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THE SOCIAL OBJECTIVES OF EU PUBLIC PROCUREMENT LAW – EVOLUTION OR REVOLUTION*

Joanna Florecka

Institute of Law Studies, Polish Academy of Sciences, Poland

ORCID: 0000-0003-1172-7881

email: j.florecka@inp.pan.pl

ABSTRACT

The article traces the evolution of the goals of public procurement procedures in European Union law. It examines EU secondary legislation along with its interpretation in the case law of the Court of Justice of the European Union (CJEU) from the 1970s onwards. Firstly, the article presents the EU law from the 1970s to the 1990s, when the coordination of public procurement procedures in the EU focused almost exclusively on economic objectives, such as opening up procurement to competition and ensuring the free movement of goods and the provision of services. Secondly, it examines the shift observed in the 2004 directives and relevant CJEU case law which started viewing procurement procedures as a tool for pursuing non-economic goals, such as social objectives, though this was only moderately reflected in EU law at the time. The final part of the article discusses the provisions of the current 2014 directives. The conclusions highlight a gradual shift in EU public procurement goals, evolving from purely economic objectives to include other goals, such as social objectives.

KEYWORDS

European Union Law, CJEU Case Law, EU Secondary Legislation, Economic Goals

1. INTRODUCTION

EU laws aimed at coordinating public procurement procedures originate from the fundamental freedoms of the internal market, the free movement of goods, persons, services and capital, as well as the resulting principles of non-discrimination, equal treatment and transparency. However, member states often failed to uphold these principles, thus necessitating intervention by the EU legislature. Consequently, the EU adopted procurement directives¹ to address these issues. The Union's efforts focused on two main objectives: increasing transparency and combating discrimination.²

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1 European Commission, Completing The Internal Market: White Paper from the Commission to the European Council COM (85) 310 final, 5 and 23.

2 C McCrudden, *Buying Social Justice Equality, Government Procurement, and Legal Change* (Oxford University Press 2007), 105.

The first Public Procurement Directive dates back to the 1970s. Ensuring the proper functioning of the internal market in the field of public procurement required successive legislative interventions and deeper coordination. Subsequent phases of regulation not only expanded its scope and refined its provisions but also incorporated increasingly diverse solutions and objectives, which extended beyond purely market-oriented goals to include additional aims, such as social objectives.

In this context, it should be noted that there is no legal definition of public procurement specifically using social criteria. The literature³ and documents of EU institutions use such terms as sustainable procurement,⁴ strategic procurement,⁵ social procurement⁶ and socially responsible procurement.⁷ Sustainable procurement and strategic procurement encompasses green procurement,⁸ social procurement⁹ and innovative procurement.¹⁰ In other words, the goals of sustainable development policy address social, environmental and innovative issues.¹¹ These

3 Earlier literature employs such terms as ‘horizontal’, ‘secondary’ or ‘collateral clauses’, with an emphasis on their secondary nature in public procurement, particularly in relation to social or environmental aspects. For further insights, refer to works such as S Williams-Elegbe, *Public Procurement and Multilateral Development Banks Law, Practice and Problems* (Hart Publishing 2019), 143; S Arrowsmith, ‘Horizontal Policies in Public Procurement: A Taxonomy’ (2010) *Journal of Public Procurement* 10(2), 149–186; S Arrowsmith, ‘The Objective of Public Procurement Systems and Regulatory Provisions’ in S Arrowsmith, S Treumer, J Fejo, L Jiang (eds), *Public Procurement Regulation: An Introduction*, 15, <<https://www.nottingham.ac.uk/pprg/documentsarchive/asialinkmaterials/publicprocurementregulationintroduction.pdf>> accessed 30 Feb 2024.

4 The term ‘sustainable procurement’ is used, for instance, in the following sources: R Caranta, ‘Sustainable Public Procurement in the EU’ in R Caranta, M Trybus (eds), *The Law of Green and Social Procurement in Europe* (DJØF Publishing 2010) 15–51; B Sjäffell, A Wiesbrockn (eds), *Sustainable Public Procurement under EU Law: New Perspectives on the State as Stakeholder* (Cambridge University Press 2015); E. Fisher, ‘The Power of Purchase: Addressing Sustainability through Public Procurement’ (2013) *European Procurement & Public Private Partnership Law Review* vol. 8, 2

5 The term ‘strategic procurement’ is used, for example, in Report from the European Commission implementation and best practices of national procurement policies in the Internal Market COM(2021) 245 final, 8; European Commission, ‘Strategic Public Procurement: Facilitating Green, Inclusive and Innovative Growth’ (2017) *European Procurement & Public Private Partnership Law Review* 12(3), 219.

6 The term ‘social procurement’ has been used, for example, in C Barnard, ‘To Bodily Go: Social Clauses in Public Procurement’ (2017) *Industrial Law Journal* 46(2), 208–244; C McCrudden, ‘Buying Social Justice: Equality and Public Procurement’ (2007) *Current Legal Problems* 60(1), 123.

7 The term ‘socially responsible public procurement’ is used, for example, in Report from the European Commission implementation and best practices of national procurement policies in the Internal Market COM(2021) 245 final, 8; European Commission, ‘Strategic Public Procurement: Facilitating Green, Inclusive and Innovative Growth’ (2017) *European Procurement & Public Private Partnership Law Review* 12(3), 220; R Caranta, ‘Towards Socially Responsible Public Procurement’ (2022) *ERA Forum* vol. 23, 149–164.

8 Green Public Procurement means ‘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’; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 16 July 2008 public procurement for a better environment COM(2008) 400, 4.

9 Innovation procurement involves acquiring new, innovative, or improved products or services to meet specific innovation policy objectives. For further insights into innovation procurement and its role in addressing sustainability challenges, refer to the following sources: J Yeow, E Uyarra, S Gee, ‘Closing the Loop: Examining the Case of the Procurement of a Sustainable Innovation’ in C Edquist, NS Vonortas, JM Zabala-Iturriagagoitia, J Edler (eds), *Public Procurement for Innovation* (Edward Elgar Publishing 2015) 237; Report from the European Commission implementation and best practices of national procurement policies in the Internal Market COM(2021)245 final, 8.

