

Public procurement

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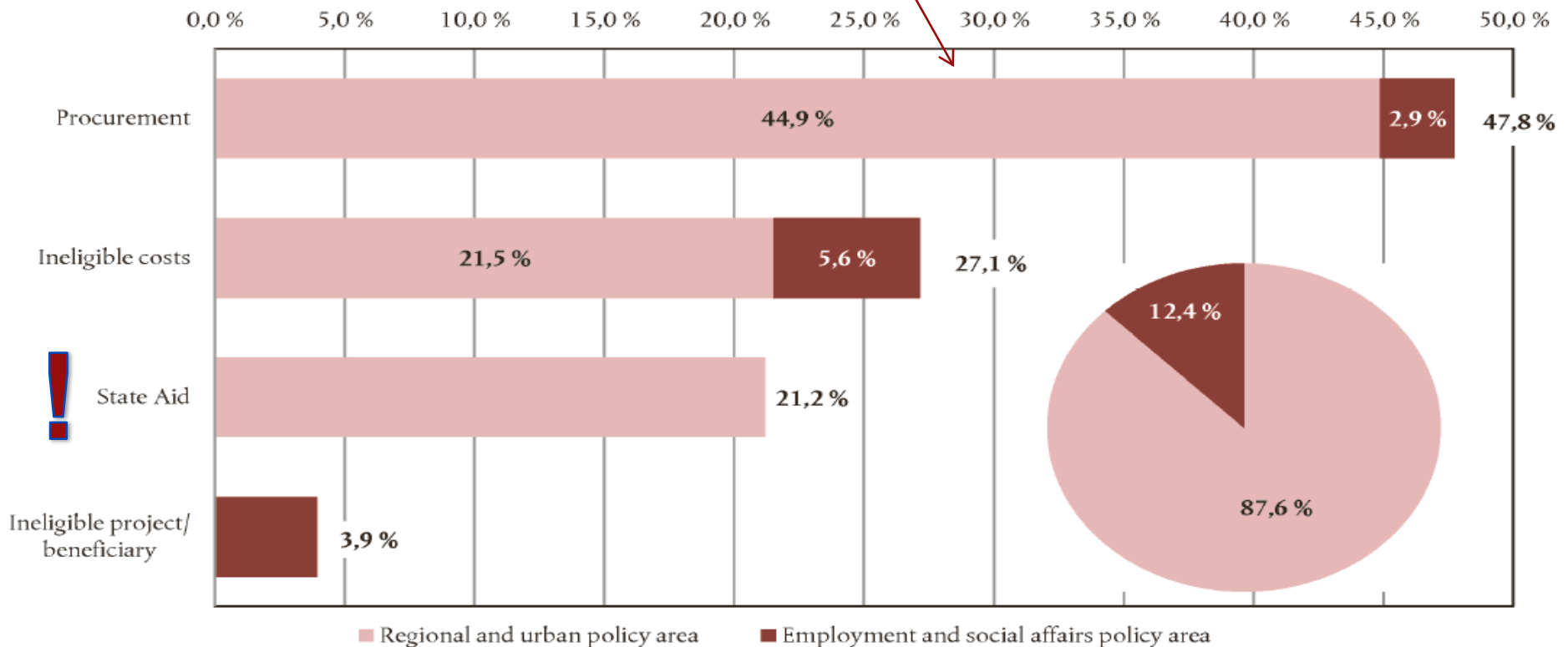
Munich| Germany| 21-22 October 2019

Christina Bauer
Managing Authority



Errors in cohesion policy

About 50 % of ESI funds are spent via public procurement!

