

Maximising the EU Public Procurement Directive for People and Planet

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Public procurement in the EU represents 14% of GDP, totaling around €2 trillion annually¹. This immense purchasing power holds significant potential for driving positive change. However, severe human rights and environmental risks in public sector supply chains persist, underscoring the need for more robust due diligence. The ongoing revision of the EU Public Procurement Directive offers a critical opportunity to strengthen sustainability requirements, enabling contracting authorities across the EU to effectively address human rights risks and impacts affecting workers and communities in global supply chains. This position paper outlines Swedwatch's key recommendations for strengthening public procurement practices as part of its engagement on the directive and based on in-depth research and investigations.

1 Align EU Directive with human rights standards

Aligning EU public procurement legislation with internationally recognised frameworks for responsible business conduct, such as the UN Guiding Principles on Business and Human Rights (UNGPs)² and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct³, would strengthen public procurement's role in upholding human rights and protecting the environment. Notably, pillar 1 of the UNGPs underscores the state's duty to protect human rights in the context of business operations⁴.

By incorporating mandatory human rights requirements into procurement policies, public procurement can help combat forced and child labour while safeguarding broader rights such as social protection, a healthy environment, and freedom of association. This would also create a level playing field for businesses, preventing responsible bidders from being undercut by those that compromise on labour and environmental standards.

2 Make sustainability requirements legally sound and mandatory

Evidence from scientific research highlights significant legal uncertainty around the use of social and environmental criteria in public procurement processes⁵. This ambiguity leads to varying interpretations of the directive across EU Member States and public contracting authorities. Some specific challenges include the principles of proportionality and the vague definition of the "link to the subject matter".

Additionally, a 2023 European Court of Auditors' report concluded that, despite the 2014 reform of the directive, "the promotion of strategic procurement with the goal to encourage greater consideration of environmental, social or innovative aspects has had a limited impact overall, the share of procedures using award criteria other than price is very limited"⁶. This reinforces concerns that the voluntary approach within the current directive to sustainable public procurement is ineffective, as noted by several stakeholders, including politicians, trade unions and NGOs⁷. To address this, the revised directive should clarify legal provisions and ensure the integration of mandatory sustainability requirements across all public procurement processes.

3 Human rights and environmental due diligence as a minimum

The revision of the Public Procurement Directive presents a unique opportunity to establish human rights and environmental due diligence⁸ as an award criterion and legally binding contract performance condition for suppliers to the public sector⁹. In this context, the EU Public Procurement Directive and the recently adopted EU Corporate Sustainability Due Diligence Directive (CSDDD) should be seen as complementary frameworks.

Inspired by the CSDDD, Member States should legally mandate public authorities to require human rights due diligence from tenderers and contractors. This process should prioritise meaningful stakeholder engagement – especially with affected workers and communities – rather than relying exclusively on social audits, which Swedwatch research has shown to be neither sustainable nor effective. Furthermore, as part of their due diligence obligation, suppliers should be required to adopt and put into effect climate transition plans in line with the Paris Agreement. To ensure effective enforcement, Member States must establish clear expectations and provide both financial and non-financial support to equip procurers with the necessary resources to fulfill these responsibilities.

4 Increase transparency around contractors' supply chain and sustainability performance

Assessing risks and monitoring suppliers' compliance with human rights and environmental standards requires reliable data. While some contracting authorities include transparency clauses in contracts, interpretations vary between suppliers and procurers regarding the extent of transparency that can be demanded. In practice, companies often withhold critical supply chain data, including on production sites and raw materials, hampering risk mitigation and making it difficult for procurers to exclude non-compliant suppliers without concrete evidence of violations. The lack of information-sharing between public authorities across Member States further weakens due diligence efforts.

A revised directive should make it obligatory for contractors in the EU market to disclose data on their operations, subsidiaries, and business partners to public procurers. For example, an EU-wide registry for the automatic exchange of data on contractors' human rights record across Member States could enable contracting authorities to evaluate companies based on sustainability, not just price.¹⁰ Similarly, a shared blacklist of companies barred from bidding due to human rights or environmental violations could improve accountability across Member States. Aggregated data on public sourcing from high-risk production countries – such as textiles from Pakistan¹¹ – could enhance risk prevention, facilitate due diligence, and ensure greater transparency in the use of taxpayers' money.

5 Recognise public procurers as change agents for sustainability

Studies have shown that when public procurers require suppliers to conduct human rights due diligence, monitor compliance, and actively engage with their supply chains, public procurement can drive meaningful improvements for workers throughout

the supply chain¹². However, contracting authorities often lack the essential resources and expertise to implement sustainability requirements effectively¹³. There is a pressing need to build capacity within procurement agencies and teams.¹⁴ This concern has also been repeatedly raised by companies involved in public procurement in discussions with Swedwatch.

Enhanced capacity would allow contracting authorities to better assess how public contract clauses and purchasing practices (e.g., lead times¹⁵) affect suppliers and, by extension, their potential to positively influence decent working conditions. Fair purchasing practices¹⁶ and the principle of shared responsibility among supply chain actors are crucial to ensure that suppliers' commitments go beyond administrative practice and instead lead to tangible improvements¹⁷. Increased capacity would also enable procurers to systematically collect, monitor, and share data, best practices, and tools on sustainable public procurement. This could help consolidate practices within and across Member States¹⁸ and increase procurers' leverage over suppliers to disclose due diligence reports and drive long-term sustainability efforts¹⁹.

