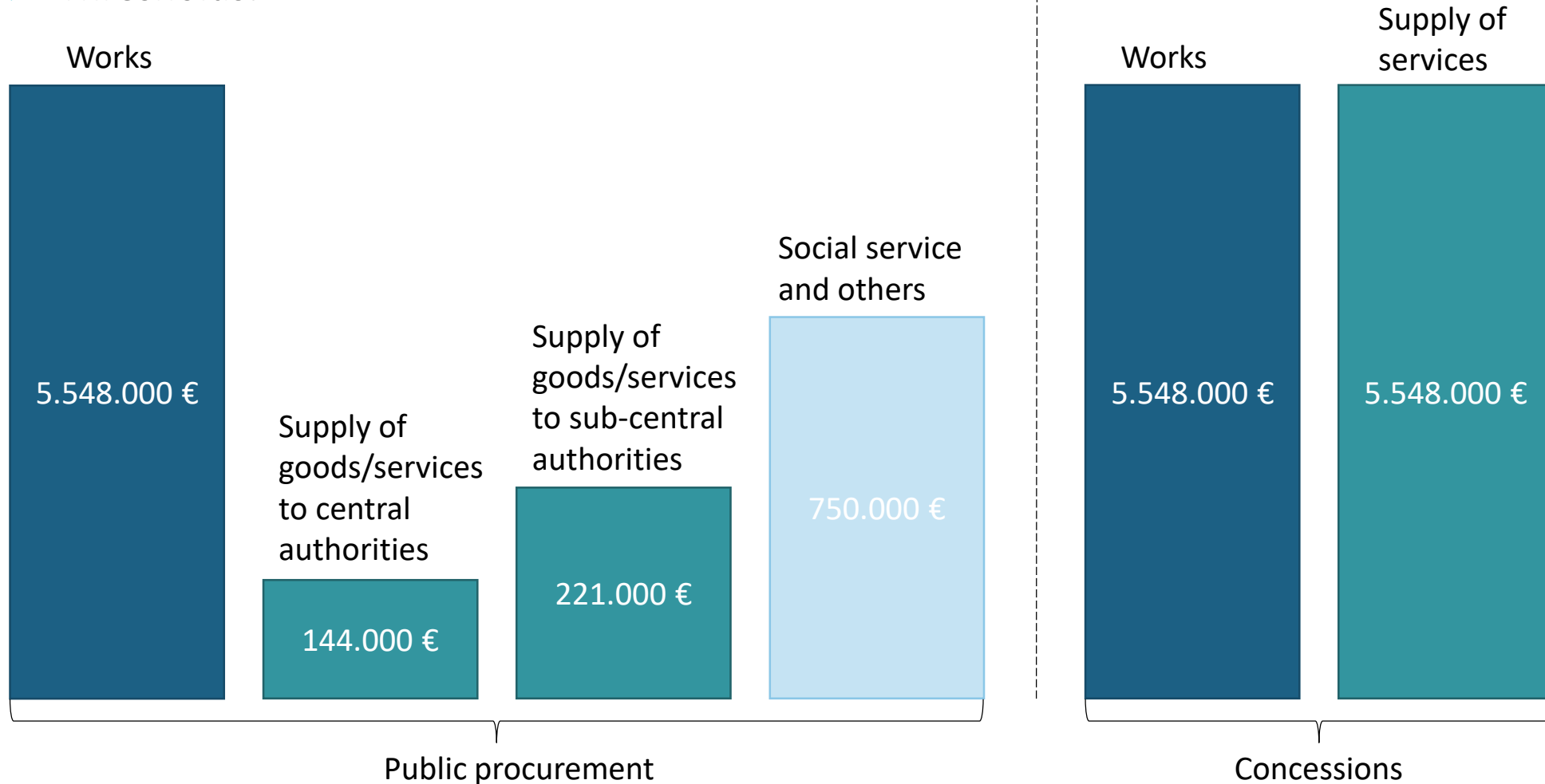


Introduction to EU public procurement law

- ✓ Contract types: “public contracts having as their object...”
 - ✓ **Works:** design/realisation/or execution of works (for example building construction or restoration)
 - ✓ For example: “installation of illumination systems for roads”
 - ✓ **Supply of goods:** purchase, lease, rental or hire-purchase, with or without an option to buy, of products
 - ✓ **Supply of services:** provision of services other than those referred to in the work contract definition
- ✓ Also possible: **mixed contracts:** public contracts which objects contain elements of several of the contract types above

