

# **GREEN PUBLIC PROCUREMENT IN THE EUROPEAN UNION:**

## **A case of Lithuania**

### **Abstract**

The core purpose of green public procurement is to encourage public authorities to purchase goods, services, and works with a lower impact on environment. The introduction of ‘green’ policy into public procurement procedure contributes to sustainable consumption and still fosters economic growth. Even though the European Commission has actively promoted the idea of ‘green procurement’, it still remains a voluntary instrument for Member States. The extent of ‘green’ purchasing practice differs significantly within European Union.

This article focuses, first, on European Union’s proposed policy and legal framework, and second, on green public procurement practice in Lithuania. The broad overview of both European and national measures is presented. Moreover, the analysis of status quo of Lithuanian green public procurement is provided. Finally, the main problems of Lithuanian implementation of green public procurement are identified.

### **Introduction**

Public authorities spend 19% of the European Union’s (hereinafter-EU) GDP, roughly 2 trillion Euros, on goods, services, and public works each year.<sup>1</sup> These public purchases have had mostly a negative effect on the environment. Therefore the introduction of “green” policy into public procurement procedure

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<sup>1</sup> European Commission GPP website, <[http://ec.europa.eu/environment/gpp/what\\_en.htm](http://ec.europa.eu/environment/gpp/what_en.htm)> (last visited 1 June 2012)

should promote sustainable, environmentally friendly development while still allowing for economic growth. Consequently, the EU took active steps to encourage Member States to practice green public procurement. This paper will focus on EU green public procurement framework measures and green public procurement in Lithuania.

The starting point will be an extensive analysis of the EU proposed policy framework. This paper will start with a short introduction to green public procurement and discuss why the EU considers it necessary to introduce green public procurement into the agendas of Member States. Particular attention will be given to the voluntary policy instruments – namely common GPP criteria and solutions to identified obstacles. In addition, the legal sources of green public procurement will be scrutinized: the relevant parts of the Directive 2004/18/EC as well as the case law.

Further, an overview of current state of green public procurement in Lithuania will be discussed. The two action plans adopted by the Lithuanian government, the amended Law on Public Procurement and its implementation results will be presented in this paper. Green public procurement was practically introduced in 2007 and its implementation faces many issues: a low number of performed “green” contracts, a small market of eco-friendly products, green public procurement information shortage and ineffective implementation measures. Finally, the latest attempt by the Lithuania to tackle these issues will be addressed.

### **Introduction to green public procurement**

Lisbon treaty, which entered into force in 2009, among many of the changes to the primary legal framework of EU introduced substantial novelties to the field of environmental policies as well. One of the most significant changes is the amendment of article 3 of the Treaty of the European Union. The article states that in order to achieve a balanced economic growth and price stability, a highly competitive social market economy, EU should aim at full employment and social

progress, and a high level of protection and improvement of the quality of the environment.<sup>2</sup>

The last part of the sentences was not in the article before the Lisbon treaty and this addition reinforced EU commitment towards environmental protection and sustainable development. Regarding green public procurement, it should be noted that EU had already taken action regarding this policy before the Lisbon treaty, but as it would be seen later, together with the implementation of Lisbon agenda, the promotion of green public procurement has gained a further impetus.

At the outset it is worth mentioning that EU was not the first to promote the possibilities of green public procurement on the international level. Organization for Economic Co-operation and Development (hereinafter-OECD), whose 22 member states are EU countries, in January 2002 issued a recommendation on Improving the Environmental Performance of Public Procurement.<sup>3</sup> In a relatively short document OECD encouraged member countries to take greater account of environmental considerations in public procurement of products and services and provides a certain list of steps that should be followed in order to ensure the incorporation of environmental criteria into public procurement of products and services. Many OECD member states, including non-European countries, followed the recommendation and introduced certain tools of sustainable procurement into their policies.

Before scrutinizing legal and policy frameworks, it is necessary to answer the question why EU deems green public procurement to be necessary and what type of benefits are expected from the increased take-up of it. European Commission GPP website<sup>4</sup> summarizes a number of assessments performed and experiences of individual Member States providing four groups of benefits associated with green public procurement:

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<sup>2</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union of 30 March 2010, [2010] OJ C 83/01.

<sup>3</sup> OECD Recommendation of the Council on Improving the Environmental Performance of Public Procurement of 23 January 2002, C(2002)3.

<sup>4</sup> Green public procurement. Benefits of GPP. [http://ec.europa.eu/environment/gpp/benefits\\_en.htm](http://ec.europa.eu/environment/gpp/benefits_en.htm) (last visited 02 June 2012).

**Environmental benefits**, first of all, are direct ones – public procurement, made more environmentally friendly, might directly influence such problems as greenhouse gas emissions, air, water and soil pollution, water use, deforestation etc. Similarly, indirect environmental benefits are deemed to arise as well. Green public procurement might raise awareness in public about environmental issues – success in public sector could possibly encourage private sector to include green procurement policies into their activities as well. Also, it could be used as a mean to disseminate information about the environmental impact of concrete products.

