

Das WTO-Abkommen über das öffentliche Beschaffungswesen: ein Wegweiser für das Schweizer Vergaberecht?

IT-Beschaffungskonferenz 2022 –
«Make or Buy? Make and Buy!»
24. August 2022, Universität Bern

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Procurement and Competition Division, WTO

Die WTO



Ziel: Verbesserung der Lebensstandards weltweit, Arbeitsplatzschaffung und verbesserte ökonomische Bedingungen.

Aufgabe:

- Verwaltung des globalen Handelssystems, stabile & offene Märkte
- Aus/Aufbau der Handelskapazitäten von Entwicklungsländern,
- Verhandeln von Handelsabkommen
- Streitbeilegung hinsichtlich Handelskonflikten.

164 Mitgliedsstaaten aus aller Welt.

Entscheidungen werden durch Konsens getroffen (für Streitbeilegung negativer Konsens)

Sekretariat: unterstützt die Mitgliedsstaaten (member-driven)

- 624 Angestellte, Budget von c.a. 200 Millionen CHF.

Dr Ngozi Okonjo-Iweala



- Erste Frau and der Spitze,
- Afrikanerin - Nigeria
- Sehr erfahren (Karriere in der Weltbank, ehemalige Finanzministerin)
- Führungspersönlichkeit
- Interesse an Themen wie Nachhaltigkeit, Korruptionsbekämpfung, SMEs Gleichstellung, Modernisierung der Organisation

“The future agenda before the WTO is **exciting**. The future of trade even more so because that future is **digital**, it is **green**, it is **services**. The WTO must grasp that future.”...

12. Ministerkonferenz – Kontext (Juni 2022)



Globale Krise:

- Pandemie,
- Ukraine Krieg,
- drohende Lebensmittelkrise,
- Unterbrechung der Handelsketten,
- Inflation,
- Geopolitische Spannungen
- Klimawandel.

Organisation:

- Keine Ministerkonferenz seit 2017, ohne nennenswerte Ergebnisse.
- Rücktritt des ehemaligen Generaldirektors zu Beginn der Pandemie.
- Lähmung der Streitbeilegungsfunktion.

12. Ministerkonferenz – wichtigste Ergebnisse



Erklärung zur Pandemie

TRIPS Waiver: Regierungen von Entwicklungsländern können Patentrechte für Covid-19 Impfstoffe aussetzen und exportieren. Wichtig: anwendbar auch auf Ingredienzen, so dass regionale Handelsnetze und Produktionskapazitäten aufgebaut werden können.

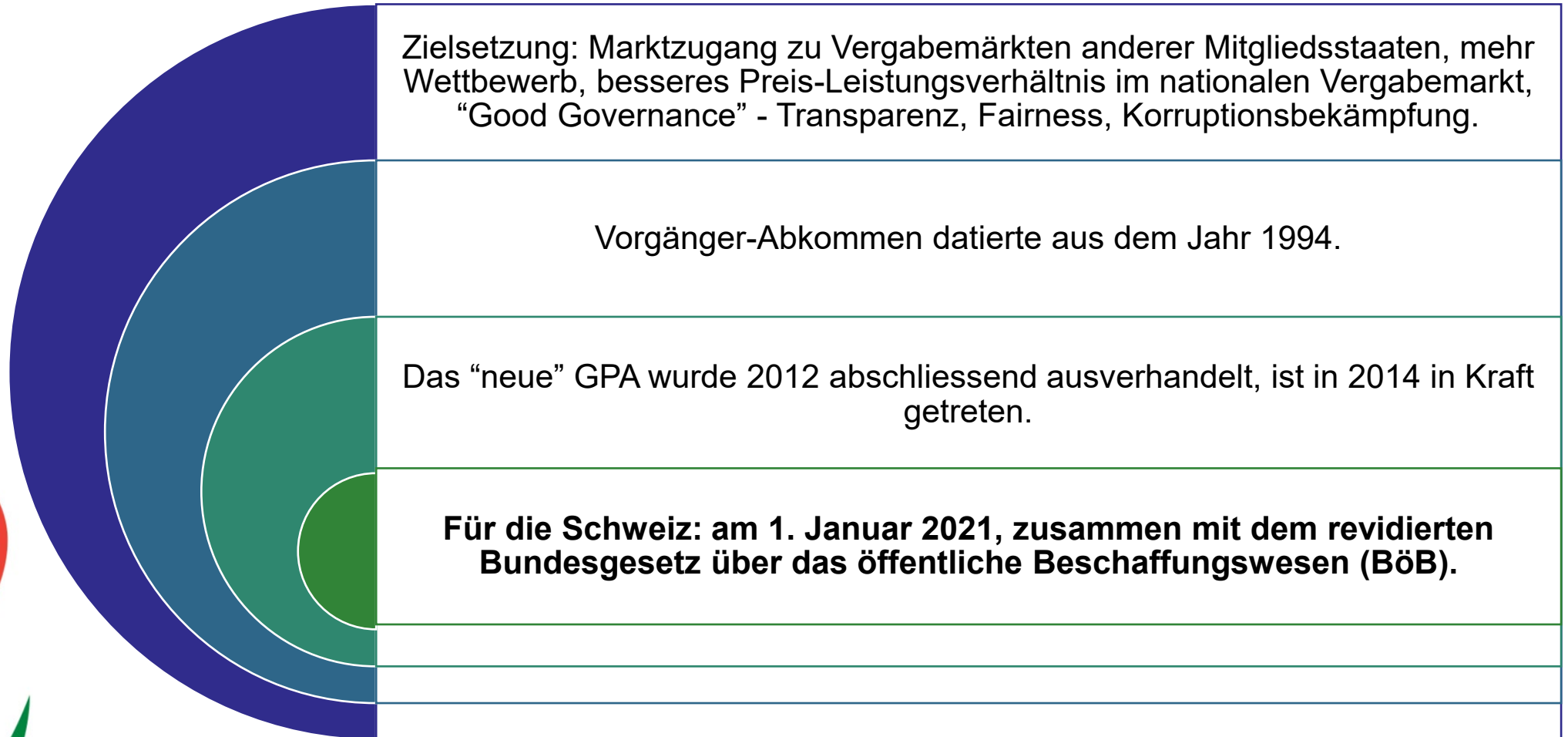
Einkäufe des Welternährungsprogramms unterliegen keinen Ausfuhrbeschränkungen (Ausnahme: eigene Bevölkerung muss ernährt werden).

