

PUBLIC PROCUREMENT AS A TOOL FOR CLIMATE CHANGE MITIGATION



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23rd of April 2023

**INTERDISCIPLINARY WORKSHOP
ON GPP LAW AND PUBLIC MANAGEMENT
(University of Copenhagen)**



KØBENHAVNS
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AGENDA



Thesis scope & 'pop' research question

Green Public Procurement

Insights from the historical evolution of EU PP Law

Sustainability vs Internal Market

From GPP to LEPP

Scope of the PhD Thesis (I)



- ❖ EU Law
 - No domestic legislation of the Member States is specifically taken into account.
 - Only Directive 2014/24 (goods, services and works) also called Public Sector Directive (No Utilities, Concessions & Remedies)
- ❖ Climate mitigation - no adaptation

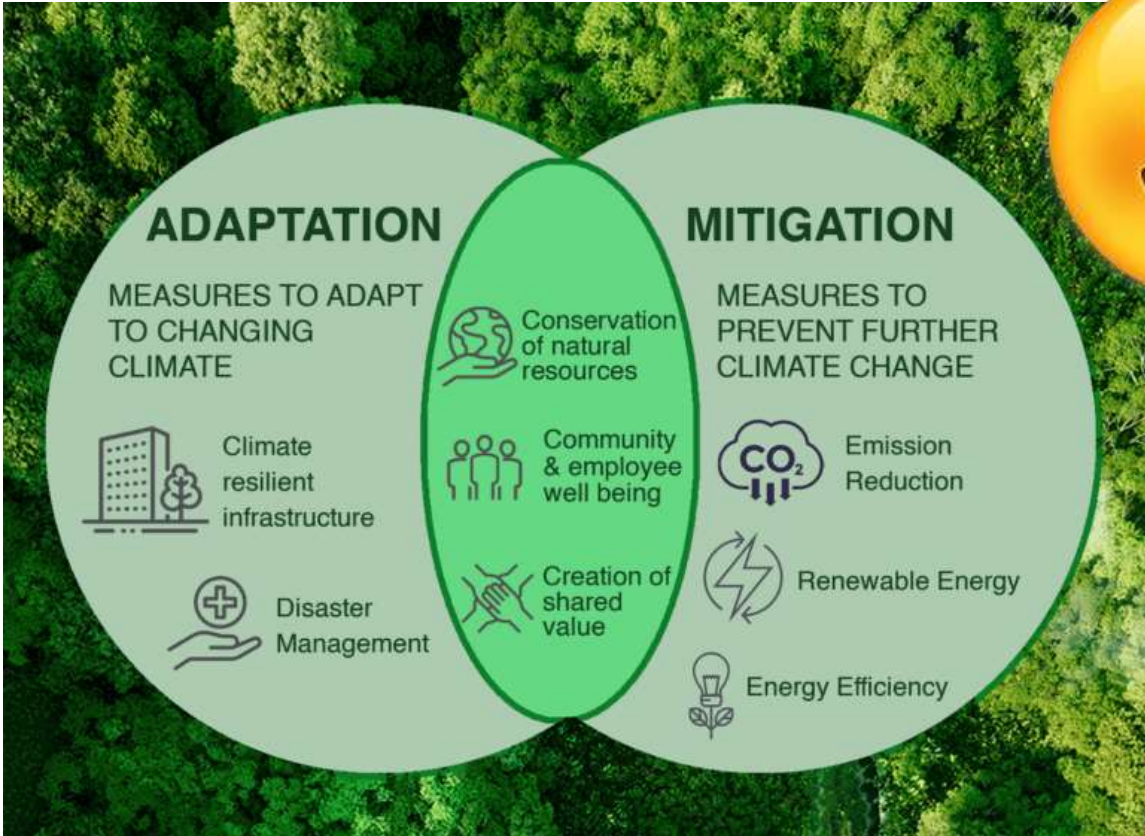


Scope of the PhD Thesis (II)