**Social/health benefits** materialize by increasing quality standards of products and services purchased by public authorities and finally benefiting the citizens. Examples of such benefits could be improved quality of drinkable water, air, better working conditions or enhanced quality of life in general.

Regarding **economic benefits**, it is highly expected that green public procurement would foster the innovation of industries, as they would be inclined to develop "greener" products or services in order to compete in the market and win the bids. The failure of the undertakings to keep up with higher environmental standards in public procurement could lead to the entrance of new players into the market thus possibly decreasing the prices. In addition, public authorities themselves can save significantly if the whole-life-cycle costing of the product is taken into account. It will see later on that life-cycle costing is an important factor in promoting green public procurement.

Finally, European Commission suggests that green public procurement could bring **political benefits** as well, even though this assertion is hardly possible to prove. According to the information of GPP website, a serious commitment to environmental protection could improve public perception of certain administration or government. However, it is questionable what kind of weight public attach to environmental issues while evaluating the performance of government in general.

Another issue that must be addressed at the outset is the ambiguity of terms Green Public Procurement and Sustainable Public Procurement. These two terms are very often found next to each other in literature or policy documents of Member

States, therefore it could create confusion and uncertainty. There is no EU wide definition of Sustainable Public Procurement, but it is found in United Nations Environment Programme Guide on Sustainable Procurement for the UN System. It states that ‘Sustainable Procurement integrates requirements, specifications and criteria that are compatible and in favor of the protection of the environment, of social progress and in support of economic development, namely by seeking resource efficiency, improving the quality of products and services and ultimately optimizing costs’.<sup>5</sup> It could be implied from this definition that Sustainable Procurement is a wider term, not only covering GPP itself, but also considering social progress and economical development requirements in the procurement processes. Therefore, GPP usually constitutes just a part of member states action to ensure sustainability of public procurement.

### **Policy framework of green public procurement**

The first important step on EU level was taken in 2003 by adopting Commission Communication on Integrated Product Policy, which for the first time emphasized the need to explore the possibilities of green public procurement. It also encouraged Member States to draw up publicly available action plans for greening their public procurement by the end of 2006.<sup>6</sup>

Furthermore, green public procurement was endorsed in the renewed Sustainable Development Strategy of 2006, which very optimistically aimed to achieve by 2010 an EU average level of Green Public Procurement (GPP) equal to that currently achieved by the best performing Member States.<sup>7</sup> However, the most comprehensive and elaborated guidance on green public procurement and its future perspectives up to date is established in the Action Plan on Sustainable Consumption

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<sup>5</sup> UNOPS, ILO, ITC. A guide on Sustainable Procurement for the UN System - Buying for a better world. p. 12

<sup>6</sup> Communication from the Commission to the Council and the European Parliament - Integrated Product Policy - Building on Environmental Life-Cycle Thinking of 18 June 2003, COM(2003) 302 final.

<sup>7</sup> Council of the European Union renewed EU Sustainable Development Strategy of 9 June 2006, 10117/06.

and Production and Sustainable Industrial Policy (hereinafter-SCP/SIP plan)<sup>8</sup> and in particular, in the Communication Public Procurement for a Better Environment.<sup>9</sup> The latter communication identifies the main obstacles deterring Member States from increasing the take-up of green public procurement and proposes certain tools to tackle them. In addition, it provides the definition of green public procurement: ‘a process whereby public authorities seek to procure goods, services and works with reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured’.<sup>10</sup>

The paragraph 2.5 of 2008 Communication on the SCP/SIP plan states that ‘Green Public Procurement will be further strengthened by voluntary measures, which will act as a complement to the mandatory measures described above, consistent with the rules of the Internal Market’.<sup>11</sup> Voluntarily nature of green public procurement itself indicates that it is regulated predominantly by non-binding tools, such as recommendations, communications and other soft law instruments. Therefore, it is essential, before turning to legal framework, to get familiar with these tools, shaping the policy of environmental friendly procurement and laying the grounds for future binding instruments. As it was mentioned above, the core and the most comprehensive policy source is Communication on Public Procurement for a Better Environment, which is a constituent part of the SCP/SIP action plan. The communication provides guidance on how to mitigate the damage made to environment by public consumption and how to foster the innovation of environmentally friendly products and services. It also identifies a list of obstacles that according to European Commission, precludes the green public procurement to

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<sup>8</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan of 17 July 2008, COM(2008) 397 final.

<sup>9</sup> Communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions - Public procurement for a better environment of 16 July 2008, COM(2008) 400 final.

<sup>10</sup> Ibid. chapter 3.1.

<sup>11</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan of 17 July 2008, COM(2008) 397 final.

be fully exploited. The obstacles could be bundled up into the several groups. First of all, very limited amount of available environmental criteria to be inserted into tendering documents. Existing environmental criteria on a national level very often differs one from another creating legal uncertainty and hampering internal market. Second of all, there is a lack of experience and knowledge about the possibilities of using environmental criteria. In addition, existing misperception of the benefits of green public procurement and that green products are deemed to be more costly, due to insufficient information regarding life cycle costing of products and services. Finally, the lack of political support for green public procurement and insufficient training for staff and low level of coordination and sharing of best practices among Member States.

