

Local barriers in the efficient use of Green Public Procurement - case of Slovakia

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Abstract

Green public procurement is a voluntary tool through which public procurers can contribute to the objectives of environmental policy. The legal framework and public policy of green procurement is covered by the European Union. The main goal is to contribute to the consideration of environmental characteristics in public purchases as well as environmental management and the life-cycle costs of the goods, services and work. However, the objectives of the legal framework and the policy to promote green public procurement are often not achieved due to the barriers posed by economic practice. The aim of the article is to analyze the local barriers in the effective use of green public procurement in Slovakia. The processing of results is based on the annual evaluation reports to the National Action Plan for Green Public Procurement in Slovakia for 2016-2020. Identified local barriers include financial constraints on contracting authorities and a preference for evaluating contracts based on the lowest price criterion, insufficiently built administrative (personal) capacity to implement green public procurement, fear of discrimination in incorporating environmental criteria into tender documents and subsequent sanctions from control bodies. Last but not least, the voluntary application of green public procurement at regional and local level is also included among the barriers in the efficient use of this tool in practice.

Keywords: green public procurement, local barriers, legal framework, Slovakia.

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1. Introduction

Public procurement is a complex multidimensional concept that combines political, economic and legal elements.² Public procurement is interesting for policy makers in terms of the public money amount that public authorities spend on the supply of goods, services and work through public purchasing. This amount of public money is large enough to make public procurement an appropriate tool for policy makers to pursue environmental, social or economic objectives in public procurement. Public procurement needs to be carried out in an environmentally and socially responsible way, and therefore with regard to the environmental as well as the social aspects associated with purchasing. Taking both aspects into account is a

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² Azud, J., Plaváková, L., Bartoš, P. (2019). The Act on Public Procurement - Commentary. C.H.Beck. Bratislava. 1816 p. ISBN 978-80-89603-75-6.

strategic tool for the states to fulfill the so-called secondary role of public procurement policies. In the case of green public procurement (hereinafter also “GPP”) policy, the states contribute to the achievement of goals in the field of climate change mitigation and prevention, environmental protection and public health by spending public funds on the procurement of goods, services and work taking into account their environmental impact. The result of the procurement is good, service or work with a lower negative impact on the environment compared to good, service or work that are the same or comparable in terms of their functionality or performance, but do not take into account environmental impacts.³ To procure in an environmentally-friendly way involves looking beyond short-term needs of public authorities and considering the longer-term impacts of each public purchase.

The European Commission is a leader in promoting green public procurement. Green public procurement is a tool in public administration that has the potential to make a significant contribution to environmental policy goals, especially in the area of sustainable use of resources and energy consumption. The potential of GPP as a public policy instrument has been increasingly recognized, and over recent years there has been growing political commitment at national, EU and also international level.⁴ The EU leaders in the green public procurement implementation are Austria, Denmark, Finland, Germany, Sweden, Nederland, Spain and United Kingdom.⁵

Green public procurement can enable public authorities to save money, especially if the whole life cycle of the contract is taken into account and not just the purchase price. For example, the purchase of energy-efficient or water-saving products can significantly help reduce electricity, gas and water bills. Restriction of hazardous substances in products can reduce disposal costs. Authorities using GPP in practice will be better prepared for changing environmental challenges, such as reducing greenhouse gas emissions or moving to a more intensive circular economy.⁶ GPP is a soft tool. GPP also motivates suppliers and subcontractors who are interested in bidding for green public contracts to comply with environmental legislation. GPP is thus an important tool through which to contribute to environmental policy objectives. Support for green procurement also resonates at a global level. The concept of green public procurement being in line with the sustainable development goals set out in Agenda 2030.

³ Ministry of Environment of the SR. (2019). Concept of Green Public Procurement Development and Implementation in Slovakia. Available online: <https://www.slov-lex.sk/legislativne-procesy/-/SK/LP/2019/570> [cit. 01.08.2021].

⁴ European Commission. (2008). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Public procurement for a better environment {SEC(2008) 2124} {SEC(2008) 2125} {SEC(2008) 2126} /* COM/2008/0400 final */

⁵ Slovak Agency for Environment. (2014). Green Public Procurement. Banská Bystrica, 42 p.

