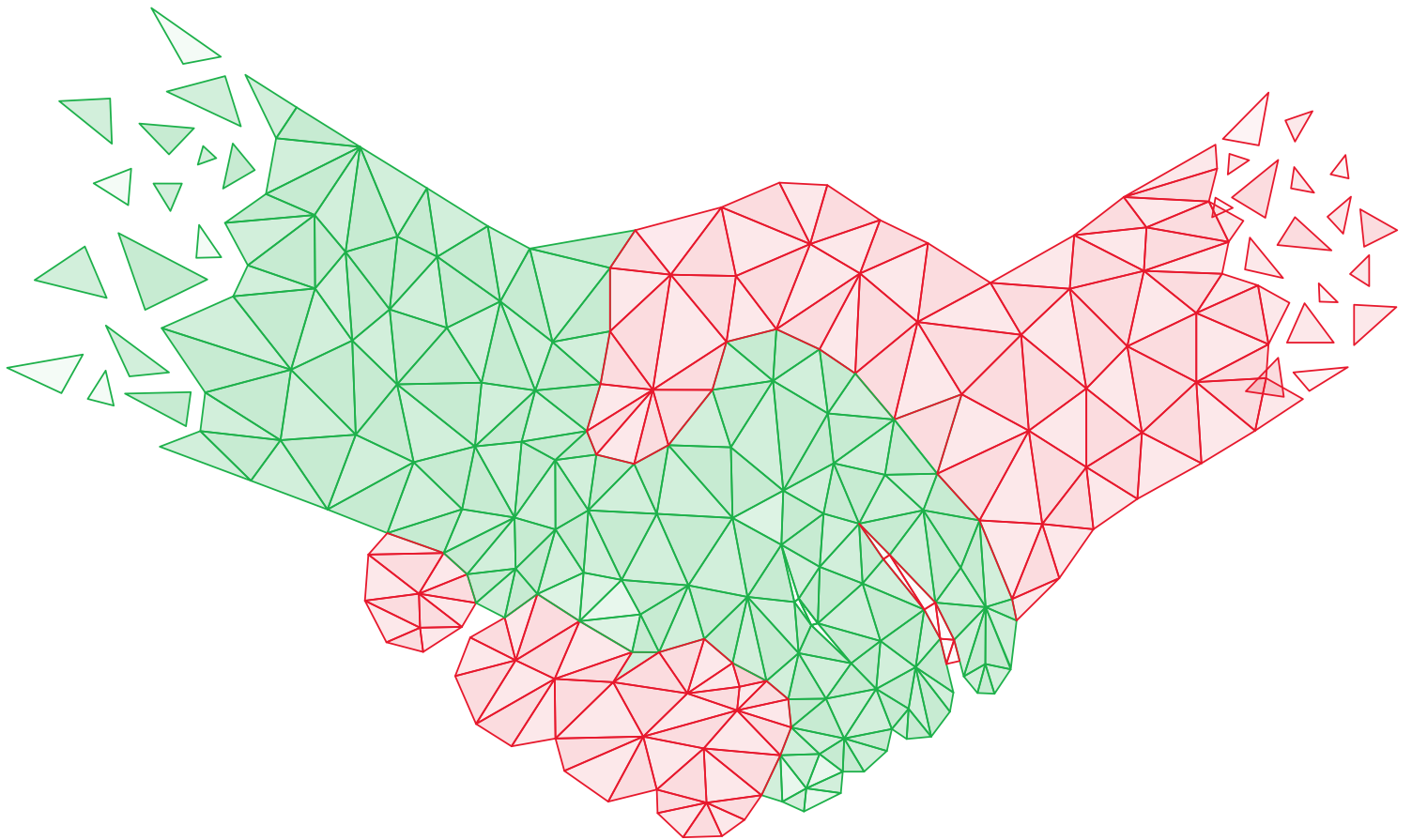


GREEN, PAVE THE WAY FOR SOCIAL!

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

Cathrine Hernández Festersen and Stan De Spiegelaere



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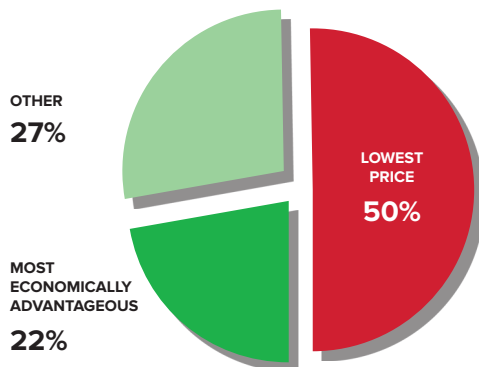
EXECUTIVE SUMMARY

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/>

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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

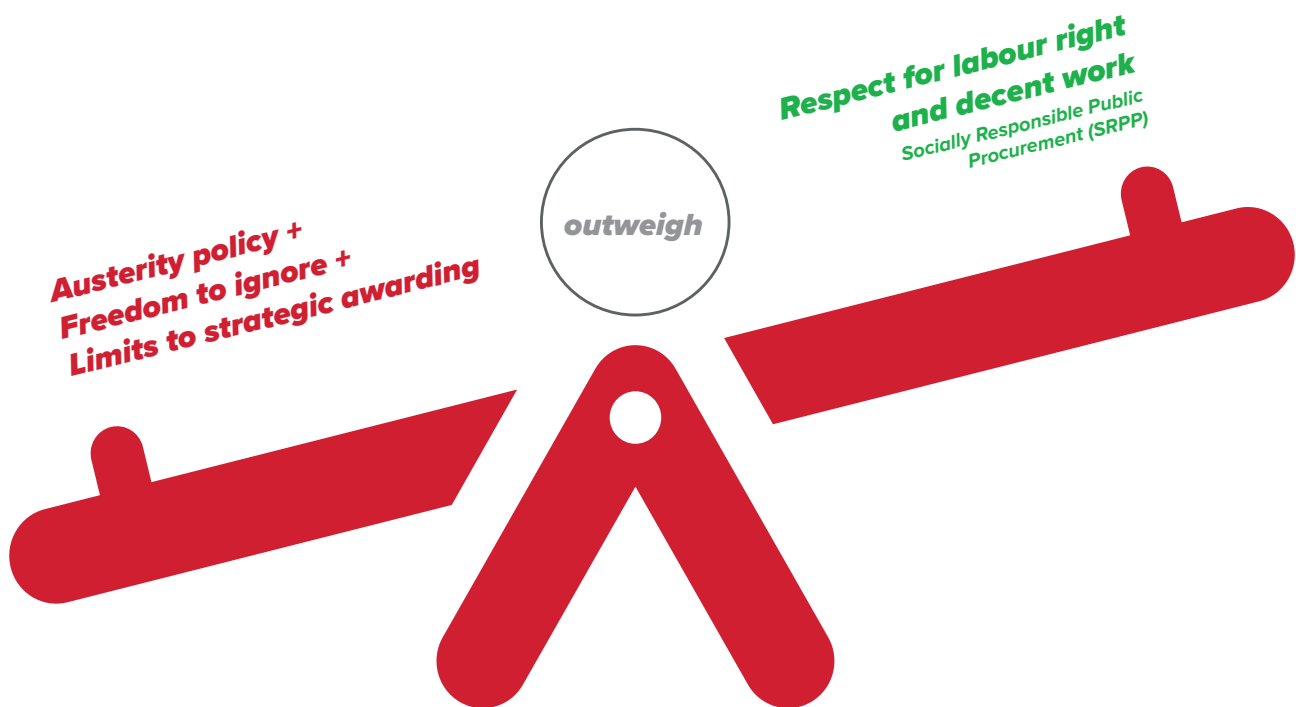
Officially, the European Commission is **in favour** of public authorities including **social criteria in public tenders**. At regular intervals it even tries to incentivise public authorities to do so by publishing best-practice guides on 'Buying Social'⁹.

