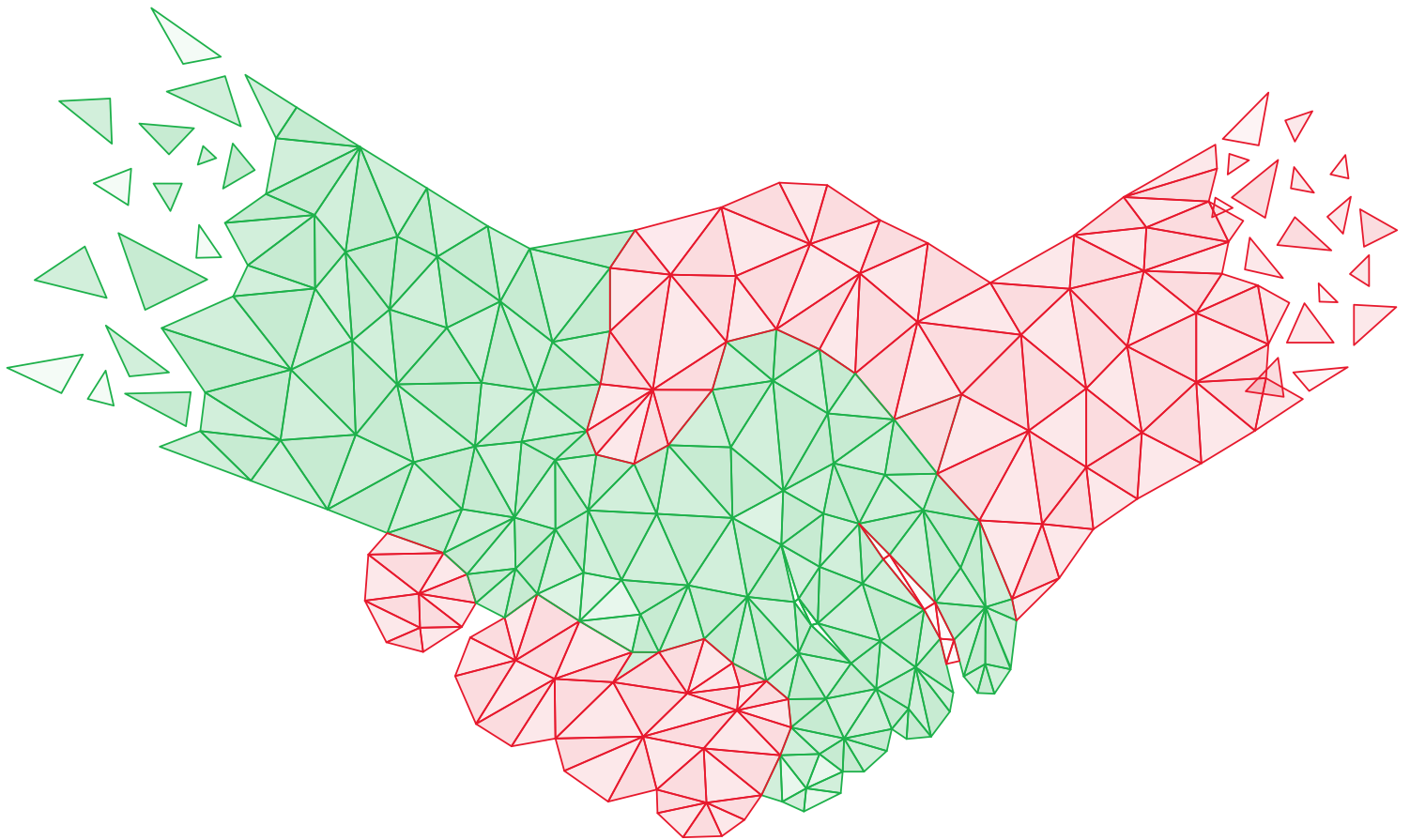


GREEN, PAVE THE WAY FOR SOCIAL!

