Briefing No.1: Sustainable Development as a Key Policy Objective of the European Union
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The European Union is, by Article 3 of the Treaty on the European Union, committed to work for the sustainable development of Europe and to the sustainable development of the Earth. Further, in accordance with the Treaty on the Functioning of the European Union, the principles of environmental protection, social cohesion and non-discrimination, among others, are specifically required to be integrated into EU policies.

The EU’s Sustainable Development Strategy recognises the ongoing need to build economic growth while protecting the environment and promoting social cohesion. However, it is generally acknowledged that moving towards a more sustainable Europe will require changes to the way things are currently done.

Public spending is an important economic driver - accounting for approximately 19% of total EU GDP. Therefore, it is argued that a better integration of sustainability criteria into public procurement is an opportunity to further sustainable development in the EU.

Numerous recent EU policy initiatives and frameworks have explicitly recognised the significant potential of public procurement as a tool to implement and deliver policy objectives that are in line with sustainable development. Emphasis has particularly been placed on the fact that mobilisation of this market would ensure demand to underpin the improvements in the sustainability of products.

This briefing highlights that the revision of the EU procurement legislation must take the opportunity to provide a robust enabling framework for sustainable public procurement in order to facilitate the delivery of sustainable development policy objectives. In particular, it is crucial that the revision:

- resolves uncertainties about how procurement can deliver horizontal policy objectives in practice, addressing transparency and non-discrimination concerns;
- ensures that, as more information become available on the costs of consumption (including production and disposal costs), contracting authorities are clear about how they may take this information into account in their procurement decisions; and
- clarifies the scope for encouraging greater innovation through procurement as this can lead to the growth of new sustainable technologies.
1. Introduction

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

This is the definition of ‘sustainable development’ that has become the common reference for this principle - it was formulated a few years before the 1972 Rio Conference by the preparatory ‘Brundtland’ Commission in its Report entitled Our Common Future.¹

‘Sustainable development’ has become an expressed objective of public policy only relatively recently, but is becoming an increasing focus. As the Commission noted as part of the preparatory process leading up to Rio+20, the 2012 global conference on sustainable development, the world is still facing two major and interlinked challenges: meeting the demands for better lives for a global population set to grow by over a third by 2050, and addressing environmental pressures that, if not tackled, will undermine the world’s ability to meet those demands.²

There is a growing consciousness that economic growth, social cohesion and protection of the environment need to be reconciled. But it is generally acknowledged that to do so will require big changes in thinking, in economic and social structures and in consumption and production patterns.³ Further, the Commission has stated that the current economic and financial crisis should be turned into an opportunity to address sustainability and develop a dynamic, low-carbon, resource-efficient, knowledge-based, socially inclusive society.⁴

This briefing first traces the origins of the concept of sustainable development as a policy objective, and then discusses how this objective has been incorporated into the law governing the EU. In addition, numerous EU policy initiatives have identified public procurement as a key tool to implement and deliver policy objectives – some of these are briefly described below.

The weight of expectation on public procurement is therefore already significant. It is crucial that the revision of the EU procurement legislation⁵ takes the opportunity to resolve uncertainties about how procurement can deliver these policy objectives in practice. The integration of sustainability criteria into public procurement is an opportunity to further sustainable development in the EU as a whole.

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³ http://ec.europa.eu/environment/eussd/
2. Sustainable Development as a policy objective

2.1. International approach to sustainable development

1972 The first intergovernmental conference dedicated to environmental issues was held in Stockholm in 1972 and the Declaration that followed on the human environment recognised the importance of environmental protection for the well-being of peoples and economic development throughout the world.6

1992 The UN Conference on Environment and Development held in Rio formally introduced the concept of ‘sustainable development’7 with human beings as the centre of concerns and environmental protection as the main objective. The principle of sustainable development was developed into a policy-oriented approach whereby environmental protection constitutes an integral part of the development process and cannot be considered in isolation from it.8

2002 A more comprehensive scope of ‘sustainable development’ was established by the 2002 Johannesburg Declaration. It encompasses three ‘interdependent and mutually reinforcing pillars of sustainable development – economic development, social development and environmental protection.’9 Sustainability is ensured by an adequate balance of these three strands.10

2.2. EU approach to sustainable development

1997 Sustainable development became an overarching objective of the EU and a fundamental principle of the European Community in 1997 when it was included in the Treaty of Amsterdam.11

2001 The Lisbon strategy12 affirmed the role of sustainable development at the heart of EU objectives, including through its external relations. The Lisbon strategy focused on growth and jobs.

