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## **PUBLIC PROCUREMENT IN THE EUROPEAN UNION AS THE DEMAND-SIDE INSTRUMENT FOR ACHIEVING SOCIAL AND DEVELOPMENTAL OBJECTIVES<sup>1</sup>**

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Public procurement reform currently being implemented in the EU is supposed to facilitate its use as an instrument of the Europe 2020 strategy and the goals of sustainable development. It involves redefining the function of public procurement, hitherto associated with increasing the spending efficiency of contracting authorities, due to competition on the open European market. The demands to strengthen the so-called social dimension of European Integration enjoy broad public support. However, there is no simple optimizing formula for simultaneously promoting competition on the open public procurement market and achieving sustainable development. Based on previous experience, the practical range of possible simultaneous implementation of these goals seems to be limited. At the same time one may notice an imbalance of international trade generated by an open public procurement market, which aggravates the realization of socio-economic convergence goals.

**Keywords:** strategic public procurement, socially responsible tenders, pro-innovative tenders, reform of public procurement in the EU

### **1. STRATEGIC REFORM OF PUBLIC PROCUREMENT IN THE EUROPEAN UNION**

The most important and immediate reason for the introduction of the current public procurement reform in the European Union (EU) and the issuance of new directives on this subject (2014/24/EU – the so-called “classical” directive;

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2014/25/EU – the so-called “sector” directive and 2014/23/EU on concessions) was their adaptation to the needs of the Europe 2020 strategy for smart, sustainable and inclusive growth. As explained by the European legislature in Directive 2014/24/EU, public procurement is to play a key role as a strategic market instrument for pursuing these objectives while ensuring the most efficient use of public funds from the point of view of contracting authorities (Preamble 2, 3, 76, 123). Similarly, while preparing an amendment to the Public Procurement Law implementing new EU directives, Polish legislature treated it as part of the implementation of the national plan for responsible development in the field of formulating a new, intelligent purchasing policy (Haładyj, 2016). The new strategic objectives are particularly related to contracts, which are: “socially responsible”, “green”, pro-innovation, and friendly for small and medium-sized enterprises.

The concept of **“Socially Responsible Procurement”** refers to “any activity in the field of public procurement that takes into account one or more of the following social aspects: employment opportunities, decent work, compliance with social rights and labor law, social inclusion (including people with disabilities), equal opportunities, designing accessibility for all, taking sustainability criteria into account, including matters of ethical trade and wider voluntary compliance with corporate social responsibility – while respecting the principles contained in the Treaty on European Union and Directives on public procurement”. (Buying Social, p. 5).

**“Green Public Procurement”** (GPP) refers to “a process whereby public authorities seek to procure goods, services and construction works whose impact on the environment during their life cycle is smaller than of goods, services and construction works with the same primary function that would otherwise be procured”. (GPP, 2008, 3.1).

**“Innovation”** within the meaning of Directive 2014/24/EU refers to the “implementation of new or significantly improved products, services or processes, including, among others, the following: the processes of production, building or construction; a new marketing method or a new organizational method in business activity, organization of work and external relations in order to help solve societal challenges and to support »The Europe 2020« strategy” (Article 2, paragraph 1. (22)).

**Small and medium-sized enterprises** within the meaning of the EU are the most common ones that meet the following standard criteria: the number of employees, annual turnover and balance sheet total. Microenterprise – less than 10 employees, annual turnover (the amount of money acquired in a given period) or balance sheet (statement of assets and liabilities of the company) of less than EUR 2 million. Small business – less than 50 employees, annual turnover or balance sheet of less than EUR 10 million. Medium-sized enterprise – less than 250 employees, annual turnover of less than EUR 50 million or balance sheet of less than EUR 43 million (MSP – Summaries).

In the literature, the issues analyzed here are not new and have been discussed for many years under such headings as: socio-economic policy in public procurement, horizontal policies in public procurement, secondary criteria for public procurement, sustainable procurement, strategic procurement, etc.