10 Report from the European Commission implementation and best practices of national procurement policies in the Internal Market COM(2021)245 final, 8.

11 *Ibid.*, 8.

goals can be set at the national regional, EU or international level.¹² Social or socially responsible procurement, on the other hand, is defined as procurement that includes “at least one social issue for the purpose of achieving social objectives.”¹³

The purpose of this article is to delineate social objectives as a constituent aspect of the coordination of public procurement procedures within the European Union’s internal market, drawing upon EU secondary legislation and corresponding case law from the Court of Justice of the European Union (CJEU). The analysis takes an evolutionary approach, starting with the first EU acts on public procurement coordination adopted in the early 1970s. The packages of directives from the 1970s,¹⁴ the 1980s¹⁵ and the 1990s¹⁶ are initially examined together, reflecting the limited consideration given to social objectives during the initial two decades of EU-level procedural coordination. Subsequent attention is directed towards the incorporation of social objectives in the 2000 package of directives, marking a discernible shift in this regard.¹⁷ The third part of the article outlines the current regulatory framework established by the 2014 directives.¹⁸

12 Ibid.

13 Ibid., 10.

14 Commission Directive 70/32/EEC of 17 December 1969 on the provision of goods to the State, to local authorities, and other official bodies [1970] OJ L 13, 1–3; Council Directive 71/304/EEC of 26 July 1971 concerning the abolition of restrictions on freedom to provide services in respect of public works contracts and on the award of public works contracts to contractors acting through agencies or branches [1971] OJ L 185, 1–4; Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts [1971] OJ L 185, 5–14; Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts [1976] OJ L 13, 1–14.

15 Council Directive 88/295/EEC of 22 March 1988 amending Directive 77/62/EEC relating to the coordination of procedures on the award of public supply contracts and repealing certain provisions of Directive 80/767/EEC [1988] OJ L 127, 1–14; Council Directive 89/440/EEC of 18 July 1989 amending Directive 71/305/EEC concerning the coordination of procedures for the award of public works contracts [1989] OJ L 210, 1–21.

16 Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport, and telecommunications sectors [1990] OJ L 297, 1–48; Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations, and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport, and telecommunications sectors [1992] OJ L 76, 14–20; Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts [1992] OJ L 209, 1–24; Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts [1993] OJ L 199, 1–53; Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, [1993] OJ L 199, 54–83; Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport, and telecommunications sectors, [1993] OJ L 199, 84–138.

17 Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport, and postal services sectors [2004] OJ L 134, 1–113; Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts, and public service contracts [2004] OJ L 134, 114–240. Please note that another directive in this legislative package is outside the scope of the analysis in this publication, namely Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts, and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC [2009] OJ L 216, 76–136.

18 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L 94, 65–242; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport, and postal services sectors and repealing Directive 2004/17/EC [2014] OJ L 94, 243–374. Due to its limited scope, another directive in this legislative package is outside the scope of the analysis: Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts [2014] OJ L 94, 1–64.

2. OBJECTIVES OF PUBLIC PROCUREMENT COORDINATION DURING THE INITIAL REGULATORY STAGE: 1970S–1990S

The directives governing the coordination of procedures for the award of public contracts by the then Member States of the European Communities incorporated a foundational level of compliance with the freedoms of the internal market, notably the freedom of movement of goods and the freedom to provide services.¹⁹ Directives 71/304/EEC and 71/305/EEC underscored that facilitating the freedom to provide services, fostering equal treatment of contractors and effective competition in public procurement necessitated not only the elimination of internal barriers, but also the coordination of national procurement procedures. This coordination was to be grounded in non-discriminatory specifications, a suitable degree of transparency and objective criteria for participation in the procurement process.

Thus, the objectives of the first directives on the coordination of public procurement procedures were essentially market-driven and concerned ensuring adherence to cross-border freedom to provide services as well as fostering effective competition in the public procurement market. The integration of social objectives was evidenced in the adoption of measures authorising contracting authorities in Member States to exclude contractors for non-payment of social security contributions²⁰ and imposing an obligation to scrutinise abnormally low tenders.²¹ Moreover, the European Commission stressed that while social issues such as combating unemployment, ensuring fair working conditions and non-discrimination on the basis of gender were not explicitly addressed by Directive 71/305/EEC, they were not prohibited either. This indicated that the regulation of such matters was permissible and left to the discretion of individual Member States.²²

However, it soon became clear that the directives from the 1970s had a negligible impact and failed to significantly open up the procurement market to intra-EU competition.²³ Member states frequently flouted the directives, intentionally dividing contracts and disregarding public procurement procedures.²⁴ To counteract this, the European Commission set a timetable for finalising efforts to establish the internal market by 1992.²⁵ In outlining the barriers to achieving this goal, the Commission pointed out that the substantial contribution of public procurement to the EU GDP, coupled with entrenched protectionist tendencies, remained among the primary obstacles hindering the completion of the internal market.²⁶ Only a mere 4% of procurement fell under the directives and intra-EU competition, and contracts continued to predominantly be awarded to local contractors.²⁷

The European Parliament, in turn, pointed out that changes to Community public procurement law should also aim to reduce regional disparities and promote employment in

19 S Arrowsmith, 'EC Regime on Public Procurement' in KV Thai (ed), *International Handbook of Public Procurement* (Routledge 2009) 258.

20 Article 23(e) of Directive 71/305/EEC; Article 20(1)(3) of Directive 77/62/EEC.

21 Article 29(5) of Directive 71/305/EEC; Article 25(5) and (6) of Directive 77/62/EEC.

22 Public procurement: Regional and social aspects (Communication from the Commission) COM (89)400 final, 11.

23 Opinion of the Economic and Social Committee on the proposal for a Council Directive amending Directive 71/305/EEC concerning the coordination of procedures for the award of public work contracts [1987] OJ C 319, 55.

24 Ibid., 55.

25 European Commission, *Completing the Internal Market: White Paper from The Commission to The European Council* COM/85/310 final, 3–4.