2001 EU leaders launched the first EU Sustainable Development Strategy (SDS) at the Gothenburg Summit in June 2001.13 Environmental protection is clearly the leading concern of the SDS with the following priorities set out as (1) climate change and clean energy, (2)

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8 Ibid. principle 4.
9 Johannesburg Declaration on Sustainable Development (Johannesburg, September 2002), UN Doc.A/CONF.199/20, Chapter 1, Resolution 1, paragraph 5.
sustainable transport, (3) sustainable consumption and (4) production, conservation and management of natural resources. It was billed as complementary to the Lisbon strategy, adding an environmental dimension.

2002 A new approach to EU policy-making was introduced, involving, among other things, impact assessment.

2005 A first review of the SDS led to a comprehensive revision of the SDS. The review noted that the revised Strategy needed ‘a stronger focus, a clearer division of responsibilities, wider ownership and broader support, a stronger integration of the international dimension and more effective implementation and monitoring.’

2006 Revised SDS approved by the Council.

2009 Second review of the EU SDS.

2.2.1. Treaty provisions

Sustainable development is now recognised as one of the leading principles of EU action. Article 3(3) of the Treaty on the European Union (TEU) sets this out clearly:

The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

Article 3(5) TEU goes on to state that, in its relations with the wider world, the EU shall contribute to ‘the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights.’

2.1.1 The ‘integration principle’: environmental protection

Environmental policy cannot be viewed in isolation as environmental issues impact and are impacted by a whole range of policies and activities. This is reflected in the ‘integration principle’ as set out in Article 11 of the Treaty on the Functioning of the European Union (TFEU):

Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to

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16 The revised SDS is annexed to document 10917/06 from the Council of the European Union.
promoting sustainable development.\textsuperscript{19}

Article 11 does not have specific addressees but only refers to EU policies and activities. In the absence of any limitation and given that the integration has to take place both at the stage of the definition of the policies and at the stage of their implementation, it seems logical that both the EU and Member States are targeted.

Further, Article 11 sets up a binding rule, as proven by the use of the terms ‘must be integrated.’\textsuperscript{20} The ‘integration principle’ is not merely a statement of good intention, but it has to be a necessary part of the decision-making process.

In addition, Article 37 of the Charter of Fundamental Rights of the EU mirrors the language of Article 11 TFEU and establishes that:

> A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.\textsuperscript{21}

2.1.2 Other aims enshrined in the EU Treaty

It should also be noted that the TFEU sets out other principles that the EU should be seeking to achieve in defining and implementing its policies and activities:

- promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health (Article 9);

- Combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 10).

These factors also form part of the broad picture of sustainable development.

2.1.3 EU Sustainable Development Strategy

The 2006 SDS states:

> [Sustainable development] is about safeguarding the earth’s capacity to support life in all its diversity and is based on the principles of democracy, gender equality, solidarity, the rule of law and respect for fundamental rights, including freedom and equal opportunities for all. It aims at the continuous improvement of the quality of life and well-being on Earth for present and future generations. To that end it promotes a dynamic economy with full employment and a high level of

\textsuperscript{19} This was formerly Article 6 of the Treaty of Amsterdam. The requirement to integrate the requirements ‘with the view to promoting sustainable development’ was added in 1999. The reference to the concept of sustainable development, which was advocated for primarily by Sweden, sought to assemble opposing interests of environmental protection, social progress and economic growth into one formula. The three pillars of sustainable development (environmental, social and economic) consequently became more equally recognised as the underlying objectives of all policies and activities of the EU.

\textsuperscript{20} Nicolas de Sadeleer, ‘Environnement et marché intérieur’, in Commentaire J. Mégret (Bruxelles: Université Libre de Bruxelles, 2010).

\textsuperscript{21} Charter of Fundamental Rights of the European Union, OJ C 83, 30.03.2010, p.389. With the entry into force of the Lisbon Treaty, the Charter has acquired a legally binding status equal to the Treaties (Article 6 TEU).
education, health protection, social and territorial cohesion and environmental protection in a peaceful and secure world, respecting cultural diversity.\textsuperscript{22}

In 2001 the European Council had introduced a new approach to policy making based on ‘the principle that the economic, social and environmental effects of all policies should be examined in a coordinated way and taken into account in decision-making.’\textsuperscript{23} The central mechanism developed for that purpose is the sustainability impact assessment covering the potential economic, social and environmental consequences of a policy.\textsuperscript{24}

One of the main features of the SDS adopted in 2006 is the identification of seven priority objectives for sustainable development: (1) climate change and clean energy, (2) sustainable transport, (3) sustainable consumption and production, (4) conservation and management of natural resources (5) public health, (6) social inclusion, demography and migration, and (7) global poverty and sustainable development challenges.

