



INT/902
Towards circular public procurement

OPINION

European Economic and Social Committee

Towards circular public procurement
(Own-initiative opinion)

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1. Conclusions and recommendations

- 1.1 A transparent, digital and competitive Circular Public Procurement (CPP) instrument, with Green Public Procurement (GPP) as defined by EU legislation, falls under policies to promote development of the single market, to deliver high-quality goods and services to citizens and consumers, and to develop an innovative, smart, sustainable and socially responsible European public procurement culture.
- 1.2 The management of public procurement is a central and decisive factor in terms of increasing investment in the environment sector, the climate objectives and the Sustainable Europe Investment Plan.
- 1.3 Public procurement that includes minimum mandatory Green Public Procurement criteria (EU GPP criteria) falls within the scope of circular economy policies as set out in the Circular Economic Action Plan (CEAP).
- 1.4 Legislation and regulation must give CPP a boost through various instruments such as procurement directives and sector-specific legislation.
- 1.5 The introduction of CPP encourages development of the circular economy. Many of the new rules are currently still based on voluntary adjustment. The EESC calls for further steps to increase the number of mandatory agreements. In addition, it is essential that the regulatory framework be simple, clear and uniform.
- 1.6 The EESC is convinced that the introduction of minimum mandatory GPP criteria can raise the baseline of sustainable and CPP across Europe.
- 1.7 These minimum criteria do not act as an obstacle to frontrunners or hinder innovation, or give an excuse to contracting authorities to go further than the minimum. The key is that minimum mandatory criteria must be regularly checked and updated to take account of technological advancement and must not restrict those that go further.
- 1.8 The EESC is convinced that CPP will allow administrations to move beyond the lowest price criterion at the time of purchase and to evaluate the quality and circularity aspects of tenders and the quality of work.
- 1.9 The EESC considers that the quality of employment, one of the European Pillar of Social Rights principles, must be reflected in the requirement to enter into public contracts with companies that apply collective agreements or, failing that, follow the applicable national law and practice resulting from the agreements between the social partners. This will prevent social dumping and ensure fair competition.
- 1.10 The EESC welcomes the standardised free-to-access to Life Cycle Cost (LCC) measuring tools that have already been developed by the EC. The LCC of a product or service, and the use of criteria that go beyond price, such as quality, sustainability or social impact, inspire and

encourage public buyers to use public procurement as a way of achieving a positive social and ethical impact.

- 1.11 It is vital to increase participation of SMEs and social enterprises in public procurement and this could be achieved by providing support to SMEs in bidding, and by using a careful balance between qualitative and quantitative criteria in the tender specifications.
- 1.12 The EESC is convinced that steps towards making it obligatory to include social clauses in calls for tender will ensure that the evaluation of the social aspect – which, alongside the economic and environmental aspects, represents the third pillar of sustainable development – becomes a permanent part of tendering procedures.
- 1.13 Similarly, the EESC thinks that ecolabels are a good mechanism to use if circularity aspects can be included, but the current directives make it unnecessarily complicated for the procurer because they put the emphasis on the procurer knowing exactly what is in the ecolabel.
- 1.14 It is essential to train public buyers in the legal and technical aspects of CPP and the concept of LCC, and to train those buyers that are end-users in the sustainable use of products.
- 1.15 For the EESC, it is vital to promote the concept of CPP, either through broader communication of good examples and practices, or through promotional campaigns or, where appropriate, public and training initiatives. There is a need for partnership and guidance through which the EU should support the development of a platform with a large procurement network.
- 1.16 EU institutions should also lead by example, by conducting CPP and showcasing this through case studies to emphasise the opportunities and benefits available to all public buyers.

2. General comments

- 2.1 Annual government expenditure accounts for around 14% of the European Union's overall gross domestic product¹: governments are therefore Europe's biggest consumers and their expenditure is determined by public procurement.
- 2.2 A transparent, digital and competitive Circular Public Procurement (CPP) instrument, with Green Public Procurement (GPP) as defined by EU legislation, falls under policies to promote development of the single market, to deliver high-quality goods and services to citizens and consumers, and to develop an innovative, smart, sustainable and socially responsible European public procurement culture².
- 2.3 The development of the circular economy is one of the EESC's main areas of interest. The management of public procurement is a central and decisive factor in terms of increasing

¹ https://ec.europa.eu/growth/single-market/public-procurement_en.