26 Ibid., 23–24.

27 Ibid., 5 and 23.

underprivileged areas and those affected by declining industries.²⁸ The Commission echoed this sentiment to some extent, affirming that while the directives sought to integrate public procurement into the internal market and ensure equitable treatment of contractors, the internal market should take into account economic and social cohesion while playing a role in their achievement.²⁹ Initially, Directive 88/295/EEC amended Directive 77/72/EEC with the goal of completing the internal market by the end of 1992 and introducing effective competition in the supply market. Subsequently, Directive 89/440/EEC amended Directive 71/305/EEC concerning construction works contracts, also citing the need to finalise the internal market and ensure effective competition. Alongside expanding the scope of Community procurement procedures, enhancing transparency in their award procedure and clarifying abnormally low prices in tenders, solutions were introduced to enhance transparency regarding protection requirements and employment conditions applicable in member states, incorporating them into tenders.

Under Article 22a of Directive 77/72/EEC, introduced at the time, Member States were allowed to request that contract documentation include information on where to obtain details regarding employment protection and working conditions obligations applicable in the country where the works are carried out. In contrast, Article 1(18) of Directive 89/440/EEC mandated that the applicable employment protection and working conditions regulations be included in the tenders. Although there were limited changes to the inclusion of social objectives in the 1980s package of amending directives, the European Commission did not rule out the possibility of using procurement to achieve social objectives, as demonstrated by the issuance of a communication on social and regional criteria in public procurement.³⁰

Challenges in the functioning of the internal market persisted in public procurement throughout the 1990s, even two decades after the adoption of the initial directives. Consequently, the European Commission ordered the Cecchini Report to delineate the costs of internal market fragmentation, the potential benefits of full execution, as well as to point the way forward for EU law.³¹ In terms of public procurement, the analysis revealed widespread protectionist practices, evidenced by the scarcity of instances where contractors from other Member States were selected, despite substantial international trade.³² Thus, the EU took action along two main lines: expanding coordination to include sectoral and services procurement, and clarifying and consolidating existing legislation.

As part of the first of the aforementioned strategies, Directive 90/531/EEC was initially implemented, soon replaced by Directive 93/38/EEC, which encompassed the coordination of public procurement procedures in the water, energy, transport and telecommunications sectors. Their goal was still to remove restrictions on the free movement of goods and the provision of services.³³ Additionally, Directive 92/50/EEC was enacted with the aim of eliminating practices that hinder competition and obstruct the participation of contractors from other Member States in public service contracts. Notably, both directives also incorporated provisions on the inclusion of clauses related to employment protection and working conditions in tenders,³⁴ as well as provisions allowing

28 Public procurement: regional and social aspects (Communication from the Commission) COM (89)400 final, 3.

29 Ibid.

30 Ibid.

31 European Commission, *Research on the 'Cost of Non-Europe': Basic Findings* (Office for Official Publications of the European Communities 1988) 3 and 12.

32 Ibid., 3.

33 Recitals 1–9 of Directive 93/38/EEC.

34 Article 28(1) and (2) of Directive 92/50/EEC; Article 29 of Directive 93/38/EEC.

for the exclusion of a contractor for failure to pay social security contributions³⁵ and the obligation to scrutinise tenders with abnormally low prices.³⁶

On the other hand, the second approach entailed the adoption of directives aimed at coordinating public procurement regulations and enhancing their clarity, thereby fostering greater uniformity in the solutions they encompassed.³⁷ Directive 93/36/EEC was instrumental in consolidating supply regulations, while Directive 93/37/EEC consolidated procedures for construction works contracts. These directives maintained a focus on promoting effective competition and facilitating the free movement of goods, as well as on solutions enabling contractors from across the EU to access public contracts effectively.³⁸ Additionally, they clarified provisions on the exclusion of contractors for failure to pay mandatory social security contributions³⁹ and the requirement to scrutinise tenders with abnormally low prices.⁴⁰

Concurrently, the Commission elucidated its stance on the issue of social publicprocurement and pointed out that the directives did not permit the introduction of social criteria as selection criteria, as these pertain to the financial and economic situation or technical capabilities of the contractor, nor as award criteria, as these pertain to the economic characteristics of the supplies, works or services covered by the contract.⁴¹ However, the utilisation of social criteria as award criteria in proceedings falling below the thresholds for application of the directives was allowed, provided it did not discriminate against contractors from other Member States.⁴²

The analysis reveals that the initial stage of public procurement regulation primarily focused on achieving an effective internal market. The social dimension of the directives' provisions is minimal and evident in only three aspects: provisions on abnormally low prices, the exclusion of contractors for failure to pay social security contributions and the possibility of requiring tenders to include obligations related to employment protection legislation and labor conditions. The social nature of these provisions arises from the fact that they are not essential for selecting the most favourable tenders; for example, excluding a contractor for failing to meet social obligations related to other contracts, especially private law contracts, is not a necessary criterion in this respect.

Changes in European Communities legislation during the 1970s–1990s were driven not only by the European Commission's deliberations but also by CJEU case law. Initially, the CJEU adopted a conservative stance on achieving social objectives through public contract awards under the directives. In the *Beentjes* judgment,⁴³ where the CJEU ruled on the applicability of the criterion of employing the long-term unemployed, it stated that the purpose of Directive 71/305/EEC is to ensure the development of effective competition and to uphold the freedom of establishment and the provision of services in the award of public contracts.⁴⁴ However, the CJEU also ruled that this criterion is not, in principle, incompatible with EU law, provided it is

35 Article 29(e) of Directive 92/50/EEC; Article 31(2) of Directive 93/38/EEC.

36 Article 37 of Directive 92/50/EEC; Article 34(5) of Directive 93/38/EEC.

37 S Arrowsmith, *The Law of Public Procurement and Utilities Procurement: Regulation in the EU and UK* (Sweet&Maxwell 2014) 184.