Reporting on the EU SDS in 2007, the Commission noted that progress on the ground was modest but that policy development had progressed significantly in many areas, notably on climate change and clean energy.\textsuperscript{25} The major challenge flagged was to ensure coherence across policy areas and in particular to reconcile the long-term objectives of sustainable development with the medium-term goal of growth and competitiveness. The conclusion of the 2009 review was also that ‘despite considerable efforts to include action for sustainable development in major EU policy areas, unsustainable trends persist and the EU still needs to intensify its efforts.’\textsuperscript{26}

### 2.3. The interrelation of the three pillars of sustainability

The three pillars of sustainable development are normally considered as equal strands as shown in Table 1 below. If one of the pillars is missing, the whole structure is at risk.

Another approach, presented in Table 2 below, consists of putting environmental protection as the core and uncompromising element of sustainability. The idea is that social and economic issues do not only affect the environment but they also cannot exist without it. This is in line with the current trend to regulate consumption and production patterns which recognises the need to make better use of natural resources to safeguard our economy. Similarly, there is recognition of the need to ‘green’ the labour market by creating jobs in line with the current environmental considerations.

Both international and EU definitions of sustainable development make clear that environmental protection, social cohesion and economic growth are interrelated and shall not be addressed separately. Indeed, any environmental policy will necessarily have social and economic impacts and vice-versa.

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That the ‘integration principle’ requires EU policies and activities to integrate sustainable development objectives—and not just environmental objectives, social objectives, and economic objectives standing alone—has significant ramifications. The comprehensive concept of sustainable development interweaving economic, environmental, and social components connotes that, if environmental factors are not taken into consideration in the formulation and implementation of policies that regulate economic activities and other forms of social organization, a model of development that can be environmentally sustainable over the long term cannot be achieved. In turn, environmental sustainability must also be understood in terms of the increasing interaction between the policy agendas of environmental protection, economic growth, and social development. In other words, the principle of sustainable development incorporates economic and social policy components into environmental policy.
3. Operationalising EU sustainable development objectives through public procurement

As public procurement accounts for approximately 19% of total EU GDP, a better integration of sustainability criteria into public procurement is an opportunity to further sustainable development in the EU as a whole.

Indeed, the following recent policy initiatives and frameworks have explicitly recognised the significant potential of public procurement as a tool for sustainable development.

- Europe 2020 Flagship Initiative: Resource-Efficient Europe
- Europe 2020 Flagship Initiative: An Integrated Industrial Policy
- Europe 2020 Flagship Initiative: Innovative Europe
- Sixth Environmental Action Programme
- Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan
- Energy Efficiency Plan
- Life-cycle thinking
- Green Public Procurement
- Fair Trade's contribution to sustainable development

The revision of the EU procurement legislation provides an opportunity to ensure that the new Directive provides an enabling framework to fulfil this potential. Specific points raised in the context of each of the above are discussed below.

Even where policies have not made explicit reference to public procurement, there is still often scope for it to further the aims of the policy. The EU’s social policy is a good example of this.

The main objectives of the EU social policy are defined in Article 151 TFEU:

> [T]he promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

The EU is committed to combat poverty and risk of poverty – in 2008 17% of the EU population were at risk of poverty. Social groups that are the most at risk are the unemployed, the disabled and the elderly. Moreover, women are disproportionately more at risk than men.

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27 EU Public Procurement Indicators 2009 from Eurostat at [http://ec.europa.eu/internal_market/publicprocurement/docs/indicators2009_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/indicators2009_en.pdf) In 2009 total expenditure on works, goods and services was estimated at around 19.4% of GDP of EU 27.

The principle of non-discrimination is one of the key principles of the EU. Discrimination on grounds of religion or belief, disability, age and sexual orientation in employment and discrimination on grounds of racial or ethnic origin in employment, education, social protection and access to goods and services are prohibited.