The new imperative of integrated objectives for promoting competition and the goals of sustainable development raises the following questions:

- With regard to the situation of contracting authorities: to what extent and how the demand instrument of public procurement can, in reality, be simultaneously used for direct implementation of substantive objectives of socio-economic policies without violating the principles of economic efficiency of purchases (mostly cost efficiency) from the point of view of contracting authorities?
- With regard to the situation on the European public procurement market: how do trade relations on this market look like, which is important due to the impact on the relative potential of (sustainable) development of individual EU countries and affects the realization of the objectives of European policy on socio-economic convergence?

## **2. SHARED VALUES PRINCIPLE**

According to the Treaty on The European Union (art. 3), the functioning of the internal market is based (among other things) on the principles of sustainable economic growth and social market economy, which assume the combination of equal economic, social and environmental development goals. From a normative point of view, this provides a strong, although very general, substantiation for the orientation adopted in new directives on public procurement. These principles do not define any clear directive as to the scope or method of direct implementation of social and environmental objectives using market demand instrumentation of public procurement. In practice, the model of functioning of the internal European market and the model of public procurement promoted in the EU directives have been formed under the dominant influence of ordoliberal concepts highlighting the role of efficient, orderly competition as the primary regulatory mechanism ensuring economic growth, as well as social welfare. Angela Merkel in her Bundestag speech justifying the adoption of the Lisbon Treaty explained that “the basic idea of social market economy depends on orderly competition. This idea has to be implemented in the European Union, because as individual nation states we cannot pursue our interests on numerous issues sufficiently (Rede..., 2008). According to Directive 2014/24/EU public procurement by the Member States or on behalf of these institutions must comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the principle of free movement of goods, freedom of establishment and freedom to provide services, and also with the principles derived from them, such as the principle of equal treatment, non-discrimination, mutual recognition, proportionality and transparency” (Preamble 1).

The road to redefine the function of public procurement in the EU and the introduction of aspects related to the socio-economic policies has been opened by the

case law of European courts by gradually expanding their significance with reference to treaty regulations (Dragos, Neamtu, 2014). Moreover, national regulations and practices in the field of public procurement differently consider the goals of strategic, protective or proactive horizontal policies. Trepte P. notes that in some cases they even constitute the original purpose of regulations (Trepte, 2007, p. 63, 65).

Traditionally, the contracting authorities choose contractors and award contracts to the most cost-effective bidders from their point of view. This entry has not changed in the new directives (Art. 67 of Directive 2014/24/EU and Art. 82 of Directive 2014/25/EU). In the light of the new directives, the objectives set out in the Europe 2020 Strategy in terms of socio-economic policies and requirements for the most efficient use of public funds are to be respected “simultaneously”, which literally suggests the need to preserve material equilibrium (balancing) of objectives and results. However, it is not like this in practice. The European legislator seeks models for combining benefits, but not at the cost of increased public spending. Social policy and public procurement are today expected to provide “more for less”. According to a popular concept of *shared values*, achieving a variety of synergies has now become the so-called canon of the European social model. The case, however, is not a simple one as in practice only a part of socio-economic preferences in public procurement may translate into a measurable “productivization” effect or at least be cost-neutral from the point of view of specific budgets and tasks carried out by the authorities.

The European legislator has not included any mandatory list of material social clauses in the Directives. The new regulations are rather intended to be “facilitative” (Bordalo Faustino, 2014). One of the most acclaimed outcomes of the new Directives is the replacement of the traditional dichotomy of the award criteria MEAT (most economically advantageous tender) vs. lowest price as the sole mandatory rationale behind any award decision. However there was/is no full consensus on the issue. The European Commission had not proposed that contracting authorities should base the award of public contracts solely on the MEAT. The position of the European Parliament was different: the criterion of the lowest price only should be eliminated and MEAT award criteria should be prescribed for all procedures. In the light of the final text, it would seem that the position of the European Parliament might have superseded that of the European Commission. However, a closer look at the possible configurations of award criteria under the MEAT reveals, that Art. 67 of the 2014 Public Procurement Directive is the result of a compromise between the not entirely matching views of those two European institutions. Bordalo Faustino notes that “in terms of the ideological switch that underpin the conversion of the MEAT into an overarching rationale for the award of public contracts, it should be noted that more than excluding or restricting the use of the lowest price criterion (which can still be used, it seems to be about facilitating and encouraging contracting authorities to integrate environmental, social and innovative factors in the configuration of the MEAT award criteria. The European Parliament was a strong supporter of this strategic use of public procurement,