38 Particularly in terms of transparency and selection.

39 Article 20(1)(e) of Directive 93/36/EEC; Article 24(c) of Directive 93/37/EEC.

40 Article 27 of Directive 93/36/EEC; Article 30(4) of Directive 93/37/EEC.

41 European Commission, Green Paper – Public Procurement In The European Union: Exploring The Way Forward COM (96) 583 final, 40.

42 Ibid.

43 Judgment of the CJEU C-31/87 EU:C:1988:422.

44 Ibid., paras. 11, 21.

mentioned in the contract announcement and does not violate the prohibition of discrimination, which would occur if only local contractors could meet it.⁴⁵ Despite this ruling, it is difficult to view the CJEU's position as an unconditional endorsement of social procurement, since it fundamentally prioritises traditional EU law objectives of non-discrimination and treaty freedoms.⁴⁶

The CJEU took a similarly conservative position in the *Nord-Pas-de-Calais* judgment,⁴⁷ in which it ruled on the possibility of using an employment criterion based on national guidelines to combat unemployment and promote employment as one of the award criteria in public procurement.⁴⁸ The European Commission and the Advocate General gave a narrow interpretation of the *Bentjes* judgment and took the position that such a criterion could only be a condition for the performance of the contract.⁴⁹ The CJEU, meanwhile, ruled that the purpose of Directive 93/37/EEC is to develop effective competition by ensuring equal treatment of contractors from other Member States, including allowing them to respond to the notice under comparable conditions as national contractors.⁵⁰ The CJEU reiterated, as it had in the *Beentjes* judgment, that the directives did not (at that time) preclude the use of criteria related to social policies against unemployment provided that they adhered to the Treaty principles, including the principle of non-discrimination arising from the freedom to provide services.⁵¹ The CJEU further held that while such a criterion was not inherently incompatible with Directive 93/37/EEC, its application had to comply with the provisions of the Directive, particularly those concerning notices.⁵²

The *La Cascina* judgment⁵³ also confirmed the CJEU's view that the Directive on the coordination of public procurement procedures primarily serves economic objectives. In this case, concerning exclusion based on failure to pay social security contributions and taxes, the Court held that Directive 92/50/EEC does not mandate the adoption of all exclusion grounds in national law and can be implemented less stringently, but cannot be expanded to include new grounds for exclusion.⁵⁴ This interpretation can be understood as giving priority to market-oriented goals over social objectives.

In the *Rüffert* judgment,⁵⁵ the CJEU examined the compatibility with EU law of a public procurement procedure that required compliance with minimum wage provisions of collective bargaining agreements applicable only to works contracts in a specific area. While the CJEU acknowledged that avoiding a threat to the financial equilibrium of the social security system could be considered a legitimate objective of general interest, it found these requirements to violate the principle of proportionality because they were not universally applicable and therefore unsuitable for achieving the intended objective.⁵⁶

It is also worth noting how the understanding of the term “most advantageous offer” has evolved through various cases. In the *SIAC Construction* judgment, the CJEU ruled that although,

45 Ibid., paras. 30–31.

46 R Caranta, M Trybus (eds), *The Law of Green and Social Procurement in Europe* (DJØF Publishing 2010), 20.

47 Judgment of the CJEU C-225/98 EU:C:2000:494.

48 Opinion of AG Alber in case C-225/98 EU:C:2000:121, paras. 35–37.

49 Ibid., paras. 36, 46–48.

50 Judgment of the CJEU C-225/98 EU:C:2000:494, paras. 34.

51 Ibid., paras. 49–50.

52 Ibid., paras. 51.

53 Judgment of the CJEU C-226/04 EU:C:2006:94, paras. 22.

54 Ibid., paras. 23.

55 Judgment of the CJEU C-346/06 EU:C:2008:189, paras. 29.

56 Ibid., paras. 39–43.

in principle, the goal of EU coordination of the public procurement market was to eliminate barriers to the freedom to provide services, it was permissible under EU directives (at that time) to select the tender with the lowest final cost instead of the one with the lowest price,⁵⁷ provided that equal treatment of contractors, transparency and objectivity of the procedure were ensured.

In another judgment, *EVN and Wienstrom*, which dealt with the environmental objectives of public procurement, the CJEU addressed the compatibility with EU law of using criteria for awarding public contracts based on the generation of electricity from renewable energy sources.⁵⁸ The referring court pointed out the lack of a definition for the term “economically most advantageous tender” (employed in the EU directive) and questioned whether criteria with no objective economic value could be used.⁵⁹ The Court considered that the EU and its Member States were committed to environmental protection and reducing greenhouse gas emissions, which justified the use of such criteria and the considerable weight given to them.⁶⁰ Finally, in the *Sintesi* judgment, the CJEU held that while the directives aimed to foster genuine competition, a national law requiring the use of the lowest price criterion constituted an incompatible restriction of the contracting authority’s freedom to tailor the criteria to the specific characteristics of the contract.⁶¹

Summarising the analysis of secondary law and CJEU case law on the coordination of public procurement procedures in the EU internal market, we can see a gradual shift toward including objectives beyond the original goals of opening procurement to competition and promoting the freedom to provide cross-border services. The opinions of the European Commission and the resulting proposals for changes in secondary legislation, alongside CJEU case law, highlight the conservative stance of EU institutions. The use of social criteria in excluding contractors and selecting the most advantageous offer has been more “tolerated” than actively promoted in EU law (as long as they do not violate established common rules in the internal market).

3. OBJECTIVES OF COORDINATION OF PUBLIC PROCUREMENT IN THE SECOND STAGE OF REGULATION – THE 2004 PACKAGE OF DIRECTIVES

In the late 1990s, the European Commission finally began recognising social objectives as goals to be pursued through the awarding of public procurement contracts. It issued documents urging Member States to align their national and EU social policy objectives with public procurement procedures.⁶² Additionally, the Commission emphasised that while public procurement serves internal market objectives, it can also advance other goals, such as social policy objectives.⁶³

The need for reform in public procurement law within the internal market was still very present. By 1996, public procurement was identified as the sector with the most pressing issues, ranging from challenges in directive implementation to deficiencies in national measures.⁶⁴

57 Judgment of the CJEU C-19/00 EU:C:2001:553, paras 32, 45.

58 Judgment of the CJEU C-448/01 EU:C:2003:651.

59 Ibid., paras. 30.

60 Ibid., paras. 40–43.

61 Judgment of the CJEU C-247/02 EU:C:2004:593, paras. 35–37 and 40–42.

62 Communication from the Commission of 11 March 1998 public procurement in the European Union COM(98) 143 final, 3 and 28–29.

