

GPP-STREAM

INTERREG EUROPE

A18: ELABORATION OF TOOLKITS FOR GPP COMPLIANCE FOR BENEFICIARIES OF EU FUNDS, RURAL AND URBAN DEVELOPMENT STRATEGIES

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GLOSSARY OF ACCRONYMS

ACCRONYM	FULL NAME
EC	European Commission
EU	European Union
GPP	Green Public Procurement
TFEU	Treaty on the Functioning of the European Union
ILO	International Labour Organization
GPA	Government Procurement Agreement
ESI	European Structural Investment
EUR	Euro
ERDF	European Regional Development Fund
TEN-T	Trans-European Network Transport
EMFF	European Maritime and Fisheries Fund
ITI	Integrated Territorial Investments
CLLD	Community-Led Local Development
ICT	Information and Communication Technology
SPP	Sustainable Public Procurement
PPI	Public Procurement of Innovation
EEA	European Economic Area
GP	Gross Profit
PG	Product groups
MEC	Minimum Environmental Criteria
NGO	Non-Governmental Organization
NAP	National Action Plan
SDG	Sustainable Development Goals
SME	Small and Medium-sized Enterprises
TCO	Total Cost of Ownership
EPA	Environmental Protection Agency
ESF	European Social Fund
GPUS	Graphics Processing Unit
FAQ	Frequently asked questions



1. INTRODUCTION: PURPOSE OF THE TOOLKIT

The toolkit for GPP compliance aims to address the specificities of GPP for EU funds and develop strategies in order to support reaching resource efficiency objectives.

The basis of public procurement regime is primarily economic, requiring public purchasers to obtain best value for public money. But by taking into account the environment in PP, the best value for public money it is represented by the life cycle cost to the greatest extent possible. For example: in the case of indoor lighting, only LED bulbs are purchased. They cost more than the conventional ones. But in the long term, there is a current economy due to the low energy consumption. There are many environmental technical specifications that can be taken into account:

- Use of a specific production process: for the catering, purchasers can shorten the supply chain, can ask for organically grown food, and so on;
- Reference to eco labels which are used to indicate that the products are deemed to be more environmentally driven than similar products. "Europe's public authorities are major consumers. By using their purchasing power to choose environmentally friendly goods, services and works, they can make an important contribution to sustainable consumption and production - what we call Green Public Procurement (GPP) or green purchasing. It is important to be mentioned that the eco-products are not a lower quality products, they only have a great impact on preventing the ozone layer and environmental safety (among others) but overall, the products have an impact on the environment during each stage of their life cycle. The eco-products to not have any negative effects on water, air, soil or any high risk of carcinogenic, allergenic effect on the users;

Although GPP is a voluntary instrument, it has a key role to play in the EU's efforts to become a more resource-efficient economy. It can help stimulate a critical mass of demand for more sustainable goods and services which otherwise would be difficult to get onto the market. GPP is therefore a strong stimulus for eco-innovation.

To be effective, GPP requires the inclusion of clear and verifiable environmental criteria for products and services in the public procurement process. The European Commission and a number of European countries have developed guidance in this area, in the form of national GPP criteria. The challenge of furthering take-up by more public sector bodies so that GPP becomes common practice still remains. As does the challenge of ensuring that green purchasing requirements are somewhat compatible between Member States - thus helping create a level playing field that will accelerate and help drive the single market for environmentally sound goods and services."¹

As a legislative support, there are several directives (detailed in the following chapters of this toolkit) at European levels that can be identified which come to support these types of acquisitions, such as:

- the old directives ([directive 2004/18/EC](#) - the 'classical public sector directive' - and [directive 2004/17/EC](#) - the 'utilities directive') which were replaced with the [Directive 2014/24/EU](#) on public procurement, and with [Directive 2014/25/EU](#) on procurement by entities operating in the water, energy, transport and postal services sectors;

¹ https://ec.europa.eu/environment/gpp/index_en.htm



- The new rules seek to ensure greater inclusion of common societal goals in the procurement process. These goals include environmental protection, social responsibility, innovation, combating climate change, employment, public health and other social and environmental considerations.
- in terms of GPP, the following sections of the directives are worth drawing attention to:
 - Defining the requirements of a contract: Defining technical specifications is guided through Article 42 and Annex VII of Directive 2014/24/EU; and Article 60 and Annex VIII of Directive 2014/25/EU;
 - Use of labels: Conditions for using labels are laid out in Article 43 of Directive 2014/24/EU; and Article 61 of Directive 2014/25/EU;
 - Lowest price award and life-cycle costing (LCC): Awarding public contracts on the basis of the most economically advantageous tender is provided as part of Article 67 of Directive 2014/24/EU; and Article 82 of Directive 2014/25/EU;
 - Innovation partnerships: Where a contracting authority wishes to purchase goods or services, which are not currently available on the market, it may establish an innovation partnership with one or more partners. This allows for the research and development (R&D), piloting and subsequent purchase of a new product, service or work, by establishing a structured partnership. The procedure for establishing an innovation partnership is set out in Article 31 of Directive 2014/24/EU;
 - Consulting the market: The procurement directives specifically allow for preliminary market consultation with suppliers in order to get advice, which may be used in the preparation of the procedure. Article 40 of Directive 2014/24/EU.

In addition, the European Commission has developed a handbook on green public procurement: [Buying green!](#) Which has already reached its third edition, and there are also toolkits for each 19 category of products and services that contain useful information for those who are running or are going to carry out GPP. To complete this handbook, there is available a guidance and good practices gathered into the [Public Procurement for a Circular Economy](#) brochure also developed by the European Commission.

This toolkit also approaches the subject of eco-labels, very useful for evaluating the offers, so that the purchaser can choose the most optimal solution that best meets his needs. Within this chapter you will be able to choose eco-labelled products that have a direct impact on supply and demand in the marketplace. This is mainly a signal which guides the market towards greater environmental awareness and environmental improvement.

The study cases that are presented have a guiding role, so that the toolkit user has well defined the concept of integrating the GPP in the ERDF. As many similar projects tend to have similar aims and problems, this study cases can provide you with an answer identified by the countries described below. All of us know that best practices try to keep people from continually reinventing the wheel☺. All you have to do is research and betterment of the end result. Also, within the GPP-STREAM project there were identified and published good practices in the context of partner countries: [good practices review](#).

The last part of this toolkit is a series of questions and answers or case studies presented by the GPP-STREAM project partners that present real cases encountered and the difficulties that they have during a procedure of GPP. From several points of view, the user can form an opinion and can face the legislation of his country. The section is an open one, and the partners of this project encourage users to ask questions, in order to try to offer point of views.



This toolkit complements the document that contains GPP tender models for resource efficiency. The document will contain 10 examples of tenders for resource efficiency and this particular toolkit for GPP compliance comes in hand for the user in order to establish and define well their needs, to familiarize themselves with the core and comprehensive criteria and to establish exactly the sectors (and it`s specifics) of intervention that will respond to their needs.

The hot point of this tool is how it will the check-lists covered here help to verify the offers that are in compliance with the GPP criteria specified within the tenders. 5 check-lists were outlined that target:

- The planning stage;
- The selection stage;
- The awarding stage;
- The implementation stage;
- Avoid conflict of interest.

Each chapter is respecting the regulations at European level and comes to the aid of purchasers running or will be running, checking or verifying green public procurement by providing guidance.



2. THEORETICAL ELEMENTS AND CASE STUDIES

2.1. DIRECTIVE 2014/23/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on the award of concession contracts

(3) Public procurement plays a key role in the Europe 2020 strategy, set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020, a strategy for smart, sustainable and inclusive growth' (the 'Europe 2020 strategy'), as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. In this context, concession contracts represent important instruments in the long-term structural development of infrastructure and strategic services, contributing to the progress of competition within the internal market, making it possible to benefit from private sector expertise and helping to achieve efficiency and innovation.

(4) The award of public works concessions is presently subject to the basic rules of Directive 2004/18/EC of the European Parliament and of the Council (1); while the award of services concessions with a cross-border interest is subject to the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the principles of free movement of goods, freedom of establishment and freedom to provide services, as well as to the principles deriving therefrom such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. There is a risk of legal uncertainty related to divergent interpretations of the principles of the Treaty by national legislators and of wide disparities among the legislations of various Member States. Such risk has been confirmed by the extensive case law of the Court of Justice of the European Union which has, nevertheless, only partially addressed certain aspects of the award of concession contracts. A uniform application of the principles of the TFEU across all Member States and the elimination of discrepancies in the understanding of those principles is necessary at Union level in order to eliminate persisting distortions of the internal market. That would also favor the efficiency of public spending, facilitate equal access and fair participation of SMEs in the award of concession contracts, both at local and Union level, and support the achievement of sustainable public policy objectives.