Emergency procurement mostly:

Derogation from application of rules

- a. Article 31 'Negotiated Procedure Without Prior Publication'



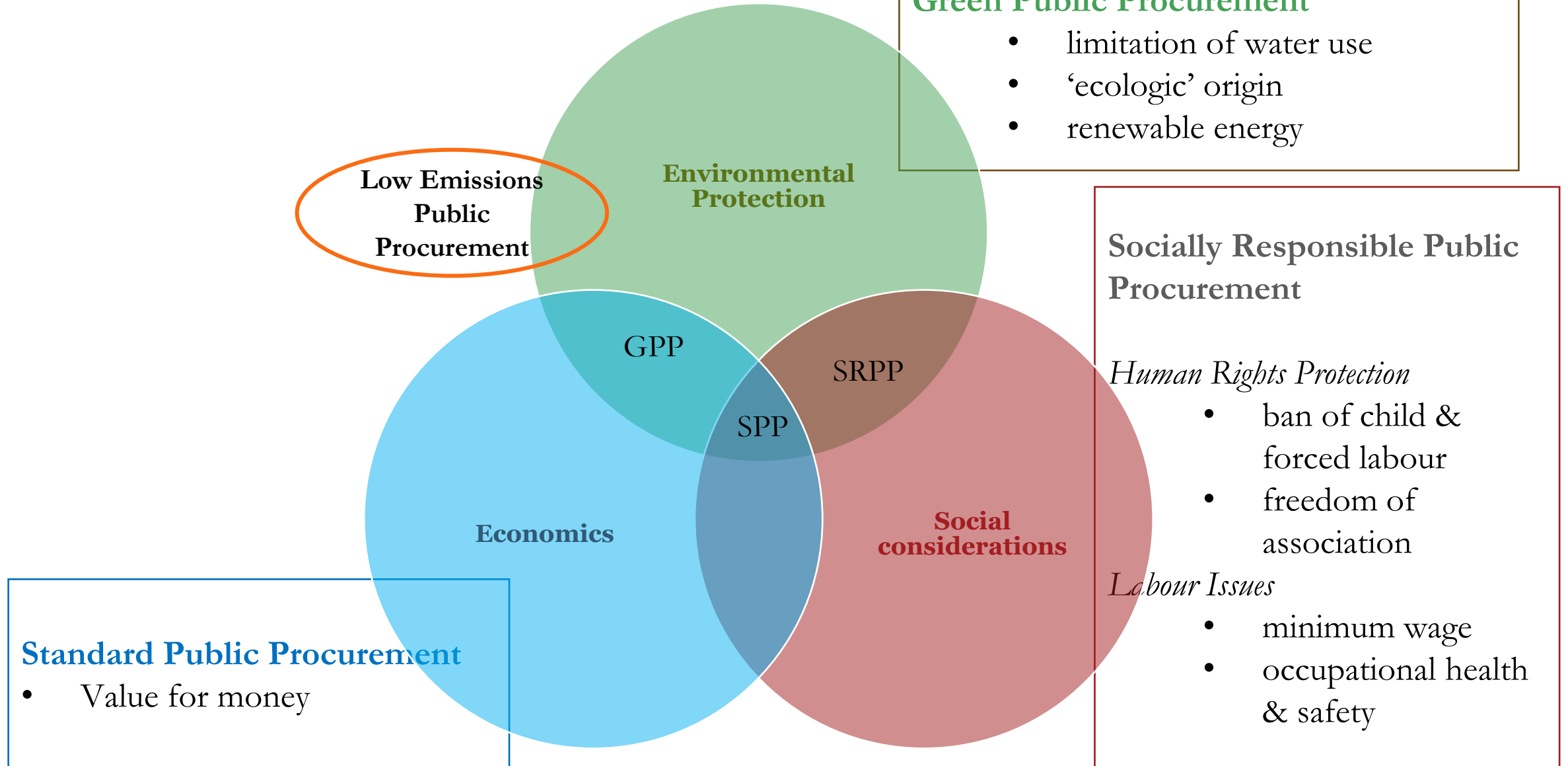
WHAT DOES EUROPEAN PUBLIC
PROCUREMENT LAW HAVE TO DO WITH
CLIMATE CHANGE MITIGATION?