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/>

4. COMPARING SOCIAL AND GREEN PROCUREMENT

Over the years, the EU has enacted a number of sectoral directives and regulations that define additional criteria for use by public authorities when procuring specific services or goods. The Table below gives an overview of past, present, and currently discussed legal acts specifying public procurement across several sectors. By comparing these acts, we can draw a number of conclusions.

The landscape of EU directives is transitioning toward the consolidation of EU regulations, marking a strategic shift in policy implementation. The commendable strides made in advancing GPP through revised legislative frameworks deserve recognition.


A growing consensus acknowledges the limita-

tions of a voluntary approach to sustainable public procurement. This shift to a more mandatory approach is very explicit and targeted. In the words of the European Commission: *“compared to a voluntary approach, mandatory criteria or targets will ensure that the leverage of public spending to boost demand for better performing products is maximised”*. While this understanding has found resonance in the realm of GPP, its relevance extends equally to SRPP. Recognising this, there is a compelling case for elevating the mandatory criteria for SRPP to align with the transformative strides achieved in GPP. The European Commission can glean invaluable insights from the progress made in establishing mandatory GPP criteria to inform and expedite the evolution of SRPP.

Regarding the **methods** through which mandatory GPP is shaped, three distinct approaches can be identified:

- 1. Obligatory setting of award criteria** related to green procurement. This applies, for example, in the case of the Energy Efficiency Directive or the currently debated Net Zero Industry Act.
- 2. Mandatory criteria set by Delegated Acts** by the European Commission. In these cases, further (delegated) acts specify the mandatory criteria to be used. This method is used in, for example, the Batteries and Waste Batteries Regulation, the Construction Products Regulation, or the Packaging and Packaging waste Regulation.
- 3. Mandatory outcome criteria.** In these cases, not only the method of procurement is set, but also the target outcomes. In the Clean Vehicles Directive, for example, progressive targets regarding the proportion of green vehicles are set.

The rapid innovation and strengthening of Green Public Procurement stand in contrast, however, with the **lack of progress regarding Social Public Procurement**. As can be seen from the table below, social procurement is mentioned in virtually none of the acts. When social procurement is mentioned, it is restricted to some general comments in the Recitals.

	Green Public Procurement (GPP)	Socially Responsible Public Procurement (SRPP)
Clean Vehicles Directive (2009)		
Clean Vehicles Directive (2019)		
Energy Performance of buildings Directive (2010, 2018)		
Energy Performance of buildings Directive (2023)*		
Energy efficiency Directive (2010, 2012)		
Energy efficiency Directive (2023)*		
Renewable Energy Act Directive (2018)		
Renewable Energy Act Directive (2021)		
Net Zero Industry Act Regulation (2023)*		
Energy Labelling Directive (2010)		
Energy Labelling Regulation (2017)		
Batteries and Waste Batteries Directive (2006)		
Batteries and Waste Batteries Regulation (2020)		
Ecodesign of sustainable products Directive (2003)		
Ecodesign of sustainable products regulation (2022)*		
Construction products Regulation (2011, 2019)		
Construction products Regulation (2021)*		
Packaging and packaging waste Directive (1992)		
Packaging and packaging waste Regulation (2022)*		

* Open files (August 2023)



In essence, the journey towards a resilient and sustainable European Union is an interconnected endeavour, requiring the harmonisation of both environmental and social considerations within public procurement practices. **By emulating the successes witnessed in the GPP domain, the European Commission can catalyse a renewed era of comprehensive sustainability through SRPP.**

The symbiotic relationship between SRPP and GPP is evident, dispelling any notion of counter-productivity. Instead, these two dimensions can work together in harmony, creating synergy towards a resilient and sustainable future for the European Union.

Progress in GPP undermines claims that altering the Public Procurement Directive would introduce bureaucratic obstacles. As the specifications and standards for GPP evolve extensively within various EU regulations and directives, the credibility of this argument diminishes. If Green Public Procurement can achieve significant advances in establishing mandatory environmental criteria, which are essential to everyone, a similar potential exists for SRPP. This is especially relevant when upholding decent labour conditions by respecting and adhering to collective agreements, ultimately benefiting the overall well-being of individuals.

Recommendations

- *The European Commission should continue its commendable efforts in proposing mandatory criteria—and the procedures for doing so—in the realm of Green Public Procurement. In this context, it should also incorporate Socially Responsible Public Procurement, with a specific focus on labour rights.*
- *The European Commission, in its sectoral public procurement files, should include a set of obligatory award criteria for Socially Responsible Public Procurement, as is the case with Green Public Procurement.*
- *In its sectoral public procurement files, the European Commission should include result-oriented target outcomes with a required percentage and specified date for Socially Responsible Public Procurement as is the case with Green Public Procurement, e.g., a requirement of X % of collective bargaining coverage of public contracts by date Y.*
- *The European Commission should revise public procurement directives*
 - > *to mandate respect for the basic International Labour Organization (ILO) Conventions, including those related to collective bargaining and the freedom of association, as an exclusion criterium for public authorities;*
 - > *to establish that public authorities demand respect for collective agreements in line with ILO Convention 94;*
 - > *to enable public authorities to award points to companies with collective agreements and ensure that national authorities can make such policies mandatory.*

5. TECHNICAL PART

5.1 CLEAN VEHICLES DIRECTIVE

OBJECTIVE

The revised Clean Vehicles Directive promotes clean mobility solutions in public procurement tenders, providing a solid boost to the demand for and the further deployment of low- and zero-emission vehicles.