HOW THE EU'S GREEN PUBLIC PROCUREMENT CAN FORGE
A PATH TOWARDS SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT

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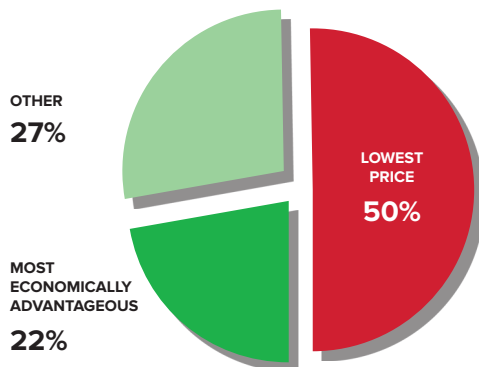
EXECUTIVE SUMMARY

This report highlights how advancements in the EU's Green Public Procurement (GPP) process can pave the way for progress in Socially Responsible Public Procurement (SRPP). GPP and SRPP complement each other in the shared goal of transforming the EU into a fair and prosperous society with a modern and competitive economy as outlined in the **EU Green Deal**. This social dimension in public procurement also reflects the EU's commitments to the European Pillar of **Social Rights Action Plan**^{1,2}, the **United Nations 2030 Agenda**^{3,4}, and the **Porto 2021 Social Commitment**^{5,6}.

2,000,000,000,000
EUR PER YEAR



Every year, over 250,000 public authorities in the EU spend around 14% of GDP or around **€2 trillion per year** on the purchase of services, works and supplies. The public sector can use procurement to boost jobs, growth, and investment, and to create an economy that is more innovative, resource and energy efficient, and socially inclusive.⁷



Currently, the public procurement rules allow authorities to ignore social criteria in tendering—this results in **50 % of public tenders being awarded solely based on the lowest price in Europe**. In turn, lowest price tendering puts **pressure on wages and working conditions**, results in reduced competition, as high-quality contractors are reluctant to submit low bids, worsens the quality of public services, brings in less tax income and, crucially, weakens collective bargaining.

Given that public procurement totals €2 trillion annually in the EU, equivalent to 14 per cent of the EU's GDP, **it is imperative not to miss the opportunity to allocate this money for the betterment and wellbeing of both the environment and citizens alike**.

1. the European Pillar of Social Rights Action Plan support this transition to a more Social Europe, in the Action Plan the European Commission encourages 'national, regional and local authorities to increase the uptake of socially-responsible criteria in public procurement and to promote their use' And the European Pillar of Social Rights' Principle 8 on Social Dialogue and Involvement of Workers states that '[social partners] shall be encouraged to negotiate and conclude collective agreements'.

2. <https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/en/>

3. In the United Nations 2030 Agenda in which Sustainable Development Goal 8 aims to achieve decent work for all (target 8.5) and protecting labour rights (target 8.8)

4. <https://sdgs.un.org/goals>

5. Porto Social Commitment from the Porto Social Summit on 7 May 2021 calls to "ensuring an enabling framework for collective bargaining" and to "mobilise all necessary resources –investments and reforms – ... to strengthen the competitiveness of the European economy, based on sustainable and inclusive growth, decent work and social justice"

6. <https://www.2021portugal.eu/en/porto-social-summit/porto-social-commitment>

7. https://single-market-economy.ec.europa.eu/single-market/public-procurement_en



As underscored in this report, the European Commission has displayed admirable **ambition in establishing mandatory GPP requirements**. However, while the EU has taken some initial steps through its ‘Buying Social’ guide, progress in advancing SRPP has been sluggish at best. **The social dimension of public procurement** relies on an insufficient **voluntary approach** despite the enormous potential benefits of SRPP, which include improved working conditions, reduced inequality, and increased social cohesion across member states. **This voluntary approach is repeatedly criticised for being insufficient**⁸.

