

Analysis report of procurement standards and procurement praxis in Europe

Introduction

Green procurement is a process whereby purchasers seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared with goods, services and works with the same primary function that would otherwise be procured.

Green purchasing is about setting an example and influencing the market place. Total public procurement in the EU – i.e. the purchases of goods, services and public works by governments and public utilities - is estimated at about 19 % of the Union's gross domestic product or 2 trillion Euros. Its importance varies significantly between Member States ranging between 11 % and 20 % of their gross domestic product.

Current European procurement legislation

The framework for the national legislation on public procurement is the European Directive 2004/18/EC and Directive 2004/17/EC. These Directives were modified in 2004 after the interpretative communication on 4 July 2001 of the European Commission and the Judgement of the European Court of Justice of 17 September 2002 (Case C-513/99 - Concordia Bus, Finland) and 4 December 2003 (C-448/01 – Wienelectricity). The Directives deepen the opportunities for adopting environmental considerations in technical specifications selection, award criteria and also contract performance clauses for public procurement.

The Directives only apply to public procurement contracts that will probably exceed fixed thresholds as mentioned in the Directives. All legal principles like equal treatment, transparency, as well as free movement of goods have to be fulfilled by the procurement procedure. They are aimed to fulfil two main tasks:

- encourage efficient use of money and
- prevent preferential treatment or corruption in procurement.

Though the directives have been transposed into national legislations, they only apply to public procurement contracts that exceed following fixed thresholds:

- for construction works: 5.000.000 Euro
- for products and services:
 - 130,000 Euro for federal state authorities
 - 200,000 Euro for other public authorities and entities
 - 400.000 Euro for water, energy, transport and postal services sectors.

A revision process for the EU Procurement Directives (2004/17/EC and 2004/18/EC) is currently underway with new legislation expected to be adopted by the end of 2012. Proposed drafts for the new legislation were published by the European Commission in December 2011, and these contain a number of provisions which would affect the way GPP can be conducted. The current Directives are not due to be repealed until 2014 though.

Decision of European Court of Justice

Another juridical development in the field of GPP is the decision of European Court of Justice from 10 May 2012 in case C-368/10

(<http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=1&part=1&mode=req&docid=122644&occ=first&dir=&cid=636399>) which says:

On account of the fact that, in the tendering procedure for a public contract for the supply and management of coffee machines, which was the subject of a contract notice published in the Official Journal of the European Union on 16 August 2008, the province of North Holland:

- established a technical specification incompatible with Article 23(6) of Directive 2004/18 of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended by Commission Regulation (EC) No 1422/2007 of 4 December 2007, by requiring that certain products to be supplied were to bear a specific eco-label, rather than using detailed specifications;
- established award criteria incompatible with Article 53(1)(a) of that directive by providing that the fact that certain products to be supplied bore specific labels would give rise to the grant of a certain number of points in the choice of the most economically advantageous tender, without having listed the criteria underlying those labels and without having allowed proof that a product satisfies those underlying criteria by all appropriate means;
- established a minimum level of technical ability not authorised by Articles 44(2) and 48 of that directive by requiring, on the basis of suitability requirements and minimum capacity levels stated in the specifications applicable in the context of that contract, that tenderers comply with the ‘criteria of sustainable purchasing and socially responsible business’ and state how they comply with those criteria and ‘contribute to improving the sustainability of the coffee market and to environmentally, socially and economically responsible coffee production’, and
- prescribed a clause contrary to the obligation of transparency provided for in Article 2 of that directive Directive 2004/18 by requiring that tenderers comply with ‘the criteria of sustainable purchasing and socially responsible business’ and state how they comply with those criteria and ‘contribute to improving the sustainability of the coffee market and to environmentally, socially and economically responsible coffee production’,

the Kingdom of the Netherlands has failed to fulfil its obligations under the aforementioned provisions.