TIMELINE

2009/33/EC: Original Directive

2019/1161: Revised Directive

In terms of ‘Green’ considerations, the new 2019 directive surpasses its predecessor from a decade ago. While the 2009 directive primarily addressed how the green objective should be achieved, the new 2019 directive establishes national targets as the minimum percentage of ‘clean vehicles’ in aggregate public procurement across Member States. The obligation applies at

the aggregate level, meaning it is not mandatory for each individual tender. The new directive has a ‘means’ objective in the form of mandatory green procurement, and an ‘outcome’ objective in the form of minimum percentage of clean vehicles in procurement. There is no mention in the new directive of social considerations or 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



Commitment to GPP

The old 2009 directive establishes the procedures for clean vehicle procurement:

OLD DIRECTIVE

Article 5 Purchase of clean and energy-efficient road transport vehicles

1. Member States shall ensure that, from 4 December 2010, all contracting authorities, contracting entities and operators referred to in Article 3, when purchasing road transport vehicles, take into account the operational lifetime energy and environmental impacts as set out in paragraph 2 and apply at least one of the options set out in paragraph 3.
2. The operational energy and environmental impacts to be taken into account shall include at least the following: (a) energy consumption, (b) emissions of CO₂; and (3) emissions of NO_x, NMHC and particulate matter.

In addition to the operational energy and environmental impacts mentioned in the first subparagraph, contracting authorities, contracting entities and operators may also consider other environmental impacts.

3. The requirements of paragraphs 1 and 2 shall be fulfilled in accordance with the following options:
 - (a) by setting technical specifications for energy and environmental performance in the documentation for the purchase of road transport vehicles on each of the impacts considered, as well as any additional environmental impacts; or
 - (b) by including energy and environmental impacts in the purchasing decision, whereby: in cases where a procurement procedure is applied, this shall be done by using these impacts as award criteria, and in cases where these impacts are monetised for inclusion in the purchasing decision, the methodology set out in Article 6 shall be used.

The new 2019 directive goes beyond how clean vehicle procurement should be conducted and, instead, raises the stakes by directly referring to targets

NEW DIRECTIVE

Article 5 Minimum procurement targets

1. Member States shall ensure that the procurement of vehicles and services referred to in Article 3 complies with the minimum procurement targets for clean light-duty vehicles set out in Table 3 of the Annex and for clean heavy-duty vehicles set out in Table 4 of the Annex. Those targets are expressed as minimum percentages of clean vehicles in the total number of road transport vehicles covered by the aggregate of all contracts referred to in Article 3, awarded between 2 August 2021 and 31 December 2025, for the first reference period, and between 1 January 2026 and 31 December 2030, for the second reference period.
2. For the purpose of calculating the minimum procurement targets, the date of the public procurement to be taken into account is the date of completion of the public procurement procedure, by way of awarding of the contract.
3. Vehicles that meet the definition of clean vehicle under point 4 of Article 4 or of zero-emission heavy-duty vehicle under point 5 of Article 4 as a result of retrofitting may be counted as clean vehicles or zero-emission heavy-duty vehicles, respectively, for the purpose of compliance with the minimum procurement targets.

Commitment to SRPP

No commitments are made.

5. TECHNICAL PART

5.2 ENERGY PERFORMANCE OF BUILDINGS DIRECTIVE





OBJECTIVE

The Energy Performance of Buildings Directive aims to at least double the annual energy renovation rate of buildings by 2030 and to promote deep renovation.

TIMELINE
2010/31/EU: Original Directive
2018/844/EU: Revised
This legislative procedure is ongoing
(2021/0426)

Significant progress has been achieved in GPP. The new 2018 (ongoing) directive by the European Parliament establishes firm emissions targets for public buildings. The more recent text underscores the need for targets, emphasising that stimulation alone is insufficient to achieve lower emissions and GPP. It also emphasises the

requirement that Member States must (“shall”) establish clear standards beyond the public sector. Finally, we observe that the scope of what Member States are required to address has expanded. However, there is no mention of social considerations or Socially Responsible Public Procurement.

Legislative file	Green Public Procurement (GPP)	Socially Responsible Public Procurement (SRPP)
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



Commitment to GPP

The old 2010 directive sets out that Member States “shall ensure” that all new buildings are nearly zero-energy buildings and that measures shall be taken for the “setting of targets” for old buildings:

OLD DIRECTIVE

Article 9 Nearly zero-energy buildings

1. Member States shall ensure that

(b) after 31 December 2018, new buildings occupied and owned by public authorities are nearly zero-energy buildings (...)

2. Member States shall furthermore, following the leading example of the public sector, develop policies and take measures such as the **setting of targets** in order to stimulate the transformation of buildings that are refurbished into nearly zero-energy buildings, (...)

The new 2018 directive proposal (ongoing legislative procedure) imposes stricter requirements for new buildings in terms of efficiency, shifting from ‘nearly zero-energy buildings to “zero emissions”. For example, the directive proposal states that new public buildings have to be “zero-emission” by 2027, and other buildings by 2030. Furthermore, the directive sets targets for the incorporation of solar energy on all newly constructed public buildings by 2027.

We see a shift away from the concept of near zero-energy construction towards minimum energy performance standards accompanied by clear targets (e.g., energy performance class D) with a clear time horizon.

There are explicit references to “**Member States shall ensure**”. This term generally imposes a high level of binding obligation, indicating a strong commitment to achieve a particular result. It implies a clear and enforceable duty to take the necessary actions to ensure the specified outcome.

We also observe that the old directive had vague formulations of the commitment by Member States to ensure transformations of buildings outside the public sector; the old formulations were aimed to *stimulate* the transformation to near zero-energy buildings. The old directive also builds on “*the leading example of the public sector*”, which would be limited in Member States where the public sector is not a leading example in this regard. However, in the new ongoing directive, the European Parliament pushes the Member States by stating that: “**each Member State shall establish minimum energy performance standards for the renovation of all other existing buildings**”. The new text broadens the scope by not only addressing new public buildings but also existing buildings that are subject to renovation.

5. TECHNICAL PART

5.3 ENERGY EFFICIENCY DIRECTIVE

OBJECTIVE

The 2023 amending directive elevates the level of ambition of the EU energy efficiency target, making it binding for EU countries to collectively ensure an additional 11.7% reduction in energy consumption by 2030.

TIMELINE
2012/27/EU: Original
2023: Proposal
This legislative procedure is ongoing (2021/0203).

Significant progress has been achieved in GPP. The new 2023 directive (ongoing) establishes mandatory purchasing requirements for public authorities, stating that they “*shall ensure*” they purchase “*only products, services and buildings with high energy-efficiency performance*”. In a legal context, the phrase “*shall ensure*” is generally understood to impose a binding obligation on the party to take specific actions or measures to guarantee a certain outcome—it leaves little room for interpretation or discretion and imposes a performance obligation that is likely to be legally enforceable. Courts are more likely to interpret this language as a mandatory requirement, and parties failing to fulfil their obligations may be subject to legal consequences. In the new 2023 directive, the annex provides a well-defined list of mandatory criteria. Furthermore, the new directive broadens the scope of definition beyond “*products, services or buildings*” to include “*works*”.