and its greater illustration seems to be the loosening of the requirement of the link to the subject matter of the contract” (p. 133). The new directives are “facilitative” and “enabling” also in the sense, that they essentially push the problem of specific ways to achieve the objectives of reform and the responsibility for the results towards national legislators and contracting authorities. According to Directive 2014/24/EU, article 18(2): “Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with 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 Annex X”.

**ANNEX X, LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 18(2)**

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ILO Convention 29 on Forced Labor;
- ILO Convention 138 on Minimum Age;
- ILO Convention 111 on Discrimination (Employment and Occupation);
- ILO Convention 100 on Equal Remuneration;
- ILO Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

The obligation to comply with provisions of binding international conventions is obvious. However, from a practical point of view, mastering the content and application of all these conventions may not be an easy task for the ordinary public procurement staff. Even more difficult is ensuring that economic operators implementing public contracts will respect them. Additional control mechanisms are necessary and their proper functioning is costly. Another practical problem of a fundamental nature is that in Poland (as well as in many other countries) as yet there is no integrated strategy for sustainable development. Also, the measurement system is in the initial development phase. The current system of indicators indicates differences with respect to the system operated by Eurostat. The differences concern not only the quantity but also the structure of the system of indicators. The Polish classification takes into account the operational indicators with regard to themes and sub-themes, and does not include the division into headline indicators, operational indicators, contextual indicators, according to the Eurostat methodology (Urbaniec, 2015 p. 130).

A study on the implementation of integrated goals in public procurement in 10 EU Member States regarding environmental protection (green procurement), social objectives (socially responsible procurement) and innovation support (innovative procurement) published in 2015 portrays the existing situation in the following way.

Table 1. Estimated size of strategic procurement based on TED database in 2013 – 10 countries: Austria, Spain, France, Latvia, Netherlands, Poland, Portugal, Sweden, Slovakia, United Kingdom

Strategic procurement in 10 EU Member States	“Green”	Socially responsible	Innovative
Participation in the total number of contracts	14%	10%	1%
Participation in the total value of contracts	25%	17%	7%

Source: *Study on Strategic*, 2015, p. 42.

These statistics, however, do not recognize the real importance/value of individual benefits, or synergies obtained through these criteria. The findings of the study show the existence of the following barriers and obstacles to the implementation of strategic procurement: (1) it is generally regarded as more expensive (at least regarding the initial expenses) than traditional procurement; (2) it is more “risky”, especially given the traditional reluctance of the administration to take risks; (3) there are difficulties in accurate determination of value-added services and benefits, which is especially important for politicians obliged to demonstrate the legitimacy of decisions; (4) there is an increased workload; (5) there is an increased demand for knowledge and qualifications of staff responsible for the execution of complex contracts; (6) there is a weakness of monitoring and evaluation systems and of harmonized concepts; (7) there is an immaturity of markets that do not provide an adequate supply of necessary goods; (8) there is an inadequate knowledge of market opportunities on behalf of authorities and a small actual or perceived flexibility of the procurement process. Moreover, contractors strictly adhere to formulated requirements only.

On the contrary, the surveyed countries have implemented a series of actions and measures in order to promote the effective implementation of strategic procurement, including the establishment of appropriate organizational entities responsible for the implementation of such procurement, the preparation of appropriate strategies, guides, guidelines and technical tools, training, cooperation networks and exchange of best practices through public and private platforms, defining objectives. The authors of the cited study formulated a list of general recommendations for political entities and contracting authorities, such as: finding appropriate people who would provide the necessary impetus to ambitious objectives related to

the implementation of strategic procurement; defining objectives and incorporating stakeholders; a holistic approach to strategic procurement and no separate administrative “silos”; and using the following appropriate incentives: obligatory, “soft” or voluntary ones; defining needs, priorities; cooperation with business, experimenting; supporting authorities through appropriate guidance and user-friendly tools; focusing on real results for the environment as well as social and innovative ones; strengthening the monitoring process, etc.