Ecodesign

Another related directive and important is Ecodesign Directive 2009/125/EC that came into force in October 2009 settled a framework for defining requirements for energy and environmental performance of energy-using and energy-related products. It implies introduction of improvement of environmental performance for products, by introducing legal requirements for such critically important energy consumption criteria as standby energy consumption and off-mode consumption, energy consumption reduction during a product's life cycle, etc.

By introducing different targets, criteria, and measures Ecodesign Directive will guide product producers to production of more sustainable range of products thus investing in greenhouse gases mitigation and climate improvement.

Also, the Directive involves a requirement for a manufacture or a supplier to provide environment – and energy-related information to the consumer to ensure a best application of the product in terms of energy consumption and environmental performance. The directive will affect the main groups of products: lighting, household appliances, electric motors, etc.

Rules and criteria provided in the framework of the Directive will help to improve and upgrade the requirements to be used in green procurement procedures together with (or even updating) the criteria that are used now based on requirements of energy and environmental labels

EMAS

Environmental management systems are defined by international standards (ISO 14001) and the EU regulation (EMAS) are also a way how to enhance application of green procurement in private companies and reach certain environmental aims. The aims of the European Union environmental management system are to encourage environmental-friendly activities, products and services and their sustainable realization. The participating companies have to include these environmental goals in their corporate governance.

Current European practice

Undated in year 2006 Sustainable Development Strategy set a target for EU countries to reach current level of the Member States best performing in Green Public Procurement. Commission's Communication from July 16th, 2008 defines this target as 50% to reach for each Member State starting from year 2010.

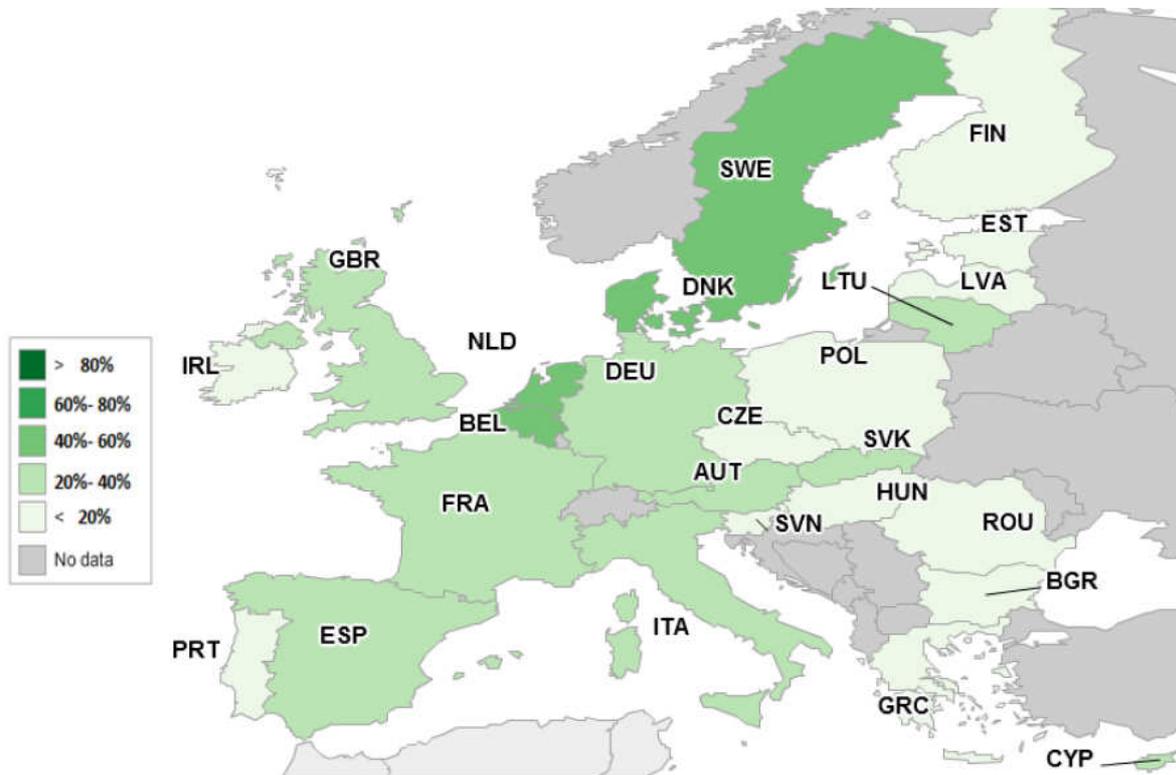
According to the research made by PricewaterhouseCoopers 7 most advanced European countries in terms of environment (Green-7) – UK, Austria, Sweden, Finland, Denmark, Germany, and Netherlands have achieved 45% of amounts spent on purchases according to the Green Public Procurement principles in years 2006/2007. The main groups of products where greener purchases