63 Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement [2001] OJ C 333, 4.

64 European Commission, Green Paper – Public Procurement In The European Union: Exploring The Way Forward COM(96) 583 final, 7.

Protectionist tendencies persisted, with approximately 85% of procurers failing to adhere to notice requirements, leading the Commission to initiate 39 proceedings for lack of or incorrect directive implementation.⁶⁵ Consequently, the Commission undertook further drafting efforts to bolster the coordination of procurement procedures. However, by this point, social objectives had gained increased prominence. In its drafts of the new directives, the Commission aimed to establish a genuine internal market that ensured principles of equal treatment, non-discrimination and transparency, while explicitly acknowledging the potential use of social criteria in contract performance.⁶⁶

The 2004 package of directives (Directive 2004/17/EC and Directive 2004/18/EC) aimed to simplify and clarify rules while incorporating pertinent case law from the Court of Justice of the European Union (CJEU), particularly regarding social and environmental aspects.⁶⁷ This statement marks a significant milestone as it represents the first direct reference within the directives to the pursuit of non-economic objectives, such as social goals, through public procurement. Firstly, social goals were integrated into the provisions on the description of the subject of the contract. This inclusion mandated that technical specifications consider accessibility criteria for individuals with disabilities.⁶⁸

Secondly, the regulation of excluding a contractor from the procedure due to failure in meeting social security obligations⁶⁹ was clarified. Furthermore, it was now understood that failure to comply with regulations on equal treatment in employment and labour,⁷⁰ including gender equality in the workplace,⁷¹ may be considered a serious ethical violation warranting exclusion from the proceedings.⁷²

Thirdly, the EU law introduced the option of granting reserved contracts. This entailed limiting participation rights in specific public procurement procedures to sheltered workshops or within sheltered labour programmes, where a portion of the employees consists of persons with disabilities or those excluded from the labor market.⁷³ Consequently, competition restrictions in favour of social objectives, such as combating unemployment and social exclusion, were permitted.

Fourthly, with regard to contract performance conditions, it was now permissible to impose

65 European Commission, Communication from the Commission to the European Parliament and the Council, The Impact and Effectiveness of the Single Market (Office for Official Publications of the European Communities 1996) 15; European Commission, Green Paper – Public Procurement In The European Union: Exploring the way forward COM(96) 583 final, 5.

66 Amended proposal for a European Parliament and Council Directive concerning the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts [2002] OJ C 203E, 210; Amended proposal for a European Parliament and Council Directive coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors [2002] OJ C 203E, 184.

67 Recital 1 of Directive 2004/18/EC and Recital 1 of Directive 2004/17/EC.

68 Recital 29 and Article 23(1) of Directive 2004/18/EC; Recital 42 and Article 34(1) of Directive 2004/17/EC; Annex III(1)(a) and (b) of Directive 2009/81/EC.

69 Article 45(2)(d) and (e) of Directive 2004/18/EC; Article 53(3) of Directive 2004/17/EC; Article 39(2)(d) and (f) of Directive 2009/81/EC.

70 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303, 16–22.

71 Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L 39, 40–42.

72 Recital 43 of Directive 2004/18/EC; Recital 45 of Directive 2004/17/EC; Recital 46 of Directive 2009/81/EC.

73 Recital 28 and Article 19 of Directive 2004/18/EC; Recital 39 and Article 28 of Directive 2004/17/EC; Article 14 of Directive 2009/81/EC; Recital 35 of Directive 2009/81/EC.

certain requirements justified by social considerations. These included the employment of excluded, unemployed or disabled persons, as well as adherence to the provisions of the International Labor Organization Convention, even though it was not part of national law.⁷⁴ Member States also became empowered to enforce labor protection provisions or employment conditions applicable at the site of contract performance.⁷⁵

Last but not least, the EU legislator was reluctant to introduce social aspects in the provisions concerning award criteria. The possibility, as mentioned in the recitals, of using criteria aimed at meeting social requirements was not included in the directives' provisions, unlike environmental aspects.⁷⁶ Additionally, the 2004 directives elucidated the requirement to request clarification in case of suspicion concerning an abnormally low price in a tender, particularly regarding compliance with employment protection and working conditions.⁷⁷

During the period under review, the Court of Justice sought to strike a balance between the completion of the internal market (ensuring, among other things, the free movement of goods and services) and the growing need to utilise public procurement to achieve other development policy objectives. In the *Consortio Stabile Libor Lavori Pubblici* judgment, the Court affirmed, on the one hand, that it is in the EU's interest to open up procurement to the broadest possible competition, but, on the other hand, it also allowed for the possibility of justifying national rules by the general interest considerations, as long as the rules were proportionate to the intended purpose.⁷⁸ For this reason, the CJEU deemed the requirement to provide a declaration of no outstanding social security contributions compatible with EU law. Indeed, the requirement was justified by a general-interest objective, which was to ascertain that the tenderer is reliable, diligent and trustworthy, and that its conduct towards its own employees is proper⁷⁹ as well as proportionate, given the clear definition in national law of the minimum amount of arrears which risked exclusion.⁸⁰

Following this, in the *Bundesdruckerei* judgment, the CJEU stated that minimum wage requirements, as social considerations, could constitute special conditions attached to the contract performance if they were outlined in the notice or specification and were in line with EU law.⁸¹ Simultaneously, to avoid undue burden, these requirements must originate from the laws of the country where the contract will be executed, not from the contracting country.⁸² Additionally, in the *Regiopost* judgment, the CJEU ruled that requirements to comply with remuneration provisions can be justified by the objective of employee protection, provided they stem from a mandatory statutory provision that is universally binding on the EU for all public contracts.⁸³

One pivotal case that solidified the acceptance of integrating broad social objectives into public procurement is the *Max Havelaar* ruling, which revolved around the requirement for a

74 Recital 33 and Article 26 of Directive 2004/18/EC; Recital 44 and Article 38 of Directive 2004/17/EC; Recital 35 of Directive 2009/81/EC.