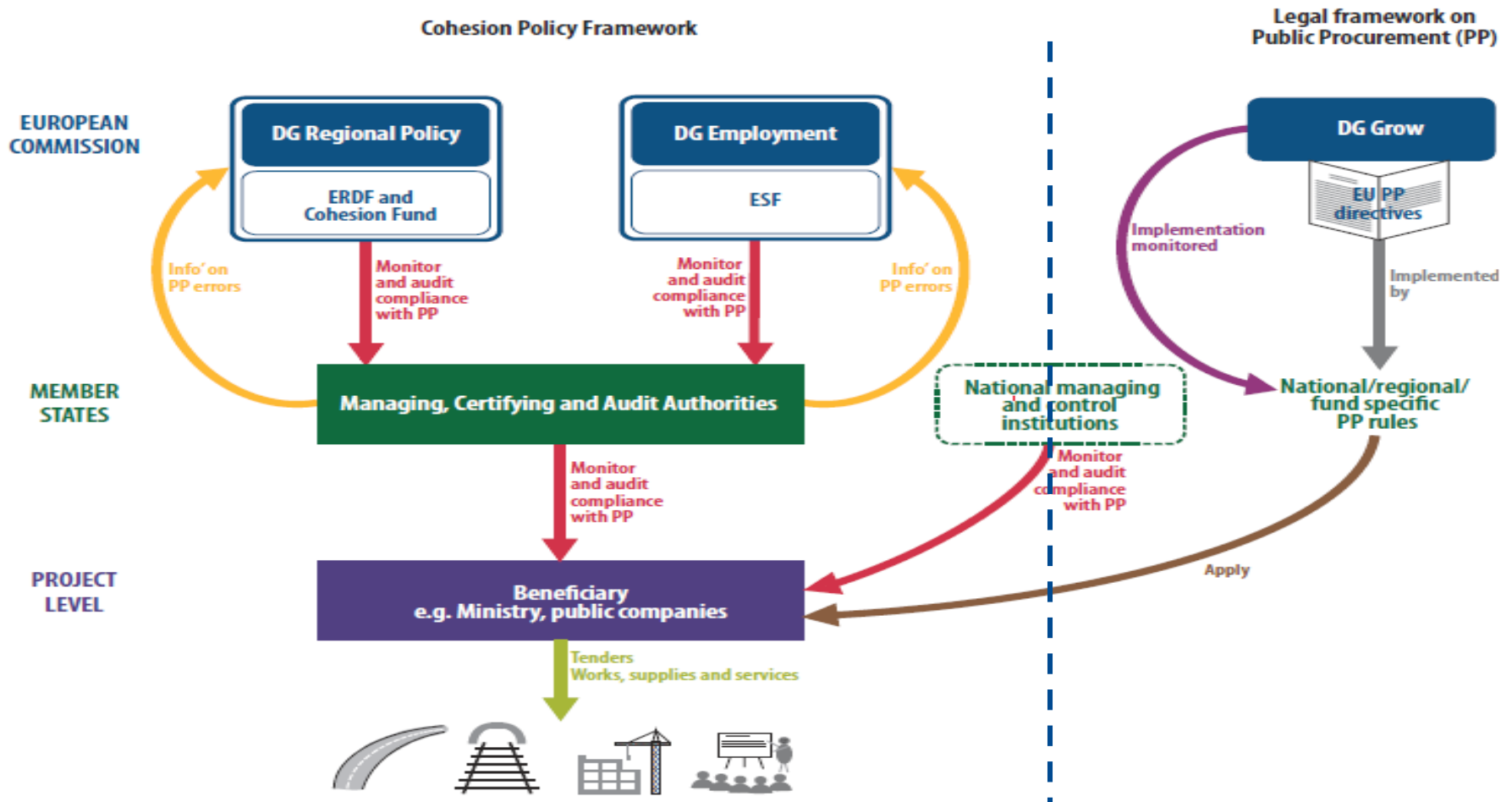


Source: European Court of Auditors, Annual Report 2014, p. 175

<http://www.eca.europa.eu/Lists/ECADocuments/annualreports-2014/annualreports-2014-EN.pdf>