The pivotal relationship between GPP and SRPP is a key driver in advancing the EU’s resilience and sustainability objectives. If the European Union is genuinely committed to strengthening Social Europe and enhancing collective bargaining, it should leverage the GPP’s advancements to promote SRPP by requiring bidding contractors to have collective agreements in place, uphold fundamental labour rights, and empower workers in their decision-making within the public procurement process. GPP and SRPP can operate in synergy, dispelling any concerns of counter-productivity.

This report argues that the European Commission should consider the following three strategies, already applied in GPP, for SRPP:

1. **Obligatory setting of award criteria** related to green procurement;
2. **Mandatory outcome criteria** by percentage and by a specified date;
3. **Mandatory criteria set by European Commission Delegated Acts.**

In this summary report, **UNI Europa** conducts a comparative analysis, mapping advancements in the public procurement across several sectoral files encompassing Green Public Procurement (GPP) in relation to Socially Responsible Public Procurement (SRPP), while evaluating them in comparison to the previous legislative files:

1. **Clean Vehicles Directive**
2. **Energy Performance of Buildings Directive**
3. **Energy Efficiency Directive**
4. **Net Zero Industry Act Regulation**
5. **Energy Labelling Directive & Regulation**
6. **Batteries Regulation Directive & Regulation**
7. **Ecodesign of Sustainable Products Directive & Regulation**
8. **Construction Products Regulation**
9. **Packaging and Packaging Waste Directive & Regulation**

8. <https://www.uni-europa.org/news/experts-call-out-broken-public-procurement-directive/>

1. INTRODUCTION

The European Green Deal is explicit: to build a more sustainable economy, “public authorities, including the EU institutions, should lead by example and ensure that their procurement is green.” This ambition is implemented through a series of legal initiatives that make GPP obligatory for public authorities. The shift from a voluntary approach towards a mandatory one in this context is commendable. However, the EU currently focuses only on the ‘green’ aspect of sustainable procurement, largely ignoring the ‘social’ side of sustainability.

In this report, UNI Europa argues that these positive developments in GPP should be seen as ‘paving the way’ for more social procurement.

The experience gained during Green Public Procurement should be used and applied to strengthen Social Europe and collective bargaining.

The report begins by clarifying the limits of the current public procurement directives for social issues and collective bargaining, elaborating on why the EU should give equal importance to social procurement, and providing an overview of how lessons from GPP can, and should, be applied to the social aspect.

The report builds on an analysis of nine EU legal acts, including acts as recent as 2023. In the technical part,, a more detailed analysis of these acts can be found.

This report concludes that the EU has made significant progress in making Green Public Procurement more mandatory. Consequently, several legal acts have been introduced to establish mandatory award criteria or to outline the requirements for mandatory award criteria by delegated acts. Other acts define the outcome criteria for Green Public Procurement.

The EU should make similar efforts with regards to Socially Responsible Public Procurement by including mandatory social awards or selection criteria in public procurement acts. Furthermore, the basic directive should be amended to enable and stimulate Socially Responsible Public Procurement, including the defence and strengthening of collective bargaining through public spending.