(55) With a view to the appropriate integration of environmental, social and labor requirements into concession award procedures, it is of particular importance that Member States and contracting authorities or contracting entities take relevant measures to ensure compliance with obligations in the fields of environmental, social and labor law that apply at the place where the works are executed or the services provided and result from laws, regulations or administrative provisions, at national and Union level, as well as from collective agreements, provided that such rules, and their application, comply with Union law. Equally, obligations stemming from international agreements ratified by all Member States and listed in this Directive should apply during concession performance. However, this should in no way prevent the application of terms and conditions of employment which are more favorable to workers. The relevant measures should be applied in conformity with the basic principles of Union law, in particular with a view to ensuring equal treatment. Such relevant measures should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council (1), and in a way that ensures equal treatment and does not discriminate directly or indirectly against economic operators and workers from other Member States.



(58) Control of the observance of the environmental, social and labor law provisions should be performed at the relevant stages of the concession award procedure, when applying the general principles governing the choice of participants and the award of contracts, and when applying the exclusion criteria.

(59) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life, the preservation of plant life or other environmental measures, in particular with a view to sustainable development, provided that those measures are in conformity with the TFEU.

(64) Furthermore, with a view to the better integration of social and environmental considerations in the concession award procedures, contracting authorities or contracting entities should be allowed to use award criteria or concession performance conditions relating to the works or services to be provided under the concession contract in any respect and at any stage of their life cycles from extraction of raw materials for the product to the stage of disposal of the product, including factors involved in the specific process of production, provision or trading of those works or services or a specific process during a later stage of their life cycle, even where such factors do not form part of their material substance. Criteria and conditions referring to such a production or provision process are for example that services being the object of the concession are provided using energy-efficient machines. In accordance with the case-law of the Court of Justice of the European Union, this also includes award criteria or concession performance conditions relating to the utilization of fair trade products in the course of the performance of the concession to be awarded. Criteria and conditions relating to trading and its conditions can for instance refer the requirement to pay a minimum price and price premium to subcontractors. Concession performance conditions pertaining to environmental considerations might include, for example, waste minimization or resource efficiency.

(65) Award criteria or concession performance conditions concerning social aspects of the production process should be applied in accordance with Directive 96/71/EC, as interpreted by the Court of Justice of the European Union, and should not be chosen or applied in a way that discriminates directly or indirectly against economic operators from other Member States or from third countries parties to the World Trade Organization Agreement on Government Procurement (the 'GPA') or to Free Trade Agreements to which the Union is party. Thus, requirements concerning the basic working conditions regulated in Directive 96/71/EC, such as minimum rates of pay, should remain at the level set by national legislation or by collective agreements applied in accordance with Union law in the context of that Directive. Concession performance conditions might also be intended to favor the implementation of measures for the promotion of equality of women and men at work, the increased participation of women in the labor market and the reconciliation of work and private life, the protection of the environment or animal welfare and to comply in substance with fundamental International Labor Organization (ILO) Conventions, and to recruit more disadvantaged persons than are required under national legislation.

(70) Furthermore, contracting authorities and contracting entities should be given the possibility to exclude economic operators which have proven unreliable, for instance because of serious or repeated violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights. It should be clarified that grave professional misconduct can render an economic operator's integrity questionable



and thus render the economic operator unsuitable to receive the award of a concession contract irrespective of whether the economic operator would otherwise have the technical and economical capacity to perform the contract. Bearing in mind that the contracting authority or contracting entity is responsible for the consequences of possible erroneous decisions, contracting authorities and contracting entities should also remain free to consider that there has been grave professional misconduct, where, before a final and binding decision on the presence of mandatory exclusion grounds has been rendered, they can demonstrate by any appropriate means that an economic operator has violated its obligations, including obligations relating to the payment of taxes or social security contributions, unless otherwise provided by national law. Contracting authorities and contracting entities should also be able to exclude candidates or tenderers whose performance in earlier concessions or other contracts with contracting authorities or contracting entities has shown major deficiencies with regard to substantive requirements, for instance failure to deliver or perform, significant shortcomings of the product or service delivered, making it unusable for the intended purpose, or misbehavior that casts serious doubts as to the reliability of the economic operator. National law should provide for a maximum duration for such exclusions.

(72) It is important that the observance by subcontractors of applicable obligations in the fields of environmental, social and labor law, established by Union law, national law, collective agreements or by the international environmental, social and labor law provisions listed in this Directive provided that such rules, and their application, comply with Union law, be ensured through appropriate actions by the competent national authorities within the scope of their responsibilities and remit, such as labor inspection agencies or environmental protection agencies. It is also necessary to ensure some transparency in the subcontracting chain, as this gives contracting authorities and contracting entities information on who is present at building sites on which works are being performed for them, or on which undertakings are providing services in or at buildings, infrastructures or areas, such as town halls, municipal schools, sports facilities, ports or motorways, for which the contracting authorities are responsible or over which they have an oversight. It should be clarified that the obligation to deliver the required information is in any case incumbent upon the concessionaire, either on the basis of specific clauses, that each contracting authority or contracting entity would have to include in all award procedures, or on the basis of obligations which Member States would impose on the concessionaire by means of generally applicable provisions.

It should also be clarified that the conditions relating to the enforcement of observance of applicable obligations in the fields of environmental, social and labor law, established by Union law, national law, collective agreements or by the international environmental, social and labor law provisions listed in this Directive, provided that such rules and their application comply with Union law, should be applied whenever the national law of a Member State provides for a mechanism of joint liability between subcontractors and the concessionaire. Furthermore, it should be stated explicitly that Member States should be able to go further, for instance by extending the transparency obligations or by enabling or requiring contracting authorities or contracting entities to verify that subcontractors are not in any of the situations in which exclusion of economic operators would be warranted. Where such measures are applied to subcontractors, coherence with the provisions applicable to the concessionaire should be ensured so that existence of compulsory exclusion grounds would be followed by a requirement that the concessionaire replace the subcontractor concerned. Where such



verification shows the presence of noncompulsory grounds for exclusion, it should be clarified that contracting authorities or contracting entities are able to require the replacement. It should, however, also be set out explicitly that contracting authorities or contracting entities may be obliged to require the replacement of the subcontractor concerned where exclusion of the concessionaire would be obligatory in such cases. It should also be set out explicitly that Member States remain free to provide for more stringent liability rules under national law.

(73) Contracting authorities or contracting entities should assess tenders on the basis of one or several award criteria. In order to ensure transparency and equal treatment, criteria for the award of concessions should always comply with some general standards. Those standards may refer to factors which are not purely economic, but influence the value of a tender from the point of view of the contracting authority or contracting entity and permit it to identify an overall economic advantage to the contracting authority or the contracting entity. The criteria should be disclosed in advance to all potential candidates or tenderers, be related to the subject-matter of the contract and should not offer to the contracting authority or contracting entity an unrestricted freedom of choice. They should permit effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. It should be possible to include in award criteria, inter alia, environmental, social or innovation-related criteria. Contracting authorities or contracting entities should also indicate award criteria in descending order of importance so as to ensure the equal treatment of potential tenderers by allowing them to be aware of all the elements to be taken into account when they prepare their tenders. In exceptional cases where the contracting authority or contracting entity receives a tender which proposes an innovative solution with an exceptional level of functional performance which could not have foreseen by a diligent contracting authority or contracting entity, the contracting authority or contracting entity should, exceptionally, be able to modify the order of the award criteria to take into account the new possibilities brought about by that innovative solution, provided such a modification ensures equal treatment of all actual or potential tenderers by issuing a new invitation to tender or, where appropriate, publishing a new concession notice.²

2.2. DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

2) Public procurement plays a key role in the Europe 2020 strategy, set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020, a strategy for smart, sustainable and inclusive growth' ('Europe 2020 strategy for smart, sustainable and inclusive growth'), as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council (4) and Directive 2004/18/EC of the European Parliament and of the Council (5) should be revised and modernized in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises (SMEs) in public procurement, and to enable procurers to make better use of

² Retrieved from the Official Journal of the European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0023&from=EN>



public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

(4) The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself; that clarification should not however broaden the scope of this Directive compared to that of Directive 2004/18/EC. The Union rules on public procurement are not intended to cover all forms of disbursement of public funds, but only those aimed at the acquisition of works, supplies or services for consideration by means of a public contract. It should be clarified that such acquisitions of works, supplies or services should be subject to this Directive whether they are implemented through purchase, leasing or other contractual forms. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works, supplies or services in question, not necessarily requiring a transfer of ownership to the contracting authorities. Furthermore, the mere financing, in particular through grants, of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not usually fall within the scope of the public procurement rules. Similarly, situations where all operators fulfilling certain conditions are entitled to perform a given task, without any selectivity, such as customer choice and service voucher systems, should not be understood as being procurement but simple authorization schemes (for instance licenses for medicines or medical services).