Regarding SRPP, the old directive made no mention of social considerations in public purchasing. The new (ongoing) file takes a step forward and sets out that “*Member States shall encourage public bodies to consider... social benefits*”. The phrase “shall encourage” implies a responsibility to promote or support an action or behaviour without necessarily ensuring its direct accomplishment. It suggests an obligation to actively promote, support, or foster a particular action or behaviour and, rather than taking those actions directly, it focuses on influencing others to take certain actions. The enforceability of “shall encourage” clauses may be limited as they often involve subjective assessments of whether sufficient efforts have been made to promote the desired behaviour. It might, therefore, be challenging to determine specific measures that constitute adequate encouragement.

Assessment of commitment to GPP and SRPP

Legislative file	Green Public Procurement (GPP)	Socially Responsible Public Procurement (SRPP)
Energy efficiency Directive (2010, 2012)	 Semi-mandatory award/selection criteria	 Nothing
Energy efficiency Directive (2023)*	 More stringent criteria	 Member States may consider? social benefits



Commitment to GPP

The old 2012 directive sets semi-mandatory award criteria and selection criteria. There is reference to 'leading by example' within the context of purchasing products and services. The term 'leading by example' is a concept that emphasises setting a positive or influential standard through one's own actions and behaviour. Whereas 'leading by example' is a broader principle that may not possess direct legal standing on its own, it can influence legal outcomes, relationships, and perceptions in various legal contexts.

Although it is clearly stated that Member States "*shall ensure*" that central governments "*purchase only products, services and buildings with high energy-efficiency performance*" there are clear caveats raising the economic considerations above the green considerations within Article 6 and Recital 19:

OLD DIRECTIVE

Leading by example recital

Recital 19: "With regard to the purchase of certain products and services and the purchase and rent of buildings, central governments which conclude public works, supply or service contracts should lead by example and make energy-efficient purchasing decisions."

Article 6 Purchasing by public bodies

1. Member States shall ensure that central governments purchase only products, services and buildings with high energy-efficiency performance, insofar as that is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition, as referred to in Annex III.

Annex III Energy Efficiency Requirements for Purchasing Products, Services and Buildings by Central Government Central governments that purchase products, services or buildings, insofar as this is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition, shall:

(a) where a product is covered by a delegated act adopted under Directive 2010/30/EU or by a related Commission implementing directive, purchase only the products that comply with the criterion of belonging to the highest energy efficiency class possible in the light of the need to ensure sufficient competition.

5. TECHNICAL PART

5.3 ENERGY EFFICIENCY DIRECTIVE

The 2023 proposal makes considerably more progress regarding GPP. The caveats that take into account economic considerations are removed from the articles. Furthermore, the proposal demonstrates its advancements in green considerations by providing in Annex IV a list of mandatory green criteria:

NEW DIRECTIVE PROPOSAL (Ongoing file)

Recital 39

Article 7 – Public procurement

1. Member States shall ensure that contracting authorities and contracting entities, when concluding public contracts and concessions with a value equal to or greater than the thresholds laid down in Article 8 of Directive 2014/23/EU, Article 4 of Directive 2014/24/EU and Article 15 of Directive 2014/25/EU, purchase only products, services buildings and works with high energy-efficiency performance in accordance with the requirements referred to in Annex IV to this Directive, unless it is not technically feasible.

Member States shall also ensure that in concluding the public contracts and concessions with a value equal to or greater than the thresholds referred to in the first subparagraph, contracting authorities and contracting entities apply the energy efficiency first principle in accordance with Article 3, including for those public contracts and concessions for which no specific requirements are provided for in Annex IV.

Annex IV: Energy Efficiency Requirements for Public Procurement

In award procedures for public contracts and concessions, contracting authorities and contracting entities that purchase products, services, buildings and works, shall: ... <a list of obligatory criteria >



Commitment to SRPP

The file includes only a very brief reference to social benefits. This reference makes no commitments and, as such, it is unlikely that any consideration of social benefits can be used to influence public procurement decisions. It should be noted that, in the context of GPP, the economic consideration caveats were removed compared to the old directive, however these caveats have been added when it comes to considering social requirements.

Article 5

8. “Member States shall encourage public bodies to consider life cycle carbon emissions as well as the economic and social benefits of their public bodies’ investment and policy activities.

Article 7 – Public procurement

5. Member States may require that contracting authorities and contracting entities, when concluding contracts as referred to in paragraph 1 of this Article, take into account, where appropriate, wider sustainability, social, environmental and circular economy aspects in procurement practices with a view to achieving the Union’s decarbonisation and zero pollution objectives. Where appropriate, and in accordance with Annex IV, Member States shall require contracting authorities and contracting entities to take into account Union green public procurement criteria or available equivalent national criteria.

5. TECHNICAL PART

5.4 NET ZERO INDUSTRY ACT

OBJECTIVE

The goals are to increase the resilience of Europe’s clean energy supply chains to avoid disruption in global energy market supply chains, and to strengthen the EU’s net-zero technology products manufacturing ecosystem.

TIMELINE
2023/0081: Proposal for regulation
2023: This legislative procedure is ongoing (2023/0081(COD))

With regards to GPP, while the proposal is still an ongoing file, this case serves as an example of how green criteria in public procurement can be promoted and specified through EU sectoral public procurement files. The proposal provides extremely clear stipulations on the criteria that constitute sustainability and resilience, as well as the weighting these are allowed in the award criteria. Furthermore, the proposal also outlines conditions for when cost differences and technical requirements exceed a specific percentage of the price. GPP has made exemplary headway in this file.

Concerning SRPP, the preamble to the proposal reiterates the social clause in Article 18 (2) of Public Procurement Directive 2014/24/EU. While

not legally binding, a strong political message is conveyed in that it places the criteria with environmental and social characteristics under assessment for their contributions to environmental sustainability, innovation, and resilience. This could have a positive impact on the inclusion of green criteria but in the SRPP context, there could be an adverse effect on the inclusion of social criteria. Conversely, the file is the first to mention collective bargaining and sets the political tone by urging contracting authorities to take appropriate steps to promote social sustainability and include collective bargaining.

Assessment of commitment to GPP and SRPP

Legislative file	Green Public Procurement (GPP)	Socially Responsible Public Procurement (SRPP)
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



Commitment to GPP

Article 19 provides precise stipulations regarding the criteria constituting sustainability and resilience, as well as the weight these can carry in the award criteria. Additionally, it states that contracting authorities "shall not be obliged" to set sustainability criteria if this leads to disproportionate costs or divergence in technical features from existing equipment, leading to compatibility issues and operational complexities. Moreover, it sets a limit on the price increase to 10%.