⁶ European Commission. (2016). Buying Green: A Handbook on Green Public Procurement, 3rd edition. Luxembourg, p. 80.

Green public procurement has been a part of strategic documents in Slovakia since 2001, but so far no significant use of this tool has been achieved in practice.⁷ The level of green public procurement implementation has long been low. Aims of the legal framework and public policy in the field of GPP promotion are not fulfill as it was expecting. Therefore, the main goal of this article is to identify local barriers to the effective use of green public procurement in Slovakia.

2. The main objectives of the Green Public Procurement legal framework

In the following section, we point out the basic objectives of the legal framework to promote green public procurement in the European Union. These can be achieved by effectively implemented public policies at different levels of governance in each Member State and eliminating existing barriers to use the full potential of green public procurement. EU environmental strategies identify GPP as essential market-based instrument for attaining EU environmental objectives.⁸ Here must be mentioned, that public procurement law at EU level has also a political and economic purpose.⁹

The Treaty on the Functioning of the EU states that “*European Union policy on the environment shall contribute to achieving the following objectives: maintaining, protecting and improving the quality of the environment, protecting human health, prudent and rational utilization of natural resources, promoting action at international level to address regional or global environmental problems, in particular the fight against climate change.*”¹⁰

The Treaty on the Functioning of the EU, which is a source of EU primary law, is followed by directives governing public procurement. These are Directive 2014/23/EU of the European Parliament and of the Council on the award of concessions, Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC, and Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC. These directives emphasize the need and importance of strategic planning within public procurement, which also includes environmental criteria.¹¹ Directives also play an important role because Member

⁷ Tkáč, J., Slobodníková, M. (2020). Green Public Procurement in practice. Wolters Kluwer SK. Bratislava. 1080 p. ISBN 978-80-571-0207-6.

⁸ Kunzlik, P. (2013). Green Public Procurement - European Law, Environmental Standards and “What to Buy” Decision In Journal of Environmental Law, 25, 2. doi: 10.1093/jel/eqt006.

⁹ Azud, J., Plaváková, L., Bartoš, P. (2019). The Act on Public Procurement - Commentary. C.H.Beck. Bratislava. 1816 p. ISBN 978-80-89603-75-6.

¹⁰ Article 191, Treaty on the Functioning of the European Union.

¹¹ Tkáč, J., Slobodníková, M. (2020). Green Public Procurement in practice. Wolters Kluwer SK. Bratislava. 1080 p. ISBN 978-80-571-0207-6.

States are obliged to interpret national public procurement rules in such a way as to comply as far as possible with European law.¹²

The Directive 2014/23/EU provides that public procurers take relevant measures to ensure compliance with environmental obligations.¹³ The Directive further regulates the possibility for contracting authorities to include environmental characteristics in tender documents by reference to the eco-labels.¹⁴ Contracting authorities should be able to require that environmental management measures or schemes be applied during the performance of a public contract. Contracting authorities should be also allowed to use award criteria or contract performance conditions relating to the works, supplies or services to be provided under the public contract in any respect and at any stage of their life cycles .”¹⁵

Other sources of law at EU level include Regulation (EC) No 1/2003. Regulation (EC) No. 106/2008 on a Community program for the labeling of the efficiency of office equipment, as amended by Regulation (EU) No 182/2011 of the European Parliament and of the Council 174/2013 as well as Directive 2009/33 / EC of the European Parliament and of the Council on the promotion of clean and energy efficient road transport vehicles.

¹² Tkáč, J., Griga, M. (2016). The Act on Public Procurement - Commentary. Wolters Kluwer, Bratislava. 1259 p. ISBN 978-80-8168-454-8.

¹³ 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 “*With a view to an appropriate integration of environmental, social and labour requirements into public procurement procedures it is of particular importance that Member States and contracting authorities take relevant measures to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed or the services provided and result from laws, regulations, decrees and decisions, at both national and Union level, as well as from collective agreements, provided that such rules, and their application, comply with Union law.*”

¹⁴ 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 “*Contracting authorities 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 eco-labels 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.*”

¹⁵ 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 “*Contracting authorities should be able to require that environmental management measures or schemes be applied during the performance of a public contract. Furthermore, with a view to the better integration of social and environmental considerations in the procurement procedures, contracting authorities should be allowed to use award criteria or contract performance conditions relating to the works, supplies or services to be provided under the public 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 and its conditions of those works, supplies 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.*”

Legal regulation of green public procurement in Slovakia is governed by the Act No. 343/2015 Coll. on public procurement. The explanatory report to the Act points to the justification for the use of environmental aspects in public procurement.