Article 31: Innovation partnership

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority.

In the procurement documents, the contracting authority shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description define the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.

The contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent. Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the procedure. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 65. The contracts shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with Article 67.

2. The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the participants.



The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments.

Based on those targets, the contracting authority may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting authority has indicated in the procurement documents those possibilities and the conditions for their use.

3. Unless otherwise provided for in this Article, contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof.

The minimum requirements and the award criteria shall not be subject to negotiations.

4. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall inform all tenderers whose tenders have not been eliminated, pursuant to paragraph 5, in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements. Following those changes, contracting authorities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

In accordance with Article 21, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

5. Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting authority shall indicate whether it will use that option.

6. In selecting candidates, contracting authorities shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions.

In the procurement documents, the contracting authority shall define the arrangements applicable to intellectual property rights. In the case of an innovation partnership with several partners, the contracting authority shall not, in accordance with Article 21, reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the partnership without that partner's agreement. Such agreement shall not



take the form of a general waiver but shall be given with reference to the intended communication of specific information.

7. The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.

Article 40: Preliminary market consultations

Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.

For this purpose, contracting authorities may for example seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

Article 42: Technical specifications

1. The technical specifications as defined in point 1 of Annex VII shall be set out in the procurement documents. The technical specification shall lay down the characteristics required of a works, service or supply.

Those characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.

The technical specifications may also specify whether the transfer of intellectual property rights will be required.

For all procurement which is intended for use by natural persons, whether general public or staff of the contracting authority, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.

Where mandatory accessibility requirements are adopted by a legal act of the Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.

2. Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.



3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardization bodies or - when any of those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';

(c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;

(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterizes the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favoring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words 'or equivalent'.

5. Where a contracting authority uses the option of referring to the technical specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender by any appropriate means, including the means of proof referred to in Article 44, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

6. Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardization body, where those specifications address the performance or functional requirements which it has laid down.

In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 44, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.



Article 43: Labels

1. Where contracting authorities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics, provided that all of the following conditions are fulfilled:

(a) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

(b) the label requirements are based on objectively verifiable and non-discriminatory criteria;

(c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organizations, may participate;

(d) the labels are accessible to all interested parties;

(e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

Where contracting authorities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements are referred to.

Contracting authorities requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements.

Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting authority or an equivalent label within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall accept other appropriate means of proof, which may include a technical dossier from the manufacturer, provided that the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority.

3. Where a label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities shall not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Article 67: Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the most economically advantageous tender.

2. The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance:



- (a) Quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- (b) organization, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- (c) After-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

Member States may provide that contracting authorities may not use price only or cost only as the sole award criterion or restrict their use to certain categories of contracting authorities or certain types of contracts.

3. Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in:

- (a) The specific process of production, provision or trading of those works, supplies or services; or
- (b) A specific process for another stage of their life cycle, even where such factors do not form part of their material substance.

4. Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting authorities shall verify effectively the accuracy of the information and proof provided by the tenderers.

5. The contracting authority shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

Article 68: Life-cycle costing

1. Life-cycle costing shall to the extent relevant cover parts or all of the following costs over the life cycle of a product, service or works:

- (a) costs, borne by the contracting authority or other users, such as:
 - (i) costs relating to acquisition,
 - (ii) costs of use, such as consumption of energy and other resources,
 - (iii) maintenance costs,
 - (iv) end of life costs, such as collection and recycling costs.
- (b) costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such



costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority will use to determine the life-cycle costs on the basis of those data.

The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions:

- (a) it is based on objectively verifiable and non-discriminatory criteria. In particular, where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators;
- (b) it is accessible to all interested parties;
- (c) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA or other international agreements by which the Union is bound.

3. Whenever a common method for the calculation of life-cycle costs has been made mandatory by a legislative act of the Union, that common method shall be applied for the assessment of life-cycle costs.

A list of such legislative acts, and where necessary the delegated acts supplementing them, is set out in Annex XIII. The Commission shall be empowered to adopt delegated acts in accordance with Article 87 concerning the update of that list, when an update of the list is necessary due to the adoption of new legislation making a common method mandatory or the repeal or modification of existing legal acts.

2.3. DIRECTIVE 2014/25/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

(4) Public procurement plays a key role in the Europe 2020 strategy, set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020, a strategy for smart, sustainable and inclusive growth' ('Europe 2020 strategy for smart, sustainable and inclusive growth'), as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council (4) and Directive 2004/18/EC of the European Parliament and of the Council (5) should be revised and modernized in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises (SMEs) in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

(57) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the center of the Europe 2020 strategy for smart, sustainable and inclusive growth. Contracting entities should make the best strategic use of public procurement to spur innovation. Buying innovative products, works



and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth.

(85) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-) national ecolabels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organizations can participate, and that the label is accessible and available to all interested parties. It should be clarified that stakeholders could be public or private bodies, businesses or any sort of non-governmental organizations (an organization that is not a part of a government and is not a conventional for-profit businesses).

(100) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth. In this context, it should be recalled that public procurement is crucial to driving innovation, which is of great importance for future growth in Europe. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement.

(101) Those sector-specific measures should be complemented by an adaptation of Directives 2004/17/EC and 2004/18/EC empowering contracting entities to pursue the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth in their purchasing strategies. It should hence be made clear that, except where it is assessed on the basis of price only, contracting entities can determine the most economically advantageous tender and the lowest cost using a life-cycle costing approach. The notion of life-cycle costing includes all costs over the life-cycle of a works, supplies or services.

(129) In order to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth, environmental, social and innovation procurement will also have to play its part. It is therefore important to obtain an overview of the developments in the field of strategic procurement so as to take an informed view on the general trends at the overall level in that area. Any already prepared, appropriate reports can of course be used in this context also.

Article 60 Technical specifications 1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. The technical specifications shall lay down the characteristics required of a works, service or supply. Those characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance, provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives. The technical specifications may also specify whether the transfer of intellectual property rights will be required. For all procurement which is intended for use by natural persons, whether general public or staff of the contracting entity, the technical specifications shall, except in



duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users. Where mandatory accessibility requirements are adopted by a legal act of the Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto. 2. Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition. 3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways: (a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract; (b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardizations bodies or — when any of those do not exist — national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’; (c) in terms of performance or functional requirements referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements; (d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics. 28.3.2014 Official Journal of the European Union L 94/309 EN 4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process which characterizes the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favoring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words ‘or equivalent’. 5. Where a contracting entity uses the option of referring to the technical specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the ground that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender by any appropriate means, including the means of proof referred to in Article 62, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications. 6. Where a contracting entity uses the option provided for in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for supplies, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardizations body, where those specifications address the performance or functional requirements which it has laid down. In its tender, the tenderer shall prove by any appropriate means including those referred to in Article 62, that the supplies, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.



Article 61 Labels 1. Where contracting entities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, supplies or services correspond to the required characteristics, provided that all of the following conditions are fulfilled: (a) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define the characteristics of the works, supplies or services that are the subject-matter of the contract; (b) the label requirements are based on objectively verifiable and non-discriminatory criteria; (c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organizations may participate; (d) the labels are accessible to all interested parties; (e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence. Where contracting entities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements are referred to. Contracting entities requiring a specific label shall accept all labels confirm that the works, supplies or services meet equivalent label requirements. Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting entity or an equivalent label within the relevant time limits for reasons that are not attributable to that economic operator, the contracting entity shall accept other appropriate means of proof, which may include a technical dossier of the manufacturer, provided that the economic operator concerned proves that the works, supplies and services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting entity. 2. Where a label fulfils the conditions of provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting entities shall not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, or, if necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject matter.