ARTICLE 19 - Sustainability and Resilience Contribution in Public Procurement Procedures

- 1. Contracting authorities or contracting entities shall base the award of contracts for net-zero technology listed in the Annex in a public procurement procedure on the most economically advantageous tender, which shall include the best price-quality ratio, comprising at least the sustainability and resilience contribution of the tender, in compliance with Directives 2014/23/EU, 2014/24/EU, or 2014/25/EU and applicable sectoral legislation, as well as with the Union's international commitments, including the GPA and other international agreements by which the Union is bound.*
- 2. The tender's sustainability and resilience contribution shall be based on the following cumulative criteria which shall be objective, transparent and non-discriminatory:*
 - environmental sustainability going beyond the minimum requirements in applicable legislation;*
 - where an innovative solution needs to be developed, the impact and the quality of the implementation plan, including risk management measures;*
 - where applicable, the tender's contribution to the energy system integration;*
 - the tender's contribution to resilience, taking into account the proportion of the products originating from a single source of supply, as determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council 72 , from which more than 65% of the supply for that specific net-zero technology within the Union originates in the last year for which data is available for when the tender takes place.*
- 3. Contracting authorities and contracting entities shall give the tender's sustainability and resilience contribution a weight between 15% and 30% of the award criteria, without prejudice of the application of Article 41 (3) of Directive 2014/23/EU, Article 67 (5) of Directive 2014/24/EU or Article 82 (5) of Directive 2014/25/EU for giving a higher weighting to the criteria referred to in paragraph 2, points (a) and (b).*
- 4. The contracting authority or the contracting entity shall not be obliged to apply the considerations relating to the sustainability and resilience contribution of net-zero technologies where their application would oblige that authority or entity to acquire equipment having disproportionate costs, or technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance. Cost differences above 10% may be presumed by contracting authorities and contracting entities to be disproportionate. This provision shall be without prejudice of the possibility to exclude abnormally low tenders under Article 69 of Directive 2014/24/EU and Article 84 of Directive 2014/25/EU, and without prejudice to other contract award criteria according to the EU legislation, including social aspects according to Articles 30 (3) and 36 (1), second intent of Directive 2014/23/EU, Articles 18 (2) and 67 (2) of Directive 2014/24/EU and Articles 36 (2) and 82 (2) of Directive 2014/24/EU.*

5. TECHNICAL PART

5.4 NET ZERO INDUSTRY ACT

The preamble (ongoing file) refers to the existing directive’s social clause, supporting the adoption of the social and green public procurement requirements in Recital 25. However, as outlined in Section 3 of this report, the existing directive has several limitations to achieving real advancements. Furthermore, Recital 25 emphasises that the contracting authority “*should duly assess*” the characteristics of tenders in relation to “*environmental sustainability, innovation, system integration and to resilience*”:

NEW 2023 Proposal

Recital 25

Directives 2014/23/EU, 2014/24/EU and 2014/25/EU already allow contracting authorities and entities awarding contracts through public procurement procedures to rely, in addition to price or cost, on additional criteria for identifying the most economically advantageous tender. Such criteria concern for instance the quality of the tender including social, environmental and innovative characteristics. When awarding contracts for net-zero technology through public procurement, contracting authorities and contracting entities should duly assess the tenders’ contribution to sustainability and resilience in relation to a series of criteria relating to the tender’s environmental sustainability, innovation, system integration and to resilience.

Commitment to SRPP

Regarding Recital 25 referred to above, in which the proposal’s text proved advantageous for GPP, running the same simulation for social characteristics is likely to yield a negative result for SRPP.

Recital 25 reiterates the social clause in the Public Procurement Directive by stating that “*criteria with social characteristics*” are allowed to be used when awarding contracts. However, it goes on to say that contracting authorities “*should duly assess*” if this contributes to “*the tender’s environmental sustainability, innovation, system integration and to resilience*”. It is uncertain whether—and probably unlikely that—a criterion for respecting collective bargaining to ensure decent work would be assessed as making a positive contribution to a tender’s environmental sustainability or resilience. The contracting authorities are not required (‘shall’), but are only expected (‘should’), to duly assess the criteria’s contribution to the tender’s environmental sustainability, innovation or resilience. The assessment’s outcome is not explicitly stated to require an impact on the tender with the highest score. Nevertheless, in practice, it could potentially create a deterrent effect on any criteria related to respecting collective bargaining for ensuring decent work.



As mentioned above, the preamble holds no legal value, but its value lies in the context it offers. The proposal reiterates that the social clause “already allows” for social criteria. However, it appears that this file adds constraints to the social clause by referencing the expectation to “duly assess” its contribution to resilience, system integration, innovation, and environmental sustainability. This is likely to be at the detriment of SRPP’s ability to promote decent work.

In addition to Recital 25, Recital 26 in the preamble addresses social criteria directly. This recital again underlines the existing social clause by stating “***Social sustainability criteria can already be applied under existing legislation and can include working conditions and collective bargaining***”. While it is important to accredit the memento and the good intentions, Section 3 of this report elaborates on the limitations of the social clause. However, what is interesting is that Recital 26 introduces the guiding principle that “*Contracting authorities should contribute to social sustainability by taking the appropriate measures(...)*”—including ensuring compliance with collective agreements. This represents an interesting message from the European Commission (if adopted by the European Union), aimed directly at contracting authorities, as opposed to indirectly through the Member States (as is the case with the social clause), where Member States are tasked with taking appropriate measures. The political intention is positive; however, as mentioned above, the text holds no legal value and cannot be enforced.

(26) Social sustainability criteria can already be applied under existing legislation and can include working conditions and collective bargaining in line with the European Pillar of Social Rights in line with Articles, 30 (3) of Directive 2014/23/EU, 18 (2) of Directive 2014/24/EU and 36 (2) of Directive 2014/25/EU. Contracting authorities should contribute to social sustainability by taking the appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X of Directive 2014/23/EU, Annex X of Directive 2014/24/EU and Annex XIV of Directive 2014/25/EU 43.

It is also worth noting that this file is the only sectoral public procurement file that makes direct reference to collective bargaining.

5. TECHNICAL PART

5.5 ENERGY LABELLING DIRECTIVE AND REGULATION

The file’s role in relation to public procurement

This file sets out the basis for labelling energy-related products, providing standard information about energy efficiency—as well as the consumption of energy and other resources—to help consumers in purchase decisions.

In terms of GPP, this legislative piece stands out as the only one in this report to lower its level of ambition in comparison to its predecessor from 2010. The new 2017 regulation makes no references to criteria or efforts to be included in relation to green public spending.

The old 2010 directive sets out the delegated acts to be published by the European Commission based on the directive.