2. LIMITATIONS OF THE CURRENT PUBLIC PROCUREMENT DIRECTIVES

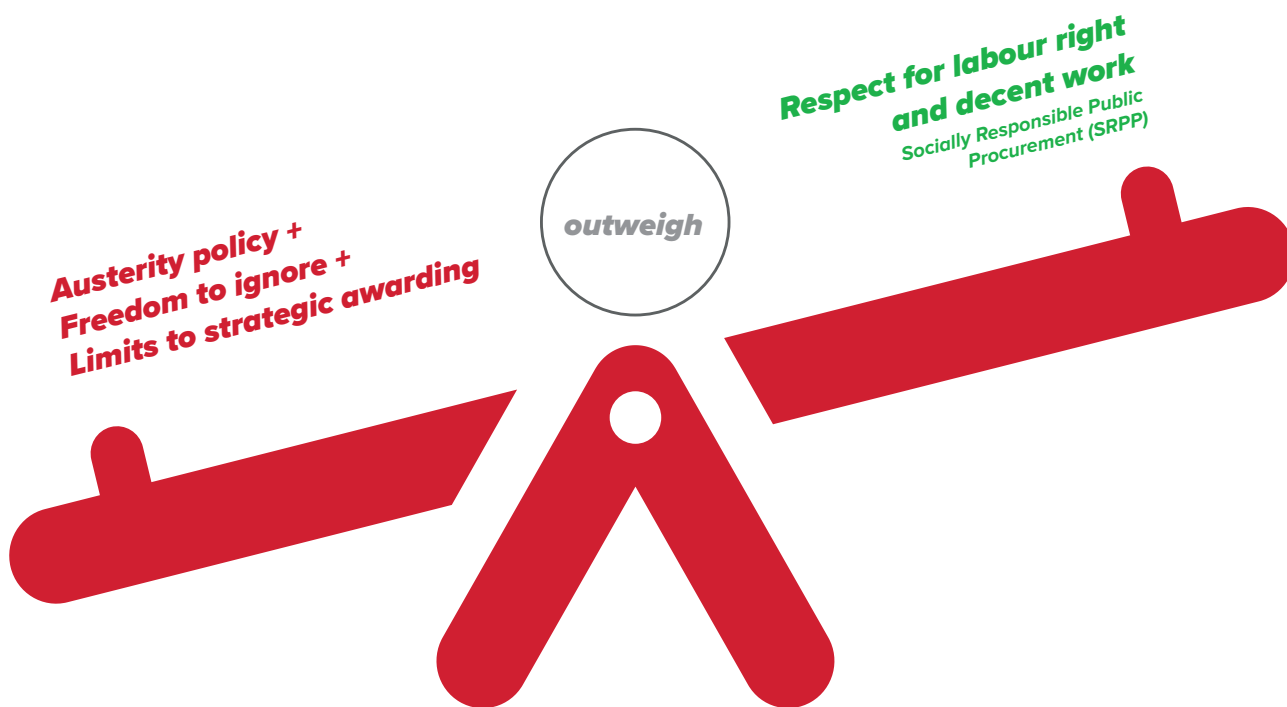
Officially, the European Commission is **in favour** of public authorities including **social criteria in public tenders**. At regular intervals it even tries to incentivise public authorities to do so by publishing best-practice guides on ‘Buying Social’⁹.

Despite this, the reality is that public authorities still prefer lowest price tendering and ignore social considerations.

This is due to a combination of two factors:

First, public authorities are under serious **financial pressure** to keep their spending low. Decades of austerity politics are forcing public authorities to consider outsourcing services via tenders, and in doing so, to focus primarily on cost.

Secondly, under¹⁰ the current rules on public procurement, public authorities are **free to ignore** social considerations. Worse still, the current rules limit how local authorities can strategically award contracts.



9. European Commission. (2011). Buying social: A guide to taking account of social considerations in public procurement. Publications Office of the European Union. <https://data.europa.eu/doi/10.2767/18977> ; European Commission. (2021). Buying Social – A guide to taking account of social considerations in public procurement – Second edition 2021/C 237/01. Publications Office of the European Union.

10. The public procurement rules in Europe are partly governed by the European Directive on Public Procurement (2014/24/EU) and their national transposition laws of this Directive. These rules only apply to public tenders above a certain threshold, yet often set a reference for other procurement



The **limitations** to local authorities' ability to strategically award contracts are threefold:
(1) compliance with fundamental labour rights is not an obligatory exclusion criterium;
(2) compliance with collective agreements is decided at the national/regional/local level; and
(3) the use of social award criteria is delegated to local authorities and is limited due to the requirement to be strictly related to the subject of the tender.