Article 82 Contract award criteria 1. Without prejudice to national laws, regulations or administrative provisions on the price of certain supplies or the remuneration of certain services, contracting entities shall base the award of contracts on the most economically advantageous tender. 2. The most economically advantageous tender from the point of view of the contracting entity shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 83, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the contract in question. Such criteria may comprise, for instance: (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions; (b) organization, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or (c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion, commitments with regard to parts and security of supply. The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only. Member States may provide that contracting entities may not use price only or cost only as the sole award criterion or restrict their use to certain categories of contracting entities or certain



types of contracts. 3. Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in: (a) the specific process of production, provision or trading of those works, supplies or services; or (b) a specific process for another stage of their life cycle, even where such factors do not form part of their material substance. 4. Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting entity. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting entities shall verify effectively the accuracy of the information and proof provided by the tenderers. 5. The contracting entity shall specify in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone. Those weightings may be expressed by providing for a range with an appropriate maximum spread. Where weighting is not possible for objective reasons, the contracting entity shall indicate the criteria in descending order of importance. L 94/320 Official Journal of the European Union 28.3.2014 EN Article 83 Life-cycle costing 1. Life-cycle costing shall to the extent relevant cover parts or all of the following costs over the life cycle of a product, service or works (a) costs, borne by the contracting entity or other users, such as: (i) costs relating to acquisition, (ii) costs of use, such as consumption of energy and other resources, (iii) maintenance costs, (iv) end of life costs, such as collection and recycling costs (b) cost imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs. 2. Where contracting entities assess the costs using a lifecycle costing approach, they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting entity will use to determine the life-cycle costs on the basis of those data. The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions: (a) it is based on objectively verifiable and non-discriminatory criteria. In particular where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators; (b) it is accessible to all interested parties; (c) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA or other international agreements by which the Union is bound. 3. Whenever a common method for the calculation of lifecycle costs has been made mandatory by a legislative act of the Union that common method shall be applied for the assessment of life-cycle costs. A list of such legislative acts, and where necessary the delegated acts supplementing them, is set out in Annex XV. The Commission, shall be empowered to adopt delegated acts in accordance with Article 103 concerning the update of that list, when an update of the list is necessary due to the adoption of new legislation making a common method mandatory or the repeal or modification of existing legal acts.³

³ Retrieved from the Official Journal of the European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0025&from=EN>



2.4. *Public Procurement Guidance for practitioners on avoiding the most common errors in projects funded by the European Structural and Investment Funds*

A European legal framework was originally developed for public procurement to ensure that businesses across the European single market could compete for public contracts and to design bidding contests above certain thresholds. The legal framework aimed to ensure equal treatment and transparency, reduce fraud and corruption and remove legal and administrative barriers to participation in cross-border tenders. More recently, public procurement has started to cover additional policy goals such as environmental sustainability, social inclusion and the promotion of innovation.

Green public procurement (GPP) consists of procuring goods, services and works with a reduced environmental impact throughout their life cycle, when compared to goods, services and works with the same primary function that would otherwise be procured.

Common green public procurement criteria at EU level In order to facilitate the inclusion of environmental considerations in procurement procedures, the European Commission has developed practical sets of green public procurement criteria (technical specifications and award criteria) for different product groups which contracting authorities can directly use if they wish to procure environmentally friendly products and services. In addition, the Commission regularly publishes information and guidance to support contracting authorities in using GPP, including:

- a list of European and international eco-labels;
- “Buying green! A handbook on green public procurement” available in all EU languages which provides guidance on how environmental considerations can be included at each stage of the procurement process in the current EU legal framework;
- A compilation of good practice cases.⁴
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2.5. *Strategic report 2017 on the implementation of the European Structural and Investment Funds*

Low-carbon economy, climate change, environment and transport

The ESI Funds channel EUR 262.2 billion in these key areas for sustainable development. By the end of 2016 about 28 % or EUR 73.2 billion was allocated to concrete projects:

- Projects selected for the low-carbon economy, such as projects on energy efficiency and renewable, reached 21 % of the total volume available in 2014-2020. One result is that thanks to the ERDF and the Cohesion Fund support, about 148 000 households are expected to get improved energy consumption classifications.
- Good progress is being made in selecting projects for adaptation to climate change and risk prevention (selection rate of 40 % or about EUR 16.5 billion allocated). This is a positive sign following the Paris Agreement on climate change. More than 4.6 million people benefit from new or improved flood protection measures.

⁴ Retrieved from the Public Procurement Guidance for Practitioners elaborated by the European Commission https://ec.europa.eu/regional_policy/sources/docgener/guides/public_procurement/2018/guidance_public_procurement_2018_en.pdf



- About EUR 26.6 billion (31 % of the available funding) have been allocated to environmental and resource efficiency projects. Good progress has been made on water projects. Approved projects should lead to about 3.5 million people getting improved water supply. 25 % of the funds dedicated to improving the efficiency of water use in irrigation have been allocated to projects, and completed on 14 % of the land area targeted while 23.5 million hectares of agricultural land are receiving support to improve biodiversity. There have been serious delays in investing in waste recycling projects.
- For transport most of the progress is on road investments, in particular on TEN-T, while support to rail transport is progressing at a slow pace. Selected projects are expected to lead to 844 km of new TEN-T roads and 687 km of reconstructed or upgraded TEN-T railway lines.
- Significant progress has been made on carbon sequestration and conservation and on the reduction of greenhouse gases and ammonia emissions. This has been done through improved management of agricultural and forest land: in both cases over 40 % of the target has been reached.
- The EMFF supported better management of more than 60 000 km² of Natura 2000 areas, and almost 1.5 million km² of other marine protected areas.

Integrated investments in cities

It is estimated that around EUR 115 billion of cohesion policy funding will be spent in urban areas in 2014-2020. For the first time, a regulatory provision empowers cities to select projects themselves, addressing urban challenges in an integrated way: about EUR 15 billion have been directly allocated to around 900 urban strategies for this. While many Member States underline the heavy workload and complex procedures that go with developing and agreeing integrated urban strategies before actually selecting projects, the approach is often seen as a way to enable long-term strategic vision and positive change in urban development.

The 2016 adoption of the Urban Agenda for the EU further underlines the Commission's priority of dealing with the challenges and opportunities in European cities. The related launch over the last year of 12 partnerships will jointly mobilize all relevant players to engage in concrete actions, including on the better use of ESI Funds in urban areas. In addition the Urban Innovative Actions are helping urban areas test innovative solutions for sustainable urban development.

Implementing territorial instruments

Integrated territorial investments ('ITIs') are used for implementing around 240 urban strategies and 150 territorial strategies. The community-led local development ('CLLD') instrument will mobilize in total EUR 9.1 billion of ESI funding. To date, more than 3 000 local action groups, which are responsible for implementing the CLLD strategies, have been set up across the EU, covering 46% of the rural population (over 90% of the target), with several hundreds more expected by the end of 2017. In many cases ITIs and CLLDs faced a slow start due to the need to first prepare the related encompassing strategies and governance structures. However, both instruments are performing relatively well by now, and project selection is catching up. Implementation is easier when the integrated approach is embedded in an existing framework and adjusted to the institutional arrangements.



Overall, sustainable urban development, ITIs and CLLD have induced a change in the local and regional planning culture, fostering cooperation and coordination across sectors and across levels of government, and beyond administrative boundaries.

Investments in the digital economy have reached 19 % of project selection. This is expected to lead to 915 000 additional households with improved broadband access. 36 % of the funds earmarked for improving ICT services in rural areas have been allocated to projects, and 1 268 000 rural residents are benefiting from improved services. The Member States have allocated on average an amount of 57.6 % of their rural development programs for actions on environment and climate change mitigation and adaptation, far beyond the required minimum of 30%.⁵

2.6. *Buying green! A handbook on green public procurement (3rd Edition)*

This handbook is a document developed by the European Commission in order to provide valuable information and guidance which helps the user to understand the ways of applying the green criteria, which is the entire procurement process, the award of contracts, and in which various examples of good practices at EU level are presented.

Clear targets are critical in order to assess progress, and to communicate your intentions within the organization and to the general public. Targets may include:

- Overall procurement targets – e.g. 80% of procurement (by value and by number of tenders) should include GPP criteria by 2018. Targets can differ for national, regional, local levels.
- Product/service specific targets – e.g. by 2017, 60% of meals served in school canteens should be organic, or by 2018, all cleaning services should use products meeting the EU Ecolabel criteria
- Operational targets – e.g. all procurement staff will receive GPP training by 2017, or GPP guidance will be available to all staff on the authority intranet. When considering procurement targets, it is important to have a clear, operational definition of what counts as green procurement. For many of the targets set at the national level by Member States, tenders are considered green if they include the national or EU GPP criteria.⁶

2.7. *Public Procurement for a Circular Economy*

This document is also developed by the European Commission in order to highlight the benefits of a circular procurement. There are presented models of circular procurement and examples of good practices. In this framework, this particular handbook it's important because on the evaluation chapter emphasis on the lifetime environmental impacts and cost.