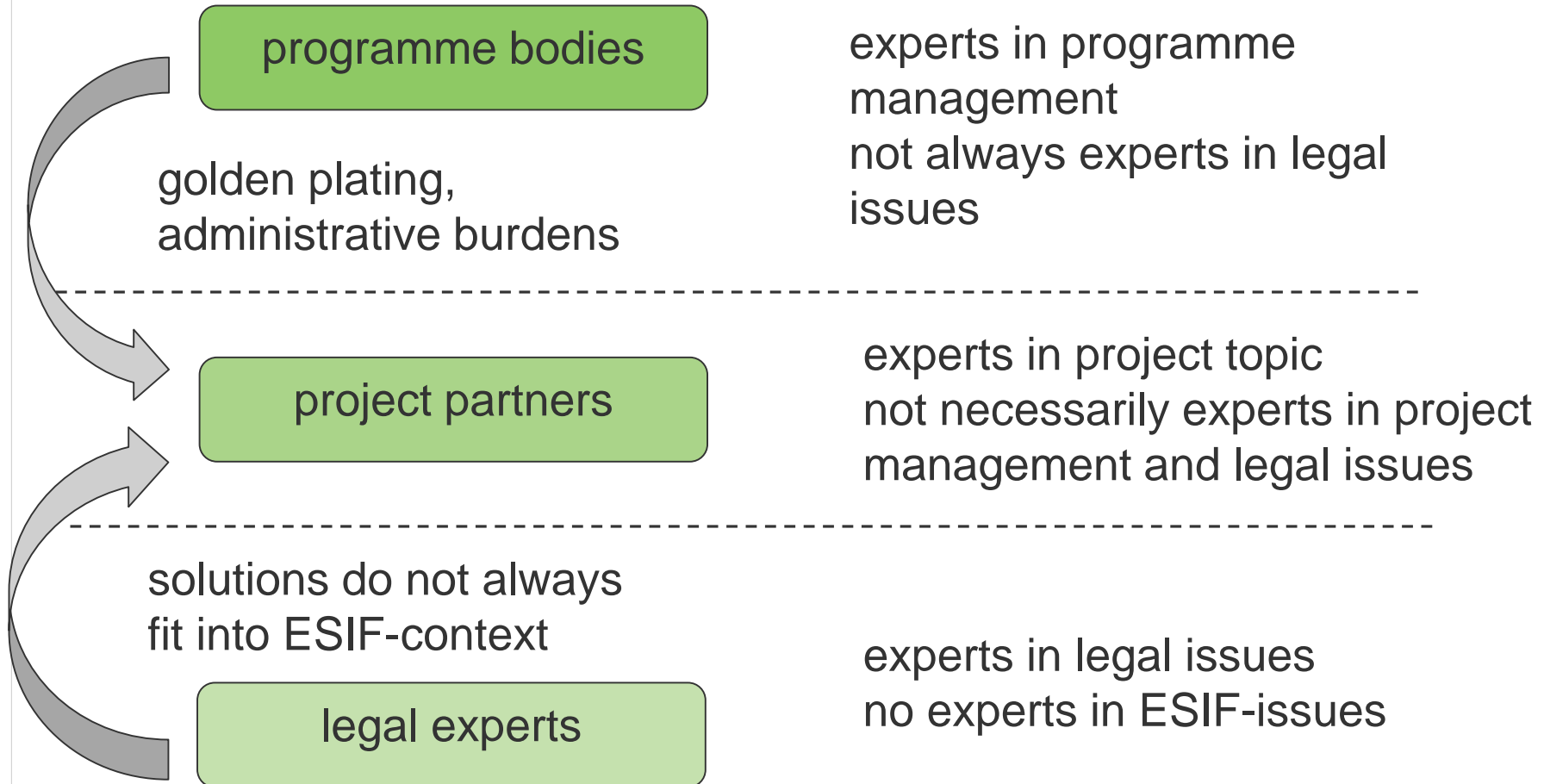
Funded procurement & its control



Source: European Court of Auditors, special report 2015/10, p. 14



Different starting points



What makes procurement difficult?

