

SOMMET CLIMATE CHANCE EUROPE

07-08 mars 2022

#SCCE2022



Public procurement : how to accelerate the European Green Deal ?

Description :

Public procurement, particularly that of local authorities, plays an essential economic role in Europe. Thus, the integration of climate issues in calls for tender can be a very powerful lever to boost economic sectors and accelerate technical developments, particularly in the field of construction or mobility, as well as to strengthen relocation movements and develop short food circuits. As public procurement in Europe is highly regulated by EU legislation, do these regulations currently help accelerate transitions or, on the contrary, do they slow them down? On which points should European law be changed as a priority?

Chair : Prof. Roberto Louvin, Professor of Comparative Public Law, University of Trieste

Moderator : Christophe Amoretti-Hannequin, Director of finance and purchasing, France urbaine

Speakers :

- Prof. Robert Louvin, University of Trieste
- Prof. François Lichère, Chair in Public Contract Law, Université Lyon 3
- Maurizio Mariani, Eating City
- Nadège Noisette, Rennes City
- Hervé Fournier, Nantes City
- Prof. Roberto Caranta, University of Turin, Sapiens Network
- Christophe Amoretti-Hannequin, France Urbaine

Summary of discussions :

- Public procurement alone accounts for 14% of European GDP, or approximately 2,000 billion euros. By assuming a more proactive role, capable of driving the private sector towards a greening of all economic activities, public procurement can bring about profound changes in European lifestyles, in order to adapt to climate change and reduce the continent's carbon footprint. One of the questions that arises is how the European legal and regulatory framework will evolve to achieve these ambitious objectives.
- Imagining a desirable future for public control may require rethinking it from the point of view of man's relationship to law and nature. If, following Descartes, man has long believed himself to be the "master and possessor of nature", with the environmental crisis, this

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absolutist and utilitarian conception of the environment has gone out the window. The emergence of an "ecological class" (Latour) suggests a profound evolution of law: the stranglehold of the French "legalistic" tradition (legicentrism) is gradually loosening in favor of new forms of shared governance and "soft laws", in search of greater social and ecological legitimacy. We must prepare for the inclusion of new rights for future generations, but also for non-humans and non-living beings (animals, plants, water sources, etc.). Finding a new balance and adopting more resilient behavior will therefore require an "ecological literacy" of the law - the current beginnings of which are already benefiting public procurement.

- The Climate and Resilience Act, adopted in France on August 22, 2021, promotes the greening of public procurement, in particular through its article 35 (on schemes to promote socially and environmentally responsible procurement, SPASER). The European Union should take inspiration from this, as no reform is planned to increase the current 10-13% rate of RES public procurement. Nevertheless, the new French law on the subject is itself perfectible, due to its moderate legal constraints. It is true that at least one selection criterion for public procurement must "take into account" the environmental dimension. But in what sense does it take it into account? No minimum weighting! The weight of this clause is limited. The real innovation consists in the obligation to use bio-based materials in at least 25% of heavy renovations, but only by 2030... Other incentive mechanisms must be adopted at the European level to promote RES public procurement, such as the obligation to provide for precise indicators expressed in number of contracts or in value.
- In this context, it is important to underline the obsolescence of certain precepts of the internal market: can the free movement of goods really be reconciled with the objective of greening public procurement? A modification of the texts is necessary, at least for foodstuffs. With regard to other world markets, the introduction of an effective border carbon adjustment mechanism (BCA) is an essential prerequisite for any greening, provided that it is of a sufficient level to correct distortions of competition. Life cycle analysis (LCA), which takes into account the total net cost, from production to destruction, while integrating the least social expenditure, can finally serve as a model for a change in the European regulatory framework.
- As far as food is concerned, public procurement can promote the emergence of an exemplary ecosystem between public services and collective catering services. Between 1996 and 2016, there was a dynamic of industrialization of collective catering services, which led to a decrease in the cost of raw materials and an increase in productivity. To accompany the European "Farm to Fork" strategy, it is necessary to set up a mutualization of sustainable collective catering purchases to structure the food chain in symbiosis with the territories.
- The cities of Nantes and Rennes have set up sustainable food plans and systems to promote ecoresponsible public procurement. Their experiences point to the need for better training of public procurement actors at all levels (local government officials, buyers, partner companies) in the mechanisms and challenges of RES. The drafting, negotiation and execution of public contracts must be the subject of specific training.

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THEMATIC DRAFT PROPOSALS FOR THE IMPLEMENTATION OF THE EUROPEAN GREEN DEAL

N°	Topic	European policy	Proposal
P1	Public procurement	Public procurement contracts	Allowing the economic and social externalities of purchasing to be taken into account: purchasing is also an economic act that has impacts on the economic ecosystem of a territory ("economic multipliers"). However, while it is possible to replace the price with a life cycle analysis that takes into account all the environmental externalities linked to the manufacture, maintenance and end of life of a good or service, public procurement law does not allow the economic and social externalities of a purchase to be valued. The aim is to allow the purchaser to extend the "full cost" reasoning, by integrating into its analysis the economic and social effects induced by the purchase: creation or maintenance of jobs, tax revenues, reduced social expenses, etc.
P2	Public procurement / Agriculture	Public procurement contracts	Providing for an agricultural and food exception for public procurement: while the Green Pact for Europe has set itself the goal of "ensuring food security in the face of climate change and biodiversity loss" and "strengthening the resilience of the EU's food system", public procurement must be able to contribute to the relocation of agri-food chains. This exception should notably allow for the inclusion of proximity criteria in calls for tenders, considering that agricultural and food goods, because they condition the survival of each individual, are not objects like any others, like cultural goods.
P3	Public procurement	Public procurement contracts	Pooling purchases for sustainable collective catering in order to structure a food chain in symbiosis with the territories, particularly for public services such as schools, hospitals, nursing homes, etc...
P4	Public procurement	Public procurement contracts	Valuing the candidate's CSR policy independently of the subject of the contract: Authorize the valorization of the elements of the general social policy
P5	Professional training and education	European Skills Agenda / European Pillar of Social Rights	Set up training workshops on eco-responsible public procurement, for local authority employees, buyers and companies that work with local authorities, in order to draw up public procurement contracts properly.



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