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# Is public procurement special?

Towards mandatory green procurement or sectoral rules

**Interdisciplinary workshop on Green Public Procurement**  
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LAPIN YLIOPISTO  
UNIVERSITY OF LAPLAND  
Pohjoisen puolesta – maailmaa varten



Photo by Aimo Halonen

# INCENTIVES OR MANDATORY RULES

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## STATUS QUO OF PUBLIC PROCUREMENT RULES

- Current rules: green public procurement (GPP) supported through incentives and soft law
  - Certain mandatory sectoral rules
- **Rising trend: this is not enough, more is needed**
  - Increasing knowledge on green public procurement does not translate into green actions (Zhu et al. 2013)
  - EU Green Deal and Circular Economy Action Plan: Mandatory rules

# MANDATORY RULES IS THE NEW BLACK

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- Majority of legal scholars: mandatory GPP rules need to be adopted
  - [Andhov & Caranta 2020 \(eds.\)](#)
  - [L. Mélon, 12 Sustainability \(2020\)](#)
  - [K. Pouikli, 21 ERA Forum \(2021\)](#)
  - B. Sjøfell and A. Wiesbrock (eds.), Sustainable Public Procurement Under EU Law: New Perspectives on the State as Stakeholder(Cambridge University Press, 2015)
- Impact of GPP is rarely critically assessed by legal scholars
  - cf. [Halonen 2021](#)
  - Potential consequences of mandatory GPP rules: costs, market consequences, ecological change

**Fitness and impact of GPP cannot be evaluated solely through legal methods: multidiscipline approach is needed**

# EMPIRICAL EVIDENCE ON ENVIRONMENTAL IMPACT

## ECONOMICS RESEARCH

- GPP criteria common (90% SWE, 55% FIN, 74% DEN), but they are ambiguous and general = toothless
  - Palmujoki and Vartiainen, Edilex 2020/9
- Contracting authorities do not know which target they aim for with each criteria
  - [Lundberg et al. 2015](#)
- PP "looks green" and is suitable for "buying already green", but is not very effective in changing the market [Konjunkturinstitutet 2020](#)
- Conflicting evidence in empirical macroeconomics research literature from different industries
  - Lundberg et al. 2015 (cleaning) , Simcoe and Toffel 2015 (construction), Lindström et al. 2020 (groceries)

**Differences between sectors + size of the purchase power crucial for impact potential = Unified, specific criteria designed for each sector appear to be the most effective (sectoral rules)**

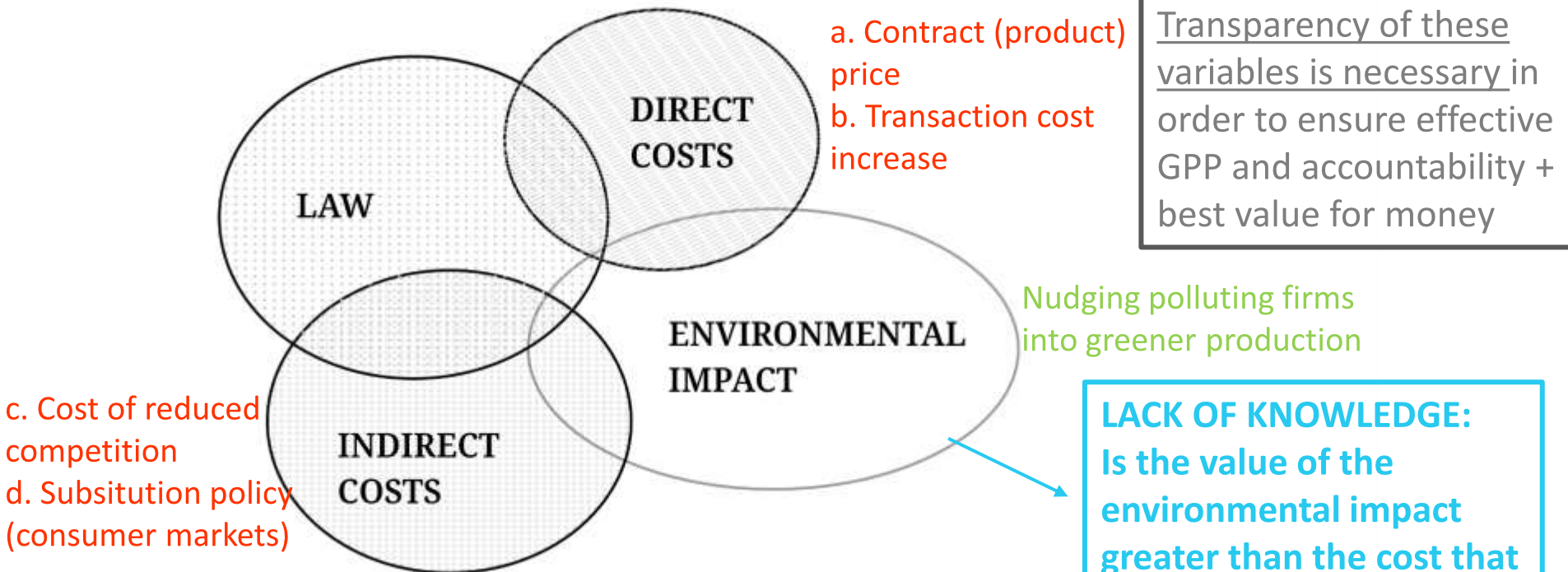
# HOW DOES SUSTAINABILITY IMPACT AMOUNT OF COMPETITION?