⁵ Retrieved from the Strategic report from 2017 on the implementation of the European Structural and Investment Funds:

https://ec.europa.eu/regional_policy/sources/docoffic/official/reports/strat_rep_2017/strat_rep_2017_en.pdf

⁶ Retrieved from the handbook on green public procurement elaborated by the European Commission:

<http://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf>



Creating a circular procurement policy or incorporating circular economy principles into existing GPP or sustainable public procurement (SPP) policy can be an effective first step to ensuring it is visible as a priority. It is important that such policies define:

- What circular procurement means within the context of your organization;
- What products, services or departments it applies to;
- What targets, priorities and timeframes are in place, and how these are monitored;
- What other activities, such as training, support, and communication strategies, are or will be put in place;
- Who is responsible for implementing the policy;

The EU-funded SPP Regions project promotes the creation and expansion of European regional networks of municipalities working together on SPP and public procurement of innovation (PPI). This report sets out different models of circular procurement. In addition, several countries, regions, and cities have been developing their own circular economy strategies, and public purchasing is often emphasized by these as an essential tool for encouraging the transition to a circular economy.⁷

2.8. Ecolabels

Established since 1992, the Ecolabels aim to help purchasers to identify sustainable products or services.

The ecolabels suited from the GPP point of view are those which are based on objective criteria and transport criteria and which are awarded by an independent third party. These labels can play a particular role in developing technical specifications and award criteria, and especially in verifying the GPP compliance.⁸

The accent is set on the products and services throughout their life-cycle: from raw material extraction, to production, distribution and disposal.

The EU Ecolabel is a voluntary scheme, which means that producers, importers and retailers can choose to apply for the label for their products.

The life cycle of a product begins with extraction – the mining or cultivation of the raw materials, such as cotton (for textiles) or wood (for paper products). It continues with manufacturing and packaging, distribution, use and finally the “end of life” stage, when the product is disposed of or recycled.

When developing Ecolabel criteria for products, the focus is on the stages where the product has the highest environmental impact, and this differs from product to product. In addition, product-specific criteria ensure that any product bearing the Ecolabel is of good quality with high performance.⁹

⁷Retrieved from the *Public procurement for a Circular Economy guidelines*:

http://ec.europa.eu/environment/gpp/pdf/Public_procurement_circular_economy_brochure.pdf

⁸Retrieved from the *handbook on green public procurement elaborated by the European Commission*:

<http://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf>

⁹Retrieved from: <https://ec.europa.eu/environment/ecolabel/the-ecolabel-scheme.html>



On her side the European Commission has developed a specific Ecolabel with a large catalogue from which we can find more information about friendly environmentally high quality products covering 11 criteria for the product we are interested in¹⁰.

It is worth mentioning that the contracting authority can use criteria related to ecological labels in the specifications of tenders (but not asking for products to have a specific label). The contracting authority may recognize an ecological label as proof of compliance with certain environmental requirements specified in the award documentation. Other appropriate evidence, such as technical documentation from the manufacturer or an analysis report from an accredited body may be accepted. The contracting authority must verify, on a case-by-case basis, from a technical perspective, whether the evidence submitted can be considered adequate. An eco-label is a simple way of demonstrating the fulfillment of the requirements, but other evidence in this regard must be accepted.

Every product and service placed on the market in the European Economic Area (European Union plus Iceland, Lichtenstein and Norway) that meets the EU Ecolabel criteria set for that product or service category can be awarded the EU Ecolabel. Criteria are currently established for a wide range of non-food and non-medical product groups, including detergents, paper towel rolls, laptops, clothing and tourist accommodation services.

Producers, manufacturers, importers, service providers and wholesalers placing their products and/or services on the European Economic Area market can all apply for the EU Ecolabel. Retailers can also apply for products placed on the market under their own brand name.¹¹

2.9. *Guidance on Innovation Procurement*

Adopted in the context of the Communication on “A renewed European Agenda for Research and Innovation – Europe’s chance to shape its technological leadership” and the input to the Leaders’ informal dinner in Sofia on 16 May 2018, this guidance document presents in a concise manner the fundamental aspects of innovation procurement: why it is important, who has interest in it and how it can be done. Green public procurements are part of the innovation procurement, where the Public authority tries to purchase goods and services with added environmental and/or social value.

The guidance is useful for public procurement officers but also for decision makers and stakeholders. It summarizes the basic principles and examples about the innovative procurements. It is structured mainly in 4 chapters, such as:

- Chapter 1 which clarifies the innovation procurement concept, its overarching dimension and added value;
- Chapter 2 which outlines the policy framework that is necessary to make strategic use of innovation procurement;
- Chapter 3 which illustrates how to open the doors of public procurement to innovators, including start-ups and innovative SMEs;

¹⁰ Retrieved from: <http://ec.europa.eu/ecat/>

¹¹ Retrieved from: <https://ec.europa.eu/environment/ecolabel/the-ecolabel-scheme.html>



- Chapter 4 which describes how to put public procurement procedures at work to modernize public services with innovative solutions and to create growth and jobs.¹²

2.10. Study cases – GPP impact on EU funding

2.10.1. GPP in Latvia

In 2015, the Green Procurement Promotion Plan 2015-2017 was developed in Latvia, which aimed at contributing to sustainable consumption and production through increasing the proportion of green procurement, especially green public procurement. Since October 2014 in Latvia application of green public procurement criteria is mandatory in the procurement of food supply and catering services in state and local government institutions. The current regulation (in force from 1st July 2017) extends the scope of mandatory application to additional six product groups and services. The Green procurement is one of the implementation tools of the horizontal principle "sustainable development" applied to receive the assistance from EU financial instruments.

Therefore, in the Green Public Procurement Support Plan (2015-2017) there is a paragraph where it is described what are the inclusion of GPP requirements in EU-funded projects.

The project funding provided by the European Social Fund, the European Regional Development Fund and the Cohesion Fund (hereinafter – the EU Structural Funds and the Cohesion Fund) has a significant impact on the development of the Latvian economy. The impact of EU Structural Funds and the Cohesion Fund on the Latvian economy and their significance is evaluated in line with the "Communication to the Cabinet of Ministers on the implementation of the European Union Structural Funds and the Cohesion Fund, the EEA Financial Mechanism, Norwegian Financial Mechanism and Latvian-Swiss Cooperation Programme until 31 March 2014", developed by the Ministry of Finance. (...)

Out of the 4.96 billion EUR public funding available from ESI for project implementation, consisting of ESI funding and state and local government co-financing (excluding the allocated state budget over-commitment financing in the amount of 404.6 billion EUR), 6,672 contracts have been signed on project implementation in the amount of 5.1 billion EUR, i.e., 102.7% (using over-commitment). Beneficiaries, in turn, have received 3.7 billion EUR or 73.9%.

In order to support GPP and GP within the ESI co-financed projects, GPP and GP must be incorporated in the regulatory framework on implementation of ESI Funds as supported activities and eligible costs; application of GPP and GP must be assessed in project performance evaluation, and progress evaluation of GPP and GP implementation must be introduced.

The Interim Monitoring Committee meeting of 28 March 2014 of the EU Structural Funds and the Cohesion Fund for the programming period 2014-2020 reviewed the methodology developed by MEPRD for monitoring the implementation of the horizontal priority "Sustainable development" by those involved in implementation of the EU Structural Funds and the Cohesion Fund in 2014-2020. According to this methodology, "Green Public Procurement" and "Green Jobs" have to be determined as the common monitoring indicators of the action programme.

¹² Retrieved from:

<https://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteld=3&year=2018&number=3051&version=F&language=en>



Thus, in the future implementation process of the EU Structural Funds and the Cohesion Fund, the appropriate indicators will be included in the selection criteria for measures planned by the responsible authorities according to the EU Structural Funds and Cohesion Fund project selection methodology for 2014-2020, expected to be approved in the first Monitoring Committee meeting of the EU Structural Funds and the Cohesion Fund for the 2014-2020 programming period.¹³

2.10.2. GPP in Italy

In Italy, as known, since about three years (three years in the 2nd of February 2018) all kind of contracting authorities have been obliged to introduce into the tender documents the “technical specifications” and the “contract clauses” of the “Minimum Environmental Criteria”, and to take into account the award criteria when they use the best price-quality ratio in awarding contracts, under the art. 34 of Legislative Decree 18 April 2016, n. 50. The “Minimum Environmental Criteria” are the GPP criteria developed at national level, mostly based on comprehensive EU GPP criteria.