Public procurement should contribute to the most efficient use of public funds, as well as to the wider economic, environmental and social benefits of new ideas and their incorporation into innovative products and services, thus promoting sustainable economic growth. Environmental aspects should be expressed by the requirement to procure such energy-related products that belong to the highest energy class and meet the highest performance criteria. Contracting authorities should be able to determine the most economically advantageous tender using a life-cycle costing approach and thus, for example, costs arising from environmental externalities.¹⁶

Goals and measures to support green public procurement are contained in the National Action Plan. Strategic goal of the National Action Plan for Green Public Procurement in the Slovakia for 2016 - 2020 is to achieve a 50% share of implemented green contracts by state administration bodies from the total volume of contracts concluded by them for selected product groups.¹⁷ However, these goals have not been achieved. New goals set in the Envirostrategy 2030 are much more ambitious. *“Slovakia will use green public procurement at least in 70% of the total value of the public procurement. It will increase support for green innovation, science and research.”*¹⁸

3. Barriers in the efficient use of Green Public Procurement - literature review

Although GPP is considered an effective policy tool to bring environmental benefits, countries face many obstacles in implementing GPP policies. A number of key challenges to the implementation of GPP have been identified by the European Commission a few years ago. These challenges include lack of political support, green products are perceived to cost more, lack of legal expertise in applying environmental criteria, lack of practical tools and information, the need for systematic implementation and integration into management systems, lack of training, lack of co-operation between authorities and limited established environmental criteria for products/services.¹⁹ These conclusion can be find also in

¹⁶ Office for Public Procurement. (2015). Explanatory Report to the Act No. 343/2015 Coll. on public procurement. Available online: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=5652> [cit. 05.10.2020].

¹⁷ National Action Plan for Green Public Procurement in the Slovakia for 2016 – 2020.

¹⁸ Greener Slovakia – Strategy of the Environmental Policy of the Slovak Republic until 2030 (the Envirostrategy 2030).

¹⁹ European Commission. (2021) Barriers to take-up of GPP. Available online https://ec.europa.eu/environment/gpp/barriers_en.htm [cit. 10.05.2021].

the report *The Uptake of Green Public Procurement in the EU27*.²⁰ Also lack of products on the market that meet the defined GPP environmental criteria can be considered as obstacle to the effective use of green public procurement.²¹

Results from the literature has been suggested several challenges of implementing GPP, for example managerial support, limited knowledge and resources, cost effectiveness, environmental preferences and orientation, and organizational attitudes. Incentives for GPP practices are often limited, mainly related to comparison between green procurement and efficiency of spending. No every case of green procurement means cost saving.²² Public authorities have still tendency to buy the cheapest alternatives.²³ On the other hand, the cost and environmental impact of GPP is difficult and sometimes even impossible to measure.²⁴ Size of public procurers seems to be also important factor in the efficient use of green public procurement. This barrier is related to capacities they have. Smaller public bodies may find it difficult to build separate purchasing departments.²⁵

Also, OECD pointed out several barriers of effective GPP implementation. *“Commonly mentioned obstacles are the perception that GPP products are more expensive than conventional ones, the lack of technical knowledge of public officials on how to integrate environmental standards in the procurement processes and the absence of monitoring mechanisms to evaluate GPP impacts.”*²⁶

²⁰ European Union. (2012). *The Uptake of Green Public Procurement in the EU27*. Available online <https://ec.europa.eu/environment/gpp/pdf/CEPS-CoE-GPP%20MAIN%20REPORT.pdf> [cit. 05.10.2020].

²¹ Hasanbeigi, A., Becque, R., Springer, C. (2019). *Curbing Carbon from Consumption: The Role of Green Public Procurement*. San Francisco CA: Global Eciency Intelligence.

²² Ahsan, K., Rahman, S. (2017). Green Public Procurement Implementation in Australian Public Healthcare Sector In *Journal of Cleaner Production*, 152, 181-197. doi: 10.1016/J.JCLEPRO.2017.03.055.