European Project "Buy Smart+".

Visit www.buy-smart.info for more information.

were made were furniture, electricity, paper, and office IT equipment. [Collection of statistical information on Green Public Procurement in the EU, PricewaterhouseCoopers 2008]

A survey from 2011¹ shows the uptake of EU GPP in the EU27 (share of last contracts – by number)*:



*Luxembourg excluded due to unavailability of data.

Recognised barriers

Green procurement has some own specifics, and cannot be conducted completely in the same way as “standard” procurement. Specific issues demand specific legal and operational knowledge. Therefore trained personnel is needed to set targets, use developed criteria and tools. In many EU countries, the green procurement is often more or less formally encouraged, but - being not compulsory - the neglecting of green issues often does not bring any consequences. Within the Buy smart project, the following main barriers to the green procurement implementation have been identified in the participating EU countries:

Table 1 Overview of the barriers to effective green procurement in the selected EU countries

¹ 2012: Centre for European Policy Studies (CEPS) THE UPTAKE OF GREEN PUBLIC PROCUREMENT IN THE EU27.

General barriers	CZ	DE	IT	LV	SE	SI
Lack of investment means which hinders purchasing goods with higher initial costs.	yes	yes	yes		partly	yes
Perception of green products as more expensive.	yes	yes	yes	yes	yes	yes
Lack of knowledge about energy savings, environmental impacts of the use of products.	yes	yes	yes	yes	yes	yes
Lack of received training in green purchasing for buyers, lack of knowledge considering use of life cycle costs as a decision criteria. This is partly due to lack of interest or time/capacities on the side of the procurers.	yes	yes	yes		yes	yes
Lack of tools and know-how how to use them.	yes	yes	yes			yes
Lack of political support and support from responsible managers; especially as for most of the organisations the green procurement is not obligatory and where it is obligatory, the monitoring and enforcement is lacking.	yes	partly	yes	yes	yes	yes
Lack of proven information for the procurers on the products – lack of verification of the information provided by the manufacturers	yes	yes	yes	yes	yes	yes
Low awareness of the benefits of environmentally friendly products and services, environmental values are not important for many procurers.	yes	partly		yes	yes	

Table 2 Overview of the barriers to effective green procurement specific to the public sector in the selected EU countries

Barriers specific for the public sector	CZ	DE	IT	LV	SE	SI
Budgetary principles hinder refinancing investment costs from savings on operating costs due to legal uncertainty about shifting the allocated finances from one cost category to another one.	yes	yes			yes	yes
Budgetary principles hinder refinancing investment costs from savings on operating costs as if the finances allocated for energy expenditures are not used during the particular year, the budget for the following year is usually reduced by the respective amount.	yes	yes	yes		yes	yes
Public institutions financed directly from the governmental budget must not take out loans by law.	yes					
Lack of a exchange of best practice and information between public institutions	yes	partly	yes	yes	yes	partly
Lack of monitoring of green procurement implementation.	yes	yes	yes		yes	yes

Opportunities

Administrative and legislative measures are necessary especially in the **public sector** as it is the only sector regulated by purchasing rules external to the organisation which are set by administrative guidelines or by law. The application of these rules is faced with several barriers to green procurement as described in the previous chapter.

