

Sustainable public procurement: Strengthening the social and human rights dimensions of SPP in the framework of the European Green Deal

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Introduction

This Policy Brief expands on the presentation by Professor Olga Martin-Ortega to the [Public Hearing](#) of the European Parliament's Committee on the Internal Market and Consumer Protection in association with Committee on Environment, Public Health and Food Safety, which took place on 1 December 2021. The Public Hearing was entitled: 'Sustainable public procurement: using the full potential of public buying to achieve goals of the European Green Deal'. Prof. Martin-Ortega participated in 'Panel 1: *European framework on sustainable public procurement: is it fit for purpose?.*', chaired by MEPs Anna Cavazzini (IMCO Chair) and Pascal Canfin (ENVI Chair). The video of the hearing, as well as the presentations of the speakers at the [IMCO website](#).

This Brief focuses on the link between sustainable public procurement and human rights in the context of the social and external dimensions of the Green Deal. It provides insights and recommendations to strengthen sustainable procurement's role as a powerful tool for achieving the European Green Deal's goals both in and outside the EU borders.

The Social Dimension of the European Green Deal- Human rights, Environment and Climate Change

The Commission set out its ambitious commitments towards tackling climate and environmental-related challenges in its Communication on [The European Green Deal](#) in 2019. Recognising that the challenges are complex and interlinked, the European Green Deal proposes a new growth strategy to transform the EU 'into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use' (p.1).

The European Green Deal has a clear social dimension, even if the consideration of the social aspects decisions related to climate change are [weaker or less ambitious](#) than ecological ones. So far, however, the developments in the context of the European Green Deal have mainly focused on the environmental aspect of the action, neglecting to some extent the interrelation between 'green' action and its social dimension. This is also obvious in the context of public procurement and potential in the framework of the Green Deal, as discussed below.

We cannot disassociate the impact of our economic activity on the environment from climate change, and, in turn, climate change and environmental damage from human rights violations. In its landmark [Resolution 48/13 \(8 October 2021\)](#), the UN Human Rights Council recognised, for the first

time, that having a clean, healthy and sustainable environment is a human right. It called on States around the world to work together, and with other partners, to achieve this right. This was followed by the appointment of a Special Rapporteur on human rights impacts of climate change ([Resolution 48/14, 8 October 2021](#)).

Environmental action does not happen in a vacuum and, therefore, action to protect the environment and tackle climate change cannot be isolated from the respect, protection and promotion of human rights. We are currently considering the impacts of environmental action in the context of [Just Transition](#), which takes into account the social harm of ‘green’ measures. However, we are still lacking a clear direction to articulate the relationship between just transition and public procurement. This could be obviated by ensuring that the design and implementation of the European Green Deal also takes into consideration the human rights dimension of public procurement in the context of the just transition. The Green Deal clearly states ‘[no person and no place left behind](#)’. This should include too those who currently produce the products we purchase, provide the services we contract and are part of the works we commission.

The Green Deal can not only transform the European economy and society, but also contribute to a more sustainable global development. However, the articulation of [this external dimension has received less attention](#) and has not sufficiently considered the impact of Europe moving to a green economy on global supply chains and those working on them. In this Policy Brief, we argue that Sustainable Public Procurement (SPP) has an important role to play in bringing together the social and external dimensions and articulating the ambition to implement the United Nations 2030 Agenda and the Sustainable Development Goals (SDGs) in and beyond of Europe’s borders. The human rights aspects of public procurement in the context of the implementation of the Green Deal need to be expressly addressed as part of the European efforts to combat climate change and achieve a just transition.

Sustainable Public Procurement

Sustainable public procurement includes the three dimensions of sustainability: economic, social and environmental. The [2014 EU Procurement Directives](#) were developed in the framework of the [Europe 2020 strategy for smart, sustainable and inclusive growth](#), and the EU public procurement regulatory framework has been evolving ever since to strengthen the three components of sustainability. Member States are required to take appropriate measures to ensure that their suppliers comply with environmental, social and labour law in the performance of public contracts, which include the ILO Core Labour Conventions (art. 18.2 and Annex X, 2014 Procurement Directive).

The greatest advances have happened in the area of environmental public procurement, but the social aspects of procurement have also consolidated greatly. In 2021, the Commission published the 2nd edition of its ‘[Buying Social - a guide to taking account of social considerations in public procurement](#)’ to support and empower public buyers to develop the social dimension of SPP.