Until now they cover 18 product groups (PGs), including PGs not developed at EU level, such as footwear, inkjet and toner cartridges, incontinence diapers and other similar incontinence products, sanitization service for hospitals. MECs contain also further different criteria in some cases. Recently the results of a survey conduct by Legambiente, a national NGO, on 1.048 municipalities (a number quite significant because in Italy municipalities are around 8.000) have been published. These results show that the rate of the MECs application increased from 9% (rate before the obligation) to 70% in 2018. So this survey, even if still around 30% of contracting authorities did not apply the MECs yet, highlights that this legislation is giving good results, even if not optimal.

In the next future it should be possible obtain punctual data on the degree of application of the MECs and on positive and critical points about it, within an Agreement signed on the 23rd of March 2018 between the Ministry of Environment and the National Anticorruption Authority for the main purpose of starting a monitoring and supervising activity on the application of the MECs. During last six months the information on the first cases of jurisprudence related to the Minimum Environmental Criteria have been spread in specialized websites and magazines. At the moment these dispute cases shown that a passive cut and paste approach is not a good way to put in practice the above mentioned obligation.

For this reason the Ministry of Environment, in addition to give support helping contracting authorities and companies whenever possible, has scheduled training and information activities and technical assistance that shall soon realize within the project “CreiamoPA” co-financed within the National Operative Programme Governance 2014 – 2020 within European Social Fund (European Structural & Investment Funds). These activities are functional also to put in place the aim of the agreement subscribed by the Ministry of Environment and the Regions to ensure greater uniformity in the levels of experience and expertise in the field of sustainable procurement at local level both for CA and suppliers, also sharing the best practices conducted within the regional GPP action plans.

Documents and strategies under development: the GPP NAP and the Minimum Environmental Criteria A new GPP National Action Plan, briefly described in last report and

¹³ Retrieved from the Green Public Procurement Support Plan 2015-2017, chapter 2.1:
https://drive.google.com/file/d/1JWY8H4eNAi8nceBxPrU2_nPmqN-1X_WG/view



some Minimum Environmental Criteria, shall highly probably be adopted soon. In particular: - “Toner and ink jet cartridges supplies and service of collection and supply of cartridges” - “Supplies and renting of imaging equipment” (third revision); “managed print services” (new product group) - “Catering service and foodstuffs supplies”.¹⁴

2.10.3. GPP in Denmark

The Partnership on Green Public Procurement and the Forum on Sustainable Procurement are the Ministry of Environment and Food’s two main initiatives on GPP: The Partnership on Green Public Procurement has 15 members (since our last meeting, we’ve welcomed one new member, and have indications that more new members will be joining us) and represents around 20% of the means spent on public procurement in Denmark.

The Partnership is in the process of amending revised criteria for procurements of “transportation” and “building & construction”. Both of these procurement categories have proven to be difficult to reach agreement upon amongst our members, so we do not expect to publish revised criteria documents in 2018. Since our last meeting, we’ve finally published revised criteria for procurement of “food”. The target states that each member has to serve a certain percentage of organic foods from their kitchens, and mainly use foods in season. In 2019, we will be revising one existing criteria (paper) and creating two new ones (textiles and children’s toys). The Forum on Sustainable Procurement has finalized a working group on “environmentally friendly establishment and operation of green recreational areas”.

The group struggled to reach agreement on their output, as they wanted to give a practical guidance to green management of public spaces. The output document is almost ready, and will contain advice for the public procurer about how to make a tender, in which environmental aspects of the maintenance of the public space is best integrated. Additionally, a working group on “Sustainable procurement and the SDG’s” begins with the first meeting in December 2018. There is also talk about starting a working group focused on how to minimize the use of single-use plastics in public institutions, starting in 2019.

The two initiatives are driven by a secretariat run by the consultancy Niras. Since our last meeting, the Danish government released their strategy for circular economy in Denmark (the CE strategy), in which funding for the secretariat is secured for 2019-2022. Under the CE strategy, we have also gained funding for the following projects:

- Continuation of a national task force aimed at helping both public institutions (municipalities) as well as SMEs implementing GPP in practice and to introduce existing tools and networks within GPP. The task force will have augmented focus on issues related to circular procurement.
- Analysis of the financial and environmental consequences of green and/or circular procurement (a follow up analysis to the report on “the price for the public authorities’ green choices. See below)
- Additional work on TCO’s. Preparing TCO’s for new areas, improving the existing, and ensuring communication about the tools available.
- A development of the web-portal “The responsible procurer”. This portal aims to give guidance on how to include environmental as well as social/ethical considerations in tendering material.

¹⁴ Retrieved from the Update on GPP activities by members of the GPP advisory group, page 9: https://ec.europa.eu/environment/gpp/pdf/190110_Update%20GPP%20Member%20States.pdf



It has been decided that the Danish EPA will be relocated to underpin the government's desire to place more public workplaces outside the capital area. Thus, from 2019 the 5 Last update: 6 December 2018 Danish EPA will not be located in Copenhagen but in the city of Odense. The work on GPP stays within the Danish EPA's portfolio of tasks. The relocation has led to an extensive change off staff in the EPA, this is also true for the GPP-related work.¹⁵

2.10.4. GPP in Sweden

Sweden will work towards the efficient spending of the EU funds, based on a multidimensional approach. The targets and the expected results for Sweden by 2020 are as follows:

- Environment and energy with improved energy performance in 10 436 households and 40 000 000 kWh/year reduction in energy consumption in public buildings;
- Fisheries: more selective and sustainable fisheries;
- Agriculture: 3 200 000 in the rural population benefiting from supported basic services, 52% of rural population covered by community-led local development strategies.

Financial instruments will be used mode in the 2014-2020 programming period, raising the ERDF allocation to EUR 133 million. Three types of financial instrument are planned: eight regional venture capital funds to support SMEs, a "fund of funds" to support private venture capital funds nationwide, and a national "green fund" to promote the transition to a low-carbon economy. Sweden used ERDF support only for equity instruments for general SME support and support in the energy sector.

Three ERDF programs involve the implementation of sustainable urban development strategies and one is using the integrated territorial investment approach. The Funds will invest in the local development, with more than 50% of the rural population helped by local development strategies implemented by 50 local action groups across the country. Local partnership in rural, urban and intermediate areas and linkages between rural and urban areas will be enhanced by a dedicated national multi-fund programme combining the ERDF and the ESF and focused exclusively on community-led local development.¹⁶

¹⁵ Retrieved from the Update on GPP activities by members of the GPP advisory group, page 3: https://ec.europa.eu/environment/gpp/pdf/190110_Update%20GPP%20Member%20States.pdf

¹⁶ Retrieved from the European Structural and Investment Funds report: https://ec.europa.eu/regional_policy/sources/policy/what/investment-policy/esif-country-factsheet/esif_funds_country_factsheet_sv_en.pdf



3. TOOLKITS FOR GPP COMPLIANCE

3.3. EU GPP criteria

The EU GPP criteria are developed to facilitate the inclusion of green requirements in public tender documents. While the adopted EU GPP criteria aim to reach a good balance between environmental performance, cost considerations, market availability and ease of verification, procuring authorities may choose, according to their needs and ambition level, to include all or only certain requirements in their tender documents.

The GPP approach is to propose two types of criteria for each sector covered:

- The core criteria are those suitable for use by any contracting authority across the Member States and address the key environmental impacts. They are designed to be used with minimum additional verification effort or cost increases.
Core – designed to allow easy application of GPP, focusing on the key area(s) of environmental performance of a product and aimed at keeping administrative costs for companies to a minimum (road example – the contracting authority shall award points to tenderers that achieve greater than or equal to 15% by weight of the recycled content, re-used content and/or by-products from the sum of the main road elements).
- The comprehensive criteria are for those who wish to purchase the best environmental products available on the market. These may require additional verification effort or a slight increase in cost compared to other products with the same functionality.
Comprehensive – take into account more aspects or higher levels of environmental performance, for use by authorities that want to go further in supporting environmental and innovation goals (Cleaning example – all textile cleaning accessories to be used to perform tasks related to the contract must be made of microfiber or meet the requirements set out in the EU Ecolabel for textile products).