### **3. SELECTED PROBLEMS WITH THE IMPLEMENTATION OF SUSTAINABLE PROCUREMENT IN POLAND**

A “recommendation on the application of social clauses in public procurement” by governments adopted on 28 July 2015 by The Council of Ministers obliged heads of government departments to analyze the possibility of applying social clauses in all the procedures of public procurement. Particular attention was paid to procurement for education and training services, advertising and cleaning of buildings and property management, security services, publishing and printing, computer services, maintenance and repair, telecommunication, restaurant and catering services. It was also recommended to use social clauses in the proceedings to which the provisions of the Act of 29 January 2004 – Public Procurement Law – do not apply due to their value (i.e. the proceedings below the equivalent of EUR 30,000). Contracting authorities have been obliged to report regarding the proceedings, which used social clauses in their amended versions. It is implemented on the basis of the Regulation of the Minister of Development and Finance of 15 December 2016 on the information contained in the annual report on awarded contracts, its form and the manner of submission (Journal of Laws, item 2038) issued pursuant to Art. 98, paragraph 4 of Public Procurement Law. With the Act of 22 June 2016 on the amendment of the Public Procurement Act (Journal of Laws 2016, item 1020) revised EU directives were implemented into the Polish legal system. The practice, however, indicates a number of doubts and problems with the implementation of social clauses (ZPD 2016).

The legislator has introduced a possibility of granting so-called reserved contracts, i.e. those which can be implemented only by a certain group of entities. These include sheltered workshops and other contractors whose activities or the activities of their separate organizational units executing the contract, include social and professional integration of people who are members of socially marginalized groups. Such groups include the disabled, the unemployed, persons deprived of liberty or those released from prisons, who find it difficult to integrate with the environment, people with mental health problems, homeless people, those who have obtained a refugee status in Poland or subsidiary protection, people up to 30 years of age and after 50 years of age with the status of a job-seeker, and per-

sons who are members of disadvantaged national and ethnic minorities. Limiting the possibility of applying for reserved contracts has become subject to the necessity of providing such information to the public through publication in a procurement notice, and in addition it is required to determine the employment rate of "disadvantaged" individuals. This provision is optional. Encouraging authorities to award such contracts without offering them any tangible benefits seems doubtful. The use of reserved contracts requires contracting authorities to introduce mechanisms to verify whether the applicants are actually sheltered workshops. They are also required to develop and implement controls and enforce effective employment of the "disadvantaged" at a minimum level specified by the legislature, and to introduce a system of penalties with a possibility of contract termination. An additional requirement is the need to maintain the status of a sheltered workshop and the declared employment level throughout the duration of the contract. The reserved contracts cannot be implemented everywhere. While it is not controversial to reserve contracts for such services as security, cleaning and catering, the introduction of such a requirement for more complex specialist contracts will be rather impossible.

According to the monitoring data of public procurement carried out by the Public Procurement Office in 2015, of 417 reports received from governmental entities, 133 subjects applied social clauses, and usually one each.

Table 2. The number of procurement procedures for different social clauses, broken down according to the type of contract

Clause Mode	Requirement of employment in the implementation of the contract on the basis of an employment contract	Requirement of employment of persons referred to in the Act	Reserved contract	Total
Competitive dialogue	0	1	0	1
Electronic bidding	0	2	0	2
Unlimited tender	291	115	21	427
Limited tender	3	2	0	5
Source procurement	6	0	0	6
Request for quotation	5	2	0	7
Total	305	122	21	448

Source: *The results of monitoring of government's application of social clauses in public procurement for 2015. Public Procurement Office, 2016, p. 11.*

Based on this data the Public Procurement Office concludes that the use of social clauses has been confirmed in a large percentage of submitted reports. However, one shall take into account that there are no comparative figures for the results of the conducted survey. The report has also noted that among the most common



causes for the cancellation of proceedings that include social clauses is a situation when the price of the best bid exceeds the means which the contracting authority could devote to a given contract. It means that financial restrictions on contracting authorities may be one of the most important barriers in the use of social clauses in contracts, and in particular those concerning conditions of employment based on employment contracts.