Sustainable public procurement is not only an aspiration, but a key element for the achievement of the Sustainable Development Goals. As such, it has been explicitly recognised in the context of SDG 12 - Sustainable Consumption and Production (SDG 12, Target 17).

The social, or responsible, component of sustainable public procurement has two distinctive dimensions. Both of them are relevant in the context of the European Green Deal and key for the economic and social recovery from the impact of the COVID-19 pandemic:

- a. Domestic, intra-European dimension: SPP as a key tool in achieving Just Transition in Europe.
- b. Extra-European: Public procurement as a tool to respect, protect and promote human rights beyond the EU borders, and as such a tool to promote and fulfil the European Green Deal globally. This is the focus of this Policy Brief.

Public Procurement and Human Rights beyond our borders

Public buyers purchase and contract from the same supply chains as private sector. Therefore, public purchasing decisions can have the same negative impact on the rights of those in global supply chains as private sector practices. The [EU has expressed its commitment to the United Nations Guiding Principles on Business and Human Rights \(2011\)](#), which clearly point to public procurement as one of the elements of the state-business nexus. This is, states, and by extension the European Union, have the duty to respect, protect and promote human rights in their commercial activities (UNGP 6, Commentary). Part of the duty to protect human rights from harmful corporate activities is the obligation to ensure internal policy coherence, meaning that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates (UNGP 8). The EU has also committed to policy coherence in the context of its [EU Action Plan on Human Rights and Democracy for the period 2020-2024](#), adopted in November 2020, which includes 'strengthening engagement in international fora and with partner countries to actively promote and support global efforts to implement the UN Guiding Principles on Business and Human Rights, including through fostering the development and implementation of national action plans in Member States and partner countries, advancing relevant due diligence standards and working on a comprehensive EU framework for the implementation of the Guiding Principles in order to enhance coordination and coherence of actions at EU level' (3.5.a). Demanding the same standards of public sector buyers than of the private sector is a key element of policy coherence in sustainable public procurement ([Methven O'Brien and Martin-Ortega, 2017](#)).

There are multiple examples of how [public procurement and human rights](#) interrelate and how states and international organisations have found themselves as unwilling and oblivious participants on human rights violations in their supply chains. We have seen this during the initial response to COVID-19, when States scrambled to supply goods to save and protect the lives of their citizens, competing to procure personal protective equipment, medical equipment, including ventilator and respirators, increasing demand from industries which were already in the spotlight for poor working conditions and even forced labour and human trafficking. Other obvious human rights impacts of procurement decisions are the unintended consequences of green decisions. From impacts of what in principle look as sustainable infrastructure to the human rights consequences of investing in clean energy (e.g. [evidence shows that renewable energy companies continue to be linked with human rights abuses](#)), the human rights dimension of public procurement needs to be paid much more attention to within the framework of sustainable public procurement.

The role of SPP in the European Green Deal: From Sustainable to Green and back again

The most significantly worrying development in the current implementation of the European Green Deal is its dissociation from the social impact, and the fact that the measures on Just Transition seem to be fundamentally focused on the domestic sphere and the intra-European effect of transitioning to a non-fossil fuels-based economy. Since the publication of the EU Procurement Directives, there has been a conscious effort to merge green and social into a progressive concept of sustainable public procurement. However, green procurement seems to be gaining terrain over the third aspect of sustainability, creating a worrying competition for objectives to fulfil in order to comply with Green Deal parameters and financing. This, in my opinion, is a step backwards.

The European Green Deal makes explicit reference to public procurement, and it does so by referring exclusively to green procurement. For example, when considering Mobilising industry for a clean and circular economy (2.1.3) it establishes 'Public authorities, including the EU institutions, should lead by example and ensure that their procurement is green. The Commission will propose further legislation and guidance on green public purchasing' (COM (2020) 640 final of 11.12.2019). The European Green Deal Investment Plan (COM (2019) 21 final of 14.01.2020) also limits the references to procurement to green. When providing the public sector with guidance and appropriate means for making sustainable investment (4.2.), the Commission commits to 'propose minimum mandatory green criteria or targets for public procurements in sectorial initiatives, EU funding or product-specific legislation. Such minimum criteria will 'de facto' set a common definition of what a 'green purchase' is, allowing collection of comparable data from public buyers, and setting the basis for assessing the impact of green public procurements.' Equally, it establishes that 'public authorities across Europe will be encouraged to integrate green criteria and use labels in their procurements'. Resources will be devoted to develop guidance, training activities and the dissemination of good practices, all of which we must assume are related to green procurement. Provisions related to the newly introduced 'Sustainable Procurement Screening', which aims to support public investors to implement their projects in practice for large infrastructure projects, is also targeted to help such investors to 'make use of all the possibilities to green their procurements and guarantee sustainability of the project and the respect of the highest environmental standards throughout the supply chain' (5.1.2). The New Circular Economy Action Plan also sees the Commission committing to empower consumers and public buyers by proposing minimum mandatory green public procurement (GPP) criteria and targets in sectoral legislation and phase in compulsory reporting to monitor the uptake of Green Public Procurement (GPP) without creating unjustified administrative burden for public buyers.