Moratorium zur Zollfreiheit von digitalem Handel (keine Zölle auf digitale downloads, video streaming, elektronische Finanztransaktionen).

Zum ersten Mal ein Abkommen direkt zum Umweltschutz: Fischereiabkommen verbietet Subventionen für illegal, undokumentierte und unregulierte Fischerei und hinsichtliche überfischter Arten. Transparenzrahmen zum Informationsaustausch.

Zusage der Mitgliedsstaaten, WTO-Reform voranzutreiben.

Das revidierte WTO-Abkommen über das öffentliche Beschaffungswesen



Plurilaterales Abkommen:

Beitritte zum
revidierten Abkommen:

UK (2021),
Australien (2019),
Ukraine (2016),
Moldavien (2016),
Montenegro (2015),
Neuseeland (2015).

Gerade sehr aktive
Beitrittsverhandlungen
von Brasilien!



Elemente des revidierten Abkommens



Regeln zum Beschaffungswesen

- Nichtdiskriminierung, Transparenz, faires Verfahren, **Korruptionsbekämpfung**
- Detaillierte Regeln zum Verfahren, z.B. Teilnahmebedingungen, Mindestfristen, Dokumentation, Auswahl, **Transparenz insbesondere durch elektronische Vergabe..**
- **Flexibilität für Entwicklungsländer**
- **Umweltbezogene Auswahlkriterien, Qualitätswettbewerb** ausdrücklich zulässig.

