

# PUBLIC PROCUREMENT AS A TOOL FOR CLIMATE CHANGE MITIGATION



PhD Fellow Federica Muscaritoli  
12<sup>th</sup> April 2023, University of Bergen



# AGENDA



---

General introduction to Public Procurement

---

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

---

A photograph of a buffet table with various food items including bread, fruit, and licorice twists. The text is overlaid on the image.

Public procurement is  
process whereby  
State, regional or local  
authorities seek to  
procure goods,  
services and work to  
satisfy the general  
interest.

- a. Regulated at the national (Procurement codes) and EU level (e.g. Directive 2014/24).
- b. **Objectives at the national level:** efficiency, integrity, VfM, discretion
- c. **Objectives at the EU Level:** equal treatment, non-discrimination, proportionality, transparency, sustainability, non-artificially narrowing competition



A photograph of a modern architectural complex. In the foreground, a wooden deck surrounds a rectangular pond with a fountain. The middle ground features a building with a wooden facade and large windows. In the background, a large, curved glass dome structure is visible under a blue sky with clouds. The word "WORKS" is overlaid in white serif font in the center of the image.

# WORKS



Handwritten price tags visible in the background include:  
- "Outdoors Sweet Pepper 2.50"  
- "Outdoors Sweet Pepper 2.50"  
- "Outdoors Sweet Pepper 2.50"  
- "Outdoors Sweet Pepper 2.50"