Abandoning sustainable public procurement in favour of a reinforcement of green procurement risks neglecting the relationship between environment, climate change and human rights, which has so strongly now been recognised at global level. Equally, it goes contrary to the current developments in combatting human trafficking and forced labour in governments and international organisations' supply chains.

Due Diligence in Public Supply Chains: Need for Policy Coherence

In the past few years, we have seen a dramatic increase in the number of jurisdictions which have created binding obligations for companies to exercise due diligence in their supply chains. This is, to identify, prevent, mitigate and remediate their negative impacts on human rights and the environment. These include several European countries. The European Commission has committed to a renewed legal framework for [Sustainable Corporate Governance](#), which should include mandatory human rights due diligence obligations for companies operating in the European internal market. The European Parliament made its position very clear regarding the need for such measures in its [Resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability](#), supported by expert reports, including by this [author](#).

However, there is still a significant lack of [policy coherence](#) between the expectations and responsibilities of the public sector towards their supply chains, which needs to be addressed in order to tackle human rights risks in global production systems. Some countries and international organisations have made great progress in their commitments to tackle the most serious violations in their own supply chains, for example, Australia, Canada, New Zealand, United States and United Kingdom publicly committed taking steps to prevent and address human trafficking in government procurement practices in their 2020 [Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains](#) (Principle 1). In particular, these governments have committed to ‘analyze, develop, and implement measures to identify, prevent and reduce the risk of human trafficking in government procurement supply chains. Additionally, governments can: provide tools and incentives and adopt risk assessment policies and procedures that require their procurement officers and contractors to assess the nature and extent of potential exposure to human trafficking in their supply chains; and take targeted action, including adopting appropriate due diligence processes, to identify, prevent, mitigate, remedy, and account for how they address human trafficking’. The OSCE has pioneered work in combatting human trafficking in its members supply chain, producing [Model Guidelines on Government Measures to Prevent Trafficking for Labour Exploitation in Supply Chains](#) (2018). The organisation has also trained their procurement professionals and programmatic staff on identifying, preventing and mitigating human trafficking in its own supply chain and publicly committed to follow guidance to improve their procurement practices. The European Union and EU Member States, however, are lagging in their efforts to address their own impact in global supply chains through procurement.

Recommendations

The European framework on SPP can play a key role in transforming Europe into a fair and prosperous society, with an economy which not only works for European citizens, but for the world, where economic growth is not only decoupled from resource use, but also from human rights abuse. Supporting economic growth in the context of the global challenges we face means SPP should aim to impact change beyond its current environmental focus. The development of SPP in the context of the European Green Deal cannot overshadow the importance of the social dimension of public procurement but should complement and support it instead.

In order to achieve these goals, the Policy Brief proposes the following recommendations for the European Union and its Member States.

1. Strengthen the social and external dimensions of SPP to better articulate the relationship between environment, climate change and human rights in the context of the European Green Deal.

2. Increase policy coherence, in particular regarding developments in the fields of business, human rights and the environment, and modern slavery in supply chains . This includes:

- Developing further the states' duties as part of the UNGPs provisions on the state-business nexus.
- Embedding both human rights and environmental due diligence into public procurement – requiring public buyers to assess the impact of their procurement on the environment as well as human rights by default, rather than having two different standards.

3. Develop strategies and tools to support public sector buyers to insert social and human rights considerations in their everyday activities. Examples are:

- Including the cost of social impacts into life-cycle costing methodologies, which currently are limited to environmental aspects.
- Developing and supporting independent monitoring of supply chains and partnerships with local civil society organisations and trade unions.
- Including the human rights dimension in training and financing of public procurement activities: public sector buyers need both resources and confidence to implement human rights due diligence in public supply chains effectively.

4. Lead by example to create a market for sustainable and responsible goods, services and works, which takes into consideration both the environmental and social impact of their production and delivery.

About the Author

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