²³ Tesca, F. et al. (2015) Examining green Procurement Using Content Analysis: Existing Difficulties for procurers and Useful Recommendation In *Environment, Development and Sustainability* 18, 197-219. doi: 10.1007/s10668-015-9634-1.

²⁴ Halonen, K. M. (2021). Is public procurement fit for reaching sustainability goals? A law and economics approach to green public procurement, „Maastricht Journal of European and Comparative Law”. doi: 10.1177/1023263X211016756.

²⁵ Michelsen, O., De Boer, L. (2009). Green Procurement in Norway, a survey of practices at the municipal and county level In *Journal of Environmental Management*, 91, 160-167. doi: 10.1016/j.jenvman.2009.08.001.

²⁶ OECD. (2013). *Sustainable public procurement initiative mapping out good practices on green public procurement*. Available online <https://www.oecd.org/gov/ethics/concept%20note%20page.pdf> [cit. 03.02.2021].

4. Methodology

In order to achieve the main goal of this article, we processed the evaluation reports of the National Action Plan for Green Public Procurement in the Slovak Republic for 2016 - 2020²⁷ submitted by the Ministry of the Environment of the Slovak Republic in 2017 to 2021 for the Government of the Slovak Republic²⁸.

- Information on the implementation of the National Action Plan for Green Public Procurement in the Slovak Republic for 2016-2020 in 2016
- Information on the implementation of the National Action Plan for Green Public Procurement in the Slovak Republic for 2016-2020 in 2017
- Information on the implementation of the National Action Plan for Green Public Procurement in the Slovak Republic for 2016-2020 in 2018
- Information on the implementation of the National Action Plan for Green Public Procurement in the Slovak Republic for 2016-2020 in 2019
- Information on the implementation of the National Action Plan for Green Public Procurement in the Slovak Republic for 2016-2020 in 2020

These reports contain an evaluation of the achievement of the objectives set out in the National Action Plan for Green Public Procurement in the Slovak Republic for 2016-2020 and also the identification of the most significant barriers that caused the objectives not to be achieved at the required level and shall be eliminated, for example, by an appropriate amendment to the legislation. The basis for the data collection and processing of results in annual reports is a questionnaire designed for public contracting authorities at national, regional and local level.

The results are processed based on the comparison of findings from annual reports. The analysis of barriers in the effective use of green public procurement in Slovakia for the period of five years when the NAP GPP III plan was implemented enables a comprehensive evaluation of the most significant obstacles on the example of Slovakia.

5. Results

More efficient use of green public procurement, especially by public purchasers at the regional and local level, can be achieved through public measures aimed at gradually removing barriers to the use of this instrument. Recognizing the barriers to the efficient use of green public procurement makes it possible to take tailor-made public interventions to improve the current situation.

In the years 2016 - 2018, financial restrictions in public administration were identified among the barriers to the efficient use of green public procurement in Slovakia. The management of public purchasers with limited budgets, especially at

²⁷ Resolution of the Government of the Slovak Republic no. 590 on the draft National Action Plan for Green Public Procurement in the Slovak Republic for the years 2016 - 2020.

²⁸ Available online: <https://rokovania.gov.sk/RVL/Material>.

regional and local level, means that contracting authorities prefer non-certified products and services when purchasing, which are more affordable and have a stable market position due to their low price.

During all analyzed years in the period 2016 - 2020, the instability of the personnel capacities of public procurers, which are responsible for public procurement agenda, is identified as an obstacle. The main problem is the staff turnover of staff with disgusting skills and knowledge in the field of public procurement. The application of environmental criteria in public procurement requires sufficient professional experience and knowledge of the topic and its benefits for the contracting authority. The barrier is also related to the knowledge of the relevant legal framework of green public procurement and the ability to apply it in practice. Hence the need to support lifelong learning in the field of public procurement with a focus on the application of environmental aspects in public procurement.

Other barriers include the fact that green public procurement is a voluntary tool at regional and local level. Public procurers do not have a legal obligation to implement public procurement in the concept of green public procurement, which significantly reduces their incentive to apply environmental criteria. The obligation imposed by law to implement at least a certain part of public procurement in the concept of green public procurement would significantly contribute to the use of this tool to a greater extent at the level of regional and local self-governments, including organizations founded by them.

