

"Sustainable Public Procurement as a tool to implement social sustainable development goals. Legal perspective"

The aim of this project is to examine whether EU and Polish law provisions enable the current system of public procurement to achieve the social objectives of sustainable development, as adopted by EU and Polish authorities - or rather, due to legal constraints, further legislative action at the EU or national level is necessary to reach these goals, and if so, how far does the available legal basis allows it.

In that respect, the research will focus on identifying the source, content and character of social objectives of sustainable development imposed at the national level. The objectives to be implemented through social public procurement (SPP) will be identified – at the international, European and state level, as well as their character – mandatory or facultative.

Furthermore, Article 114 of the TFEU will be examined whether it is a sufficient legal basis for the adoption of current, as well as further developed, harmonization of SPP provisions, given the conferral, subsidiarity and proportionality principles – to provide a guideline for how far possible harmonization can be legally permitted based on the relevant CJEU case law, given that the SPP is at the frontier between EU's domain and the social policy, remaining vastly at the Member State's discretion.

In addition, the analysis will concern the legal barriers and obstacles for the application of social criteria in the public procurement.

More precisely, this issue must be examined given the legal issues identified in preliminary research: (1) the three levels of social objectives imposed on the national contracting authorities; (2) established EU *acquis communautaire*, the objective of which is to ensure the functioning of the internal market, and the scope of its change to include social objectives; (3) the legal requirement for adopted criteria to be linked with the subject-matter of the contract; (4) legally permitted means to ensure proper verification of compliance with social criteria by the contractor; (5) compliance with data protection regulation, especially regarding the social criteria concerning special categories of personal data such as disability of the personnel; (6) Article 114 of the TFEU as a possible legal basis for the EU's greater adoption of SPP and its admissible scope, granted that it is limited by EU law principles and the relevant CJEU case law.

In effect, Public procurement represents an astounding 14% of EU GDP (COM (2017) 572), and as such is a fundamental shaper of the EU's market economy. Consequently, the importance of SPP for implementing social policy objectives is not only a topic of its time, but also one with great potential to influence legal science and practice. This unique purchasing power could be used as a valuable tool to achieve social policy objectives, and is already considered as such at the international, the EU and Member State levels (Bernard, 2017; Sarter, 2015). Indeed, SPP not only serves as a measure to promote rational spending of public funds, but also takes into account sustainable development. Despite these developments, the current use of social criteria in public procurement remains woefully limited. Research on legal problems covered by the project remains undeveloped, leading to legal uncertainty in the use of SPP.

Unlike other publications, the research will not focus on non-legal issues, but thoroughly analyse the applicable law to indicate existing ambiguities, irregularities and, where possible, will formulate conclusions suggesting the scope of needed and admissible amendments.

Finally, the project, by proposing a systematic and comprehensive elaboration of the identified legal problems in the scope of the use of SPP, directly concerns the new issues, which have not yet been thoroughly covered in Polish and foreign literature. This project is characterized by a cognitive aspect, as it aims to broaden knowledge of the public procurement system and carry out an in-depth analysis of the legal causes of the inadequacy of current social public procurement provisions.

The conclusions of the research will be included in a monograph submitted for publication and an English language article in an international scientific journal in the area of International or EU public procurement law.