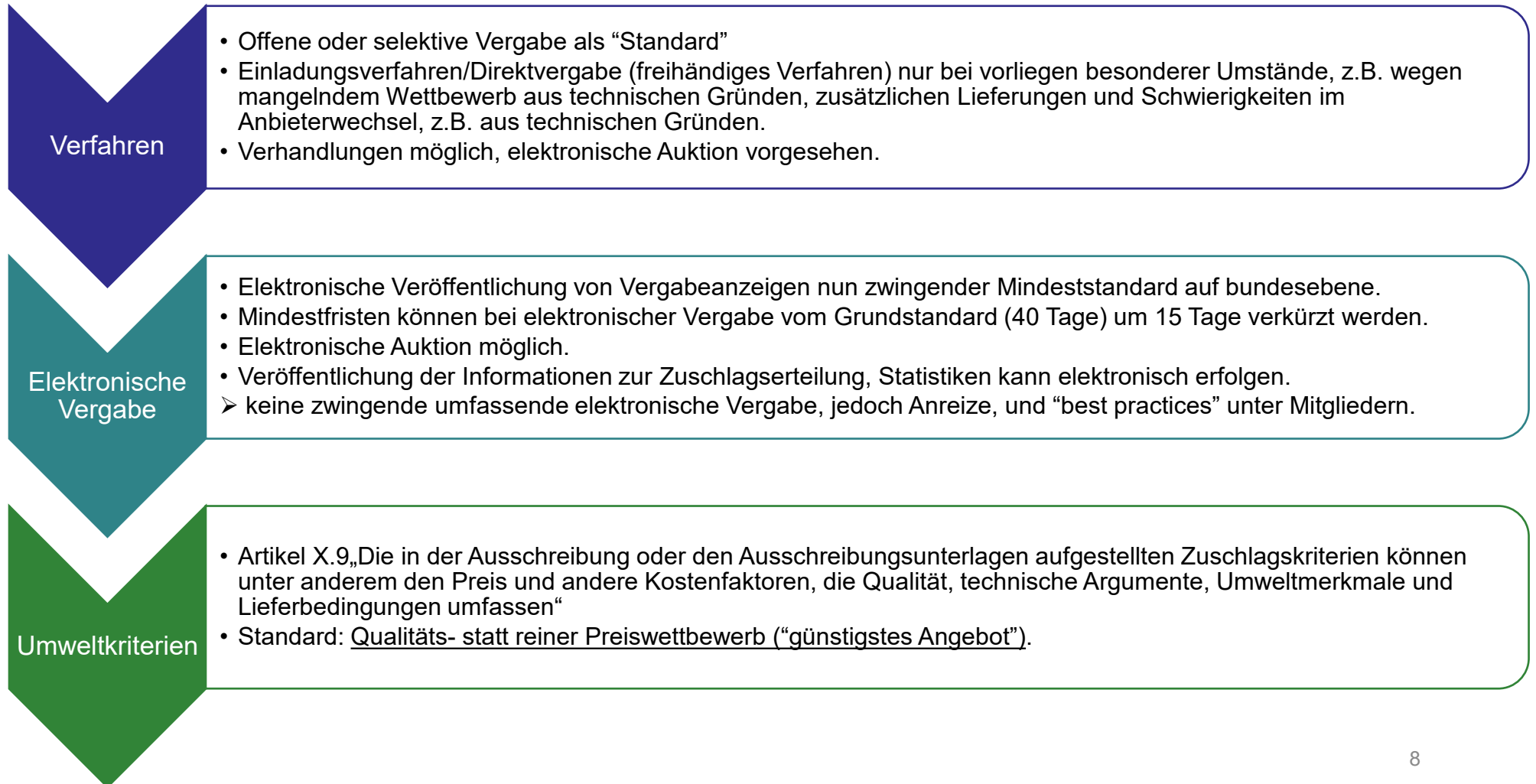
Marktzugangsverpflichtungen

- Jede Partei verhandelt die auf den nationalen Markt anwendbaren Verpflichtungen.
- Nur Vergabeverfahren über den **Schwellenwerten** betroffen ("automatischer" Schutz für SMEs)
- Anhänge mit detaillierten Listen zu umfassten Vergabestellen (nationale, regionale, kommunale Ebene) plus Güter, Dienstleistungen, Bauleistungen
- Ausnahmen

Arbeitsprogramme zu Zukunftsthemen

- **Nachhaltige Vergabe**
- **Klein- und Mittelstängische Unternehmen**
- Sicherheitsstandards
- **Statistische Vergabedaten**
- Ausnahmen und Restriktionen

Flexibilität in der Umsetzung



Vergabemethoden: GPA zeigt Wirkung!

GPA Insights Series - 01

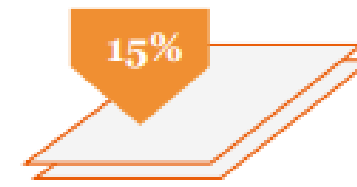
Use of tendering methods under the WTO GPA

The plurilateral WTO Agreement on Government Procurement (GPA) seeks to **steer** its signatory governments (for GPA-covered procurement) **towards** tendering methods involving **transparent competition among bidders** (open or selective tendering, defined here as competitive tendering) and permits a non-open and less transparent method involving no or little competition (limited tendering) only under specified circumstances. Available **WTO statistical data** from the last 24 years **shows that the GPA has fulfilled this function successfully**.

On average, the vast majority (85%) of all GPA-covered central government contracts have been awarded through competitive tendering, with limited tendering making up only a minority of those contracts (15%).



Competitive
tendering



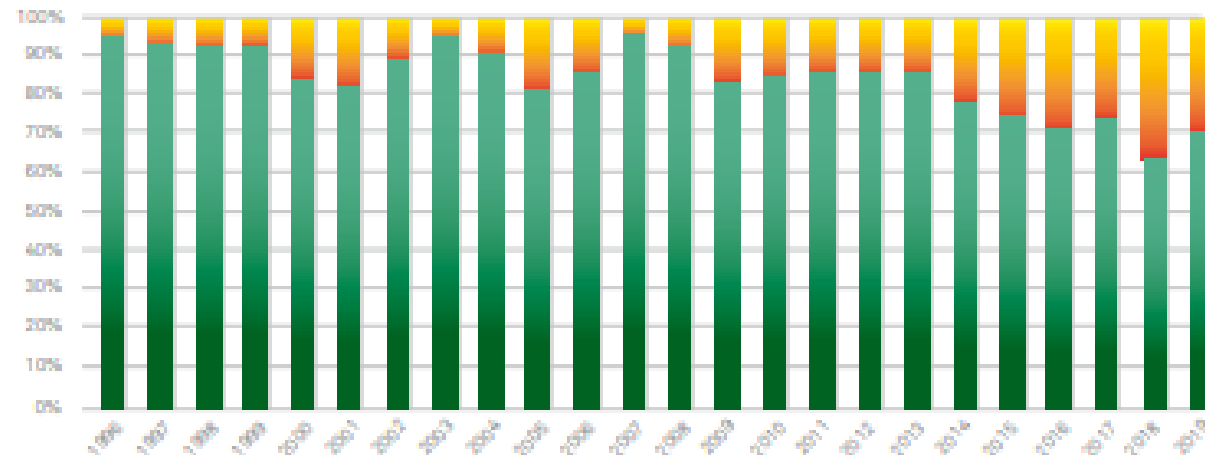
Limited
tendering

Vergabemethoden: GPA zeigt Wirkung!