<i>Criteria</i>
<u>Cleaning products and services</u>
<u>Copying and graphic paper</u>
<u>Electricity</u>
<u>Furniture</u>
<u>Imaging Equipment</u>
<u>Paints, varnisher and road markings</u>
<u>Sanitary Tapware</u>
<u>Textiles</u>
<u>Road Transport</u>
<u>Water-based Heaters</u>
<u>Computer and monitors</u>
<u>Electrical and Electronic Equipment used in the Health Care Sector</u>
<u>Food Catering services and vending machines</u>
<u>Public Space Maintenance</u>
<u>Office Building Design, Construction and Management</u>
<u>Road Design, Construction and Maintenance</u>
<u>Road Light and traffic signals</u>
<u>Toilets and Urinals</u>
<u>Waste Water Infrastructure</u>

Table 1 – GPP criteria as listed by the European Commission¹

3.4. GPP compliance

There are 5 types of steps in verifying whether a public procurement is or is not complied with the minimum obligations, such as: ¹⁷

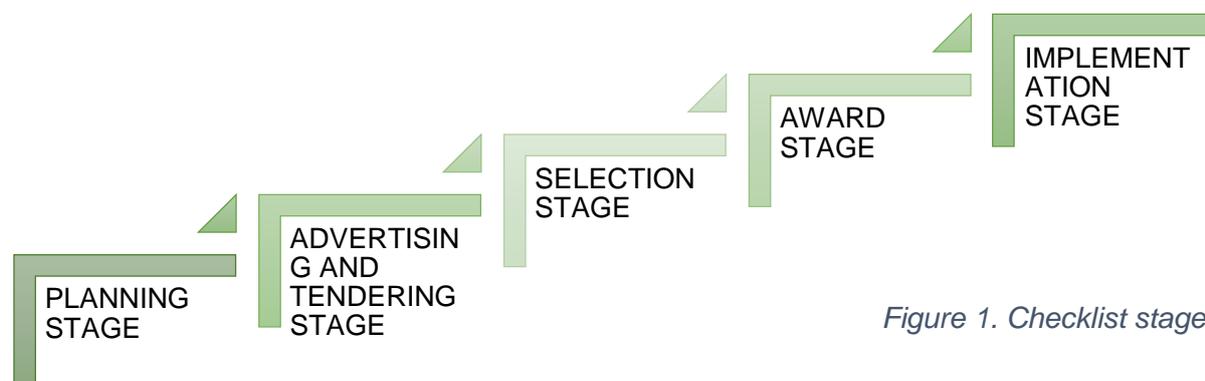


Figure 1. Checklist stages

We have made a table, as an example, that outlines the requirements contained in a necessity report regarding the public procurement of a product or a service that has green criteria's:

Product type	Product Category	Green purchasing option-technical specifications	Core criteria	Comprehensive criteria	U.M	Cost
IT&Electronics	Desktop computer	Technical specifications	Aligned to Energy Star v6.0 Tablet computers exempted due to low relevance of energy consumption (approximately 4kWh/year)	Allowance for GPUs capped near Tier 2 of EU Ecodesign requirements A dynamic element is introduced, with a link to the latest version of Energy Star Tablet computers exempted.	10	€

Table 2. GPP requirements

In order to verify the compliance respecting the steps mentioned in the Figure 1 ([GPP compliance](#)) we need to have 5 checklists: for the 4 out of 5 steps and an additional one for avoiding the conflict of interest.

The checklists will target the: planning stage, the selection stage, the award stage and the implementation stage.

For the advertising and tendering stage we only respond to the clarification received from the bidder. This stage doesn't necessarily need a checklist. It is important to have this kind of

¹⁷ Retrieved from:

https://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_public_proc_en.pdf



check-list before the awarding of the contract because it will facilitate the monitoring process at the evaluation of tenders and during the contract execution phase.

If the contracting authority knows very well in detail the green criteria established in tenders then they will know what to ask from the bidder (self-declaration, certificates, technical sheets, test reports or other appropriate forms of proof) by using the check-list.

Our proposal for the check- list for the GPP compliance addressing private and public beneficiaries following the steps mentioned above is the following:

Crt. No.	VERIFIED PROCEDURAL ASPECTS				
		Y	N	N/A	COMMENTS
	PLANNING				
1	Did the tender integrated functional and performance requirements with environmental and social requirements, considering the minimum environmental criterias?				
2	Did the tender integrated functional and performance requirements with environmental and social requirements, considering the environmental certification systems?				
3	Did the tender documentation integrated components of environmental and social sustainability?				
4	The social clause has been included in the tender so that the contractor will have to ensure that the goods are produced in compliance with minimum social standards?				
5	Did the specific technical specification are clear, understandable for all operators in the same way that it is possible to verify compliance when evaluating offers?				

Table 3. Check-list for the planning stage

Crt. No.	VERIFIED PROCEDURAL ASPECTS				
		Y	N	N/A	COMMENTS
	SELECTION				
6	Has the justification note drawn up for the determination of the estimated value, signed by the legal representative of the beneficiary?				
7	Has the estimated value in the financing contract been increased with the AM approval?				
8	The private beneficiary split the contract in order to avoid the application of the provisions please fill with the application of the public procurement law in each country ?				



9	Has the purchase announcement been published on the website of the European Funds Ministry?				
10	If invitations to participate were sent, did they contain the same information in the ad and were submitted on the date of publication of the notice?				
11	Is there a justification for the direct award of the contract to a particular economic operator?				
12	Did the economic operator respected the environmental legislation?				
13	Did the economic operator possess the technical skills described in the tender in order to ensure the performance of the contract?				
14	Did the economic operator respected the terms of environmental performance?				
15	Have clarifications been requested by economic operators?				
16	Has the field been announced in the ad that tells economic operators that changes have been made to the initial information?				
17	Are all bids registered?				
18	Did the evaluated bids be received by the time and date announced in the published notice?				
19	Did the economic operator provided evidence of the necessary technical capacity?				
20	Did the Beneficiary sign and stamped the Acknowledgment of Selection based on technical specifications and financial benefits?				

Table 4. Check-list for the selection stage

Crt. No.	VERIFIED PROCEDURAL ASPECTS				
		Y	N	N/A	COMMENTS
	AWARD				
21	How is the best bidder identified?				
22	Is there a match between the technical specifications related to the object of the acquisition and the environmental criteria of the financing contract?				



23	Are the technical specifications objectively quantifiable and specific?				
24	The environmental criterias are ensuring the possibility of effective competition?				
25	Are the environmental criterias expressly mentional in the notice and in the tender documents?				
26	Are the fundamental principles (economic, effectiveness, timeliness and correctness) respected?				
27	Detailed information on the award criterion for tenders (the criterion will not be modified during the procedure)				
28	Information on the possibility of modifying the contractual clauses				
29	Did the adoption of a cost estimate of the life cycle revealed the actual cost of the contract?				
30	It has been expressly provided for the possibility of adjusting the price				

Table 5. Check-list for the award stage

Crt. No.	VERIFIED PROCEDURAL ASPECTS				
		Y	N	N/A	COMMENTS
	IMPLEMENTATION				
31	Is there a match between the technical specifications related to the object of the acquisition and the provisions of the financing contract?				
32	Are the technical specifications objectively describing the subject of the acquisition?				
33	Are the specific technical specifications and the motivations of the situation described in detail?				
34	Detailed information on the award criterion for tenders (the criterion will not be modified during the procedure)				
35	Information on the possibility of modifying the contractual clauses				
36	It has been expressly provided for the possibility of adjusting the price				
37	Are the environmental consideration included in the clauses for the performance of a contract?				



38	Are environmental consideration published in the notice of competition or in the specifications?				
39	Is the object of the contract complying with the Law?				