Introduction to EU public procurement law

Thresholds:



Introduction to EU public procurement law

✓ Awarding procedure:

✓ Contracts **above thresholds**: **ordinary procedure** as transposed from Directives

✓ Contracts **below thresholds**: falls outside the scope of EU Directives

✓ **National law** applies

✓ **General principles of EU law** must be respected:

✓ No discrimination against companies from other EU countries/tender information must be made available to all interested companies

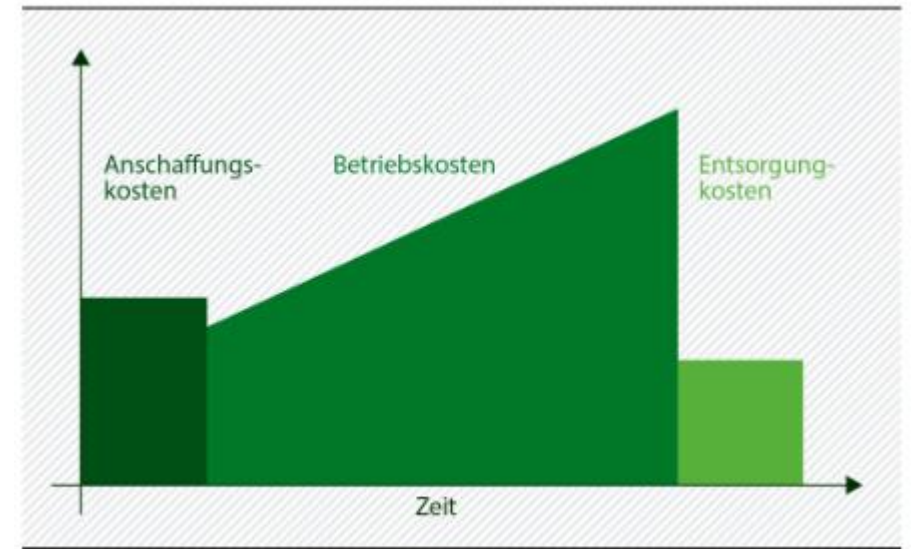
✓ No reference to specific brands, trademarks or patents in the tender description

✓ No refusal of supporting documents (certificates, diplomas, etc. providing the same level of guarantee) issued by other EU countries

Introduction to EU public procurement law

- ✓ Award criterion: most economically advantageous offer, cf. PP/Concessions Directives
- ✓ Cost-effectiveness approach, e.g. **life-cycle costing (LLC)**, taking into account:

- ✓ Purchase price and end-of-life costs
- ✓ Operating costs, including **energy**, fuel and water use, spares and maintenance
- ✓ **Costs of environmental externalities during life cycle** (e.g.: cost of GHG or other pollutant emissions, climate change mitigation costs)