Purchases made by the **private sector** are not regulated so there are no obstacles to the implementation of green criteria that could be eliminated by public decision-makers. Therefore, in this sector, it is necessary to focus on a greater number of economic incentives, promotion and

dissemination of information. The promotion of green procurement in the state and public administration will, nevertheless, also serve as an example for businesses and the wide public.

The award of public contracts which are environmentally friendly is, in the European legislation, regulated in particular by directives 2004/17/EC and 2004/18/EC. The practical application of these directives is clearly described in a handbook issued by the European Commission and called Buying Green!². In a Communication from the Commission No. COM(2008) 400: Public procurement for a better environment, in 2008 the European Commission further supported its intention to save public expenses and the environment by developing criteria for awarding public contracts which deal with energy efficiency. In addition to this, public entities which are subject to EU directives dealing with the award of public contracts must implement energy efficiency criteria in their public contracts regarding vehicles in accordance with the requirements of Directive 2009/33/EC on the Promotion of Clean and Energy Efficient Road Transport Vehicles, or regarding office equipment under the European Energy Star program which binds the central government bodies of the member states and the bodies of the EU to acquire equipment which meets the minimum energy efficiency requirements under the Energy Star program (EC No. 106/2008).

From 2019, this will also concern new buildings. According to Directive 2010/31/EU on the Energy Performance of Buildings, these will have to reach a level of “almost zero energy consumption”. To promote this approach, the Commission proposes that public bodies should systematically require a high level of energy efficiency whenever they buy goods (such as IT equipment), services (in particular in the area of energy supplies) and construction works (for example renovation of buildings).

A number of national criteria and approaches to GPP have been developed, however, the criteria used by Member States should be compatible to decrease the administrative burden of the suppliers operating in more member states and to avoid a distortion of the single market. In the Communication “Public procurement for a better environment” (COM (2008) 400) the Commission recommended the creation of a process for setting common GPP criteria. A first set of common GPP criteria was established in the framework of the Training Toolkit on GPP. The first set of criteria cover product and service groups in 10 sectors which had been identified as most suitable for implementing GPP. A second set of GPP criteria for 8 new sectors was made available in July 2010. The GPP criteria are based on data from an evidence base, on existing ecolabel criteria and on information collected from stakeholders of industry, civil society and Member States. The evidence base uses available scientific information and data, adopts a life-cycle approach and engages stakeholders who meet to discuss issues and develop consensus.

Measures proposed on the EU level:

- The process of developing common GPP criteria for the EU member countries should be continued. Since the application of the GPP criteria by the member countries is voluntary, the process should aim to a more binding **harmonisation process** by making some of the key criteria obligatory for the member states.
- Common methodologies and information should be provided on the costing of a product over its life cycle.
- **Common methodology and rules on the GPP indicators and monitoring should be set on EU level.** Modern policy making sets targets that should be reached in a certain time frame. For

² <http://ec.europa.eu/environment/gpp/pdf/handbook.pdf>

European Project “Buy Smart+”.

Visit www.buy-smart.info for more information.

green public procurement this has been done by the European Union in the year 2008 with the Communication (COM (2008) 400) “Public procurement for a better environment”. The Communication includes guidelines for public authorities on the definition and verification of environmental criteria, tools for stimulating GPP and examples for a number of product groups. It also offers legal and operational guidance. In order to check if the targets could be reached, a **monitoring should be implemented in the EU.**

- **Building up green markets:** One of the barriers is that for some products no or only niche markets for green products and services exist. However, the existence of at least a niche market for greener products of a certain product group is essential for engaging into green procurement. A tender that does not attract any offers is counterproductive. It is true to a certain extent, that demand creates supply. However, in today’s world with the strong position of large multinational companies, it needs very strong purchasing power to make a large company develop a new or redesign an existing product. This is an area, where again political initiatives are needed, and some very promising ones are under way. The implementing measures in the context of the Energy-using Products (EuP) Directive and the reorganisation and reclassification of the European Energy Label will help enormously to ban inefficient products from the markets and highlight excellent appliances and products for the customer.
- **Additional legal requirements harmonised on the EU level,** beginning with public authorities, should push professional purchasers to give systematically more attention to green procurement. The European Energy Star regulation is a good example for the product group of IT equipment, the energy saving regulation for buildings, and the Directive 2009/33/EC for road vehicles. Similar initiatives that either provide criteria or demand the calculation of life cycle costs should be considered for further product groups.

