

# Better regulation in public procurement law

Prof. Dr. Pieter Kuypers

Professor Radboud University Nijmegen

Partner AKD Brussels

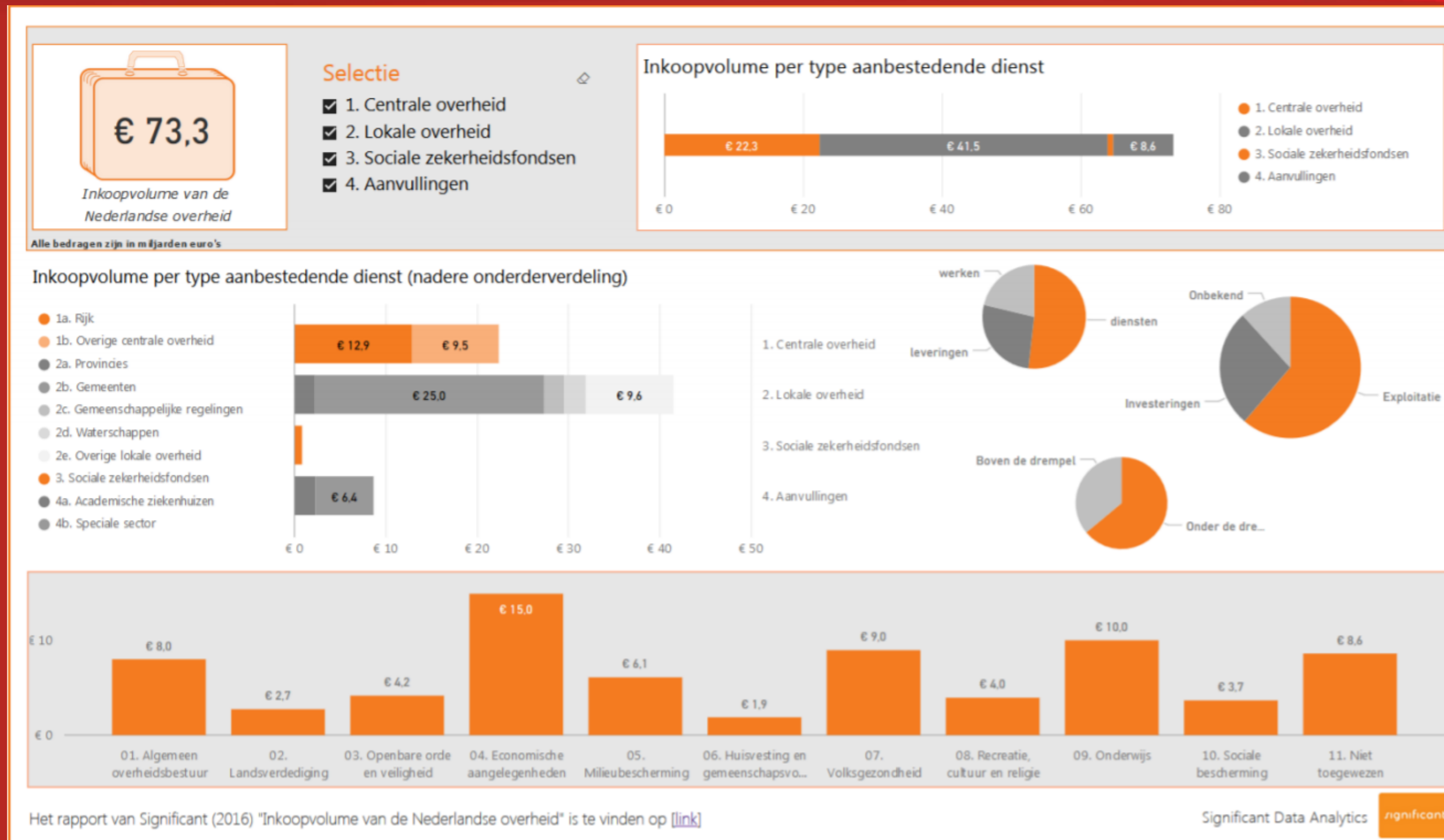
# Public procurement: what is it all about?

*Public procurement affects a substantial share of world trade, amounting to more than €1.3 trillion per year. In the EU, the public purchase of goods and services has been estimated to be worth 16% of GDP.*

Source: <http://ec.europa.eu/trade/policy/accessing-markets/public-procurement/>



# Public procurement: what is it all about?



# Aims and key principles

- Public sector gets best value for money
- Quality and price
- Principles:
  - Equal treatment
  - Non-discrimination
  - Transparency
  - Proportionality
  - Mutual recognition
  - Effective competition



# Directives 2004/18/EC and 2014/24/EU

- 6 generations
- 2004 to 2014: Better regulation?



# Better Regulation: key elements

- Transparent legislative process
- Accessible for users/practitioners
- Simplicity
- Decreased burden for public sector and economic operators in tenders
- Effective legal remedies



# Better Regulation! Codification

(2): *'[...] There is also a need to clarify basic notions and concepts to ensure legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.'*

- +/+ Many judgments
- +/+ Difficult to find
- /- Deviation from judgments
- /- Which judgments?



# Better Regulation! Green Public Procurement

- Reduced environmental impact throughout their life-cycle
- (91) *'This Directive clarifies how the contracting authorities can contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts.'*

+/+ Improvement & contribution to greener society

-/- Too many different provisions & not linked



# Better Regulation? More is not better

- ‘Explosion’ of the number of rules
  - Accessibility of procurement law?
  - Too detailed rules
- Back to simplicity of rules:
  - First and second generation
  - Better use of principles



# Better Regulation? Gold plating

Gold plating:

*“Gold-plating is pejorative term to characterise the process where an EU directive is given additional powers when being transposed into the national laws of member states.”*

- /- Not transparent
- /- Aims of procurement directives

# Challenges: same rules, different purposes (1)

- EU legislation is used for different purposes within Member-States.
  - EU legislator should take better note
  - Harmonisation : restriction of transposition methods
  - Simplicity
- Terrorism
- SME
- Sustainability

# Challenges: abolish rules (2)

- Proportionality Guide and Richtsnoeren Leveringen & Diensten
- Part of the Dutch Public Procurement Act
  - “Maatschappelijke meerwaarde”
  - Division in lots
- EU Directives
  - Exclusion ground: self cleaning
  - In house: no private capital
  - Exception social and other services

# Better Regulation: conclusion

- Public procurement
  - 2004 - 2014: More rules & increased complexity
  - Back to the roots: regulating purchases
  - Less secondary aims: deregulation
  - More user friendly

# Better discussion?

- Thank you for your attention
- Questions?
  
- Pieter Kuypers
  - Mail: [p.kuypers@jur.ru.nl](mailto:p.kuypers@jur.ru.nl)
  - Tel: +31 88 253 50 83
  - Mob: +32 496 122 194