NOTHING!

That is why this thesis exist 😊

Sustainable Public Procurement



What is Green Public Procurement (GPP)?

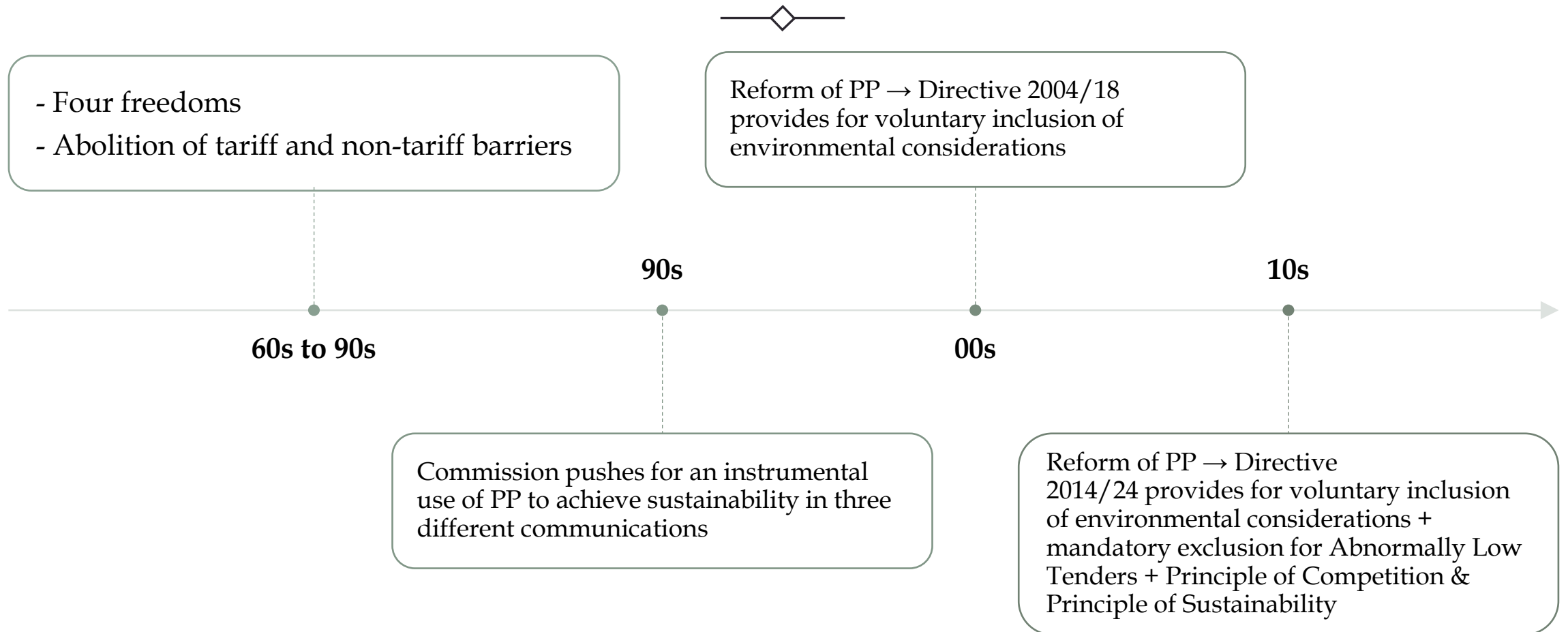
Policy statement! Also GPP criteria are not mandatory

"a 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." COM 2008 (400)

At every stage? Just one?

How much is 'reduced', even just 1kg of CO₂ emissions?
And which environmental impacts?

Historical evolution of EU GPP



Is sustainability still a nemesis of competition?