Since 2019, the fear of discrimination in application of environmental criteria into tender documents and the associated risk of sanctions by control authorities has also been identified as a barrier.

Barriers to the efficient use of green public procurement may include ignorance of the topic, poor orientation of public procurers in the field of environmental criteria and their incorporation into tender documents. Also, insufficient internal procedures of public procurers in recording and evaluating the benefits of green contracts seems to be a barrier. This situation can be improved by a better analysis of public procurement and a better (public) database. Nowadays, there are no structured data on green public procurement by product groups, etc.²⁹

According to the Institute for Environmental Policy (2018)³⁰, systemic changes in education, transparency and monitoring will contribute to expanding the use of green public procurement. According to the Ministry of the Environment (2019), *"Taking into account the environmental impact of public procurement requires a significant change in the current understanding of public procurement*

²⁹ Institute of Environmental Policy. (2018). How to save the environment and money through green public procurement. Available online: https://www.minzp.sk/files/iep/2018_01_zelene_verejne_obstaravanie.pdf [cit. 10.06.2020].

³⁰ Ibid.

and the evaluation of tenders on the basis of the lowest price criterion."³¹ It follows that contracting authorities should also be encouraged to apply other criteria for the evaluation of tenders, such as the lowest price and thus the best value for money, and the cost criteria using a cost-effectiveness approach, in particular life-cycle costing.

Setting up the environmental criteria for the procured goods, services or works requires a certain skill and scope of knowledge. A basic positive effect can be achieved through the application of the recommended standard of environmental requirements to the terms of a specific public contract.

*"Green public procurement processes require continuously monitoring in order to predict the development of this tool, as well as the ability to propose further measures to support development."*³² There is no uniform system for recording and evaluating green contracts implemented at different levels of government.

In order to eliminate barriers and simplify the use of green public procurement, the Office for Public Procurement proposes to introduce measures such as the preparation of model green contracts, training of public procurers within selected product groups and methodological support of green public procurement and its application in practice.³³

6. Conclusion

The analysis and comparison of annual reports evaluating the National Action Plan for Green Public Procurement in Slovakia for 2016-2020 shows that the main barriers to the effective use of green public procurement include financial constraints in public administration, which lead to preference for bid evaluation based on the lowest prices. Furthermore, the fear of discrimination in the inclusion of environmental criteria in the tender documents and the subsequent sanction from control bodies. Related to this barrier is a barrier consisting of insufficient capacities that would be professionally capable of implementing green public procurement. Other identified barriers include absence of complex databases of GPP implementation, low motivation of public procurers to implement contracts in the regime of green public procurement and the associated attitude of public procurers to this way of public procurement.

Barriers identified in Slovakia are among the barriers to uptake of green public procurement, which are also pointed out by the results of professional and scientific studies and are characteristic of countries that are introducing green public procurement. It should be noted that the evaluation reports point out obstacles in general and do not take into account the peculiarities of the application of green

³¹ Ministry of Environment of the SR. (2019). Concept of Green Public Procurement Development and Implementation in Slovakia. Available online: <https://www.slov-lex.sk/legislativne-procesy/-/SK/LP/2019/570> [cit. 01.08.2021].

³² Ibid.

³³ Ibid.

public procurement by state bodies, local and regional self-government bodies, or organizations in their founding competence. A suitable topic for future research is also the identification of obstacles depending on the size of the contracting authority or its budget.

Identification and elimination of these barriers is important step in the phase of voluntary implementation of green public procurement. In this phase, it is still time for barriers to be removed by tailor-made measures from the national level. Thus, contracting authorities, mainly at regional and local level, can be better prepared for the phase of mandatory implementation of green public procurement.

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II. Legislation and strategic documents

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3. Act No. 343/2015 Coll. on Public Procurement.
4. Resolution of the Government of the Slovak Republic no. 590 on the draft National Action Plan for Green Public Procurement in the Slovak Republic for the years 2016 – 2020.
5. National Action Plan for Green Public Procurement in the Slovakia for 2016 – 2020.
6. Greener Slovakia – Strategy of the Environmental Policy of the Slovak Republic until 2030 (the Envirostrategy 2030).