² The European Commission published a useful brochure on this subject in 2017: https://ec.europa.eu/environment/gpp/pdf/cp_european_commission_brochure_en.pdf.

investment in the environment sector, and in the Sustainable Europe Investment Plan³ and the EESC opinion on the *New Circular Economic Action Plan*⁴.

- 2.4 The aim of the opinion is to propose integration of a number of different instruments into European legislation, with a view to promoting the spread of CPP, i.e. aligning the main purpose of a contract with protection of the environment and social rights, and looking for and choosing economic solutions with a lower environmental impact during their lifespan.
- 2.5 Legislation and regulation must give CPP a boost through various instruments (minimum GGP-criteria, encouraging a sectoral approach, strengthening the eco-design framework and enhancing eco-design regulations, compulsory monitoring) to circular economy public procurement, with a view to:
- 2.5.1 Promoting quality and innovation, including from an environmental and social perspective;
 - 2.5.2 Reducing the expenditure that local authorities currently incur for the services they offer;
 - 2.5.3 Making public procurement smarter and more efficient;
 - 2.5.4 Using public procurement to address global challenges such as climate change, resource scarcity and inequalities by supporting social policies;
 - 2.5.5 Stepping up the transition to more sustainable and competitive logistics chains and business models;
 - 2.5.6 Guiding the use of the public procurement framework in the emergency situation related to the COVID-19 crisis⁵;
 - 2.5.7 Helping SMEs and social economy enterprises access a larger market share, while promoting their presence in local markets and, at the same time, promoting an even greater presence in European industrial systems, as the virtuous circle can be a driving force for investment in environmental innovation and an increased demand for specialised and skilled jobs;
 - 2.5.8 Defending and broadening consumer rights and better promoting the application of the principles of justice and fairness as set out in the European Pillar of Social Rights.
- 2.6 The introduction of CPP encourages development of the circular economy. Many of the new rules are currently still based on voluntary adjustment. The next step is to increase the number of mandatory agreements. Furthermore, it is essential that the regulatory framework be simple, clear and uniform.

3 See the Commission's Circular Economic Action Plan; the EESC opinion on the *New Circular Economy Action Plan*, and the European Parliament's own initiative report.

4 [OJ C 364, 28.10.2020, p.94.](#)

5 [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401(05)&from=EN).

3. Minimum mandatory EU GPP criteria

- 3.1 The introduction of minimum mandatory Green Public Procurement criteria can raise the baseline of sustainable and CPP across Europe. They can make tender specifications easier to formulate: they include obligations which public administrations are required to adhere to, advantages for businesses with environmental certifications, bonuses for deserving tenders, new tender evaluation criteria, and aggregation of public demand in order to promote a qualitative assessment of tenders. It is important that these minimum criteria do not act as an obstacle to frontrunners or hinder innovation, or give an excuse to contracting authorities to go further than the minimum. The key is that minimum mandatory criteria must be regularly checked and updated to take account of technological advancement and must not restrict those that go further. In the meantime, flexible models must promote innovation.
- 3.2 Socially Responsible Public Procurement (SRPP) is about achieving positive social outcomes in public contracts. SRPP has the potential to influence the broader market on both the demand and supply sides. By purchasing wisely, public buyers can promote employment opportunities, decent work and social and labour market inclusion, better conditions for people with disabilities and the disadvantaged, accessibility, as well as ethical trade⁶.
- 3.3 Buying responsibly and ethically can also enhance the profile of those entrepreneurs most attuned to these issues, by encouraging them to engage in more responsible and sustainable management of the production process and employment of workers. This makes socially responsible public procurement a strategic tool for advancing social and labour policies effectively. It is important to implement active policies aimed at facilitating and financing companies, more specifically SMEs, that intend to promote these business models.
- 3.4 The social sustainability aspect requires firm commitments to ensure that public procurement contracts are only concluded with companies that apply valid collective bargaining agreements or, failing that, follow the applicable national law and practice resulting from the agreements between social partners. This will prevent social dumping and ensure fair competition.
- 3.5 The European Commission can facilitate the adoption of socially responsible criteria in public procurement and promote their use across the EU. It could, for example, organise a series of workshops to raise awareness of the new Buying Social Guide (expected in 2021) and the use of social criteria and clauses by public buyers in order to support social economy organisations, and maximise opportunities for social responsibility in the manufacture of goods and provision of services. It could also update the *#WeBuySocialEU* campaign which has collected and disseminated 71 good practices and a series of videos⁷ to inspire and encourage public buyers to use public procurement as a way of achieving a positive social and ethical impact.
- 3.6 Through the commitment to integrating minimum GPP criteria into public procurement, social entrepreneurship and the social economy will be promoted, with positive effects both for SMEs and for consumers in conjunction with the organisations concerned. Furthermore,

6 Will be mentioned in the EC Buying Social Guide that is being prepared.

7 *#webuysocialeu* – YouTube.

administrations must ensure that the introduction of environmental criteria does not lead to a significant increase in the administrative burden. Such a burden encountered through the procurement process is one of the main obstacles to SME participation.