Directive 2014/24/EU on public procurement

Directive 2014/25/EU water, energy, transport, postal service

thresholds e.g. 221.000 € net
for service contracts

EU-Treaty

e.g. principles of equal treatment, transparency

European Court of Justice

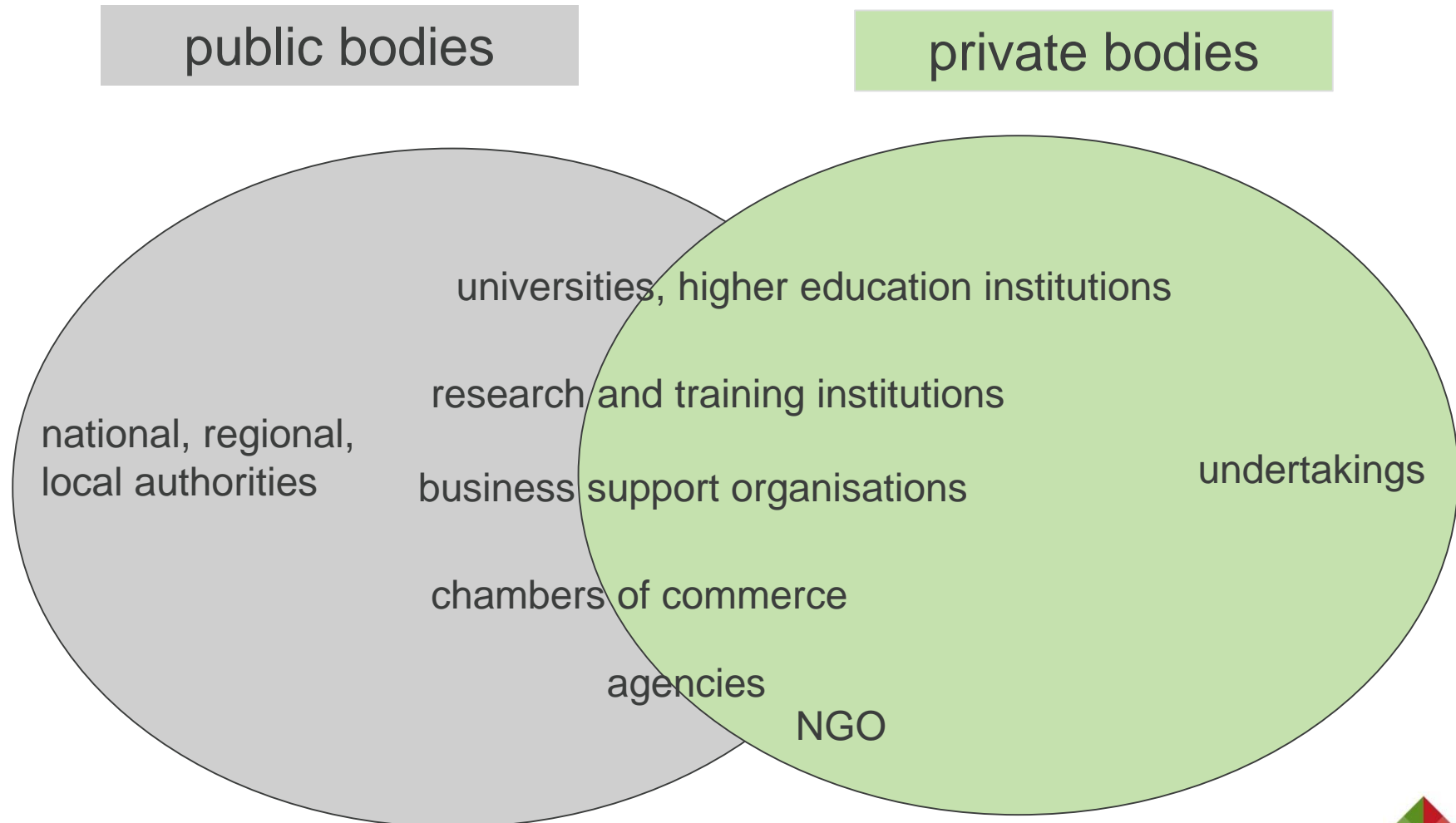
National law(s)

Specific rules of ESI-funded programmes

Specific rules of project partner organisations



Who is subject to procurement law?