In reference to the problems occurring in this respect regarding the application of public procurement law favorable to the labor market (ZPD 2016), the Council for Social Dialogue in its resolution of 19 October 2016 called on the contracting authorities to carry out the adjustment of salaries of contractors of public contracts pursuant to the Act of 22 July 2016 amending the law on the minimum wage, including the following: salary increase for people accepting contracts and service providers together with the mandatory derivatives calculated from the wages, and the amount of allowance to be paid for working at night. The Council also called on authorities to establish the budget for the execution of public contracts in an amount that would guarantee a real possibility of complying with the law, in particular regarding the obligation to recruit on employment contract where the scope of activities so requires and the rate of the minimum wage and the minimum hourly wage.

Another new option is a general obligation for construction services and works to be based on employment contracts for individual workers. This requirement may refer to both contractors and subcontractors. The introduction of the aforementioned regulations can be positively evaluated because of the struggle against the so-called “junk contracts” and a need to reduce gray economy. However, the contracting authority has been obliged to further describe the object of contract, taking into account the requirements for employment under employment contracts and to identify actions that require such employment. While it remains relatively simple to determine the requirements for blue collar workers performing simple general construction tasks, it is much more complicated in the case of works requiring the use of specialized heavy equipment used sporadically and not at each stage of the project.

The new directives treat public procurement as a market-based instrument, which can contribute to the development of an economy based on knowledge and innovation. Innovation in public procurement can be supported mainly by the use of a flexible competitive procedure with negotiations and a competitive dialogue. These modes enable the provision of complex contracts related to ICT technologies, infrastructure projects or projects involving funding processes (Granecki, 2016). This mode is also suitable for public-private partnership projects. Unfortunately, in Poland competitive dialogue is hardly used. These statistics are confirmed by PPO data presented in the following graph:

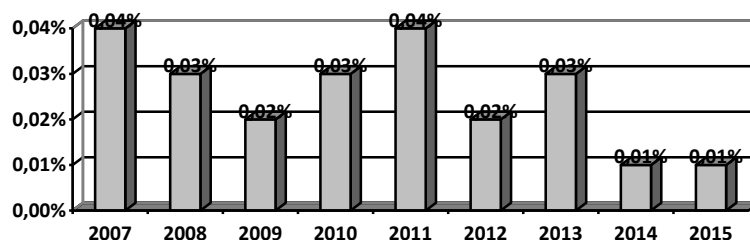


Fig. 1. The percentage of contracting authorities in Poland using the competitive dialogue mode in 2007-2015

Own study based on data from the Public Procurement Office

According to the study (Borowiec, 2013), the reason for the reluctance of contractors to participate in these procedures is primarily the lack of certainty of winning contracts. Concerns are often raised about participation in the dialogue as no one wants to sell their ideas before implementing them in practice. Hence, it is essential to reward potential contractors participating in the dialogue, which would further encourage them to participate in it (additional costs!). The possibility of such remuneration is given to authorities by the PPL Act. Negotiation procurement modes constitute a solution similar to competitive dialogue. Unfortunately, in this respect, as in the case of competitive dialogue, the capacity of their utilization in Poland is low.