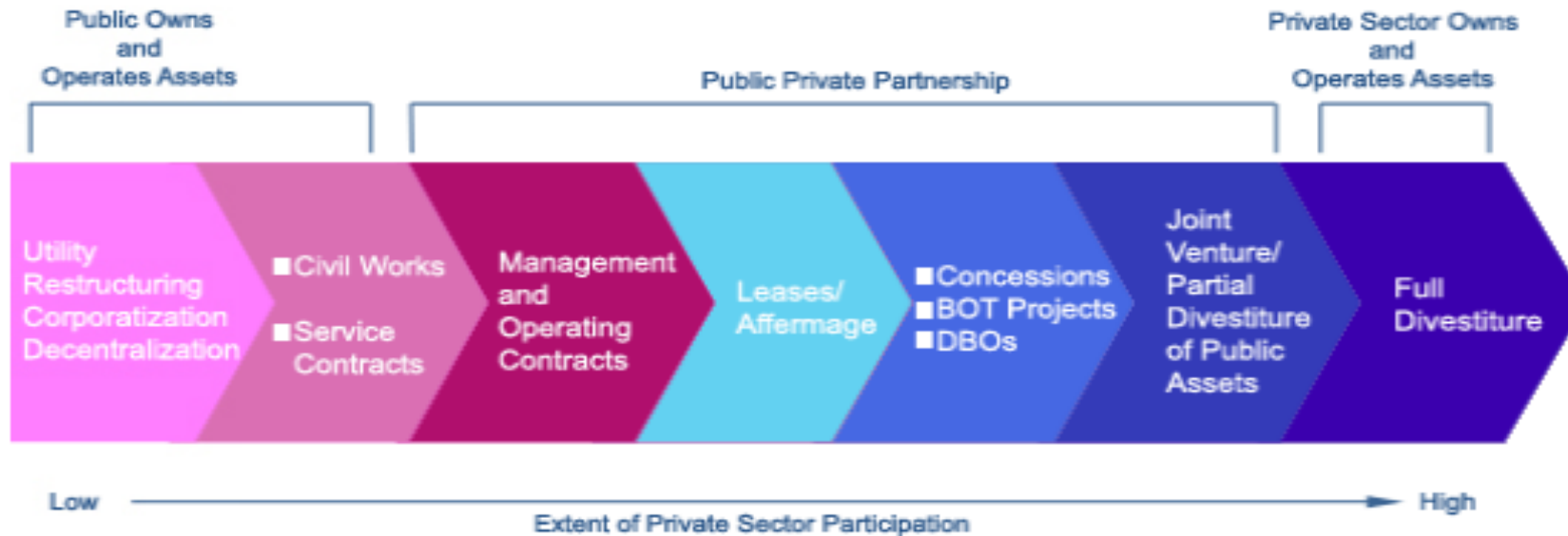


Umweltbundesamt

Source: Umweltbundesamt

Introduction to EU public procurement law

- ✓ **Contract design:** no specific rules set by EU law
 - ✓ Detailed provision established by national legislation!



Source: Public-private partnership legal resource center (PPPLRC)

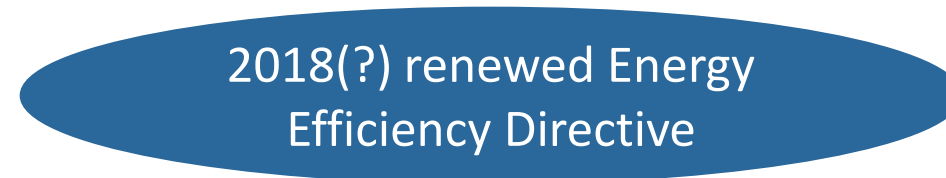
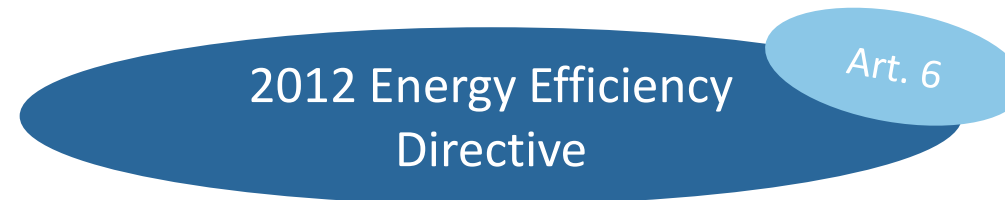
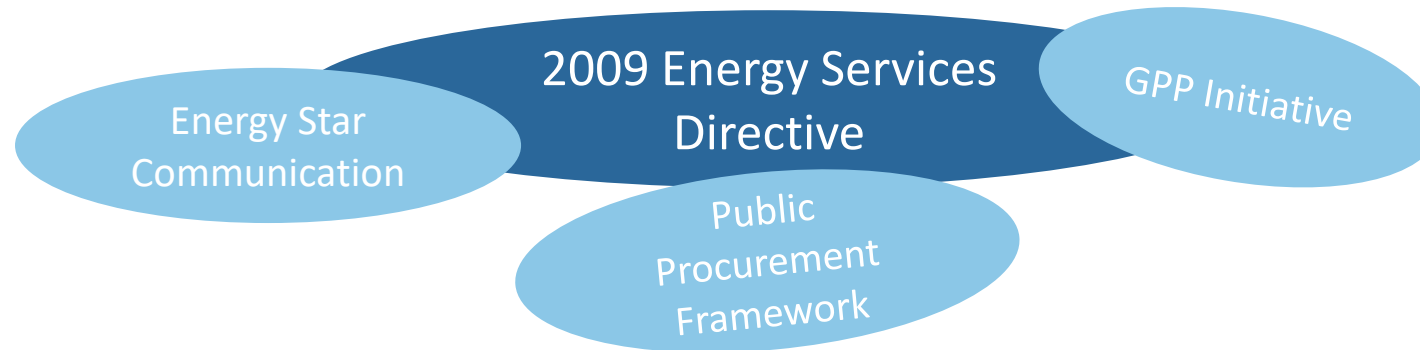
- ✓ Italian example: specific provision for PPP (PP and concessions)
 - ✓ Other contract types: project financing, construction leasing, availability