- 3.7 CPP will allow administrations to move beyond the lowest price criterion at the time of purchase and to evaluate the quality and circularity aspects of tenders, the Life-Cycle Cost (LCC) of a product or service, and to use criteria that go beyond price, such as quality, sustainability or social impact. The European Commission, which has already developed standardised free-to-access LCC measuring tools⁸, is well placed to provide such transparent and reliable tools, which procurers can use with confidence. These tools should also provide the option to calculate and include the carbon costs of products. The EESC calls for public buyers to be encouraged to make use of existing tools in public procurement to help develop innovative solutions, for example, through innovation partnerships or competitive dialogues.
- 3.8 The aim of CPP should be to steer contracts towards meeting a given need rather than simply purchasing a specific product as part of a routine process. In particular, a more comprehensive study of needs will allow a functional or performance-based approach to be adopted. In this way, it is possible to incorporate more flexibility into the process, and to innovate and provide the most effective solutions, thereby reducing costs and resource use. Functional and performance-based approaches may best be achieved through the procurement of services rather than products, including maintenance and take-back services. Demand for such services will create new business opportunities at the local level.
- 3.9 CPP can cover the promotion of a product's eco-design and its design for recyclability, extended producer responsibility, waste prevention, packaging materials, and sharing, the collaborative economy, reuse and refurbishing.
- 3.10 The directives do not include any specific mandatory rules on emissions or circular economy, but they enable public authorities:
- to use strategic procurement, which is a relevant and powerful way to respond to societal, environmental and economic challenges to shape the way in which both the public and private sector behave in the market;
 - to address common societal goals in the procurement process based on social considerations in the awarding of contracts with a focus on promoting gender equality, employment opportunities and combating discrimination⁹.

One possibility is to consider to replace the present system, which leaves the decision to use strategic procurement largely to Member States, with EU minimum criteria in some areas such as sustainability and the Life Cycle Cost. Such a policy may at the same time encourage an R&D framework to create circular solutions.

8 Life Cycle costing – GPP – Environment – European Commission ([europa.eu](https://ec.europa.eu/easme/)).

9 [Pursuing social goals through public procurement | EASME \(europa.eu\)](https://ec.europa.eu/easme/).

4. Specific comments

4.1 SMEs

- 4.1.1 The aim is to increase participation of SMEs and social enterprises in public procurement through innovative CPP and greater professionalisation of all stakeholders.
- 4.1.2 It is necessary to support potential suppliers – especially SMEs and social enterprises – to bid for circular public contracts. Many SMEs remain unaware of market opportunities and how to find them, including how to use the Tenders Electronic Daily (TED portal)¹⁰, and how to find tenders in other countries, and struggle to provide the environmental and social evidence that procurers require in order to compare bids. Effective and efficient procurement requires quality bids.
- 4.1.3 In this context, social and environmental criteria can impact at which SMEs can offer their goods and services. In order to comply with these criteria, SMEs will have to make significant investments without any guarantee. Therefore, administrations must be careful not to award contracts based primarily, or only, on the lowest price, as this would hurt SMEs.
- 4.1.4 Increasing resource efficiency and aiming for sustainability play a role in innovation and competitive advantage for part of the production system, and this is even truer in the case of SMEs.
- 4.1.5 This innovative approach to circular public procurement not only operates at national or regional level, but undoubtedly at local level too, where its impact will be strongest in the case of SMEs and the cooperatives. The EC's Big Buyer Initiative on circular and sustainable construction, for instance, aims to increase the uptake of innovative procurement focussing on zero-emissions construction sites, heavy-duty electric vehicles, and circular construction material.
- 4.1.6 Greater impetus will be given to commercial innovation; streamlined monitoring (economic and environmental results) can be expected; digitalisation of procedures will help small economic entities to take part in calls for tender.