The GPA thus is a prime example of how binding international trade rules can **support** governments in making **optimal trade policy decisions**: in the case of the GPA, the decision to opt predominantly for competitive tendering methods that maximize the value governments can obtain for their taxpayers' money and mitigate corruption risks.

Frequency of use of competitive tendering and limited tendering methods across all GPA Parties for GPA-covered central government procurement



Source: The information above was compiled by using the [notifications of procurement statistics](#) submitted by GPA Parties to the WTO Committee on Government Procurement. It should be noted, however, that not all GPA Parties have notified statistical reports for every year, and that the reports submitted present some analytical challenges.

For more information, see [the GPA Website](#) and [the e-GPA Gateway](#)

Covid-19 Pandemie

GPA Insights Series - 02

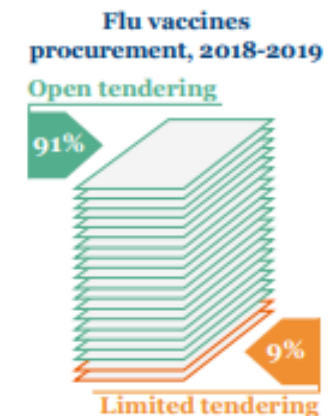
Flexibility in selecting tendering methods: The vaccine procurement example

The procurement of human vaccines against various diseases is an accepted and critical function of governments around the world. Government procurement procedures, including those that signatories of the WTO Agreement on Government Procurement (GPA 2012) must implement, are all-terrain vehicles by design. The examples of flu and COVID-19 vaccines procurement serve to demonstrate that the flexibility built into government procurement procedures has enabled GPA signatories to respond swiftly and appropriately to diametrically opposed market and public health situations.

IN NORMAL (ENDEMIC) TIMES: FLU VACCINES PROCUREMENT

Data concerning 164 award notices published by fifteen GPA signatory governments indicates that in normal times, when there are sufficient supplies of a vaccine against an endemic disease (e.g. influenza) and there are various vaccine suppliers, governments procure vaccines predominantly through competitive open tendering in accordance with the principles of transparency and best value for money.

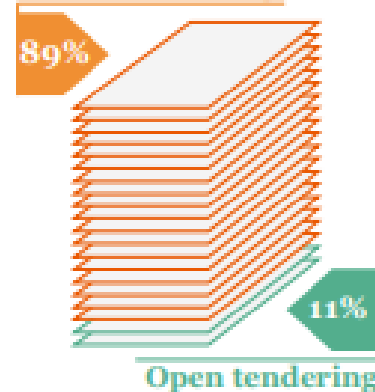
For example, for the period 2018-2019, open tendering was used for the vast majority (91%) of government procurement of flu vaccines. Limited tendering, which is a non-open and less transparent method involving no or little competition, was seldom used (9%).



Covid-19 Pandemie

COVID-19 vaccines procurement, 2020-2021

Limited tendering



IN EMERGENCY (PANDEMIC) TIMES: COVID-19 VACCINES PROCUREMENT

During the emergency caused by the COVID-19 pandemic, there were limited supplies of COVID-19 vaccines and few suppliers. Data concerning 36 award notices published by five GPA signatories shows that, in this urgent situation, governments strongly preferred limited tendering, and specifically the direct award procedure whereby a procuring entity directly contacts and negotiates with a specific supplier.

From 2020 to 2021, **limited tendering** was used for **89%** of government procurement of COVID-19 vaccines, with **open tendering** accounting for just **11%**.

Source: The information above was compiled from publicly available sources. Data for flu vaccines covers 164 award notices from Australia; Canada; EU member States (Finland, Hungary, Luxembourg, Malta, North Macedonia, and Poland); Hong Kong, China; New Zealand; Singapore; Chinese Taipei; Ukraine; United Kingdom; and the United States. Data for COVID-19 vaccines covers 36 award notices from the European Union, Iceland, Ukraine, United Kingdom, and the United States. It should be noted that most award notices relied upon did not indicate whether the relevant government procurement was GPA-covered.