It includes an effort-based obligation, wherein contracting authorities “*shall endeavour to procure only such products which comply with the criteria of having the highest performance levels and belonging to the highest energy efficiency class*”. The use of the term “shall endeavour” can also imply an obligation of good faith and fair dealing in attempting to fulfil the stated objective. However, unlike


TIMELINE
2010/30/EU Directive
2017/1369 Regulation

stronger terms such as “shall” or “must”, “shall endeavour” allows for a certain degree of discretion and flexibility in determining the precise methods and steps to be taken. It acknowledges that external circumstances beyond a party’s control may affect the ability to achieve the goal.

The old 2010 directive also mentions that Member States “*may also require the contracting authorities to procure only products fulfilling those criteria*”. However, this is immediately followed by a provision stating that the application of such criteria can be subject to “*cost-effectiveness, economic feasibility...*”. This effectively places the ranking of financial considerations above those of green criteria.

There is no mention of SRPP.

Assessment of commitment to GPP and SRPP

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



Commitment to GPP

OLD 2010 DIRECTIVE

Article 9 Public procurement and incentives

1. Where a product is covered by a delegated act, contracting authorities which conclude public works, supply or service contracts as referred to in Directive 2004/18/EC 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 (1), which are not excluded by virtue of Articles 12 to 18 thereof, shall endeavour to procure only such products which comply with the criteria of having the highest performance levels and belonging to the highest energy efficiency class. Member States may also require the contracting authorities to procure only products fulfilling those criteria. Member States may make the application of those criteria subject to cost-effectiveness, economical feasibility and technical suitability and sufficient competition.

NEW 2017 REGULATION

<No commitments are made to Green Public Procurement (GPP)>

Commitment to SRPP

No commitments are made.

5. TECHNICAL PART

5.6 BATTERIES AND WASTE BATTERIES DIRECTIVE AND REGULATION

The file’s role in relation to public procurement

This file sets out the basis for labelling energy-related products, providing standard information about energy efficiency—as well as the consumption of energy and other resources—to help consumers in purchase decisions.





TIMELINE
2006/66/EC: Directive
2020/0353: Regulation

There are several advances regarding GPP. For example, obligatory award criteria will be established by a delegated act. Another interesting development is the transformation of the former directive into a regulation. As a regulation, it holds immediate legal effect and does not require member states to take further action to incorporate it into their national legal systems. The regulation is binding and uniformly applicable across the EU. Furthermore, regulations ensure a high degree of uniformity and consistency in the application of

EU law across member states, as they create the same legal obligations for all countries.

Notably, in the context of SRPP, the preamble sets out the groundbreaking political wish to include the impact of social issues, including labour rights, in a mandatory due diligence policy. While this political indication is hopeful, it is unlikely to be enforced solely based on the provisions of this regulation.

Assessment of commitment to GPP and SRPP

Legislative file	Green Public Procurement (GPP)	Socially Responsible Public Procurement (SRPP)
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



Commitment to GPP

The new 2023 regulation establishes obligatory GPP through delegated acts based on the regulation to be published by the European Commission (Article 85 (2,3)). Article 85(1) states in robust language that contracting entities “*shall (...) take account of the environmental impacts (...) with a view to ensuring that such impacts are kept to a minimum*”. “Shall” and “ensuring” are strong terms, implying a clear obligation with enforcement implications.

Furthermore, through the use of delegated acts, the European Commission can establish the criteria for procurement procedures.

New 2023 Regulation

Article 85 - Green public procurement

1. Contracting authorities, as defined in Article 2(1), point (1), of Directive 2014/24/EU or Article 3(1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU shall, when procuring batteries or products containing batteries in situations covered by those Directives, take account of the environmental impacts of those batteries over their life cycle with a view to ensuring that such impacts are kept to a minimum.

From 12 months after the date of entry into force of the first delegated act referred to in paragraph 3 of this Article, establishing award criteria for procurement procedures, the obligation laid down in paragraph 1 of this Article shall be fulfilled through the application of those award criteria. Any procurement procedure carried out by contracting authorities or contracting entities for the purchase of batteries, or products containing batteries, that fall within the scope of Articles 7 to 10 shall make reference in its technical specifications and award criteria to that first delegated act to ensure that those batteries, or products containing batteries, are procured with significantly lower environmental impacts over their life cycle.

3. The Commission shall, 12 months after the adoption of the latest of the delegated acts referred to in Article 7(2), fourth subparagraph, point (a), Article 8(1), Article 9(2) and Article 10(5), adopt delegated acts in accordance with Article 89 supplementing this Regulation by establishing award criteria for procurement procedures for batteries, or products containing batteries, based on the sustainability requirements laid down in Articles 7 to 10.

5. TECHNICAL PART

5.6 BATTERIES AND WASTE BATTERIES DIRECTIVE AND REGULATION

Commitment to SRPP

In the preamble to the 2023 regulation, a strong commitment is present to both green and social considerations. While the preamble holds no legal value, it sets out the guiding purpose and principles of the document. In Recital 133 it states that contracting authorities “*should ensure*” effective compliance by the economic operators with social requirements. “Should ensure” conveys a recommendation or strong suggestion that the party should take certain actions to achieve a particular objective. It falls short of creating a strict legal obligation. While “should ensure” indicates a desire or expectation that the party will act in a certain way, it is generally less enforceable than “shall ensure.” Courts may perceive it as more aspirational or discretionary.

New 2023 Regulation (Preamble)

(133) Public procurement constitutes an important sector with regard to reducing the impacts on the environment of human activities and to stimulating market transformation towards more sustainable products. Contracting authorities, as defined in Directives 2014/24/EU(38) and 2014/25/EU(39) of the European Parliament and of the Council, and contracting entities as defined in Directive 2014/25/EU should take account of the environmental impacts when procuring batteries or products containing batteries and should ensure effective compliance by the economic operators with social and environmental requirements, in order to promote and stimulate the market for clean and energy-efficient mobility and energy-storage and thus contribute to the environment, climate and energy policy objectives of the Union.



In the Recital 82 preamble of the 2023 regulation, we see a commitment to the need to address social risks that are inherent in processing and trading (of batteries and waste batteries). We also see the criteria for mandatory battery due diligence policies to address “*at least the most prevalent social (...) risk*” and that those policies “*should cover the current and foreseeable impacts on social issues, among others labour rights.*” As before, the preamble holds no legal value.

(82). (...) economic operator that places a battery on the Union market should set up a battery due diligence policy. Requirements therefore should be laid down in this Regulation, in order to address the social and environmental risks inherent in the extraction, processing and trading of certain raw materials and secondary raw materials used for the purposes of battery manufacturing.

(86) Mandatory battery due diligence policies should be adopted or changed and should address, at least the most prevalent social and environmental risk categories. Such a policy should cover the current and foreseeable impacts on social issues, in particular human rights, human health and safety of persons as well as occupational health and safety, and labour rights.

5. TECHNICAL PART

5.7 ECODESIGN FOR SUSTAINABLE PRODUCTS REGULATION

Objective

This file aims to reduce negative life cycle environmental impacts of products, and to improve the internal market. Ecodesign refers to the idea that sustainability considerations are included in product design.