Measures proposed on the national level:

- **Designation of an administrative unit responsible for the promotion of green public procurement,** which will be responsible for the creation and implementation of an action plan for the promotion of green public procurement in the particular Member State. To be able to take the steps necessary to implement the action plan, it is also necessary to allocate the necessary funding from the governmental budget. The strategy for the promotion of green public procurement will be created and regularly updated. Realisation of the strategy should be monitored regularly.
- It is recommendable that the Member States **formally endorse the already developed common voluntary EU GPP criteria.** This would mean inclusion common GPP criteria in the National Action Plans and guidance on GPP. Member states should prepare guidelines and model tendering documents to ease the implementation by the public institutions. The approved criteria and guidelines should be continuously amended to reflect the latest developments within the EU in the future.
- To introduce **energy efficiency as a compulsory criterion** for the purchase of selected groups of products by public organisations.
- To support decision-making based on **life cycle costs** rather than on the initial value of investments e.g. by the inclusion in model tendering documents and approved procedures for purchases made by public institutions.

- To **promote centralized bulk procurement** for public institutions, e. g. on the national or the regional level. The centralization of purchases will influence the supply side of the market when it comes to energy efficiency criteria. Further more, centralization of public procurement will lead to well-trained experts regarding GPP.
- Consistently insisting on the **fulfilment of the applicable legislative measures** supporting energy efficiency criteria application in public procurement and adopting new legislative requirements or other rules (energy-efficient appliances and vehicles). When purchasing, renting or refurbishing the public buildings energy audits, energy performance certificates for buildings and similar tools should be used.
- A higher number of **good examples of institutional role models** is needed. Pilot projects should be implemented and more institutional encouragement and additional institutional support from national and regional authorities is needed. Good practice cases with the procedures, advantages, results, impacts of green procurement should be promoted and disseminated. The implementation of green procurement (although usually gradually introduced) may require the re-organisation and re-definition of the overall purchasing policy. This must be done with a good knowledge of the real qualitative and quantitative needs and of the (green) criteria to be considered.
- To create and update **recommendations for the use of specific technologies** stating the legislative requirements as to which specific information must be stated by the supplier, and allowing the application of environmental criteria (of energy efficiency) when deciding on the selection of products. This concerns sources of light, energy efficient appliances, technologies for energy efficient buildings and energy efficient vehicles. These recommendations will help the contracting agencies to push the installation of energy efficient products and technologies.

Economic and financial instruments

Internalisation of externalities into the energy prices

The higher the prices of energy, the greater the economic motivation to save energy. An increase in energy prices by internalization of externalities is therefore a very strong instrument to create conditions for the development of green procurement. Up to now, in most of the EU countries users of energy-consuming products have only been paying a minimum price for environmental damage caused by their energy consumption. If the damage becomes part of the price, buying environmentally friendly products will lead to greater savings of operating costs and thus create economic motivation for green procurement.

Measures proposed on the EU level:

- To continue a harmonised process of increasing the level of internalisation of externalities through obligations put on the EU member states. This includes especially minimum levels of the energy/carbon taxes and the EU emission allowance trading scheme.

Measures proposed on the national level:

- Higher energy tax rates: While the tax rates applied to fossil fuels have been a sufficient motivation to save energy in a few EU member states, in most of the countries price of energy have been increased only by few percent by energy taxation.
- The full volume of emission allowances should start to be sold to big energy sources in auctions as soon as possible. In some member states eligible to exceptions still substantial part of the emission allowances is planned to be provided for free in the following years.