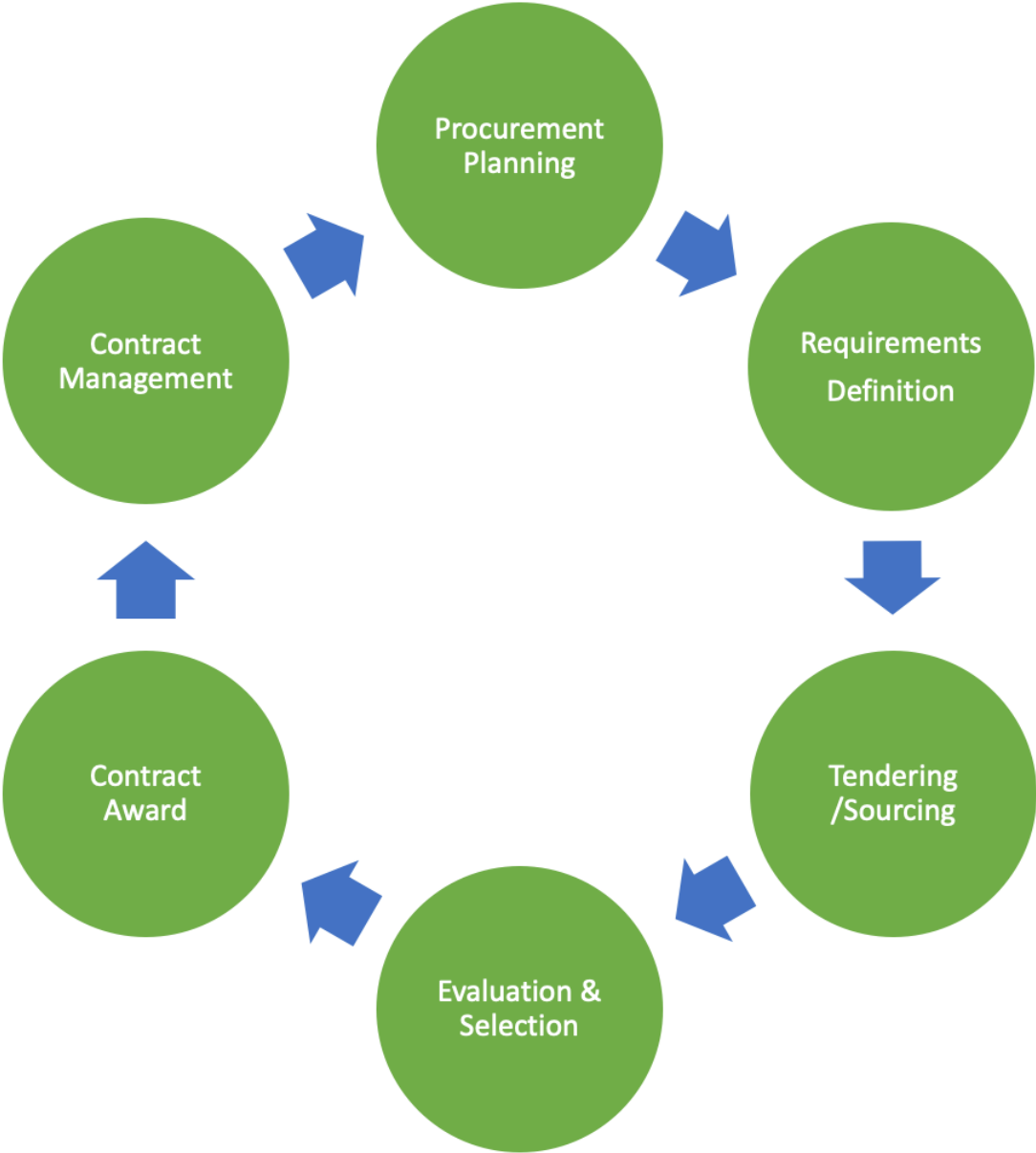
# SUPPLIES



# SERVICES



# Simple Procurement Cycle



# 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



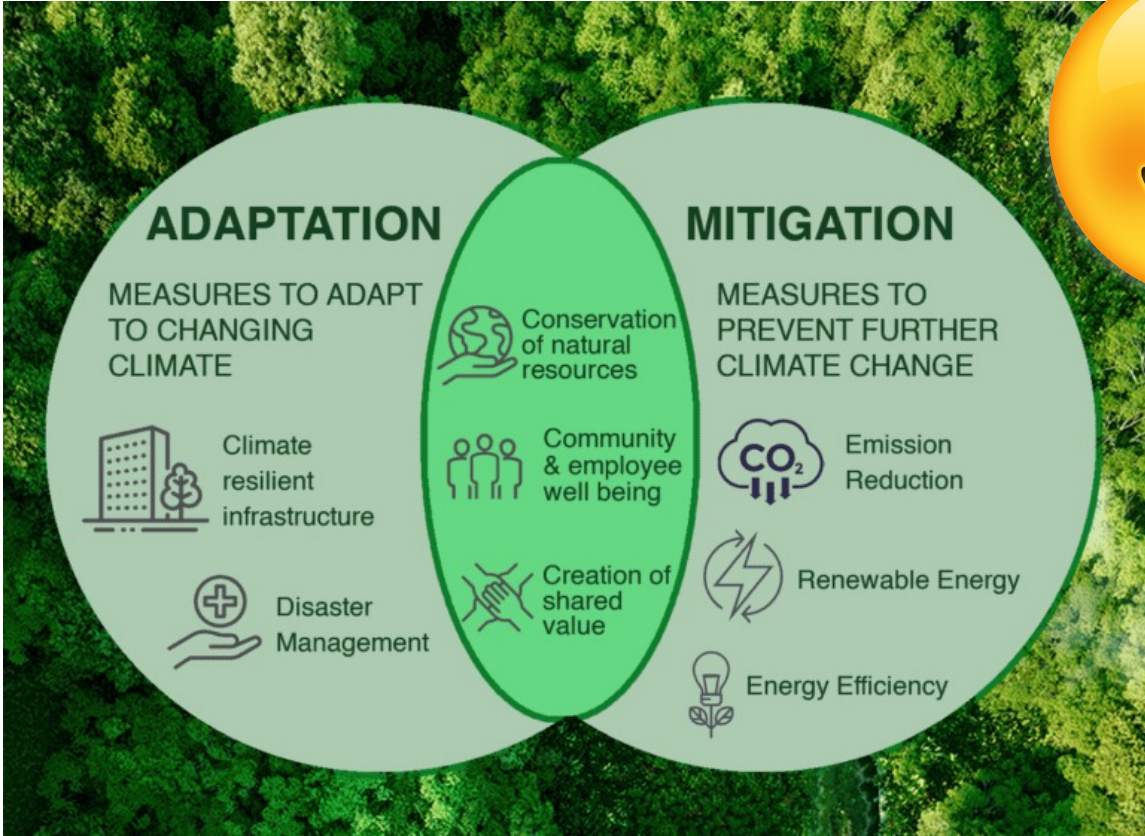


# Scope of the PhD Thesis (II)

Emergency procurement mostly:

Derogation from application of rules

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



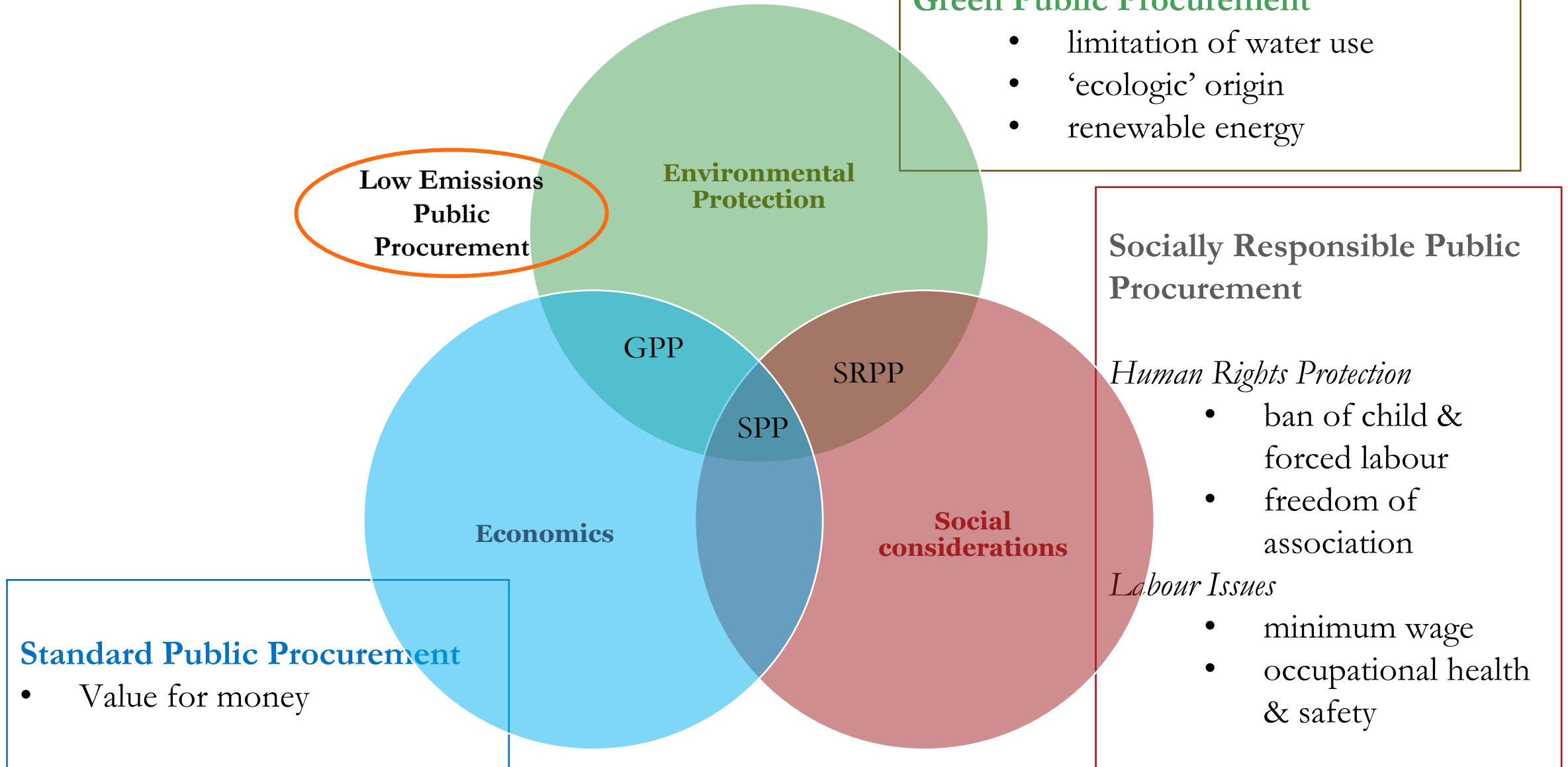
WHAT DOES EUROPEAN PUBLIC  
PROCUREMENT LAW HAVE TO  
DO WITH CLIMATE CHANGE?