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Green Public Procurement in EU law

Evolution of the framework for Green Public Procurement:



Green Public Procurement in EU law

- ✓ Communication of the Commission 400/2008 on Green Public Procurement (GPP)
 - ✓ Definition: *“Process whereby public authorities **seek to procure goods, services and works with a reduced environmental impact throughout their life cycle** when compared to goods, services and works with the same primary function that would otherwise be procured”*
 - ✓ GPP Communication is the “ancestor” of Art. 6 EED and still relevant!
- ✓ Member States encouraged to publish National Action Plans outlining actions and measures for green or sustainable PP

Green Public Procurement in EU law

- ✓ GPP criteria: environmental procurement criteria developed for assisting contracting authorities in identifying and procuring greener products, services and works
 - ✓ The EU established **GPP criteria** for 21 products and service groups, among which “**Street Lighting and Traffic Lights**”¹ which can be used directly in tender documents
 - ✓ GPP criteria sets also developed by Member States, for example Italy
 - ✓ Use of **labels** as part of technical specifications (Ecolabel, EU energy label...)
- ✓ Awarding of GPP:
 - ✓ Environmental/technical criteria as minimum requirement (**specification**)
 - OR
 - ✓ As a preference/% of the criteria reserved for energy efficiency (**award criterion**)

¹ http://ec.europa.eu/environment/gpp/pdf/criteria/street_lighting.pdf

Green Public Procurement in EU law

- ✓ Practical implementation of Art. 6 EED via concrete support mechanisms
 - ✓ Provision of criteria documents (minimum requirements, award criteria for groups of products...)
 - ✓ Provision of specific advice (handbooks, guidelines...)
 - ✓ Provision of specific methodologies (e.g. life cycle costing)

- ✓ Commission study: **provision of specific methodologies** has the highest added value

- ✓ But: level and quality of these measures differed among Member States
 - ✓ Need for harmonised tools from the EU?

Green Public Procurement in EU law

✓ Barriers to GPP

✓ Issue: reluctant attitudes in the local administration/contracting authority towards changes in the tendering process

✓ Solutions:

✓ Raise awareness; provide explanations as to the advantages of green solutions

✓ Reduce administrative burden through framework agreements (one tendering for several contracts)

✓ Issue: lack of technical know-how and experience with dynamic lighting projects/GPP

✓ Solutions:

✓ Support from dedicated authorities such as national/regional energy agencies

✓ Joint procurement: shared skills and knowledge among authorities!

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Transposition into national law