For more information, see [the GPA Website](#), [the GPA Insights Series](#) and [the e-GPA Gateway](#)

Schwellenwerte

	Year	Levels of Government	Currency	Goods	Services		Construction services		
				In SDR	In Nat. Curr.	In SDR	In Nat. Curr.	In SDR	In Nat. Curr.
Switzerland	2022	Central Government Entities	CHF	130,000	230,000	130,000	230,000	5,000,000	8,700,000
		Sub-Central Government Entities ¹	CHF	200,000	350,000	200,000	350,000	5,000,000	8,700,000
		Other Entities	CHF	400,000	700,000	400,000	700,000	5,000,000	8,700,000

Marktzugang im Bereich IT-Beschaffung (über den Schwellenwerten)

https://e-gpa.wto.org/en/Search

Search Form Entities **Services** Thresholds Notes & General Notes Coverage (all selected dimensions)

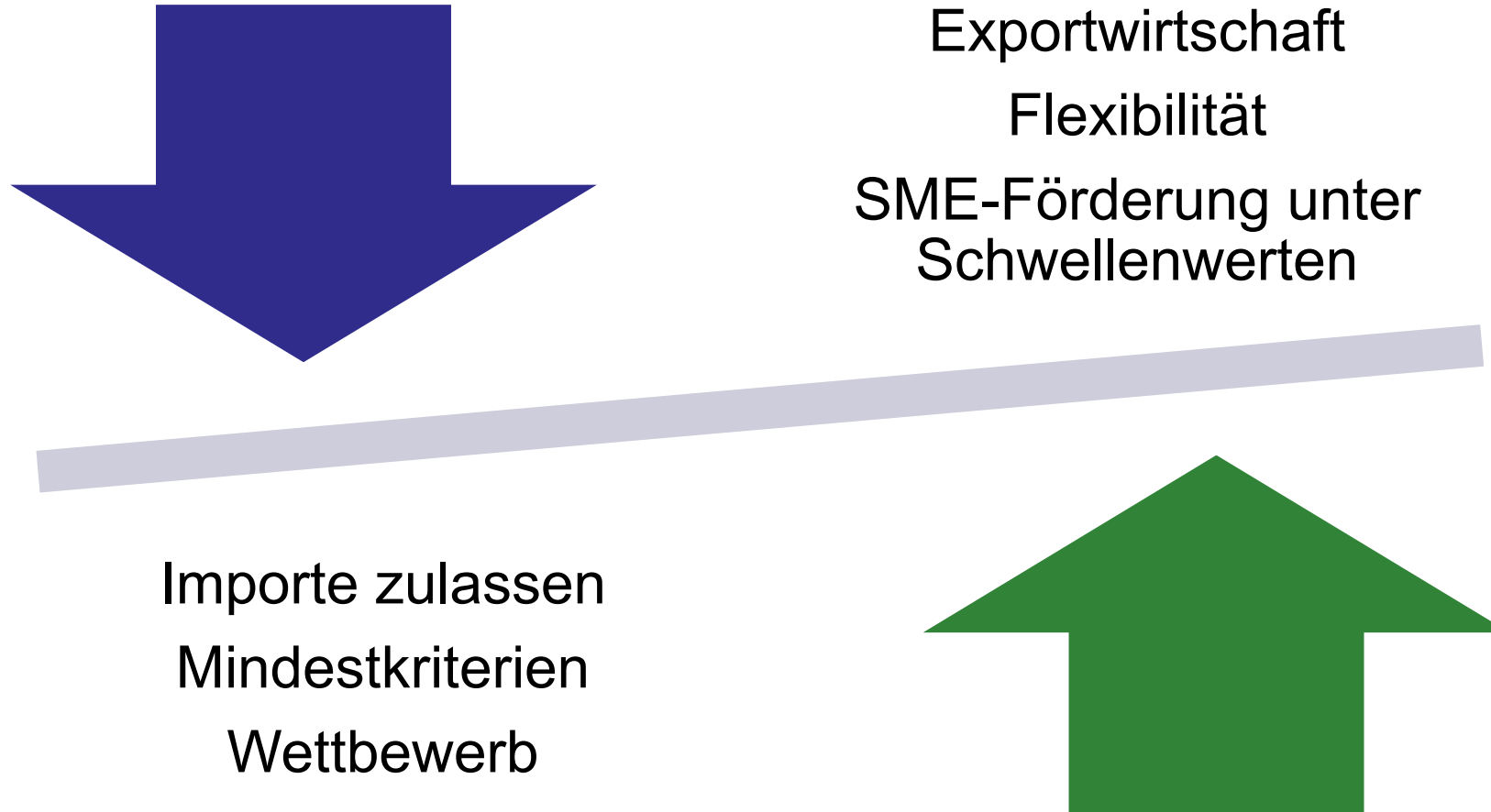
▼ See your selected search criteria

★- Partial coverage of the sector ★- Full coverage of the sector

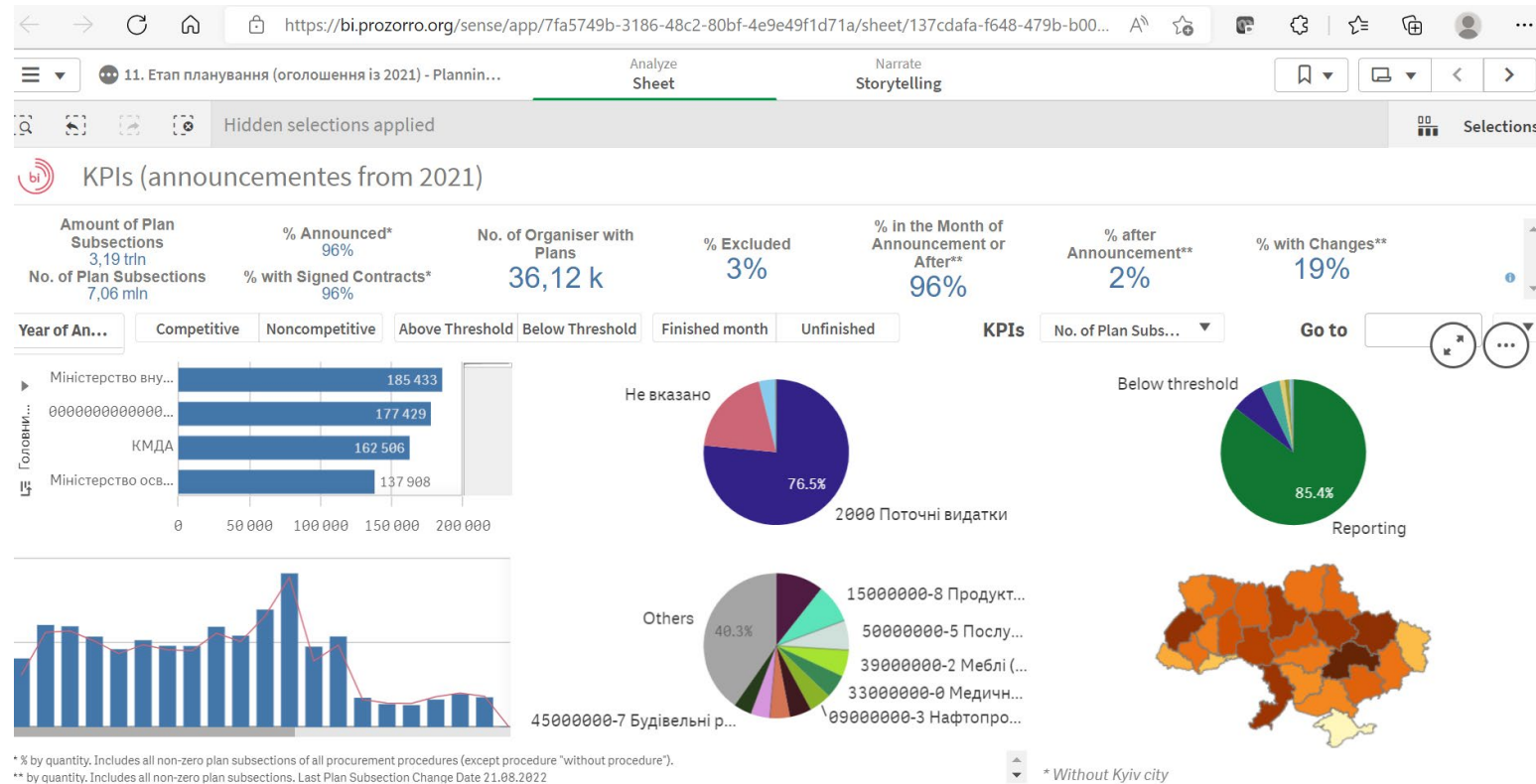
- Armenia
 - 1. BUSINESS SERVICES [Show the Party's Coverage at this level.](#)
 - B. Computer and Related Services ★
- Australia
 - 1. BUSINESS SERVICES [Show the Party's Coverage at this level.](#)
 - B. Computer and Related Services ★
- Canada**
 - 1. BUSINESS SERVICES [Show the Party's Coverage at this level.](#)
 - B. Computer and Related Services ★
- European Union
 - 1. BUSINESS SERVICES [Show the Party's Coverage at this level.](#)
 - B. Computer and Related Services ★ [Show the Party's Coverage at this level.](#)
 - a. Consultancy services related to the installation of computer hardware 841 ★
 - b. Software implementation services 842 ★
 - c. Data processing services 843 ★
 - d. Data base services 844 ★
 - e. Other 845+849 ★
- Hong Kong, China
 - 1. BUSINESS SERVICES [Show the Party's Coverage at this level.](#)
 - B. Computer and Related Services ★ [Show the Party's Coverage at this level.](#)
 - c. Data processing services 843 ★
 - d. Data base services 844 ★
 - e. Other 845+849 ★
- Iceland
 - 1. BUSINESS SERVICES [Show the Party's Coverage at this level.](#)

- Nur Aruba, Hong-Kong und Singapur haben limitierte Verpflichtungen im Bereich Computerdienstleistungen!
- Güter generell umfasst!
- e-gpa.wto.org als wichtige Informationsressource!