1. Violation of fundamental labour rights is not an obligatory exclusion criterium.

In selecting a provider, local authorities *'shall'* exclude companies that have been involved in such things as corruption, fraud, terrorism, money laundering, child labour, tax evasion, or breaches related to social security contributions¹³. Interestingly, local authorities *'may'* exclude public contractors for other reasons such as competition distortion, conflict of interest, or violations of the ILO's core conventions on **Fundamental Principles and Rights at Work**¹⁴. The current rules on public procurement, in other words, give authorities the freedom to include or exclude companies involved in violations of fundamental rights at work, which may likely be the cheaper option.

2. Compliance with collective agreements is left to the member states.

Article 18 of the Public Procurement Directive (2014/24/EU) states that authorities *'shall'* ensure equal treatment and competition of the bidders¹⁵. When it comes to compliance with environmental, social, and labour laws, including collective agreements, the EU delegates responsibility to member states, requiring them to *'take appropriate measures'*¹⁶. Hence, EU legislation directly mandates authorities to guarantee equal competition, but it does not do the same regarding compliance with social and labour laws or collective agreements.

3. Award criteria are both supported and limited.

When selecting a contractor, the authorities are required to use *'award criteria'* to make a choice based on the most economically advantageous tender¹⁷. Within this framework, authorities *'may'* include criteria related to quality, environmental, or social standards. However, the responsibility for defining these criteria is delegated to a lower level. At the same time, the strategic scope for using award criteria is limited and must be strictly linked to the subject matter, such as the goods or services to be delivered. The inclusion of general corporate policies as award criteria is therefore disputed.

It is obvious that while the European Commission is officially in favour of the strategic use of public procurement for social issues, the current rules are insufficient in guaranteeing such a practice. Given the strong financial pressure on public authorities, the reality is that many do not engage in social procurement.

11. Article 57 of the 2014/24/EU Directive which has to be read in conjunction with article 56 which states that, in open procedures, authorities *'may'* decide to examine grounds of exclusion.

12. Article 57§1 of the 2014/24/EU directive.

13. Article 57§2 of the 2014/24/EU directive.

14. Article 57§3 of the 2014/24/EU directive. the Freedom of Association (ILO 87), the right to organise and collective bargaining (ILO 98), the convention on forced labour (ILO 29 & 105), minimum age (138), discrimination (111), equal pay (100) and child labour (182).

15. Article 18§1 of the 2014/24/EU directive.

16. Article 18§2 of the 2014/24/EU directive.

17. Article 67 of the 2014/24/EU directive.

3. WHY SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT (SRPP) SHOULD LEARN FROM GREEN PUBLIC PROCUREMENT (GPP)

In this report, we make the case that in EU legislative instruments, GPP has seen advancements in its level of ambition and commitment, notably through the introduction of mandatory criteria. This shift acknowledges the inadequacy of the voluntary approach¹⁸. These advancements can be applied to SRPP.

SRPP goes beyond economic considerations to address social challenges and contribute to the overall betterment of society. By leveraging the purchasing power of public entities, **SRPP can drive positive social outcomes**, promote responsible business practices, and uphold higher labour standards, leading to improved working conditions, fair wages, and better employee benefits.

More than half of public tenders in the European Union look only at the price tag to select which company is awarded the contract. In such cases, service quality, working conditions, or environmental impact are not considered. As a result, public procurement rules incentivise companies to undercut each other by reducing working standards. Companies that are ready to cut costs at the expense of decent work conditions win public contracts. Such cuts are made by reducing workers' pay and conditions, putting them far below living wage standards, and compromising safety through inadequate staffing levels and insufficient health and safety equipment. This is simply not the type of competition we should be rewarding or incentivising. Examples of **unpaid, underpaid or otherwise exploited workers employed on public contracts in France,**

the Netherlands, Denmark, Finland, Spain, and Belgium can be found in the UNI Europa report *Put your money where your mouth is*.¹⁹

UNI Europa believes that for **the European Union to strengthen Social Europe and collective bargaining**, it should leverage the money spent through public procurement by demanding that bidding contractors have collective agreements in place, and respect fundamental labour rights and workers' say at work.

