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Navigating the Circular Economy: A Demystified Framework for Public Buyers

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Navigating the Circular Economy: A Demystified Framework for Public Buyers

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This document is primarily directed at public buyers about to embark on strategic public procurement focusing on circular economy. The findings could also be helpful for practitioners and actors who are dealing with the EU legislation and want to implement more environmentally desirable solutions in public procurement.

Introduction

The global economy relies on linear practices (take-make-use-dispose), which results in exponential growth in material consumption, pollution, and waste generation. Research indicates that from 2016 to 2021, the global economy consumed 582 billion tonnes of materials, approaching the cumulative consumption of the entire 20th century of 740 billion tonnes.¹ In response to this unsustainable trajectory, the EU has shifted its strategies towards embracing a more Circular Economy (CE)² model.

However, despite the EU's commendable efforts in developing a Circular Economy framework through a decade of legislative and non-legislative measures, there is little evidence to suggest that these initiatives have reached the desired impact. Progress has been slow, with an overall circularity rate reaching just 11.7%. Numbers prove that scaling up circular practices is more incumbent than ever, and public procurement (PP) plays a considerable role in determining market changes.

This policy brief draws upon the author's research and addresses some underpinning legal questions that public buyers may face when implementing CE principles in PP.

Problem statement

The research field of Circular Economy is still fragmented³ and, combined with public procurement law, understudied. It has been argued that there is a blurred distinction between the already-known Green Public Procurement (GPP) approach and the Circular Public Procurement (CPP), which is now gaining momentum. This ambiguity accentuates public buyers' risk aversion and culminates in the preference for integrating minimum criteria or continuing GPP under the new frame of CPP, limiting the potential circularity of public procurement. So, most CPP practices can be seen as GPP practices "in disguise".⁴

How does this research contribute?

Given the above problem statement, the doctrinal legal research hereby conducted:

- Retraces the legal framework of the circular economy and proposes some solutions for public buyers;
- Clarifies the intertwin between GPP and CPP and assesses whether CPP is a self-standing strategy;

Key findings

1. The CE principles are deeply rooted in the EU Waste Framework Directive and the Green Paper on Integrated Product Policy.⁵ The former focuses on waste management, while the latter represents a mix of instruments and approaches

to make products and services more environmentally friendly throughout their life cycle, from mining raw materials to production, distribution, use, and waste management.

2. Public buyers willing to include CE objectives in their public tenders could use the CE definition provided in the EU Taxonomy Regulation⁶ and related CE criteria. Harmonised criteria could be used to shape public tenders. Ensuring a standardised CE understanding can benefit both public buyers as they comply with general principles of public procurement and do not distort competition, as well as economic operators who could submit offers based on equal and transparent CE requirements in the entire EU.

3. In legal terms, there are no distinctions between GPP and CPP, as CPP falls under the main GPP approach. Public buyers can successfully deliver CE objectives by requiring ambitious waste management targets, such as ensuring high percentages of waste recycling. In addition, they can be even more virtuous and push towards the most desirable CE activities (by rethinking their needs, reusing or repurposing existing products, focusing on product design, containing high percentages of secondary raw materials, or products as service systems, etc.).

Conclusion

The transition to a circular economy lies at the core of the EU's long-term strategy, yet the circularity rate is not scaling as predicted. Public buyers have the possibility to boost this transition by steering their purchase towards more circular solutions. Focusing on GPP or CPP should not be misleading as long as the objectives are set, and the EU Taxonomy could become a support.

Policy recommendation

Public buyers should not dwell on formal distinctions but pursue concrete and ambitious objectives. Precision is essential, and choosing between the different CE objectives in the preparatory stage is key. By setting mandatory GPP criteria, public buyers will unquestionably contribute to a circular economy, yet their level of ambition matters: the higher the target (circularity), the higher the impact. To this end, public buyers must be well-trained in existing and upcoming GPP criteria and CE principles.



References

¹ The Circularity Gap Report, A circular economy to live within the safe limits of the planet, Circle Economy Foundation, January 2024.

² Article 2 n. 9, Regulation (EU) 2020/852 ‘circular economy’ *means an economic system whereby the value of products, materials and other resources in the economy is maintained for as long as possible, enhancing their efficient use in production and consumption, thereby reducing the environmental impact of their use, minimising waste and the release of hazardous substances at all stages of their life cycle, including through the application of the waste hierarchy.*

³ David Monciardini and others, ‘13 Circular Economy Regulation: An Emerging Research Agenda’ in Allen

Alexander and others (eds), Handbook of the Circular Economy, De Gruyter, 2023;

⁴ Leticia Fuertes Giné and others, ‘Public Procurement for the Circular Economy: A Comparative Study of Sweden and Spain’ (2022) 2 Circular Economy and Sustainability 1021; Heidi Simone Kristensen and others, ‘Circular Public Procurement Practices in Danish Municipalities’ (2021) 281 Journal of Cleaner Production 124962;

⁵ Directive 2008/98/EC on waste and EU COM (2001) 68 final, Green Paper on Integrated Product Policy, Brussels, 07.02.2001.

⁶ Article 2 n. 9, Regulation (EU) 2020/852, *endnote 2.*