Gleichgewicht & Solidarität

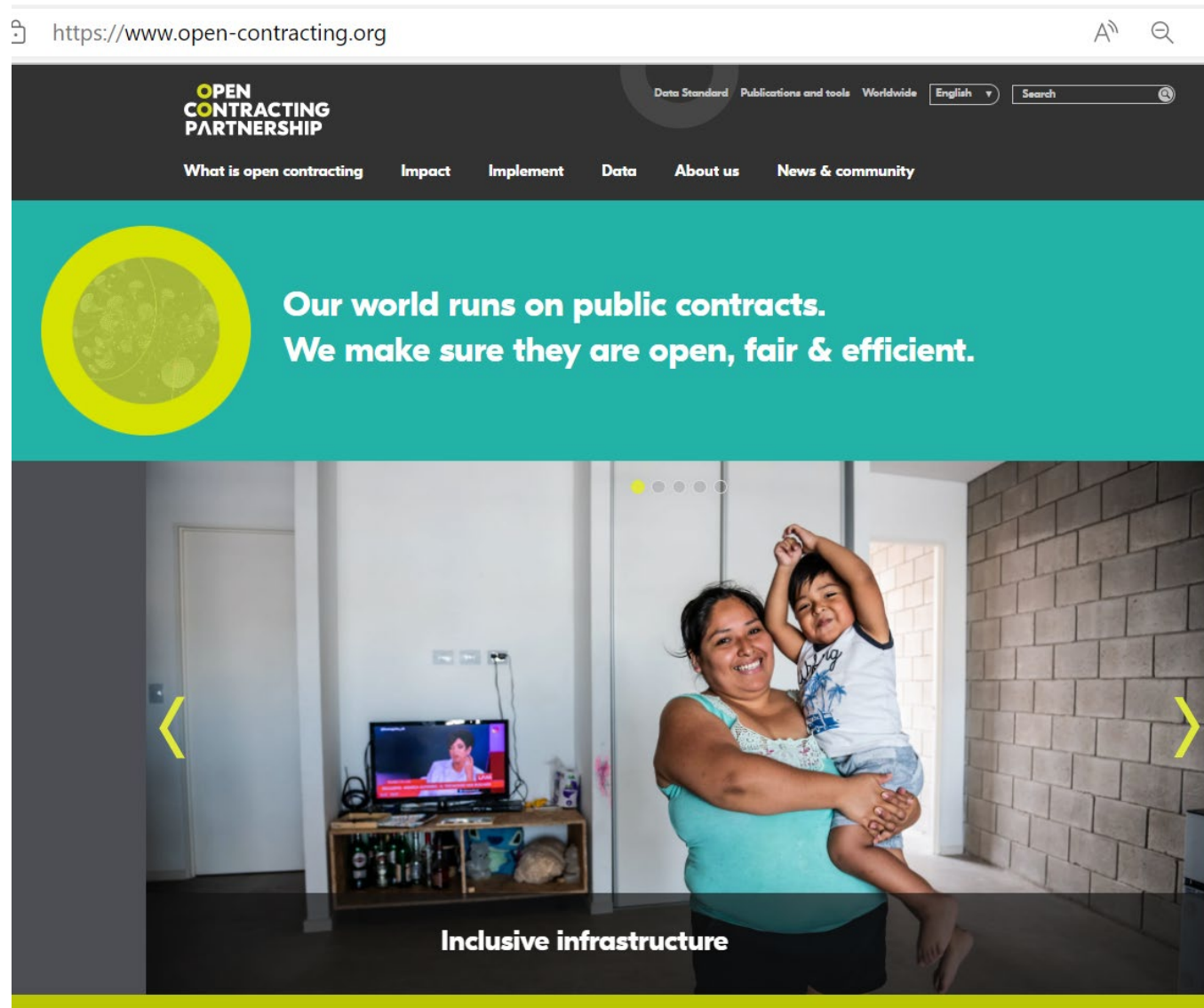


Beispiel Ukraine: Visualisierung von Beschaffungsdaten



[https://prozorro.sale/news/ukraine-wins-un-public-service-awards-enhancing-effectiveness-public-institutions-reach-sdgs;](https://prozorro.sale/news/ukraine-wins-un-public-service-awards-enhancing-effectiveness-public-institutions-reach-sdgs)
[Determining environmental requirements for the subject of procurement in the ProZorro system - YouTube](#)

Internationale Erfahrung mit Open Contracting WORLD TRADE ORGANIZATION



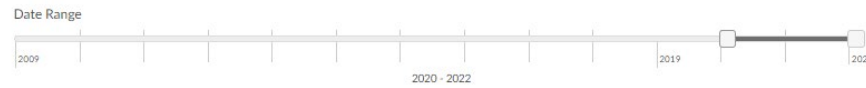
The screenshot shows the homepage of the Open Contracting Partnership website. The browser address bar displays <https://www.open-contracting.org>. The website header includes the logo "OPEN CONTRACTING PARTNERSHIP" and navigation links for "Data Standard", "Publications and tools", "Worldwide", "English", and a search bar. A secondary navigation menu lists "What is open contracting", "Impact", "Implement", "Data", "About us", and "News & community". The main content area features a teal banner with a yellow circular graphic containing a globe and the text: "Our world runs on public contracts. We make sure they are open, fair & efficient." Below this is a video player showing a woman holding a child in a living room, with the caption "Inclusive infrastructure" at the bottom. The video player has navigation arrows and a progress indicator.