UNI Europa's proposal to make public contracts conditional on collective bargaining—supported by more than 170 MEPs²⁰—is in fact a **win-win-win**. We know that **collective bargaining is the most effective way of lifting workers' pay and conditions in the long run**.

As public procurement amounts to €2 trillion per year in the EU, representing 14 per cent of the EU's GDP, **we cannot miss out on the opportunity to utilise public money to guarantee decent labour practices, working conditions, and decent quality of services**. We must establish a minimum standard of decency for essential workers by ensuring that public contracts only go to companies that have collective bargaining agreements with their workers.

Research indicates that **extending collective bargaining would put an additional €25 billion per year in the pockets of working people**.²¹ By spending this income in their local communities, working people could play a vital role in revitalising the real economy during this critical time.

18. <https://www.uni-europa.org/news/experts-call-out-broken-public-procurement-directive/>
Construction products regulation 2022/0094 (COD) Proposal Recital 91

19. <https://www.uni-europa.org/news/public-procurement-snapshot-report-december-21/>



















20. <https://www.uni-europa.org/news/procuringdecentwork-updated-list-of-mep-endorsements/>

21. Zwysen (2019) COLLECTIVE BARGAINING FOR EUROPEAN SERVICE WORKERS IN THE 21ST CENTURY - A SNAPSHOT:





















<https://www.uni-europa.org/news/new-publication-collective-bargaining-for-european-service-workers-in-the-twenty-first-century-a-snapshot/>

5. TECHNICAL PART

5.10 OVERVIEW TABLE: COMPARATIVE PROGRESS ON GPP AND SRPP

Legislative file	Green Public Procurement (GPP)	Socially Responsible Public Procurement (SRPP)
Clean Vehicles Directive (2009)	 Mandatory GPP award criteria	 Nothing
Clean Vehicles Directive (2019)	 Mandatory GPP targets (national)	 Nothing
Energy Performance of buildings Directive (2010, 2018)	 Criteria for energy efficiency of public buildings	 Nothing
Energy Performance of buildings Directive (2023)*	 Extra criteria for energy efficiency of public buildings	 Nothing
Energy efficiency Directive (2010, 2012)	 Semi-mandatory award/selection criteria	 Nothing
Energy efficiency Directive (2023)*	 More stringent criteria	 Member States may consider? social benefits
Renewable Energy Act Directive (2018)	 Leading by example	 Nothing
Renewable Energy Act Directive (2021)	 Semi-mandatory criteria (where appropriate MS shall...)	 Nothing
Net Zero Industry Act Regulation (2023)*	 Strict mandatory green award criteria , specifically on which criteria and the weight of it. Although, with an opt out if the price is very different	 Some mentions in the recitals



Legislative file	Green Public Procurement (GPP)	Socially Responsible Public Procurement (SRPP)
Energy Labelling Directive (2010)	 GPP to be decided via delegated act	 Nothing
Energy Labelling Regulation (2017)	 Nothing	 Nothing
Batteries and Waste Batteries Directive (2006)	 No mentions	 No mentions
Batteries and Waste Batteries Regulation (2020)	 Mandatory green criteria to be established by delegated act.	 Mentions in the recitals
Ecodesign of sustainable products Directive (2003)	 Mandatory green criteria to be established by delegated act.	 Mentions in the recitals
Ecodesign of sustainable products regulation (2022)*	 Mandatory green criteria to be established by delegated act.	 Nothing
Construction products Regulation (2011, 2019)	 Mandatory green criteria to be established by delegated act.	 Nothing
Construction products Regulation (2021)*	 Mandatory green criteria to be established by delegated act.	 Mentions in the recitals
Packaging and packaging waste Directive (1992)	 Mandatory green criteria to be established by delegated act.	 Mentions in the recitals
Packaging and packaging waste Regulation (2022)*	 Mandatory green criteria to be established by delegated act.	 Mentions in the recitals



FORWARD

THROUGH COLLECTIVE

BARGAINING