Another of the fundamental principles of the EU is the respect for human rights. The Universal Declaration of Human Rights and the Fundamental Charter on Human Rights are major sources of international human rights law. In addition there are also the fundamental labour standards of the International Labour Organization (ILO), including condemnation of forced labour and slavery, the protection against discrimination in respect of employment and occupation, condemnation of child labour, the freedom of association, and the right to organise.

A number of areas may be impacted by a project or policy, including employment and labour market, standards and rights related to job quality, social inclusion and protection of particular groups, equality of treatment and opportunities, and non-discrimination, social protection, health, social security and educational systems, and public health and safety. These may be areas that contracting authorities would like to consider in their procurement decisions.

Public procurement may be used to promote most of the social objectives described above. The revision of the EU procurement legislation provides an important opportunity to clarify how these horizontal objectives can be brought into every stage of public procurement.

3.1. Europe 2020 Strategy

Europe 2020 Strategy for smart, sustainable and inclusive growth was adopted in 2010 by the European Council. The main goal of the Strategy is to help recovery from the crisis by boosting competitiveness, productivity, growth potential, social cohesion and economic convergence. It is explicitly acknowledged that these challenges must be addressed in a sustainable manner.

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29 Article 2 TEU.
32 Articles 2 and 6(1) TEU.
34 Horizontal procurement objectives can be used to promote social, environmental, and other societal objectives that are not necessarily connected with the procured item’s functional objectives. For example, a contracting authority may choose to honour human rights obligations through a policy prohibiting the purchase of supplies produced using child labour, to advance social cohesion by requiring public works contractors to employ ethnic minorities or long-term unemployed persons in the contracted work, or to pursue environmental objectives by requiring publicly procured paper to have a minimum recycled-fibre content. For a discussion of the role of horizontal policies in public procurement, see ClientEarth, Legal Briefing, Briefing No. 2: Horizontal Objectives in Public Procurement (September 2011) accessible at www.clientearth.org/sustainable-public-procurement-briefings
Five headline targets are identified and constitute shared objectives guiding the action of Member States and the Union aiming at:

− [raising] to 75% the employment rate for women and men aged 20-64, including through the greater participation of young people, older workers and low-skilled workers and the better integration of legal migrants;
− improving the conditions for research and development, in particular with the aim of raising combined public and private investment levels in this sector to 3% of GDP;
− reducing greenhouse gas emissions by 20% compared to 1990 levels; increasing the share of renewables in final energy consumption to 20%; and moving towards a 20% increase in energy efficiency;
− improving education levels, in particular by aiming to reduce school drop-out rates to less than 10% and by increasing the share of 30-34 years old having completed tertiary or equivalent education to at least 40%;
− promoting social inclusion, in particular through the reduction of poverty, by aiming to lift at least 20 million people out of the risk of poverty and exclusion.

Public spending is an important economic driver that allows public authorities to include horizontal objectives when contracting for products or services. The revision of the EU procurement legislation provides an opportunity to clarify how horizontal objectives aimed at achieving these targets can be incorporated into procurement criteria.

Three of the seven flagship initiatives developed as part of the EU 2020 Strategy specifically identify public procurement as an important instrument to contribute to achieving sustainable development in the EU.

Resource Efficient Europe is an initiative aiming at ensuring a more efficient use of natural resources, including ‘raw material such as fuels, minerals and metals but also food, soil, water, air, biomass and ecosystems.’ Setting standards of sustainability in public procurement contracts would send a demand signal and induce industry confidence to make the necessary changes and investments to produce more sustainable goods and hence to better preserve natural resources. The Resource Efficiency initiative emphasises that ‘co-ordinated public support for R&D and innovation will be important to increase the availability and performance of the necessary technologies.’

The Innovative Europe initiative specifically aims at focusing ‘R&D and innovation policy on new challenges facing our society, such as climate change, energy and resources efficiency, health and demographic change.’ Public Procurement is listed by the Commission as one of the key tools to improve framework conditions for business to innovate by opening up access to more capital.

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40 Ibid. p.7.
The Flagship Initiative on an Integrated Industrial Policy likewise points to the power of public procurement in the context of innovation, and in particular seeks wider use of green public procurement in order to develop the EU market for environmental goods and services.

The possibilities for encouraging greater innovation through procurement should be pursued in the revision of the EU procurement legislation.

3.2. Sixth Environmental Action Programme

In 2002, the EU adopted its Sixth Environmental Action Programme to address key environmental objectives and priorities. In line with the ‘integration principle’, the programme seeks to promote integration of environmental protection requirements into all EU policies and contribute to the achievement of sustainable development.