COMPETITION PRINCIPLE

The design of the procurement shall not be made with the **intention** of excluding it from the scope of this Directive or of *artificially narrowing competition*. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of **unduly favouring or disadvantaging** certain economic operators.

SUSTAINABILITY PRINCIPLE

Member States shall take appropriate measures to ensure that in the **performance of public contracts** economic operators comply with **applicable obligations in the fields of environmental, social and labour law** established by *Union law*, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.

The fact that the award criteria referring to low noise a nitrogen oxide levels can be fulfilled only by a small number of undertakings "*is not in itself such as to constitute a breach of the principle of equal treatment*"



C-513/99

CONCORDIA BUS (2002)

Relevance

- **Regulation (EU) 2021/1119**
 - Binding objective of climate neutrality by 2050 and 55% down by 2030
 - Recital 25: “all relevant Union legislation and policies need to be consistent with, and contribute to, the fulfilment of the climate-neutrality objective while respecting a level playing field, and invited the Commission to examine whether this requires an adjustment of the existing rules”
- Detected paradigm shift: the EU is progressively establishing what is sustainable (see EU Taxonomy Regulation, 2021) and other sectoral legislation such as *Clean Vehicles Directive* or *Batteries Regulation* or *Energy Efficiency of Buildings Directive*



HOW TO DEFINE LOW EMISSIONS PUBLIC PROCUREMENT?



THREE WAYS

1) Interdisciplinary approach: EU PP Law + Climate Sciences

2) EU Climate Mitigation Law + EU PP Law

3) EU Environmental Law + EU PP Law

(indirect positive effects on CO₂ or CO_{2eq} emissions reductions)

+ EU Treaties





What is Low Emissions Public Procurement? (LEPP)

An optimal definition



"a process whereby public authorities seek to procure goods, services and works with the primary policy objective of **contributing to climate mitigation**. When awarding public contracts, LEPP requires applying an **LCC methodology** - or equivalent approach for emissions quantification. The LEPP seeks the best price-quality option, providing the lowest emissions and **requires quantifying and reporting the emission and their reduction derived from the purchase.**"

(Andhov, Muscaritoli, 2023)



CLIMATE LAW
& PUBLIC
PROCUREMENT



**Implication derived by
(i.e.)**

- Effort Sharing Regulation
- Emission Trading System Directive
- Renewable Energy Directive



What do the Treaties say?

Article 11 TFEU

Environmental protection *requirements* must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

Article 7 TFEU

The Union shall ensure consistency between its policies and activities, *taking all of its objectives into account* and in accordance with the principle of conferral of powers.

What about other Treaties Provisions?

i.e. Article 191 TFEU

Does the polluter pays principle apply to Public Procurement?

Does the precautionary principle?

(M) Tech. Spech.	(M) Minimum target	(M) Award Criteria	(M) Penalty of Exclusion
Clean Vehicles Dir.	Clean Vehicles Dir.	Net-zero Industry Reg. (Proposal)	Deforestation Reg.
Construction Products Reg. (Proposal)	Energy Performance of Buildings Dir.		Recycled Content Dir.
Energy Efficiency Dir.			



EU Sectoral Legislation for emissions reduction



EU Deforestation Regulation

Article 25 EUDR - Penalties:

“1.[...] **Member States shall lay down rules on penalties applicable to infringements of this Regulation** by operators and traders and shall take all measures necessary to ensure that they are implemented.

2. The penalties provided for in paragraph 1 shall be **effective, proportionate and dissuasive**. Those penalties shall include:

(d) temporary exclusion for a maximum period of 12 months from public procurement processes [...];

3. Member States shall **notify the Commission of final judgments** against legal persons for infringements of this Regulation **and the penalties** imposed on them, within 30 days from the date on which the judgments become final, taking into account the relevant data protection rules. **The Commission shall publish on its website a list of such judgments [...].**



THANK YOU



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This project has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 956696.