Body governed by public law?

established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character

and

legal personality

and

financed, for the most part, by the state, regional or local authorities or other bodies governed by public law

or

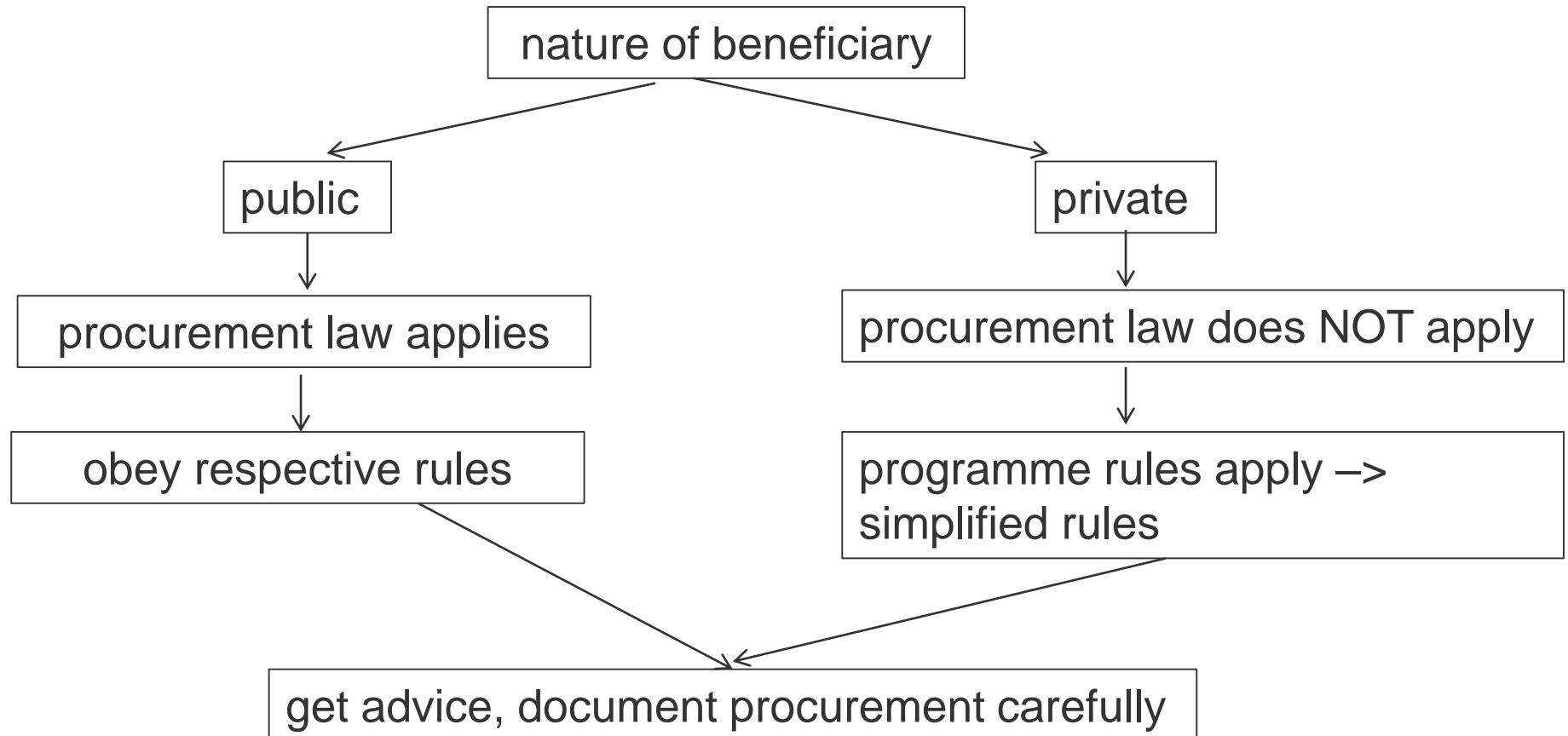
subject to management supervision by those bodies

or

having an administrative, managerial or supervisory board, more than half of whose members are appointed by the state, regional or local authorities, or by other bodies governed by public law



Programme rules on procurement



Programme guidance:

Factsheet 1.2. Who can participate?