Schweizer Daten hier: <https://opentender.eu/ch/start>



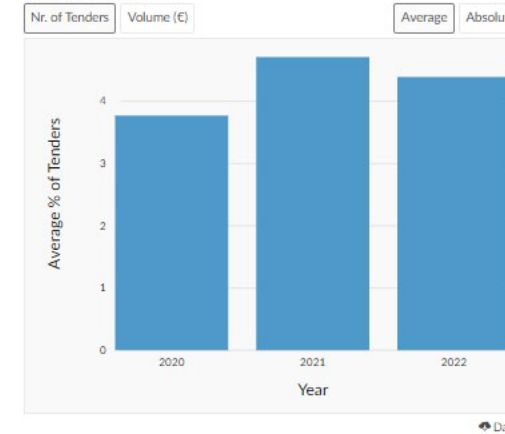
IT services: consulting, software development, Internet and support (CPV 72)



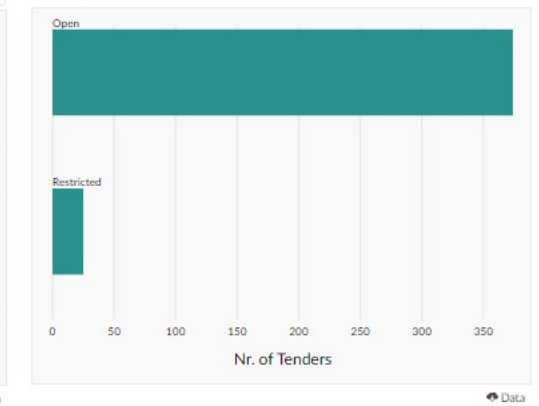
Sector Overview



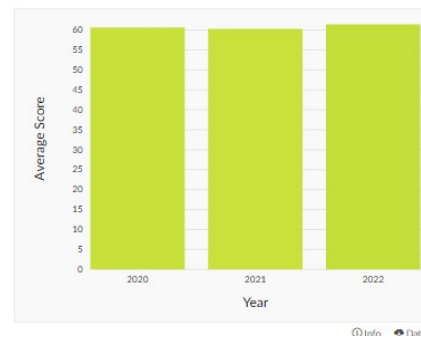
Sector over Time



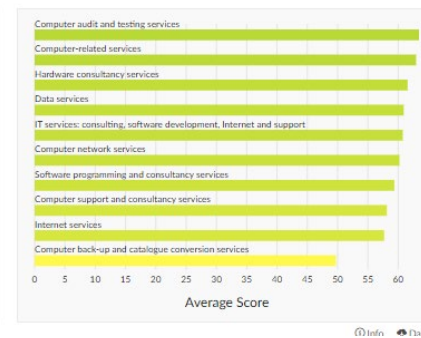
Procedure Type



Average Good Procurement Score over Time



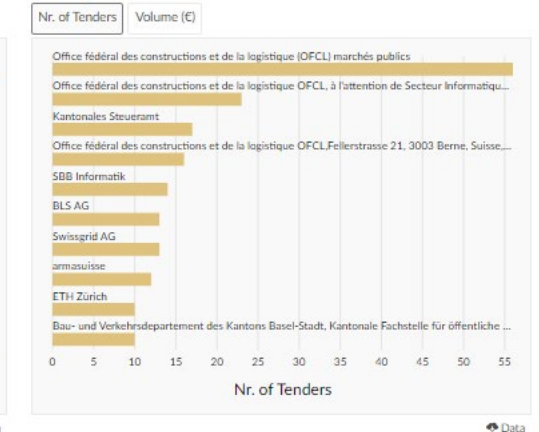
Average Good Procurement Score per Sector



Main Suppliers



Main Buyers



Zusammenfassung



- Die WTO hat erfolgreich einem Erneuerungsprozess begonnen! MC12 zeigt die bestehende Relevanz der Organisation.
- Das GPA is Vorreiter in dieser Hinsicht, als einziges bereits bestehendes WTO Abkommen, welches komplett erneuert worden ist!
- GPA-Schwerpunkte für die Zukunft des Vergabewesens:
 - E-procurement
 - Nachhaltigkeit, Qualitätswettbewerb
- Das GPA kann als Wegweiser bei internen Reformen dienen!
 - Wie kann sich die IT-Branche aktiv für Neuerungen in der Schweiz einsetzen und internationale Erfahrungswerte nutzen?

Gesprächsrunde zur Vergaberechtsreform mit WTO-Perspektive

Moderation: Matthias Stürmer, Berner Fachhochschule

- ▶ Gerhard Andrey, Nationalrat Grüne und Kernteam Parldigi
- ▶ Anna Caroline Müller, Welthandelsorganisation
- ▶ Marc Steiner, Bundesverwaltungsgericht