## AMOUNT OF COMPETITION AND PRICE

- [European Court of Auditors Special Report 28/2023](#): Highlights the increase in single bidding and direct awards as well as the limited amount of cross border procurement during the past 10 years
- Plenty of empirical evidence on the correlation between competition (amount of tenders) and price: low competition awards each additional bidders results in 3-10 per cent price decrease depending on the research data and country
  - [Jääskeläinen ja Tukiainen \(FIN\) VATT 2019](#); [Halonen & Tukiainen \(SWE\) Konkurrensverket 2020](#) ; [V. Titl \(CZE\)](#) ; [KFST \(DEN\)](#)
- Little evidence on how the amount of competition is affected due to SPP and what is their cost: clear that that they more complex and demanding – some narrowing of competition will take place
  - Spanish data ([Carreras 2023](#)): use of environmental award criteria (-5.6%) and socially responsible award criteria (-8.3%) lowers the numbers of bids received



# THE VARIABLES OF LAW AND ECONOMICS APPROACH TO GREEN PUBLIC PROCUREMENT



From: K-M. Halonen, Is public procurement fit for reaching sustainability goals? A law and economics perspective to public procurement. Maastricht Journal of European and Comparative Law 2021, DOI: 10.1177/1023263X211016756  
<https://journals.sagepub.com/doi/full/10.1177/1023263X211016756> (open access)

# PUBLIC PROCUREMENT FOR SUSTAINABILITY?

## HOW TO DESIGN THE RULES?

### Buying Green

- Dominant buyer: Public
- Method: Mandatory GPP or Sectoral rules

### Buying Green

- Dominant buyer: Private
- Method: Sectoral rules

### Promoting Transitions from Brown to Green Productions or Supporting Green Innovations

- Transition Method: Green State Aids, Tax policies, Sectoral rules
- Green Innovation Method: R&D Aids, Procurement (innovation partnerships and public contract design)



# PUBLIC PROCUREMENT FOR SUSTAINABILITY?

## ARE PUBLIC PROCUREMENT RULES THE RIGHT PLACE TO REGULATE?

- Designing the rules and **focusing on the impact**
  - **Clear message to the markets** → national / EU wide unified criteria communicates the ambition level to companies (no contracting authority specific criteria)
  - **Specific criteria for each product / service:** focusing on the concrete green impact potential of the product in question and not on "how the procurement looks"
  - **Prioritizing efforts** to the most polluting industries

**Sectoral rules are better equipped to generate environmental impact through public (and private) purchasing than introducing mandatory general public procurement rules**



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