✓ National transpositions of Art. 6 EED on purchasing by public bodies

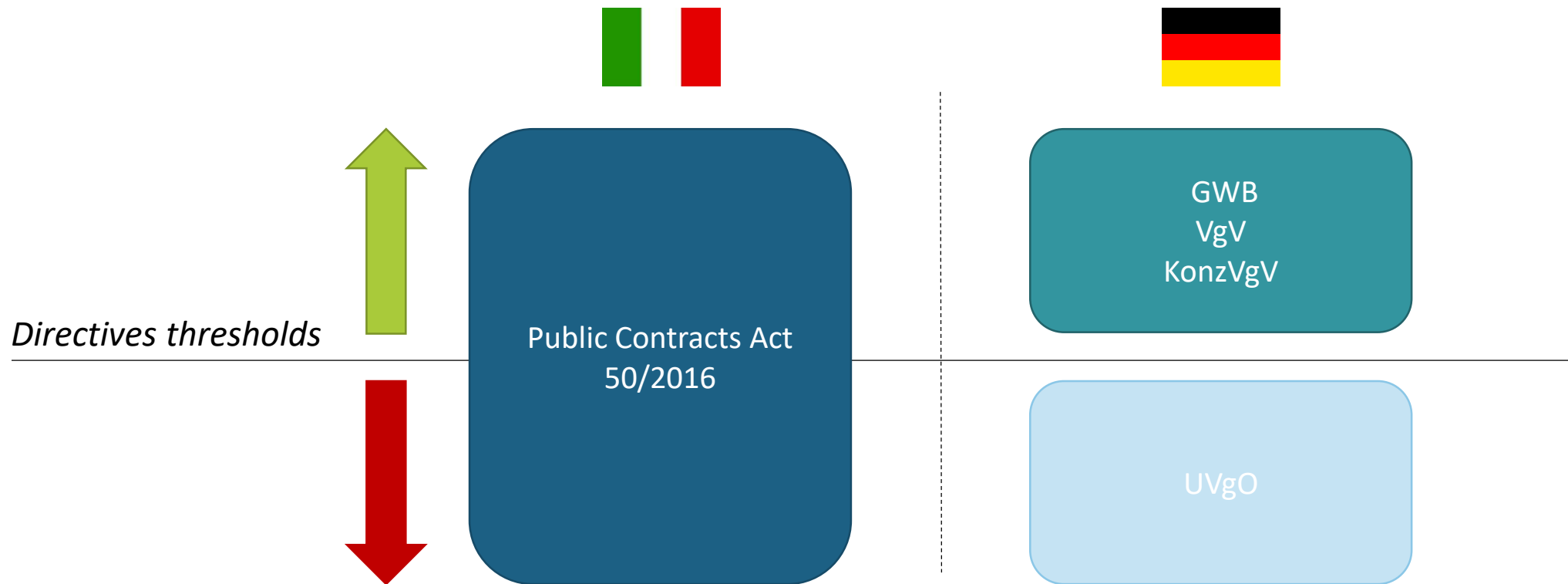
Form of transposition	Partner countries
Countries with direct transposition	Croatia, Italy, Poland (specific efficiency laws)
Countries with implementation plus additional national rules	Austria, Czech Republic (procurement and energy efficiency legislation) Slovenia (public procurement legislation)
Other countries	Germany (pre-existing law)

Source: EUR-Lex


✓ Crucial is the **local level!**

- ✓ Recommendation of the EU Parliament of 2015: importance of “exploiting the **potential of local energy savings** much more, **as local and regional authorities are central** in driving forward energy efficiency and, overall, the energy transition”