Endnotes

- 1 https://single-market-economy.ec.europa.eu/single-market/public-procurement_en
- 2 The UN Guiding Principles for Business and Human Rights (UNGPs) set global standards for preventing and addressing human rights abuses linked to business activities. They are based on three pillars: the state duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy for victims. Endorsed by the UN in 2011, the UNGPs provide a framework for businesses and governments to integrate human rights into their operations and supply chains. They are widely recognized alongside the OECD Guidelines as key standards for responsible business conduct.
- 3 The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct apply to all businesses from OECD countries and are, along with the UN Guiding Principles for Business and Human Rights, considered to be the most important guidelines on responsible businesses conduct. They also work as a tool for communities and workers to hold businesses to account. The Guidelines were first adopted in 1976 and last reviewed in 2023.
- 4 Specifically, UNGP 6 stipulates that “States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law.” See: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciples-businessshr_en.pdf
- 5 Treviño-Lozano, L. & Uysal, E. (2023) Bridging the gap between corporate sustainability due diligence and EU public procurement, *Maastricht Journal of European and Comparative Law*, 30(5), pp. 554–55: <https://doi.org/10.1177/1023263X231213335>; Janssen W.A and R. Caranta (eds.), (2023) *Mandatory Sustainability Requirements in EU Public Procurement Law: Reflections on a Paradigm Shift*, Bloomsbury Hart.
- 6 European Court of Auditors (2023) *Public Procurement in the EU. Less competition for contracts awarded for works, goods and services in the 10 years up to 2021*: https://www.eca.europa.eu/ECAPublications/SR-2023-28/SR-2023-28_EN.pdf
- 7 At a 2021 European Parliament public hearing on sustainable public procurement, several experts and MEPs emphasised that the current voluntary approach to achieving social and green sustainable procurement is insufficient. See: <https://www.uni-europa.org/news/experts-call-out-broken-public-procurement-directive/>. A 2023 study for the European Parliament also recommended revising the directive to include a mandatory social clause that explicitly ensures adherence to collective agreements is never deemed discriminatory. See:

- [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740095/IPOL_STU\(2023\)740095_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740095/IPOL_STU(2023)740095_EN.pdf). Additional reports include UNI Europa's "Green, Pay the Way for Social": <https://www.uni-europa.org/news/new-report-green-pave-the-way-for-social/>; and ClientEarth's briefing in support of mandatory sustainability requirements: <https://www.clientearth.org/media/10lfzclu/briefing-competitive-eu-public-procurement.pdf>
- 8 Human rights and environmental due diligence is the process by which a company assesses the risks of potential and actual human rights impacts, takes action to prevent and mitigate those impacts, tracks and communicates performance, and provides remedy to affected rights holders through legitimate processes if the company has caused or contributed to significant impacts. The environmental aspect can be included, as human rights and environmental impacts are interconnected.
- 9 For a good example of how human right due diligence can be used in codes of conduct, see Swedish regions' work on how sustainability due diligence contractual terms can be deployed and fulfilled: <https://www.xn--hllbarupphandling-8qb.se/en/services-4>
- 10 ClientEarth (2024) Sustainable Public Procurement in the European Union. Briefing in support of mandatory requirements: <https://www.clientearth.org/media/10lfzclu/briefing-competitive-eu-public-procurement.pdf>
- 11 Swedwatch has previously reported on poor working conditions in textile factories in Pakistan, many of which supply to the public sector. For more details, see: <https://swedwatch.org/industry/challenges-home-textile-workers-pakistan/>
- 12 Swedwatch (2020) Agents For Change. How public procurers can influence labour conditions in global supply chains. Case studies from Brazil, Pakistan and Thailand, Swedwatch https://swedwatch.org/wp-content/uploads/2016/11/82_Agents-for-Change-enkelsidor.pdf; Swedwatch (2022) Key considerations for sustainable public procurement: <https://swedwatch.org/wp-content/uploads/2022/11/position-paperpublic-procurement-for-webb221109.pdf>
- 13 OECD (2020) Integrating Responsible Business Conduct in Public Procurement, OECD Publishing, Paris. <https://doi.org/10.1787/02682b01-en>
- 14 Janssen, W.A. (2023) Building blocks for a new vision on public procurement in the European Union. Presentation for EU Commission Government Experts Group on Public Procurement 30 May 2024, Brussels: <https://www.uu.nl/sites/default/files/rebo-presentatie-Willem-Janssen-expertgroep-aanbestedingen-EU%20commissie-2024-klein.pdf>
- 15 Lead time refers to the number of days between when a buyer places an order for supplies and when the items are delivered.
- 16 See for example: The Common Framework for Responsible Purchasing Practices developed by the Ethical Trading Initiative (ETI), Ethical Trade Norway, Fair Wear, the German Partnership for Sustainable Textiles (PST), and the Dutch Agreement for Sustainable Garments (AGT): <https://wp.fairwear.org/wp-content/uploads/2022/07/CFRPP-Full-Framework-Updated.-V1.-30.06.22.pdf>
- 17 See European Model Clauses; <https://www.responsiblecontracting.org/toolkit> for examples of clauses on shared responsibility. Similar clauses could be developed for contract authorities.
- 18 In Sweden, the National Agency for Public Procurement contains a library of sustainability requirements and risk assessments covering human and labour rights for a wide range of products as well as step-by-step guidance on the implementation process. (See for example: <https://www.upphandlingsmyndigheten.se/en/criteria/>)
- 19 One example of how contracting authorities can work together and increase their leverage and capacity is the National Secretariat for Sustainable Public Procurement – a collaboration between the Swedish regions: <https://www.xn--hllbarupphandling-8qb.se/en>



Swedwatch is an independent, non-profit research organisation striving to empower rights holders and to promote responsible business practices. With over a decade of experience, Swedwatch has focused on leveraging public procurement to address human rights and environmental issues.

Since 2025, it has been an official member of the European Commission's Stakeholder Expert Group on Public Procurement (SEGPP).

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