75 Article 27 of Directive 2004/18/EC; Article 39 of Directive 2004/17/EC; Article 24 of Directive 2009/81/EC.

76 Recital 46 and Article 53(1) of Directive 2004/18/EC; Recital 55 and Article 55(1) of Directive 2004/17/EC.

77 Article 55(1)(d) of Directive 2004/18/EC; Article 57(1)(d) of Directive 2004/17/EC; Article 49(1)(d) of Directive 2009/81/EC.

78 Judgment of the CJEU C-358/12 EU:C:2014:2063, paras. 29–31.

79 Ibid., paras. 32.

80 Ibid., paras. 40–41.

81 Judgment of the CJEU C-549/13 EU:C:2014:2235, paras. 28.

82 Ibid., paras. 24–17 and 30.

83 Judgment of the CJEU C-115/14 EU:C:2015:760, paras. 70, 75.

fair trade label and an environmental label.⁸⁴ Despite the previously discussed declarations on social criteria, the European Commission argued that the directive opposes requiring labels and that they were not relevant to the contract's subject matter.⁸⁵ However, the Advocate General did not agree with the objections to the use of labels, noting that most contracting authorities would not be qualified to define fair trade independently, and imposing labels could risk market fragmentation.⁸⁶ The CJEU upheld the possibility of requiring social labels, provided that transparency requirements were met. Highlighting that Directive 2004/18/EC was to grant EU contractors access to public contracts of interest to them, the Court found that the transparency requirements were breached as the criteria behind the labels were not specified, and as presenting alternative evidence of compliance was not allowed.⁸⁷

The case law of the CJEU on the implementation of non-market objectives, proved to be insufficiently clear to provide a firm basis for regulation in this area in the directives.⁸⁸ Consequently, it was emphasised in the legal writing that the second stage of coordination of public procurement has not lived up to the task of clarifying all doubts related to the application of social criteria in public procurement.⁸⁹

4. GOALS OF COORDINATION OF PUBLIC PROCUREMENT IN THE THIRD STAGE OF COORDINATION – THE 2014 PACKAGE OF DIRECTIVES

In the years leading up to the adoption of the 2014 package of directives, the European Commission had already clearly articulated that the internal market was not an end in itself, but an instrument to achieving other goals, including social objectives.⁹⁰ For this reason, the measures taken to modernise the internal market, also in the area of public procurement, were intended, among other things, to promote demand for products and services in line with the principles of social responsibility.⁹¹

In its proposals for the adoption of the new package of directives, the Commission, based on its previous analysis, concluded that the main objectives of the public procurement directives in facilitating the exercise of internal market freedoms in the sector had been achieved.⁹² However, it found instances of inadequate implementation or application, which resulted in the risk of

84 Judgment of the CJEU C-368/10 EU:C:2012:284, paras. 94.

85 Ibid., paras. 45–46.

86 Opinion of AG Kokott in case C-368/10 EU:C:2011:840, paras. 91.

87 Judgment of the CJEU C-368/10 EU:C:2012:284, paras. 52 and 113.

88 R Caranta, M Trybus (eds), *The Law of Green and Social Procurement in Europe* (DJØF Publishing 2010) 11.

89 Ibid., 27.

90 Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions of 27 October 2010 towards a single market act for a highly competitive social market economy 50 proposals for improving our work, business and exchanges with one another COM (2010) 608 final, 4.

91 Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions of 13 April 2011 single market act twelve levers to boost growth and strengthen confidence 'working together to create new growth' COM (2011) 206 final, 22.

92 Proposal for a Directive of the European Parliament and of the Council of 20 December 2011 on public procurement COM (2011) 896 final, 3; Proposal for a Directive of the European Parliament and of the Council of 20 December 2011 on procurement by entities operating in the water, energy, transport and postal services sectors COM (2011) 895 final, 2.

abuse and inefficient management of public funds.⁹³ Considering this, the European Commission identified two complementary goals of the new legislation: to enhance the efficiency of public spending, ensuring the best value for public money and to optimise public procurement to support social goals,⁹⁴ among other objectives. Furthermore, it emphasised the necessity to bolster demand for environmentally and socially sustainable services, goods and construction works.⁹⁵

Indeed, within the Europe 2020 Strategy, which sets the direction of EU policies for the next decade, the European Commission has acknowledged public procurement as an instrument for spending public funds efficiently and contributing to the achievement of the current goals. Simultaneously, it has upheld the obligation to respect classic principles of EU procurement law, such as the principle of non-discrimination.⁹⁶ In essence, while EU public procurement endeavours to open the market to effective intra-EU competition, it can also play a role in supporting areas such as employment.⁹⁷ This dual function is evident in the recitals of the adopted directives, which first underscore the principles of the single market⁹⁸ and subsequently indicate that public procurement is to serve the implementation of the Europe 2020 Strategy.⁹⁹

This trend in the evolution of EU procurement law is affirmed by the Commission's preparation of a guide on the use of social criteria in public procurement¹⁰⁰ alongside the proposals for the adoption of the 2014 directives. In the subsequent edition of the handbook, the Commission highlighted that procurement can contribute to various social outcomes, such as employment promotion, upskilling, ensuring adequate working conditions, fostering social inclusion, promoting accessibility and facilitating ethical trading.¹⁰¹ Additionally, reference was made to the potential utilisation of procurement in post-pandemic COVID-19 national recovery plans as a tool for enhancing social inclusion and territorial cohesion.¹⁰²

On one hand, the 2014 directives, namely the Classical Directive 2014/24/EU, the Utilities Directive 2014/25/EU and the Concessions Directive 2014/23/EU, comprehensively regulate procedures crucial for the proper operation of the internal market for public procurement. In the

93 Commission staff working paper executive summary of the impact assessment of 21 April 2021 accompanying the document Proposal for a Directive of the European Parliament and of the Council on Public Procurement and the Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal sectors SWD(2021) 151 final, 2–4.