Transposition into national law

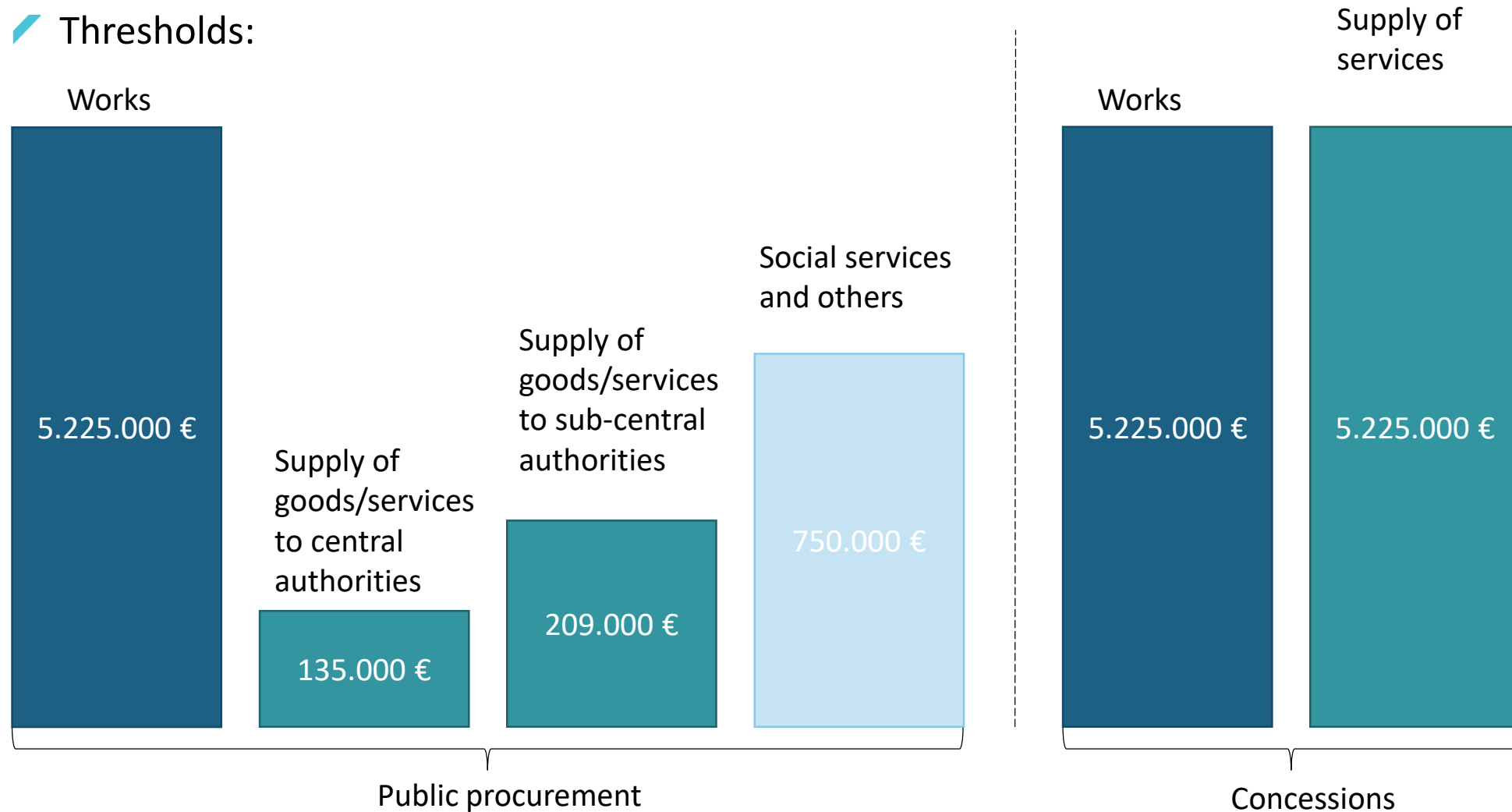


Transposition into national law

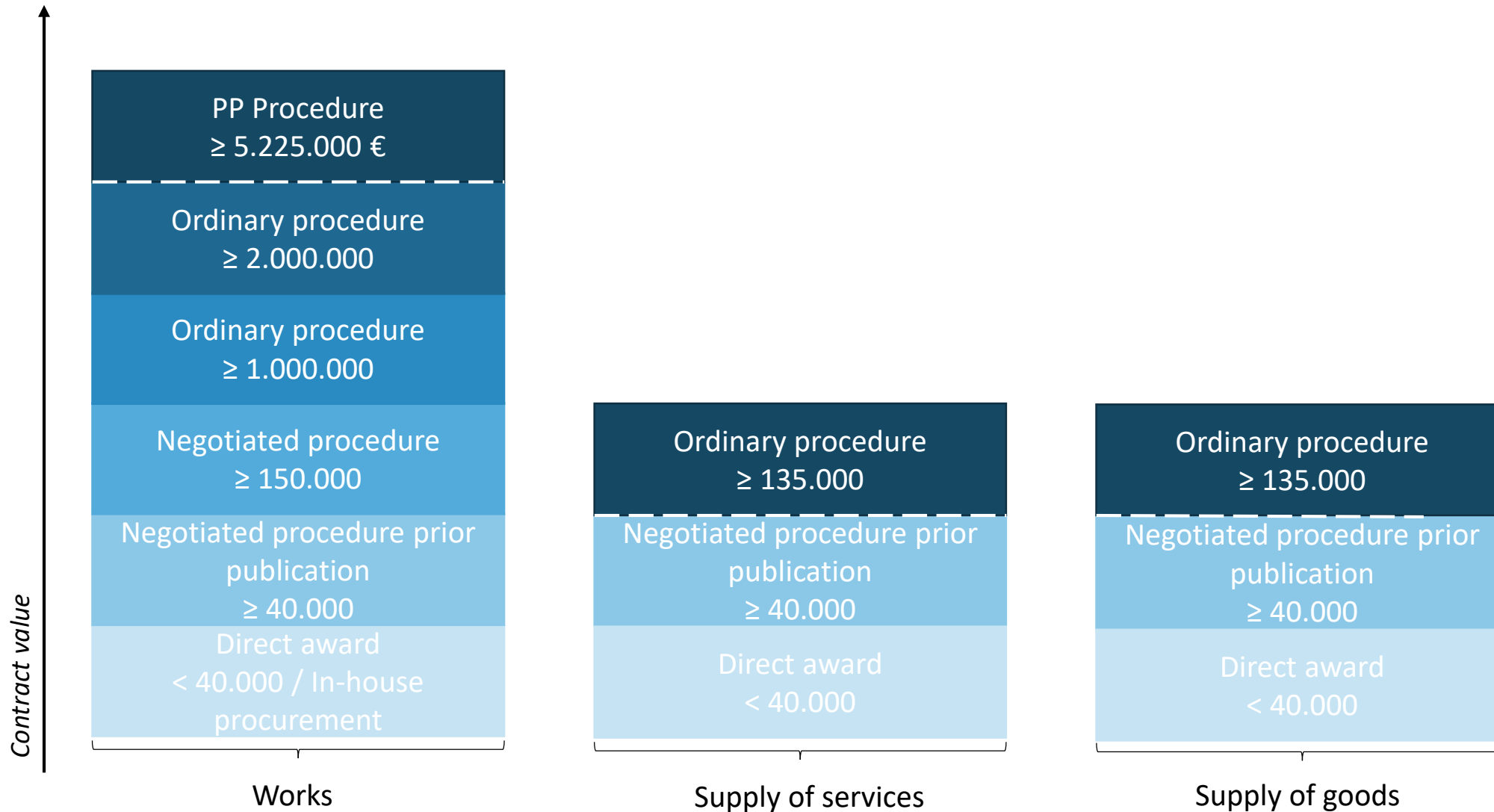
- ✓ Example case: Italy 
- ✓ EU Directives transposed by the **Public Contracts Act** (Decreto Legislativo n. 50/2016)
 - ➔ Completed and partially corrected by legislative decree n. 56/2017
- ✓ The Act regulates all public contracts (**both PP and concession**)
 - ✓ Public contracts as “procurement or concession contracts **for the purchase of services or supplies, or for the execution of works or projects**”
 - ✓ Rules are also set for public contracts **below European thresholds**
- ✓ Art. 34 D. Lgs. 50/2016: **minimum environmental criteria** mandatory

Transposition into national law

Thresholds:




Transposition into national law



Transposition into national law



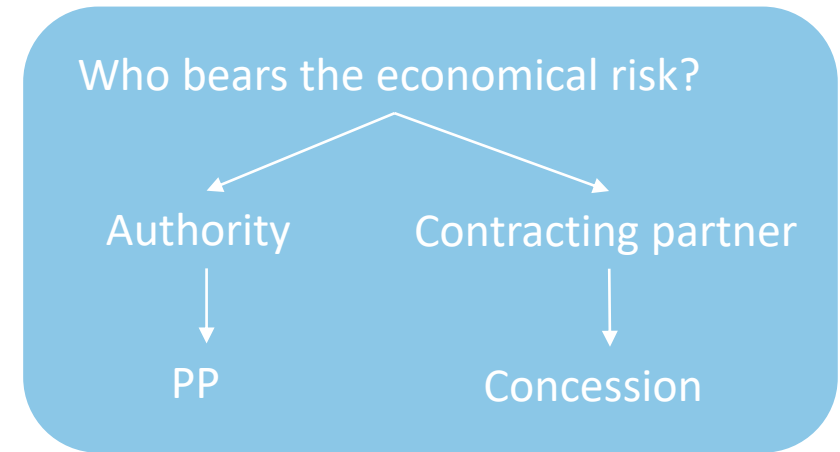
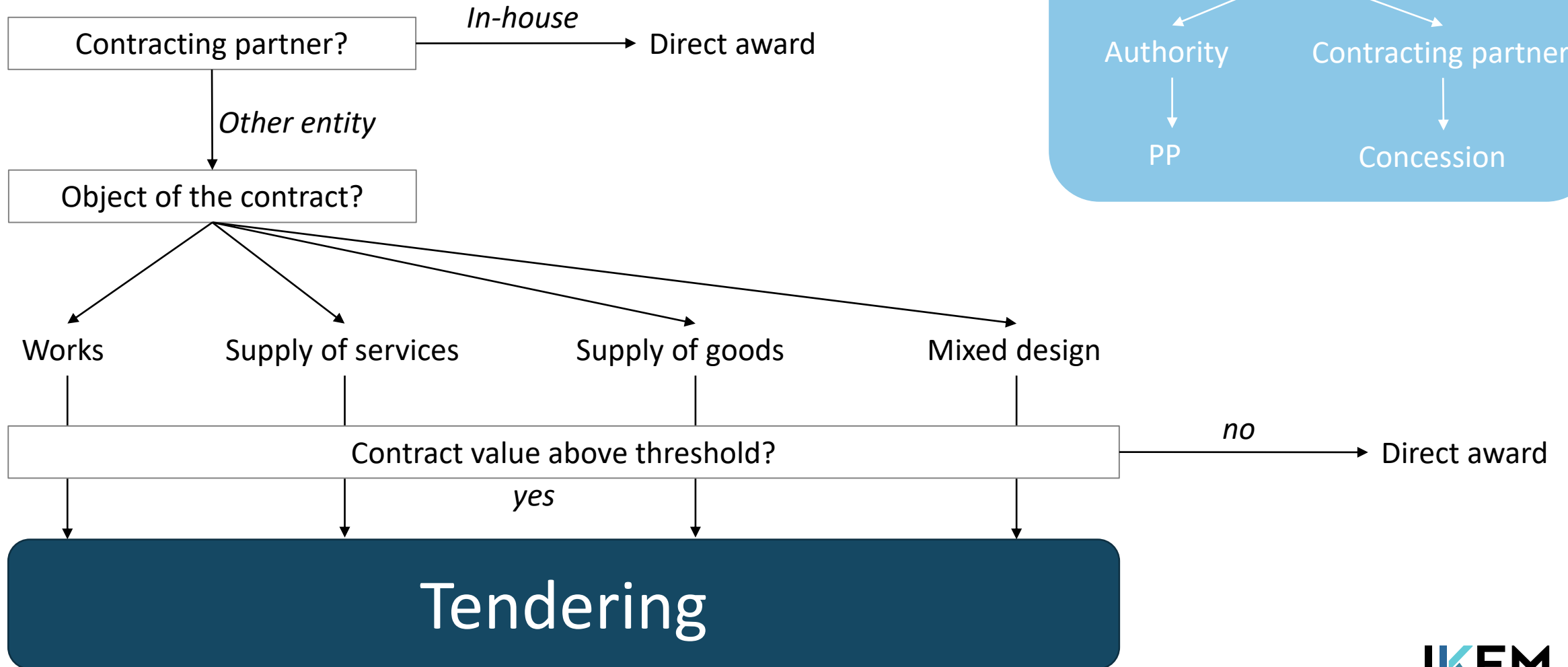
Transposition into national law

- ✓ Example case: Germany 
- ✓ **PP Directive** transposed by **Part 4 of the Act against Restraints on Competition (GWB)**
 - ✓ Concretised by the 2016 **Ordinance on the Award of Public Contracts (VgV)**, which sets detailed rules on the awarding procedure
 - ✓ Requirements for energy efficiency in tender documents, § 67 VgV
- ✓ **Concessions Directive** transposed by the **Concession Grant Regulation (KonzVgV)**
- ✓ For contracts below the EU thresholds, **national budgetary law** applies (UVgO)

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Strategy for DL integration





Thank you for your attention!

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