# NOTHING!

That is why this thesis exist 😊

# Sustainable Public Procurement



# What is Green Public Procurement (GPP)?

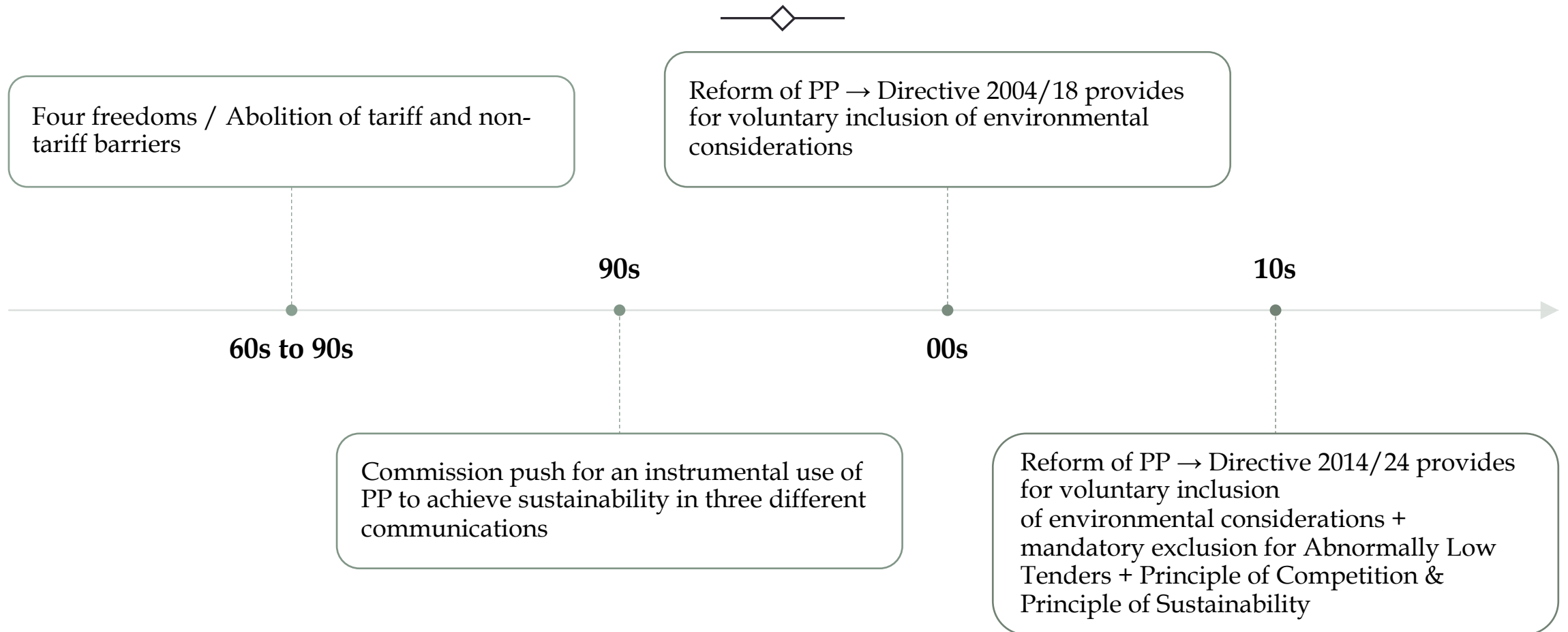
Policy statement! Also GPP criteria are not mandatory