The programme sets strategic approaches to meeting its aims and objectives. The programme identifies public procurement policy as playing a fundamental role in achieving sustainable consumption. Moreover, in the mid-term review of the Sixth Environmental Action Programme, the Commission asserted that using the market to deliver environmental results, in particular Green Public Procurement, drives innovation and contributes to resource efficiency. The revision of the EU procurement legislation should focus on enabling contracting authorities to realise this in practice.

In particular, the revision of the EU procurement legislation is also an opportunity to provide clarity that contracting authorities may use information about the processes and products in terms of their environmental impact when making procurement decisions.

3.3. Sustainable consumption and production

The Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan is based on the acknowledgment that our way of life contributes to global warming, pollution, material use, and natural resource depletion. The current Action Plan addresses the need to enhance sustainable consumption with the use of better products. Among other things, the Action Plan foresees that labelling of products can allow consumers to better identify the energy consumed for

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44 Ibid. p.20.
46 See in particular articles 1(1), 2 and 3 of Decision 1600/2002.
47 Article 3 of Decision 1600/2002.
the use of a particular product as well as other significant environmental specifications of that product. This enables demand to underpin improvements in products. Public Procurement could be a big part of that, and the revision of the EU procurement legislation is an opportunity to spell out how contracting authorities can use labelling and information in their procurement decisions.

3.4. Life-cycle thinking

In order to integrate the various sustainability criteria for production, the Commission has developed the concept of life-cycle thinking, first under its product policy,50 and later into other policies, such as waste.51 The Joint Research Centre (JRC) dedicates a website52 to this issue, encouraging the use of life-cycle approach into all relevant policies.

Life-cycle thinking seeks to identify possible improvements to products in the form of lower environmental impacts and reduced use of resources across all life-cycle stages. The key aim is to achieve reduction of the cumulative environmental impacts of products. This means minimising impacts at one stage of the life cycle, or in a geographic region, or in a particular impact category, while helping to avoid increases elsewhere i.e. no burden shifting. For example, reducing the environmental impact of a product at the production stage may lead to a greater environmental impact further down the line. The reverse may also be true—the environmental benefits of a product that is more efficient during use may be off-set by the environmental costs of the product’s production or disposal phases.

Life-cycle thinking can and should be used in public procurement where possible. Ideally when selecting the most sustainable products, works, and services, life-cycle assessments should seek to take into account all criteria of sustainable production and consumption. This means calculating the value of public contracts over the whole life cycle of the goods procured - including their production phase and disposal phase, not just their use phase - rather than ‘sticker price’ alone.53 The data available for such ‘cradle-to-grave’ calculations is not currently available for every product or sector. However, if public purchasers are interested in improving their life-cycle assessments, this could also add weight to the demand from the general consumer market for the development of more data and tools to enable consumers to consider new sustainability factors.

The revision of the EU procurement legislation is an opportunity to ensure that, as more information becomes available on the costs of consumption, contracting authorities are clear about how they may take this information into account in their procurement decisions. As more data and tools become available, and it becomes possible to assess such criteria for more and more products, contracting authorities will need to be confident that they can use ‘cradle-to-grave’ life-cycle assessment. The revision should create an enabling framework that not only allows contracting

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52 See http://lct.jrc.ec.europa.eu/
53 For further discussion, see sections 3.3 and 4.2 in ClientEarth, Legal Briefing, Briefing No. 7: Award Criteria (September 2011) accessible at www.clientearth.org/sustainable-public-procurement-briefings
authorities to make full use of ‘cradle-to-grave’ data that is already available and or that will become available in the coming years, but also incentivises the development of additional tools needed to design and assess more ambitious and effective sustainable procurement criteria.

3.5. Energy efficiency

Energy efficiency is one of the priorities of the Europe 2020 Strategy and one of the main aspects of a transition to a resource-efficient economy. The EU has therefore set itself a target to save 20% of primary energy consumption by 2020, which is fundamental to achieving its long-term energy and climate goals. With public spending accounting for around 19% of EU GDP, the Commission identified the public sector as crucial to achieving better energy efficiency. In its Energy Efficiency Plan, the Commission proposed that high standards of energy efficiency shall be systematically applied when public authorities purchase goods, services and works. Directive 2010/30 currently states that, in respect of certain products, contracting authorities must endeavour to procure only products having the highest performance levels and belonging to the highest energy efficiency class requirement. However, in its proposal for a new Energy Efficiency Directive, the Commission has gone further and seeks to oblige public bodies to buy products that comply with standards set in other legislation or, in respect of some products, to buy ‘best in class’.