94 Proposal for a Directive of the European Parliament and of the Council of 20 December 2011 on public procurement COM (2011) 896 final, 3; Proposal for a Directive of the European Parliament and of the Council of 20 December 2011 on procurement by entities operating in the water, energy, transport and postal services sectors COM (2011) 895 final, 2.

95 Commission staff working paper executive summary of the impact assessment of 21 April 2021 accompanying the document Proposal for a Directive of the European Parliament and of the Council on public procurement and the Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal sectors SWD(2021) 151 final, 11.

96 Communication from the Commission of 3 March 2012 Europe 2020 A strategy for smart, sustainable and inclusive growth COM(2010) 2020 final, 24.

97 Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions of 27 October 2010 towards a single market act for a highly competitive social market economy 50 proposals for improving our work, business and exchanges with one another COM (2010)608 final, 16.

98 Recital 1 of Directive 2014/24/EU; Recital 1 of Directive 2014/23/EU; Recital 1–2 Directive 2014/25/EU.

99 Recital 2 of Directive 2014/24/EU; Recital 3 of Directive 2014/23/EU; Recital 4 of Directive 2014/25/EU.

100 European Commission, *Social Issues in Purchasing: A Guide to Integrating Social Issues in Public Procurement* (Office for Official Publications of the European Communities 2011).

101 Ibid., 4.

102 Ibid.

procurement regulations, there is a strong emphasis on equal treatment and non-discrimination of economic operators, on contracting authorities taking transparent and proportionate actions, as well as on avoiding the artificial narrowing of competition.¹⁰³ On the other hand, the 2014 package of directives contains numerous provisions on social objectives, such as ensuring fair trade origin of products, promoting gender equality in the workplace, enhancing women's participation in the labor market, adhering to International Labour Organization conventions, facilitating employment opportunities for disadvantaged individuals and offering training programmes for the unemployed.¹⁰⁴

Firstly, EU regulations governing the coordination of public procurement procedures entail a broad mandate for Member States to guarantee that contractors or subcontractors performing public contracts comply with relevant environmental, social and labor laws stemming from national, EU and international regulations. These provisions are listed in the Directive's Annex and are also rooted in collective bargaining agreements.¹⁰⁵ However, the EU law has not specified what measures are to be employed for implementing these obligations.¹⁰⁶

Secondly, the directives offer provisions for excluding contractors who fail to meet these requirements¹⁰⁷ and also reference the obligations concerning the duty to assess and reject abnormally low tenders.¹⁰⁸ Thirdly, social objectives can be integrated by imposing suitable conditions for contract performance, which should be directly relevant to the contract's subject matter. These conditions may encompass initiatives like promoting employment among women and disadvantaged groups or ensuring compliance with International Labour Organization conventions.¹⁰⁹ Furthermore, the CJEU case law has confirmed the feasibility of incorporating social labels into technical specifications or contract performance conditions as stipulated in the directives.¹¹⁰

The directives also attribute special importance to social objectives concerning accessibility and combating the exclusion of individuals with disabilities, in line with the provisions of the United Nations Convention on the Rights of Persons with Disabilities.¹¹¹ Contracting authorities are mandated to consider accessibility criteria for individuals with disabilities and adopt designs accessible to all users.¹¹² This requirement is reiterated in various contexts, including electronic communication methods,¹¹³ adherence to relevant standards¹¹⁴ and even the potential exclusion of contractors.¹¹⁵

103 Article 18(1) of Directive 2014/24/EU; Article 36(1) of Directive 2014/25/EU; Article 30(2) in connection with Article 3(1) of Directive 2014/23/EU.

104 Recitals 96–101 of Directive 2014/24/EU; Recitals 102–104 of Directive 2014/25/EU; recitals 64–66, 70 of Directive 2014/23/EU.

105 Recital 105 and Article 18(2) of Directive 2014/24/EU; Recital 110 and Article 36(2) of Directive 2014/25/EU; Recital 72 and Article 30(3) of 2014/23/EU.

106 M Margaret, 'Horizontal Social Clause in Light of New Legal Regulations in Public Procurement' (2016) *Annals of Administration and Law: theory and practice* 16(2), 326.

107 Article 57(4)(a) of Directive 2014/24/EU; Article 80(1) of Directive 2014/25/EU; Article 38 (7)(c) of Directive 2014/23/EU.

108 Recital 103 and Article 69(1)(d) and (3) of Directive 2014/24/EU; Recitals 108 and 84(1), (2)(d) and (3) of Directive 2014/25/EU.

109 Recitals 97–98 and Article 70 of Directive 2014/24/EU; Recitals 102–103 and Article 87 of Directive 2014/25/EU.

110 Recital 97 and Article 43(1) of Directive 2014/24/EU; Article 61 of Directive 2014/25/EU.

111 Recital 3^{of} Directive 2014/24/EU; Recital 5 of Directive 2014/25/EU; Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2009] OJ 23, 35.

112 Article 42(1) of Directive 2014/24/EU; Article 60 of 2014/25/EU; Article 36(1) of Directive 2014/23/EU.

113 Recital 53 of Directive 2014/24/EU; Recital 64 of Directive 2014/25/EU.

114 Article 62(1) of Directive 2014/24/EU; Article 81(1) of Directive 2014/25/EU.

115 Recital 101 Directive 2014/24/EU; Recital 106 Directive 2014/25/EU.

Simultaneously, mandatory exclusion criteria are established in cases involving final decisions or judgments related not only to failure to pay taxes or social security contributions, but also convictions for offenses related to child labor or other forms of human trafficking.¹¹⁶

Fourthly, for the first time, it was explicitly stated that the selection of the most economically advantageous offer can be based on price or cost-effectiveness, which may include considerations of quality-to-price ratio estimated with regard to social criteria.¹¹⁷

Finally, attention should be drawn to special provisions enabling the pursuit of social objectives, namely, the concept of reserved contracts. These contracts allow sheltered workshops, which provide the social and professional integration of individuals with disabilities or disadvantaged persons, to compete for public contracts under conditions tailored to their needs. This provision acknowledges that certain entities may face challenges in securing contracts through standard competitive processes, thus warranting Member States to reserve specific procedures exclusively for them.¹¹⁸ Although this regulation prioritises social objectives over opening up procurement to competition, it is imperative that the treatment of contractors under reserved contracts remains non-discriminatory, in accordance with the overarching principles of the Directive.