"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)

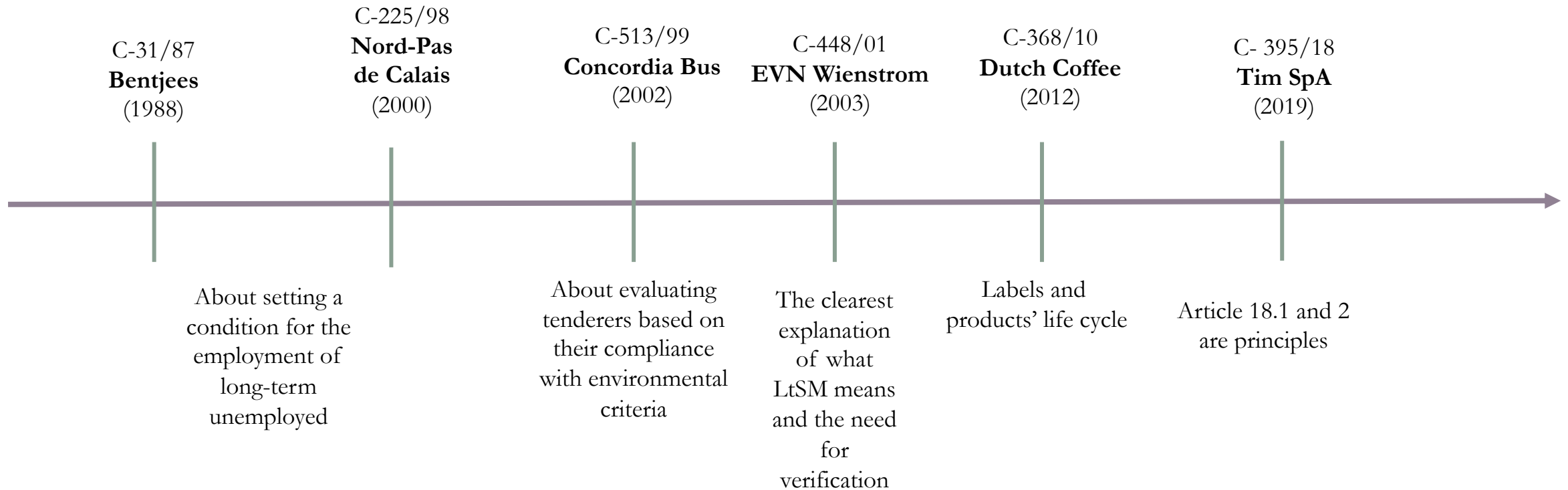
At every stage? Just one?

How much is 'reduced', even just 1kg of CO<sub>2</sub> emissions?  
And which environmental impacts?

# Historical evolution of EU GPP



# The development of green and sustainable public procurement in the judgements of CJEU



# 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

- Public institutions should lead by example COM(2019) 640 final
- Public Procurement accounts for approximately 14% of EU GDP. As such, it can be a valuable instrument to spur socially and environmentally responsible practices.
- EU Climate Law's binding objective of climate neutrality by 2050 and 50% down by 2030
  - “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” (Recital 25)
- 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 CO<sub>2</sub> or CO<sub>2eq</sub> emissions reductions)

4) Help from the 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*

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*

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.		Green Claims Dir.
Energy Efficiency Dir.			

## EU Sectoral Legislation for emissions reduction







THANK YOU



## CONTACTS

**Federica Muscaritoli**

Marie Curie PhD Fellow

University of Copenhagen

[federica.muscaritoli@jur.ku.dk](mailto:federica.muscaritoli@jur.ku.dk)

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.