TIMELINE
2003/0172
2008/0151
COM/2022/142: Proposal
2022/0095/COD: Ongoing file

Within the context of GPP, the European Commission has the power to adopt delegated acts that establish certain requirements, which may include mandatory criteria for public contracts.

Regarding SRPP, the European Parliament has pushed for the future consideration of social

sustainability. While this is an improvement compared to files where social issues are not even mentioned, it is unclear why social sustainability is positioned only as a future issue to be encountered, whereas environmental and climate issues are pressing matters that are ready to be addressed now.

Assessment of commitment to GPP and SRPP

Legislative file	Green Public Procurement (GPP)	Socially Responsible Public Procurement (SRPP)
Ecodesign of sustainable products Directive (2003)	 Mandatory green criteria to be established by delegated act.	 Nothing
Ecodesign of sustainable products regulation (2022)*	 Mandatory green criteria to be established by delegated act.	 Nothing



Commitment to GPP

The regulation established a digital product passport which provides for the setting of mandatory GPP criteria.

Article 4 gives the European Commission the power to adopt delegated acts establishing requirements for public contracts. This is an improvement over the old directive from 2009, which only refers to this in its Recital 38:



New 2022 Proposal for Regulation

Article 4 – Empowerments to adopt delegated acts

The Commission is empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation by establishing ecodesign requirement (...) Delegated acts referred to in the first subparagraph may also supplement this Regulation by:

(...)

(h) establishing requirements applicable to public contracts, including implementation, monitoring and reporting of those requirements by Member States. Those requirements shall be based on the product parameters referred to in Annex I and established in accordance with Article 58.

5. TECHNICAL PART

5.7 ECODESIGN FOR SUSTAINABLE PRODUCTS REGULATION

Article 58 specifies GPP by establishing mandatory requirements in the form of selection criteria, award criteria, and performance clauses or targets, which must be treated as performance requirements.

Article 58 – Green public procurement

Requirements pursuant to Article 4, third subparagraph, point (h) for public contracts awarded by contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3(1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, may take the form of mandatory technical specifications, selection criteria, award criteria, contract performance clauses, or targets, as appropriate.

When establishing requirements pursuant to Article 4, third subparagraph, point (h), for public contracts, the Commission shall take into account the following criteria:

- a) the value and volume of public contracts awarded for that given product group or for the services or works using the given product group;*
- a) the need to ensure sufficient demand for more environmentally sustainable products;*
- a) the economic feasibility for contracting authorities or contracting entities to buy more environmentally sustainable products, without entailing disproportionate costs.*



Commitment to SRPP

In Amendment 222 to the proposal for a Regulation, Article 69, Paragraph 1, the European Parliament calls upon the European Commission to consider the inclusion of social sustainability within the scope of the directive and to accompany this with a report.

Amendment 222

Article 69 (1):

(...) No later than [insert the date 4 years after the date of application of this Regulation], the Commission shall consider the inclusion of social sustainability and due diligence requirements within the scope of this Regulation.

The Commission shall present a report on the main findings to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, and make it publicly available. Member States shall provide the Commission with the information necessary for the preparation of that report.

5. TECHNICAL PART

5.8 CONSTRUCTION PRODUCTS REGULATION (CPR)

Objective




The aim of the CPR is to improve the single market for construction products and to ensure the free movement of these products.

TIMELINE
305/2011: Original
2019/1020: amended
2022/0094 (COD): Proposal

Regarding GPP, this regulation represents a significant advancement. Through delegated acts, the Commission acquires the authority to define requirements covering mandatory technical specifications, selection and award criteria, contract performance clauses, and targets, thereby

establishing compulsory benchmarks. The Commission is also obliged to consider economic viability, contract scale, and environmental sustainability, underscoring a positive development for GPP. However, there is no mention of SRPP.

Assessment of commitment to GPP and SRPP

Legislative file	Green Public Procurement (GPP)	Socially Responsible Public Procurement (SRPP)
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.	 Nothing



Commitment to GPP

The preamble's Recital 91, in the new 2022 proposal, addresses the inadequacy of the voluntary approach in implementing ambitious criteria in public procurement. Unfortunately, the European Parliament attempted to weaken this political statement by removing it (Amendment 61).

New 2022 proposal

Recital 91

“Compared to a voluntary approach, mandatory criteria or targets will ensure that the leverage of public spending to boost demand for better performing products is maximised. The criteria should be transparent, objective and non-discriminator”

The old 2011 regulation had already allowed for delegated acts (Article 28, para. 2) which took into consideration ‘effect on the health and safety of people, and on the environment.’ However, it did not go as far as to specifically address GPP, as done in the new proposal. Within the legally binding text of the proposal, it is stated that the Commission can, through delegated acts, establish requirements as outlined in the regulation. These requirements may encompass mandatory technical specifications, selection criteria, award criteria, contract performance clauses, or targets. This means that the Commission can establish obligatory criteria. Furthermore, the Commission is required to consider economic feasibility, contract size, and environmental sustainability—a positive development for GPP.

New regulation

Article 84 Green public procurement

The Commission is empowered to supplement this Regulation by delegated acts according to Article 87 by establishing sustainability requirements applicable to public contracts, including implementation, monitoring and reporting of those requirements by Member States.

Requirements adopted pursuant to paragraph 1 for public contracts awarded by contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3, point (1) of Directive

5. TECHNICAL PART

5.8 CONSTRUCTION PRODUCTS REGULATION (CPR)

The old 2011 regulation had already allowed for delegated acts (Article 28, para. 2) which took into consideration ‘effect on the health and safety of people, and on the environment.’ However, it did not go as far as to specifically address GPP, as done in the new proposal. Within the legally binding text of the proposal, it is stated that the Commission can, through delegated acts, establish requirements as outlined in the regulation. These requirements may encompass mandatory technical specifications, selection criteria, award criteria, contract performance clauses, or targets. This means that the Commission can establish obligatory criteria. Furthermore, the Commission is required to consider economic feasibility, contract size, and environmental sustainability—a positive development for GPP.

New regulation

Article 84 Green public procurement

The Commission is empowered to supplement this Regulation by delegated acts according to Article 87 by establishing sustainability requirements applicable to public contracts, including implementation, monitoring and reporting of those requirements by Member States.

Requirements adopted pursuant to paragraph 1 for public contracts awarded by contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3, point (1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, may take the form of mandatory technical specifications, selection criteria, award criteria, contract performance clauses, or targets, as appropriate.

When establishing requirements pursuant to paragraph 1 for public contracts, the Commission shall take into account the following criteria:

- the value and volume of public contracts awarded for that given product family or category or for the services or works using the given product family or category;*
- the need to ensure sufficient demand for more environmentally sustainable products;*
- the economic feasibility for contracting authorities or contracting entities to buy more environmentally sustainable products, without entailing disproportionate costs*

Commitment to SGPP

No commitments to SRPP are made.