Public sector spending can create new markets for energy efficient technologies, services and business models. In particular, the Plan states that the public sector should take the lead in bringing public buildings up to high energy performance levels and in improving urban mobility and urban renovation. The revision of the EU procurement legislation provides an opportunity to ensure that the Directive enables the public sector to play this role to its fullest potential.

3.6. Green Public Procurement

The 2008 Commission Communication, Public procurement for a better environment defines ‘Green Public Procurement’ as:

...a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured.

Another objective of Green Public Procurement (GPP) is to stimulate innovation in environmental technologies and products.

58 Commission Communication, Public procurement for a better environment, COM(2008) 400 final
Some common GPP criteria have already been developed in ten sectors identified as most suitable for implementing GPP. The criteria have been based in particular on existing European and national Eco-label criteria.

Nonetheless, the many obstacles to the take up of GPP that the Commission pointed to in 2008 are still problematic. Such obstacles include the lack of information on life-cycle costing and on long-term benefits of environmentally friendly products, legal uncertainties about how green procurement criteria can be defined and implemented, and the lack of political support and of exchange of best practices. There is also a fear that GPP creates distortions to the internal market and reduces EU-wide competition.

By clarifying existing legal uncertainties and providing an enabling framework for sustainable public procurement, the revision of the EU procurement legislations provides an opportunity to develop more ambitious GPP model criteria and to address more product categories.

### 3.7. Fair Trade

In the SDS, fair trade is recognised as one of the actions that shall be taken to promote sustainable consumption and production.

The fair trade criteria (defined by the Fair Trade movement and later recognised by the European Parliament and the European Commission) refer to the three pillars of sustainable development and include: fair producer price; part payments to be made in advance; long-term, stable relations; transparency and traceability; respect of the eight ILO Core Conventions; respect for the environment; protection of human rights and respect for traditional production; capacity building and empowerment; support for production and market access; and awareness-raising activities.

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59 The ten priority sectors are:
- Construction (covering raw materials, such as wood, aluminium, steel, concrete, glass as well as construction products, such as windows, wall and floor coverings, heating and cooling equipment, operational and end-of-life aspects of buildings, maintenance services, on-site performance of works contracts)
- Food and catering services
- Transport and transport services
- Energy (including electricity, heating and cooling coming from renewable energy sources)
- Office machinery and computers
- Clothing, uniforms and other textiles
- Paper and printing services
- Furniture
- Cleaning products and services
- Equipment used in the health sector.

60 E.g. EU Ecolabel criteria; Energy Star - energy efficiency requirements: performance benchmarking developed under the Ecodesign Directive; sustainability criteria for biofuels and bioliquids.


In its Communication on how Fair Trade can contribute to sustainable development⁶⁴, the Commission acknowledges that public authorities are demanding the inclusion of fair trade criteria in their procurement policies. It, however, puts forward a restrictive interpretation relating to the inclusion of such objectives. First, contracting authorities may not require specific labels because this would limit access to the contract of products which are not so certified but meet similar sustainable trade standards.⁶⁵ Second, similarly to other environmental and social criteria, concerns have been raised about whether criteria meet the requirement to be ‘linked to the subject matter’. The important issue of the ‘link to the subject matter’ is addressed in Briefing No. 4: Clarifying the Link to the Subject Matter for Sustainable Procurement Criteria.⁶⁶ Third, the Commission has suggested that fair trade objectives may only be included in contract performance clauses. Arguments countering this restrictive approach are presented in Briefing No. 5: Technical specifications.⁶⁷

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⁶⁵ Ibid. p.9. Also, for further discussion, see sections 3.3 and 4.3 in ClientEarth, Legal Briefing, Briefing No. 5: Technical specifications (October 2011) (accessible at www.clientearth.org/sustainable-public-procurement-briefings ), for a discussion on the use of labels as tools in procurement.
⁶⁶ ClientEarth, Legal Briefing, Briefing No. 4: Clarifying the Link to the Subject Matter for Sustainable Procurement Criteria (September 2011) accessible at www.clientearth.org/sustainable-public-procurement-briefings
⁶⁷ ClientEarth, Legal Briefing, Briefing No. 5: Technical specifications (September 2011) accessible at www.clientearth.org/sustainable-public-procurement-briefings
4. Conclusion

This briefing has summarised the development of the concept of sustainable development as a key policy objective for the EU. It has also described recent policy initiatives that expressly call upon public procurement as a tool for implementing specific sustainable development objectives and also highlighted other policy areas that could be served by public procurement.