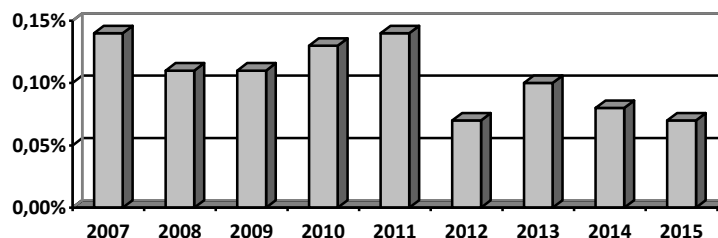


Fig. 2. The proportion of the use of negotiated procedure with publication in 2007-2015 among the Polish authorities

Own study based on data from the Public Procurement Office

Among the most important barriers revealed by the research on the use of negotiation procedures, it is worth mentioning primarily those associated with long-term durability and difficulty of procedures. Often the contracting authorities are not interested in procedures, which are time-consuming and rarely lead to the expected results. At the same time, too many possible solutions also result in resignation from harder modes and preference for the easier and thus shorter lasting ones.

The directives offer a completely new procedure, namely an innovative partnership. Innovative partnership is a long-term procedure and leads to the development and purchase of an innovative product, service or works in a single procedure carried out in accordance with pre-defined parameters of performance and costs. The general character of the rules on partnerships allows the contracting authorities to form them freely. On the other hand, this could lead to legal uncertainty. The issue of innovativeness also appears in the new directives in the context of formulating technical specifications of contracts. Unfortunately, in this respect, contracting authorities are guided chiefly by means of descriptions of technical standards and specific well-known solutions moving away from defining the functional requirements in defining products and services planned for purchase. It is estimated that good opportunities for innovation support by the authorities can be provided by suitably formulated evaluation criteria, e.g.: term of the contract, technical performance, costs, quality of service, functional characteristics, material quality, after sales service and offer types of technical support (Trepte, 2004). The value of each of these criteria may be shaped freely by contracting authorities. In the opinion of M. Andrecka (2015, p. 61), an innovation partnership constitutes the first attempt to regulate both the procurement process and the contractual structure of the agreement. However, a substantial downside of the new regulation is that it is not suitable for bodies seeking new services in a short timeframe, as the process has many stages and will require investment of time and money. Also the wording of the innovation partnership is defective. It is very complex. The contracting authority carries an extensive “burden of contractual awareness” (a concept used by M. Steinicke, 2012 and cited by Andrecka). The authority needs to establish intermediate targets and regulate intellectual property rights, and this may be a difficult task especially for small contracting authorities with limited experience. Perhaps a better approach (which is also suggested by S. Arrowsmith, 2014) could be to leave the structure of the innovation partnership open, to be decided by the parties, and rather than having three similar procedures (competitive dialogue, innovation partnership and competitive procedure with negotiation) focus on establishing one flexible procedure allowing, among others, procurement of innovation projects. Such an approach – Andrecka argues – could add more flexibility to the development of innovation, and at the same time safeguard the procurement principles.

#### **4. EXCHANGE IMBALANCES ON THE OPEN MARKET OF PUBLIC PROCUREMENT**

The new directives do not affect the fundamental character of the principles and policies to promote fair competition, equality and non-discrimination regarding contractors. This is also important due to international external regulations in the EU. They mainly involve the Agreement on Government Procurement, which the