Financial subsidies and funding

Only few subsidy programs in the EU member countries have focused on the promotion of green procurement so far. Several programs, however, provide subsidies for the implementation of energy-saving measures in buildings and for the use of renewable resources in energy production. This can provide a significant financial support to green procurement in the buildings product group. The remaining groups of products have been rarely supported.

Measures proposed on the national level:

- To create a special subsidy sub-program to support pilot projects dealing with green procurement by the public administration in the areas which are currently not supported: electric appliances, office equipment and lighting. The support for the pilot project would be limited in time and would last until there is a sufficient development of green procurement in the given area and until there is a sufficient number of good examples from the real life.
- To set criteria for the existing and planned subsidy programs, so that a greater priority in the services and products selection process could be given to life cycle costs, energy efficiency and other environmental criteria. The requirement of a significant minimum share of initial price is usual in certain subsidy programs in some member states.

Tax reliefs

Tax relief is another way to support economic return of investments in energy savings.

Measures proposed in the area of tax relief:

- To apply different forms of tax reliefs on selected energy-efficient technologies and appliances.

Competitions

To foster innovation competitions can be conducted for public procurers or municipalities. Attractive funding for the winners would create substantial interest of the participants. One good example of using a competition for the support and promotion of green procurement is “Bundeswettbewerb Stadtbeleuchtung” focused on efficient street lighting in Germany. Another one was a competition focused on environmentally friendly operation of offices and organizations established by the region of Hradec Králové in the Czech Republic.

Measures proposed on the national level:

- State administration bodies, regions, towns and municipalities will organize competitions showing good practice examples of green procurement in public institutions based on pre-set criteria, in particular in the area of bulk procurement of office equipment, household appliances, lighting and green vehicles. The promotion of good examples, winners and motivation in the form of financial reward will be part of the competition.

Dissemination of information and promotion

The new green procurement requirements faced by the public organisations must be accompanied by mutual coordination of processes, education, dissemination of information and promotion of green procurement in all product categories.

However, the private sector should not be excluded from the support. Since in the private sector green procurement is completely voluntary, a strong emphasis should be put on motivation of the procurement actors and economic factors. Convincing and motivating the responsible staff to engage in a new approach may be the most difficult but at the same time the most promising strategy to boost green procurement. In many places, where green procurement is implemented successfully, there is committed personnel, willing to make a difference.

To enable the personnel to implement green procurement more easily it is necessary to provide them with the necessary knowledge and tools, and to offer to them information sources with good practices and personal advice. Respective trainings must be broadly organised and promoted, also for multipliers, who will in turn transfer them to their clients. Since today many procurement activities are established with the help of external service providers, e.g. professional e-procurement platforms, these service providers can be important promotional partners and multipliers for green procurement.

For young, innovative companies taking part in a public tender might be a challenge. Therefore information and trainings should be also provided for them on how to take part in a public tender and on how to score with green innovations.

Implementation of the measures proposed below would require allocation of new personnel and financial resources in most of the EU member states. Given the small amount of these resources at the moment, cooperation with international green procurement projects (supported from EU funds) and with non-governmental organizations should be developed as much as possible.

Measures proposed on the national level:

To support green procurement, it is necessary to ensure promotion, dissemination of information, education and creation of capacities by organizing workshops, courses, conferences, by providing free information and by creating an internet portal and helpdesk dealing with the following subjects:

- general and central information on green procurement and its benefits;
- suitable procurement procedures in line with the current legislation, rules and methodologies;
- information on environmentally friendly products and on the way to obtain information to assess environmental criteria and to use eco-labels;
- calculation tools for the calculation of life cycle costs and for the assessment of other criteria in accordance with the legislation, official GPP guidelines and applicable methodologies.

Further, networking and establishment of a cooperation platform will not only increase the effectiveness of using available means, but also allow for interconnecting the know-how and the experience of various interest groups. It will also help to provide effective and targeted support by providing necessary information.

Relevant sources of information

Green Public Procurement website of DG Environment
http://ec.europa.eu/environment/gpp/index_en.htm