Factsheet 4.2. Public procurement



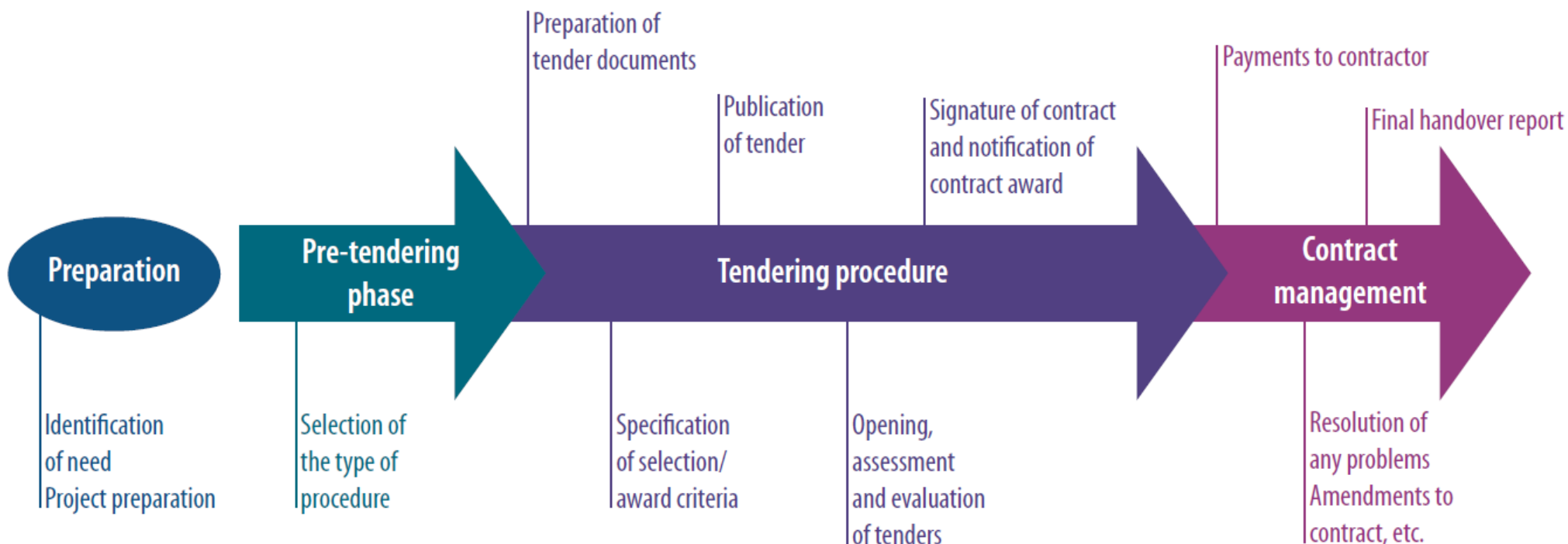
Purchase rules for private partners

Estimated contract value (excluding VAT)	Programme rule
5.000 Euro or higher	perform adequate market search (e.g. by collecting offers from at least 2 market operators, internet price comparison)
50.000 Euro or higher	publication of call for offers on programme and project website

Please document the purchase carefully!