EU is trying to reform just for the sake of strengthening the rules of competition and further open procurement markets (Amended proposal, 2016). The European legislator has obliged Member States to ensure compliance with responsibilities in the field of environmental law, social law and labor law – all laid down in the EU legislation, national collective agreements or the rules of international environmental law, international social law and international labor law (Article 18, par. 2 of classical directive and art. 36, par. 2 of sector directive). The European legislator has also established the basic principle stating that the preferences of customers associated with the implementation of socio-economic objectives should relate to the subject side of contracts and not the object one (few acceptable exceptions may apply to the so-called reserved contracts). Subjective preferences relativize the principle of fair competition in a direct and greater way. For the employees of contracting authorities, knowledge and respect for the extensive international safety regulations and social organizations can pose a difficult challenge. Similarly, it may be difficult to prepare and apply new models of multi-criteria evaluation of the effectiveness of tenders (especially in terms of costs and benefits throughout the life cycle). An additional burden (including a financial one) for Member States is to extend the obligation to measure, analyze and evaluate the effectiveness of orders in a way ensuring at least European comparability and that allows verifying the effectiveness of the implementation of the Europe 2020 strategy. In this context it is surprising that measuring the effectiveness of the Single European Market in the field of public procurement carried out within the framework of the European Scoreboard does not relate to sustainable development in any direct way. However, the following indicators are taken into account: (1) “*One bidder*”, i.e. the proportion of contracts awarded in proceedings involving only one contractor; (2) “*No Calls for Bids*”, i.e. the proportion of contracts awarded by the procedures of direct negotiations with contractors without public contract notice; (3) “*Aggregation*”, i.e. the frequency of joint purchases by a number of contracting authorities; (4) “*Award criteria*”, i.e. the proportion of contracts awarded on the basis of solely the lowest price, without taking into account other qualitative criteria; (5) “*Decision Speed*”, i.e. the number of days that have elapsed since the deadline for submission of tenders for the award of the contract; (6) “*Reporting Quality*”, i.e. the quality of information provided by the authorities, in particular the proportion of awarded contracts whose value is not given to the public; (7) “*Overall Performance*”, i.e. the total performance ratio of contracting authorities in the Member States, taking into account all the previous indicators (weighted average, but triple weight is granted to such indicators as *One Bidder* and *No Calls for Bids*), which measures the ratio of orders achieving good value for public money, as assessed through the prism of the level of procurement transparency, ease of understanding them and the possibility of making comparisons. Using this indicator, the Polish public procurement market is estimated at an average performance (80–90% of contracts), which is similar to Germany, Portugal, Bulgaria and Estonia (Internal Market Scoreboard).

The Europe 2020 strategy emphasizes the need to improve competitiveness of the EU's trade relations with key partners in the world by, inter alia, improving the efficiency of the European economy and relative competitiveness within the euro zone and the wider European Union. Promoting competitiveness has mainly led to the use of export opportunities in global markets in the sectors of manufacturing, services and “green” economy (Europa 2020, pp. 14, 16). However, in international public procurement, protectionism (usually hidden) has always been present and has always remained a problem. In recent years this problem has increased (Amended proposal..., 2016). The opening and operation of international public procurement markets, as well as respect for the principle of reciprocity have always been a subject of fierce competition of interests. The Europe 2020 strategy emphasizes that economic, social and territorial cohesion remains at its “heart” and will be supported by the relevant instruments of cohesion policy and structural funds. It also warns against the temptations of economic nationalism reinforced by the crisis (Europa 2020, pp. 20, 21). The case is not so simple, however. International public procurement – including an open and equal one – entails objectively defined processes of redistribution and can be a source of disparities in benefits and negatively affect national balance sheets of foreign trade. Disparities in turnover on the international public procurement markets are signaled by indicators of the so-called penetration rate.

Table 3. The rate of penetration of foreign public procurement markets in some countries

Country	% ratio of total imports of the public sector to public demand	% ratio of the value of imports of the public sector within the EU internal market to public demand
1	2	3
Austria	9.6	7.1
Belgium	7.0	5.2
<b>The Czech Republic</b>	<b>13.9</b>	<b>11.3</b>
Denmark	5.9	3.6
<b>Estonia</b>	<b>12.5</b>	<b>9.5</b>
Finland	7.0	4.3
France	5.8	3.6
Germany	6.5	3.8
Greece	7.1	4.1
<b>Hungary</b>	<b>12.6</b>	<b>8.6</b>
Ireland	9.3	6.2
Italy	6.0	3.6
<b>Lithuania</b>	<b>12.3</b>	<b>7.3</b>
The Netherlands	6.8	3.3
<b>Poland</b>	<b>6.1</b>	<b>4.0</b>
Portugal	8.5	6.5

Table 3 cd.

1	2	3
<b>Romania</b>	<b>18.1</b>	<b>11.4</b>
<b>Slovakia</b>	<b>16.1</b>	<b>12.7</b>
<b>Slovenia</b>	<b>11.1</b>	<b>8.8</b>
Spain	8.3	5.2
Sweden	5.7	4.0

Own study based on Messerlin, P., p. 3.