To realise the potential for public procurement to contribute to sustainable development objectives, however, the revision of the EU procurement legislation must take the opportunity to provide a robust enabling framework for sustainable public procurement in order to facilitate the delivery of sustainable development policy objectives. In particular, it is crucial that the revision:

− resolves uncertainties about how procurement can deliver horizontal policy objectives in practice, addressing transparency and non-discrimination concerns;

− ensures that, as more information becomes available on the costs of consumption (including production and disposal costs), contracting authorities are clear about how they may take this information into account in their procurement decisions; and

− clarifies the scope for encouraging greater innovation through procurement as this can lead to the growth of new sustainable technologies.

This briefing is the first in a series of ClientEarth briefings entitled Identifying Opportunities for Sustainable Public Procurement. In the remaining briefings to this series, we will point to how the EU procurement legislation could be clarified and revised to enable contracting authorities to bring sustainability criteria into each stage of the procurement process. All briefings are accessible at www.clientearth.org/sustainable-public-procurement-briefings
ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

As legal experts working in the public interest, we act to strengthen the work of our partner organisations. Our work covers climate change and energy system transformation, protection of oceans, biodiversity and forests, and environmental justice.

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For further information please contact

Catherine Weller
Lawyer
Climate & Forests Programme
t +44 (0)20 3030 5968
cweller@clientearth.org

Janet Meissner Pritchard
Senior Lawyer
Climate & Forests Programme
t +44 (0)20 7749 5979
jpritchard@clientearth.org

Eléonore Maitre
Legal Researcher

ClientEarth offices:

Brussels
4ème Etage
36 Avenue de Tervueren
Bruxelles 1040
Belgium

London
274 Richmond Road
London E8 3QW
UK

Warsaw
Aleje Ujazdowskie 39/4
00-540 Warszawa
Poland

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Identifying Opportunities for Sustainable Public Procurement Briefing Series

The European Commission is expected to propose a revision of public procurement legislation\(^1\) by early 2012.\(^2\) A primary objective of this revision is to allow procurers to make better use of public procurement in support of common societal goals, including protection of the environment, better resource and energy efficiency, combating climate change, promoting innovation and social inclusion, and ensuring the best conditions for the provision of high quality public services.

ClientEarth’s briefing series, *Identifying Opportunities for Sustainable Public Procurement* aims to consolidate, clarify, and expand opportunities to use public procurement to contribute to sustainable development objectives. Where appropriate the current legal situation is analysed, focussing on the Procurement Directive.\(^3\)

**The briefings can be found at:**


This briefing series seeks to foster the development of new EU procurement legislation that fulfils the following aims:

- *Provide an enabling framework for sustainable public procurement.* To this end, the legal framework should not be limited to the tools, products, and data sets that exist presently. Rather, it should anticipate and provide an enabling framework for the next generation of sustainable public procurement tools and practices to evolve.
- *Ensure legal certainty* as to how sustainability criteria can be brought into each stage of the procurement process.
- *Strive for greater flexibility and simplification* of procurement processes, to enable greater take-up of sustainable public procurement possibilities.
- *Ensure compliance with the principles of transparency, non-discrimination, equal treatment, and proportionality.* While public procurement is increasingly utilized to serve horizontal objectives including sustainable development, the initial aim of the EU procurement legislation—to ensure a transparent and non-discriminatory single market for procurement within the European Union—must also continue to be secured.

The series is comprised of four introductory briefings discussing (1) the sustainable development objectives of the European Union, (2) the concept of horizontal procurement objectives and the scope of the EU’s authority to regulate the procurement activities of Member States, (3) how the principles of transparency, equal treatment and proportionality are understood in the context of procurement, and (4) understanding how sustainability criteria are ‘linked to the subject matter’ of contracts for sustainable goods and services. These are followed by four briefings discussing opportunities for incorporating sustainability objectives into each stage of the procurement process: (5) technical specifications, (6) selection criteria, (7) award criteria and (8) specific conditions (also known as contract performance conditions).

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\(^3\) Many of the arguments developed in the briefings will apply equally to Directive 2004/17/EC.