4.2 Clauses and Labels

- 4.2.1 The obligation to apply the minimum EU GPP criteria to tenders of any amount (i.e. for 100% of the value based on the bid instead of a percentage of the bid) will facilitate the transition and ensure that procurement is both "green" and "sustainable".
- 4.2.2 Making it obligatory to include social clauses in calls for tender for the award of concession contracts and contracts for works and services and supplies, among other things, especially – but not only – those relating to labour-intensive work (such as cleaning and catering services and others), will ensure that evaluation of the social aspect – which, alongside the economic and

¹⁰ <https://ted.europa.eu/TED/browse/browseByMap.do>.

environmental aspects, represents the third pillar of sustainable development – becomes a permanent part of tendering procedures.

- 4.2.3 Social clauses relate to the correct application of the applicable collective agreement covering all workers. But they can also serve the general social interest: employment of risk groups, social economy projects.
- 4.2.4 Wherever possible, the contracting authority should request an ecolabel or certification in the tender specifications. Ecolabels can be a valuable tool for procurers. Currently, procurers can specify that goods and services must comply with the technical specifications of an ecolabel. They can ask for a certain ecolabel, however they have to ensure that it meets certain conditions set out in the Public Procurement Directives. This is complicated and, in many cases, procurers do not have the resources and time to do this.
- 4.2.5 Ecolabels are a good mechanism to use if circularity aspects can be included, but the current directives make it unnecessarily complicated for the procurer – they put the emphasis on the procurer knowing exactly what is in the ecolabel. However, the point of the ecolabel is to make it easier for a procurer by not having to understand all the technical details of a product/service and its impact. It is important that the ecolabel is trusted and thoroughly checked to avoid false claims and greenwashing. As procurers move towards more functional or performance-based approaches, the demand for circular economy services will rise. Ecolabels can also be awarded for services, such as the recent EU Ecolabel for Cleaning Services.

4.3 Training

- 4.3.1 It is essential to train public buyers in the legal and technical aspects of CPP and the concept of LCC, and to train those buyers that are end-users in the sustainable use of products. ICLEI¹¹, together with other organisations, updated the EC's GPP Training toolkit. A Commission training programme for relevant staff to become CPP-specialists in different areas would be an investment that can ultimately lead to lower expenditure and thus to savings. Soft skills such as market dialogue capabilities are also important. Collaboration and dialogue between buyers and suppliers help buyers understand what is available on the market and help suppliers prepare to meet buyers' future needs. Training the relevant staff to become circular procurement specialists in different areas is an investment that can ultimately lead to lower expenditure and thus to savings. In addition, it is necessary to support potential suppliers – especially SMEs and social enterprises – to bid for circular public contracts.

4.4 Promotion

- 4.4.1 It is vital to promote the idea of CPP, either through broader communication of good examples and practices, or possibly through other management actions, such as promotional campaigns or, where appropriate, public and training initiatives that the EESC could support and organise. As well as skilled procurers, circular public procurement requires committed decision-makers, informed users, contract managers and engaged suppliers who can meet new needs. Pilot

11 International Council for Local Environment Initiatives (<https://iclei-europe.org>).

projects provide an ideal opportunity for public buyers to build capacity, raise awareness and catalyse market change through the provision of real business opportunities. Future European funding streams should continue to support innovative CPP-pilots which promote learning through doing and provides opportunities for upscaling and replication.

4.4.2 Since 2010, the Commission has gathered 189 inspiring GPP examples. A further 12 will be prepared in 2021. Many of these also showcase CPP. It could step up efforts to promote good practices that have been disseminated across all Member States¹².

4.4.3 The Economy Circular Economy Stakeholder Platform was launched as a joint initiative by the European Commission and the EESC in March 2017. It brings together stakeholders active in the field of circular economy in Europe, and facilitates the exchange of good practices, knowledge and lessons learnt in the circular economy^{13 14}.

4.4.4 Some countries have national procurement awards, and they usually include something for green/innovative/social procurement. The EESC proposes the creation of a European Public Procurement Award.

4.4.5 EU institutions should also lead by example, by conducting CPP and showcasing this through case studies to emphasise the opportunities and benefits available to all public buyers. In general, all tenders must include GPP criteria.

Brussels, 9 June 2021

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The president of the European Economic and Social Committee

12 See https://ec.europa.eu/environment/gpp/case_group_en.htm.

13 See <https://circulareconomy.europa.eu/platform/en/good-practices>.

14 A good example of a local procurement plan is the Amsterdam plan https://mk0mratuurzaamnh901f.kinstacdn.com/wp-content/uploads/2020/01/MRA_CirculairInkopen_ENGdef01.pdf.