5.9 PACKAGING AND PACKAGING WASTE REGULATION

Objective





The Packaging and Packaging Waste Directive (PPWD – Directive 94/62/EC) lays down measures to prevent the production of packaging waste, and to promote reuse of packaging, recycling, and other forms of recovering packaging waste. It also outlines the requirements that all packaging placed on the EU market must meet.

TIMELINE
1992/0436: Directive
COM/2022/677:
Proposal for Regulation
Procedure file (2022/0396 COD)

Within the context of GPP, the proposal establishes the implementation of ‘minimum mandatory GPP criteria’ through delegated acts. These criteria consider contract size, environmental sustainability, and economic feasibility. This represents a step forward for GPP as it requires that environmental sustainability is considered in GPP criteria. However, for SRPP, no such provisions exist.

In addition, there are no commitments made with regards to SRPP. However, the preamble holds significance for both GPP and, potentially, SRPP. The preamble conveys a strong political message regarding GPP, emphasising the need for mandatory criteria or targets to ensure the impact of public procurement in driving progress forward. The recognition that voluntary measures are insufficient in driving change sets an important tone for SRPP, providing opportunities to promote decent work in future public contracts.

Assessment of commitment to GPP and SRPP

Legislative file	Green Public Procurement (GPP)	Socially Responsible Public Procurement (SRPP)
Packaging and packaging waste Directive (1992)	 Mandatory green criteria to be established by delegated act.	 Nothing
Packaging and packaging waste Regulation (2022)*	 Mandatory green criteria to be established by delegated act.	 Nothing

5. TECHNICAL PART

5.9 PACKAGING AND PACKAGING WASTE REGULATION

Commitment to SRPP

Article 57 of the proposal establishes that contracting authorities shall apply the ‘minimum mandatory green public procurement criteria’ developed in delegated acts. Furthermore, the Commission is obliged to adopt these delegated acts within a specific timeframe. The minimum mandatory GPP criteria must consider contract size, environmental sustainability, and economic feasibility.

Article 57 – Green public procurement

- 1. Contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3(1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, shall, when awarding any public contracts for packaging or packaged products or for services using packaging or packaged products in situations covered by those Directives, **apply the green public procurement criteria** to be developed in **delegated acts** adopted pursuant to paragraph 3.*
- 2. The obligation set out in paragraph 1 shall apply to any procedure for procurement by contracting authorities or contracting entities for the awarding of public contracts for packaging or packaged products or for services using packaging or packaged products, which is initiated 12 months or later after the entry into force of the respective delegated act to be adopted pursuant to paragraph 3.*
- 3. The Commission shall, by [OP: please insert the date = 60 months after the date of entry into force of this Regulation], adopt delegated acts in accordance with Article 58 supplementing this Regulation by establishing **minimum mandatory green public procurement criteria** based on the requirements set out in Article 5 to 10 and on the following elements:*
 - a) the value and volume of public contracts awarded for packaging or packaged products or for the services or works using packaging or packaged products;*
 - b) the need to ensure sufficient demand for more **environmentally sustainable** packaging or packaged products;*
 - c) the economic feasibility for contracting authorities or contracting entities to buy more **environmentally sustainable** packaging or packaged products, without entailing disproportionate costs.*

Those green public procurement criteria shall be developed in accordance with the principles contained in Directive 2014/24/EU and in Directive 2014/25/EU and with the principle that the packaging to be chosen on the basis of those criteria facilitates the achievement of the objectives of this Regulation.



It is conceivable that criteria with environmental characteristics can contribute to a tender's environmental sustainability and economic feasibility, and while GPP may increase the cost of a contract, at least environmental sustainability is considered. This simulation would likely yield a positive advancement for GPP. However, running the same simulation for SRPP, this delegated act—which takes into account economic feasibility but not social sustainability—is not likely to yield advances for SRPP such as ensuring decent work. It is unlikely that a criterion set by this delegated act would include respect for collective bargaining to ensure decent work, which would be assessed as positively contributing to the tender's environmental sustainability or economic feasibility.

The Commission's authority is further reinforced in the preamble. Recital 128 stipulates that, when it is *'necessary'* and *'appropriate'*, the Commission may exercise its power to adopt delegated acts to *'require'* contracting authorities *'to align their procurement with specific green public procurement criteria or targets'*. Accordingly, the intention behind Article 157 is clear and is clearly in favour of GPP.



















Recital 128:

(128) Public procurement amounts to 14 % of the Union's GDP. To contribute to the objective of reaching climate neutrality, improving energy and resource efficiency and transitioning to a circular economy that protects public health and biodiversity, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission, which may exercise it as necessary, to require, where appropriate, contracting authorities and entities as defined in Directive 2014/24/EU of the European Parliament and of the Council 75 and Directive 2014/25/EU of the European Parliament and of the Council 76 , to align their procurement with specific green public procurement criteria or targets. Compared to a voluntary approach, mandatory criteria or targets should ensure that the leverage of public spending to boost demand for better performing packaging is maximised. The criteria should be transparent, objective and non-discriminatory.





















No commitments to SRPP are made. However, the preamble makes an important statement regarding GPP, which may set the tone for SRPP. While the preamble does not hold any legal value or have a direct effect, it effectively communicates a significant political statement regarding GPP. It underlines that *'mandatory criteria or targets should ensure that the leverage of public spending to boost demand for improvement'*, which is unlike a voluntary approach. This emphasises the need for mandatory criteria or targets to harness the potential of public procurement in stimulating improvements, rather than relying solely on a voluntary approach. Recognizing that the voluntary approach is insufficient to bring about change establishes an important tone for SRPP and the potential to guarantee decent work in future public contracts.

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

6. RECOMMENDATIONS



1. The European Commission should continue its good work on proposing mandatory criteria—as well as procedures to propose mandatory criteria—in Green Public Procurement. In doing so, it should also include Socially Responsible Public Procurement, with a particular focus on labour rights.
2. The European Commission should include, in its sectoral public procurement files, a set of obligatory award criteria related to Socially Responsible Public Procurement, as it does with Green Public Procurement.
3. The European Commission should incorporate, in its sectoral public procurement files, result-oriented criteria related to Socially Responsible Public Procurement by a specified percentage and date, similar to how it deals with Green Public Procurement, e.g., requirement of X % of collective bargaining coverage of public contracts by date Y.
4. The European Commission should revise the public procurement directives to:
 - a. respect the basic International Labour Organization conventions, including making the conventions on collective bargaining and freedom of association mandatory exclusion criteria for public authorities;
 - b. establish that public authorities require collective agreements to be respected, in line with ILO Convention 94;
 - c. enable public authorities to award points to companies with collective agreements, and to allow national authorities to make such policies mandatory.



FORWARD

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