The above data presents a particularly high penetration of public procurement markets in the countries of Central and Eastern Europe in comparison to the “old” EU Member States. According to the findings of The European Commission, the countries of Central and Eastern Europe enjoy a higher share of centralized purchases than the old EU countries and due to their lower value they are not published in Europe. There has been a rapid increase in the proportion of complex and aggregated tenders through a centralized, common framework and electronic contracts. However, they actually restrict the access of small and medium-sized enterprises. Such companies cannot cope with typical obstacles to the participation in international public procurement, such as language knowledge, complex legal and administrative requirements, the risk of foreign exchange rates. Meanwhile, small and medium-sized enterprises are crucial to job creation, and their share in the structure of Central and Eastern Europe's economies is relatively higher than in the old European Union where large companies operating on international markets are incomparably more numerous. In different countries there are different required standards on environmental and social issues. They are generally much higher in the old EU countries. They can impede access to foreign tenders. The fight against so-called social dumping, abnormally low prices, demands for respecting local wage rates of the lowest tariff, or even medium ones or such, which take into account all the additional benefits, reduce or eliminate typical competitive advantages

Table 4. Unfavorable Polish balance of international exchanges on the public procurement market

<b>Year</b>	<b>Import</b>	<b>Export</b>	<b>I/E</b>
2015	PLN 15.2 billion (14% of market value)	PLN 0.561 billion	27/1
2014	PLN 13.5 billion	PLN 1.324 billion	10/1
2013	PLN 13.6 billion	PLN 1.843 billion	7.4/1
2012	PLN 7.5 billion	PLN 2.083 billion	3.4/1

Source: *Report of the PPO...*, 2016.

of bidders from countries with lower wages. In turn, the mandatorily elevated standards of environmental technologies objectively prefer producers and contractors from more developed Western countries. In recent years, very unfavorable trends have appeared in the Polish balance of foreign trade on public procurement markets.

The current public procurement reform in the EU is now being implemented. Its effects can only be fully assessed in the long term. However, some solutions regarding additional socio-economic preferences, which do not undermine the principle of economic efficiency for the contracting authority, could have also been used in the earlier legal order. The current reform proposes and allows Member States and contracting authorities to introduce some further facilities in this area. But certainly it does not constitute any strategic turn suggested by the rhetoric of some of the comments, especially in the view of sustainable socio-economic development of the EU as a whole.

#### LITERATURE

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## ZAMÓWIENIA PUBLICZNE W UNII EUROPEJSKIEJ JAKO POPYTOWY INSTRUMENT REALIZACJI CELÓW SPOŁECZNYCH I ROZWOJOWYCH

### Streszczenie

Wdrażana obecnie w UE reforma zamówień publicznych ma m.in. umożliwić ich wykorzystanie jako instrumentu realizacji strategii Europa 2020 i osiągnięcia celów zrównoważonego rozwoju. Oznacza to redefinicję funkcji zamówień publicznych, związanej dotychczas ze zwiększaniem efektywności wydatków instytucji zamawiających dzięki konkurencji na otwartym rynku europejskim. Postulaty wzmocnienia tzw. społecznego wymiaru integracji europejskiej mają szerokie poparcie społeczne. Nie istnieje jednak prosta formuła optymalizacyjna jednoczesnego wspierania konkurencji na otwartym rynku zamówień publicznych i osiągnięcia celów zrównoważonego rozwoju. Na podstawie dotychczasowych doświadczeń praktycznych zakres możliwego jednoczesnego osiągnięcia tych celów wydaje się ograniczony. Jednocześnie dostrzegana jest nierównowaga w międzynarodowej wymianie handlowej generowanej przez otwarty rynek zamówień publicznych, co pogarsza sytuację w zakresie konwergencji społeczno-ekonomicznej.

**Słowa kluczowe:** strategiczne zamówienia publiczne, społecznie odpowiedzialne zamówienia, proinnowacyjne zamówienia, reforma zamówień publicznych w UE