In terms of case law based on the 2014 Directive, the *Conacee* case is particularly noteworthy. This case involved procurement reserved for sheltered workshops, and the Court concluded that the relevant provision of the Directive aims to achieve the social policy objective of employment.¹¹⁹ This conclusion remained intact despite the CJEU's concurrent finding that the principle of equal treatment is the basis of public procurement legislation.¹²⁰ Accordingly, the Court stated that this provision allows Member States to establish additional conditions, subject to their compliance with the principles of equal treatment and proportionality.¹²¹

Moreover, the Advocate General stressed that this provision derives from an amendment of the European Parliament and allows the Member States to use public procurement to integrate or reintegrate individuals who cannot normally work, which is in line with the broader objective of guaranteeing equal opportunities for all.¹²² The Advocate General also noted that the decision to introduce reserved contracts into national law serves a dual purpose: to ensure equal treatment of these contractors and to implement social and employment policies.¹²³ This case illustrates that both the Court and the Advocate General recognise the multifaceted objectives of the Procurement Directives, i.e. their primary pro-market objective and the additional goals set by certain provisions of the Directive, which also encompass social objectives.

116 Article 57(1)(f) and (2) of Directive 2014/24/EU; Article 80(1) of Directive 2014/25/EU; Article 38(4)(f) and (5) of Directive 2014/23/EU.

117 Article 67(1) and (2) of Directive 2014/24/EU; Article 82(1) and (2) of Directive 2014/25/EU.

118 Recital 36 and Article 20(1) of Directive 2014/24/EU; Recital 51 and Article 38(1) of Directive 2014/25/EU; Article 24 of Directive 2014/23/EU. The condition is that at least 30% of the employees of sheltered workshops must be individuals with disabilities or disadvantaged persons.

119 Judgment of CJEU C-598/19 EU:C:2021:810, paras. 27.

120 Ibid., paras. 37.

121 Judgment of the CJEU C-598/19 EU:C:2021:810, paras. 46.

122 Opinion of AG Tanchev in case C-598/19 EU:C:2021:349, paras. 56 and 59.

123 Ibid., paras. 70.

5. CONCLUSIONS

The above analysis shows that the EU lawmakers' approach to public procurement regulation has evolved through successive attempts to clarify the provisions of the directives and achieve a functional internal market. Initially, the directives minimally regulated social criteria, leaving the potential use of procurement for social purposes to the discretion of Member States.

However, persistent problems over more than 20 years in creating an internal market, along with the limited opening of national markets to contractors from other Member States motivated the EU lawmakers to implement further reforms to counteract this by enhancing coordination in public procurement procedures. This effort, coupled with an increasing number of infringement proceedings, led to a greater emphasis on applying a market-oriented interpretation of the directives. In the Court's case law, a cautious approach to using social criteria has emerged, with the proviso of respecting market-based treaty principles in each case. There have even been opinions suggesting a conflict between the different goals of the public procurement system.¹²⁴

Over the years, non-binding documents have highlighted the potential of using public procurement to achieve social policy goals. Gradually, more social objectives have been recognised as attainable through procurement. This evolution is apparent in the increasing inclusion of social criteria in the directives, transforming what was once a mainly unregulated matter into an aspect of growing importance alongside market-oriented goals.¹²⁵ Public procurement is now being used to achieve EU social objectives in ways that are no longer optional.¹²⁶ This ongoing shift in the relationship between social goals and public procurement regulation continues to develop. Similarly, ensuring accessibility for users with disabilities has transitioned from being a welcomed addition to a required standard.

It is clear from the above that the directives prioritise ensuring the proper functioning of the internal market, while also pursuing or allowing – to varying degrees – objectives related to sustainable development, including social objectives. In light of current EU policy trends, it can be concluded that these objectives are primarily complementary rather than conflicting. Balancing market values with social values should not lead to the exclusion of either. This conclusion corresponds with the view that the coordination of public procurement rules seeks not only to ensure the proper functioning of the EU internal market, but also to achieve the main goals of sustainable development policy which include social issues.¹²⁷

124 S Arrowsmith, 'The Purpose of the EU Procurement Directives: Ends, Means and the Implications for National Regulatory Space for Commercial and Horizontal Procurement Policies' (2012) *Cambridge Yearbook of European Legal Studies* vol. 14, 39. See also K Jaehrling, 'The State as a 'Socially Responsible Customer'? Public Procurement between Market-making and Market-embedding' (2015) *European Journal of Industrial Relations* 21(2), 149–164; EK Sarter, 'The Legal Framework of Contracting: Gender Equality, the Provisions of Services and European Public Procurement Law' (2015) *Wagadu: A Transnational Journal of Women's and Gender Studies* vol. 13, 55–83.

125 In a report on the functioning of public procurement in member states, the Commission stressed the importance it now attaches to its use for sustainable development objectives, pointing out that 'more stringent implementation of strategic procurement considerations is key for supporting an inclusive recovery, promoting a just transition and strengthening socio-economic resilience in line with the European Green Deal as new growth strategy for the EU'. Report from the Commission implementation and best practices of national procurement policies in the Internal Market COM(2021) 245 final, 12.

126 S Williams, 'Coordinating Public Procurement to Support EU Objectives – A First Step? The Case of Exclusions for Serious Criminal Offences' in S Arrowsmith, P Kunzlik (eds), *Social and Environmental Policies in EC Procurement Law* (Cambridge University Press 2009) 497.

127 C Barnard, 'To Bodily Go: Social Clauses in Public Procurement' (2017) *Industrial Law Journal* 46(2), 211.

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