Phases of procurement procedure



Source: European Court of Auditors, special report 2015/10, p. 15



Most common procurement errors

insufficient publication

- direct awarding without any prior notification
- notification only on regional/national level instead of EU-level

imprecise tender documents

excessively short deadlines for submission of tenders



Most common procurement errors/2

mix-up of selection and award criteria

- selection criteria: related to company, to assess quality of candidates
- award criteria: related to offer, to select most economically advantageous offer, e.g. price, qualification of staff, methodology

discriminatory or dissuasive criteria, modification of criteria

unlawful splitting of contracts



Most common procurement errors/3

procurement of human resources

- depends on type of contract
- employment contract not subject to procurement law

changes in the contract/additional tasks

- essential changes to be regarded as new procurement
- additional tasks to be regarded as new procurement, obey prohibition of splitting of contract
- negotiated procedure without prior publication applicable
- under certain circumstances



Most common procurement errors/4

negotiated procedure without prior publication

- extreme urgency due to unforeseeable events
- applies to natural disasters rather than to tight time schedules

contract can only be executed by one particular company for technical or artistic reasons or reasons connected to protection of exclusive rights

- limited possibilities, normally more than one potential supplier
- applicable e.g. in case of procurement of specific software



exemptions permitting negotiated procedure to be interpreted strictly



Consequences of detected errors

consequences on project level

- financial corrections:
 - for public partners -> Commission Decision C (2013) 9527
 - for private partners -> financial correction of 10% of contract value
- no or only partly EU-funding, repayment of EU-funds
- delay in project implementation, problems in project financing
- negative impacts on project partnership

consequences on programme level

- high administrative efforts
- action plan: corrective, investigative, preventive measures
- stop of payment of EU-funds by EC
- payment of EU-funds to other projects blocked



COM Decision 3452/2019

Guidelines on financial corrections/1

irregularity	recommended correction
lack of public contract notice	100% of contract value 25 % of contract value if advertised to some extent
artificial splitting of contracts	100 % of contract value 25 % of contract value if advertised to some extent
selection/award criteria not stated in tender documents unlawful or discriminatory criteria modification of criteria during selection phase	10 % to 25 % of contract value
insufficient definition of subject-matter of the contract	10 % of contract value



COM Decision 3452/2019



Guidelines on financial corrections/2

irregularity	recommended correction
negotiation during award procedure	25 % of contract value
substantial modification of the contract	25 % of amount of contract plus value of additional amount resulting from modification
award of additional works, supplies or services exceeding the allowed limits	25% of initial contract and 100% of related contract modification (price increase)

<https://ec.europa.eu/transparency/regdoc/rep/3/2019/EN/C-2019-3452-F1-EN-ANNEX-1-PART-1.PDF>



Do's and don'ts in procurement

	Do's	Don't's
 Planning	spend sufficient time in planning, implementing and documenting procurement	start the procurement without prior planning
	bundle similar contracts to get value-for-money	split similar contracts
 Tendering	check potential cross-border interest and advertise accordingly	launch procurement without prior advertising according to relevant laws
	follow time-limits set by regulations and allow sufficient time for bidding	accelerate procedures and go faster than foreseen time-limits



Do's and don'ts in procurement/2

	Do's	Don't's
Evaluating	define clear selection and award criteria according to subject matter of contract	apply vague or discriminatory selection and award criteria
Implementing	ensure transparent and fair evaluation	modify criteria during evaluation process
	justify why you buy additional works or services from same contractor or tender them	modify contract substantially or exceeding 50 % of original contract value
Documenting	document procurement procedure from cost estimation to final payment to contractor	just keep the contract document



Further recommendations

When you begin with your project

- start to prepare for controls with start of activities
- use seminars for information and exchange
- clarify any questions with programme bodies (FLC, JS, ACP, MA) in advance
- get legal advice
- document any procurement properly

When controllers come

- be prepared that they want to know everything
- check if you have all documents and persons available
- take your time to answer the questions of the controllers
- ensure quick and efficient follow up of findings