Table 6. Check-list for the implementation stage

Crt. No.	VERIFIED PROCEDURAL ASPECTS				
		Y	N	N/A	COMMENTS
	AVOIDING CONFLICT OF INTEREST				
40	Are the statements on the own responsibility of the economic operators participating in the procedure showing that they are not in conflict of interest?				
41	Did the members of the commission sign the declaration on their own responsibility, stating that they are not in conflict with the economic operators who have submitted offers?				
	VERIFICATION OF CONFLICT OF INTEREST				
A	Legal Representative of the Beneficiary:				
1	• is the shareholder of the contractor				
2	• is the manager of the contractor				
3	• is the contractor`s censor				
4	• has the obvious link (name) with the legal representative of the contractor				
B	Members of the Board of Directors (if applicable):				
1	• they are shareholders of the contractor				
2	• are managers of the contractor				
3	• they are the censors of the contractor				
4	• has the obvious link (name) with the legal representative of the contractor				
C	Authorized representative of the legal representative:				
1	• they are shareholders of the contractor				
2	• are managers of the contractor				
3	• they are the censors of the contractor				
4	• has the obvious link (name) with the legal representative of the contractor				



D	Project manager:				
1	<ul style="list-style-type: none">they are shareholders of the contractor				
2	<ul style="list-style-type: none">are managers of the contractor				
3	<ul style="list-style-type: none">they are the censors of the contractor				
4	<ul style="list-style-type: none">has the obvious link (name) with the legal representative of the contractor				
E	Natural or legal persons are directly involved in the process of verification / evaluation of applications / tenders:				
1	<ul style="list-style-type: none">they are shareholders of the contractor				
2	<ul style="list-style-type: none">are managers of the contractor				
3	<ul style="list-style-type: none">they are the censors of the contractor				
4	<ul style="list-style-type: none">has the obvious link (name) with the legal representative of the contractor				
F	The winning bidder holds the majority stake in two bidders participating in the procedure				

Table 7. Check-list for the conflict of interest



4. FAQ

This section is dedicated to the partners of the GPP-STREAM project as an exchange of opinions regarding the evaluation of the offers or uncertain issues.

The section aims to answer questions that users of this toolkit can encounter throughout the purchasing process.

Q: What is the activity of evaluating the offers received before awarding the contract verified in each partner country?

A: North-East Regional Development Agency: The Romanian legislation requires that the products offered (e.g. IT equipment) to have a relevant type of ecological label (Type I), or if they don't have such a label, the tenderer may present other „adequate means of proof, such as a manufacturer's technical file or a test report from a recognized body demonstrating compliance with the requirement, for example: body accredited to issue test reports in accordance with ISO 7052”.

Thus, the submission by the tenderer of a statement on his own responsibility regarding the green criteria requested by the specifications does not represent a proof that the product offered meets the green criteria requested by the contracting authority. Also, if the product offered does not have a relevant type I eco-label, the members of the evaluation committee find it extremely difficult to analyze a technical file or a test report, given that they do not have specialized knowledge in this sense.

A: Gabrovo Municipality: Our position is mainly to follow the principle that in the contract should have a penalty for failure to reach. We have an idea but not try it yet, to link the penalty with the relative % of the offer's value (if it is an award criteria and it is evaluate of the offer), with the amount of sanctions. For example, if the saved emissions are evaluate with 20% relative bid estimate, then the penalty for not achieving the savings level at the offered level is 20% of the contract amount. In this way, we would seek a moderation of the bids on the one hand, and if the results were not achieved the price paid would be lower or equal to the next bid in the public procurement. This is what we are going to test.

A: Auvergne-Rhône-Alpes Énergie Environnement: From our point of view it's impossible of course to be enough specialist of everything so one of the best way to be sure about the bidders is to ask, as far as it's possible of course, evidences. According to us the best evidence is to present an ecolabel (type 1 ISO 14024). If that's not possible the bidder should show something equivalent and at last to sign a declaration on honor. Some French municipalities don't award in the same way if the certification is an ecolabel (type 1), only a label (type 2 ISO 14021) or a declaration (type 3 ISO 14025). The issue is to define penalties and even to break the procurement if finally you realize that the bidder don't respect its commitment.

A: Ministry of Environment, Waters and Forests: Depending on the specific and nature of the procurement, an evaluation commission is desennated consisting of at least 1 member from the procurement department, plus a minimum of 2 substitute members from the technical department, plus another 2 (minimum) substitute members. The tender evaluation process is a complex one, the evaluation commission analyze, for the first stages, the participation guarantees (if applicable) and the documents proving the requirements



regarding the qualification of the bidders. The next stage is analyzing the technical proposals received from the bidders, following which bids declared as compliant and which will enter into the final stage of analysis, respectively the analysis of the financial proposals. The evaluation factor established in the award documentation is applied, the tender classification is performed and then the report of the procedure is submitted, which is submitted to the unit manager for approval. Subsequently, the communications regarding the result of the procedure are transmitted and, after the legal deadline in which appeals can be filed, the public procurement contract is signed.

Q: How is it verified, when receiving offers from the bidders that those criteria passed in the specification of the tender book are in accordance with that was answered by the offer?

A: North-East Regional Development Agency: According to the Romanian legal provisions, the contracting authorities have the obligation to use, at the level of specifications, certain minimum environmental requirements, such as: for the purchase of office IT equipment (desktops, laptops, tablets, servers, monitors). One of the requirements is: „all products must comply with the latest ENERGY STAR energy performance standards”, referring to the information available on the website www.eu-energystar.org. The lawmaker stated that „products that have a relevant type I eco-label and that comply with the listed requirements are considered compliant”. The bidder may also provide other „appropriate evidence, such as a manufacturer’s technical file or a product report test recognized body which will demonstrate the compliance with the requirements, for example: body accredited to issue test reports in accordance with ISO 7025”.

It is simple to specify such a requirement in the specifications!

In evaluating the offers (August 2019), the members of the evaluation committee were confronted with the following problems regarding this green criteria:

- The latest Energy Star standard for computer is 7.1 (according to <https://www.energystar.gov/>);
- On the website www.eu-energystar.org (to which the lawmaker referred in the Romanian legislation) stated: „The EU ENERGY STAR programme followed an Agreement between the European Community (EU) and the Government of the US to coordinate energy labelling of office equipment. It was managed by the European Commission. The US partner was the Environmental Protection Agency (EPA), which started the scheme in the US in 1992. The EU-US agreement expired on 20 February 2018”. Thus, all Energy Star 6.1 certified computers can be found in the EU database;
- At the same time, according to the Romanian Agency for Public Procurement, „the Energy Star registrations of the most recent US version must also be accepted, provided that the testing has been carried out in accordance with the European requirement regarding the input power”;
- The members of the evaluation commission failed to identify in the European regulations/directives what are those European requirements regarding the power of entry.

Taking into account the above mentioned details, the following questions are raised:



Q1: How could the contracting authority evaluate the tenders submitted during an open tender, in terms of meeting the minimum requirements regarding the latest Energy Star standards?

A: Auvergne-Rhône-Alpes Énergie Environnement: As Energy Star standards is no more available for 2 years in Europe (used only in North America nowadays) we do not use this kind of standards.

Q2: According to the Energy Star standard, the manufacturer has the obligation to specify in the data sheet of the product that certifications obtained. It is sufficient, as a proof, the presentation by the bidder of the technical file of the offered product, in which the product certifications are mentioned? Or what other document could the bidder must provide in order to prove that the product offered meets the Energy Star standard required?

Q4: What relevance is having the requests and specifications from the tender for a certain maximum value of carbon dioxide emissions (and the bidder must prove at the time of the offer) the fulfillment of this requirement by presenting the technical data sheet of the vehicle, when that certificate of compliance is presented with the delivery of cars (from which results is the level of CO2 emissions) ?

We specify that it is not possible to request the presentation by the bidder of this certificate at the time of the bidding because you cannot oblige the bidder to have the cars offered in stock, and this certificate is issued by the manufacturer at the time of delivery of the vehicles.

A: Gabrovo Municipality: Out of this we are looking for certification, declaration for technical specification or certified tests from a licensed companies.

A: Auvergne-Rhône-Alpes Énergie Environnement: As that's always very difficult to be 100 % sure that the result will be conform to the tenders, we rather say to the procurers to work before the procurement with their bidders so that a new relationship can be build. The bidders understand the purchasers and can join together if they're too small. The purchasers can try to convince the bidders to increase their environmental offer to increase their global performance and finally their award.

In France that's a constant problem to verify the conformity of the offers because in fact that's a new job, very different of a regulation verification. We ask there to the purchasers who are most of them "lawyers" to become "developers" and that's the issue! They haven't the means, they need to be train, they need advices and to be supported (by GPP-STREAM!) and for them in fact that's not mandatory. We don't usually ask to a purchaser to help their bidders but only to write regular procurement ...

That's why, according to us, it's necessary to ask strong evidences once again (ISO 14024 or equivalent) and in the same time to do this work, a long time before the tender itself.

To summarize our approach is the bidders' job to give evidences and "to avoid" (i.e. reduce) the control, the best way as to create confident linked between public bodies and purchasers and bidders, thanks to the sourcing.

A: Ministry of Environment, Waters and Forests: The designated evaluation commission analyzes the document of each tender in terms of meeting the requirements provided in the award documentation. To the extent that if there are unclear aspects in the documents



transmitted, the commission requests clarification. It should be specified that, for each requirement stipulated in the award documentation, the bidder proves the eligibility either through supporting documents (to attest the information from the offer) or by self-declaration.