NEW: Joint Cross-border Procurement

article 39 (4) Directive 2014/24/EU

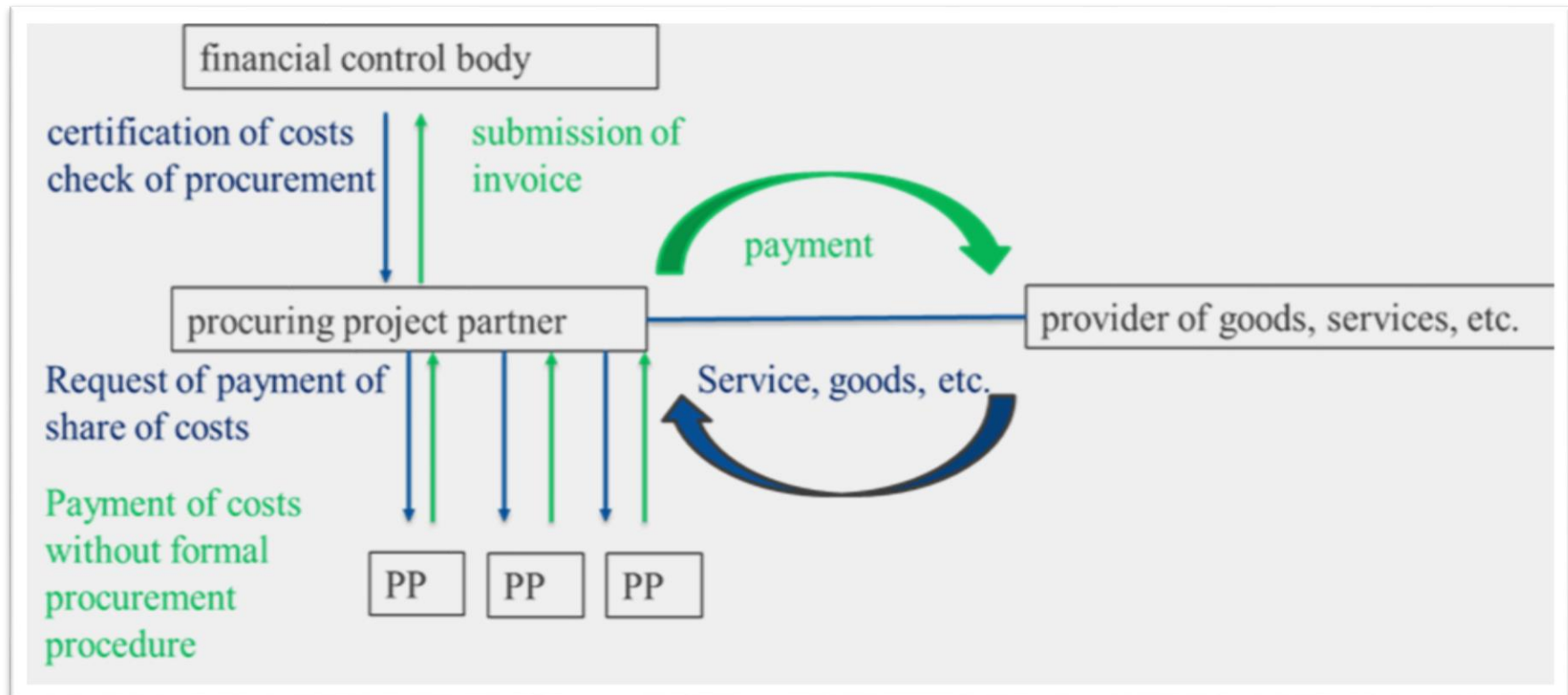
contracting authorities from different Member States may jointly award a public contract if they conclude an agreement on:

- the responsibilities of the parties and the relevant applicable national law;
- the internal organisation of the procurement procedure, including management of the procedure, distribution of the works, supplies or services to be procured and the conclusion of contracts

participating contracting authority acts in line with procurement rules when it purchases from responsible contracting authority



NEW: Joint Cross-border Procurement



Outlook 2021-2027

- extended use of SCO (art. 48-51 CPR)
- risk-based management verifications (art. 68 (2) CPR)
- more proportionate approach to audits (art. 77-79 CPR)
- single audit arrangement (art. 74 CPR)
- common audit sample for Interreg (art. 48 (1) ETC)



https://ec.europa.eu/regional_policy/sources/docgener/factsheet/new_cp/simplification_handbook_en.pdf



Do you have any
questions?