The main objective of the communication is to address these above mentioned obstacles and to further promote green public procurement as a mean to foster innovation of environmental products and services. In particular, the communication sets four specific objectives that are essential for increasing the uptake of green public procurement:

- Setting common GPP criteria;
- Dissenting information on life cycle costing products;
- Provide legal and operational guidance;
- Encourage political support through a political target, linked to indicators and future monitoring.<sup>12</sup>

**Common GPP criteria:** A guidance on setting common GPP criteria is one of the key themes of the communication, hence one of the most important objectives - the whole success of GPP relies on clearly defined and ambitious environmental criteria for products and services that could be inserted into tender documents. To begin with, numerous environmental criteria are developed on national level already, mainly as a result of the requirements of renewed Sustainable Development

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<sup>12</sup> Communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions - Public procurement for a better environment of 16 July 2008, COM(2008) 400 final.

Strategy. Nevertheless, having different set of criteria at each country risks hindering the functioning of internal market.<sup>13</sup> Undertakings, engaging in intra-border activities face hurdles when they must meet the new requirements every time they enter a new market. This problem is especially relevant for small and medium business, which usually has a very limited administrative capacity, therefore it can be refrained from expanding outside national borders.

Recognizing this problem, EU has taken action, and certain environmental criteria already exist in EU legislation. e.g. Energy Star Regulation, the Eco-design for energy using products Directive.<sup>14</sup> However, the Action Plan on Sustainable Consumption and Production and Sustainable Industrial policy aims at developing more in-depth and ambitious criteria throughout the market. Preliminary list of EU common GPP criteria is established in web based Training Toolkit on Green public procurement.<sup>15</sup> Criteria are grouped into 17 different sectors, also referred as priority sectors. These areas were chosen considering their share in public expenditure, potential impact for environment, other information provided by various stakeholders. European eco-label criteria were also taken into account. European Commission, in order to achieve a better green public procurement, based on a wider range of GPP criteria, seeks to engage in dialogue with states, stakeholders industries and civil societies and invites Member States to formally endorse all currently developed GPP criteria. Formal endorsement does not only mean that Member States will have to include criteria into their national plans, which members had to create in the light of the Communication on Integrated Product Policy of 2003, but such endorsement would also strengthen political support for green public procurement, which is considered to be insufficient.

The Communication on Public Procurement for a Better Environment also provides some guidance on what should be the types of criteria. First of all, GPP criteria should be formed as minimum technical specifications, that all the bidders

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<sup>13</sup> Ibid. p5.

<sup>14</sup> Regulation (EC) 106/2008, 15 January 2008, [2008] OJ L 39/1 and Directive 2005/32/EC, 6 July 2005, [2005] OJ L 191/29.

<sup>15</sup> GPP Training Toolkit (2008) [http://ec.europa.eu/environment/gpp/toolkit\\_en.htm](http://ec.europa.eu/environment/gpp/toolkit_en.htm) (last visited 02 June 2012).



must to comply with. For instance, when contracting authority is purchasing automatic irrigation systems, it is up to tenderer to prove that his product meets the GPP criteria - the irrigation system must be adjustable in terms of volume of dispensed water by zones must have adjustable timers, to programme the watering period.<sup>16</sup> GPP criteria very often can be formed as award criteria as well, which would not be mandatory, but would add additional weighing to the bid and thus may promote innovation of environmentally friendly products. Under the same example of irrigation systems, additional points will be awarded if the irrigation system can collect and use water from locally recycled sources, such as rain water, ground water and filtered grey water.<sup>17</sup> Another important aspect provided by the communication is the division of GPP criteria into “core” and “comprehensive”. Core criteria can be used by any Member State or by any purchaser and it focus only on basic environmental impacts. Usually they do not require extensive additional verification by the tenderer and do not increase the cost. Core criteria aim to keep the administrative costs as low as possible. On the other hand, comprehensive criteria are used by those who aim to purchase the products of the highest environmental standards and it takes much more aspects into account than core criteria. It may be more difficult for the tenderer to verify that a certain product or service meets high requirements therefore it might result in a slight increase of cost.

**Legal problems.** As it was mentioned in the beginning, one of the obstacles identified by the communication is the lack of legal expertise in applying environmental criteria. Member States were not certain how and to what extent GPP criteria could be applied in procurement processes. This question is not directly addressed in the communication, but it refers to a separate Working Staff Document which accompanies the communication.<sup>18</sup> First of all, the principles of transparency and equal treatment of bidders, stemming from public procurement directives, are

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<sup>16</sup> EU GPP Criteria for Gardening Products and Services <http://ec.europa.eu/environment/gpp/pdf/criteria/gardening.pdf> (last visited 02 June 2012).

<sup>17</sup> Ibid.

<sup>18</sup> Commission staff working document accompanying the communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions - Public procurement for a better environment of 16 July 2008, COM(2008) 400 final.

also relevant applying GPP criteria. Secondly, all production process related criteria are deemed to be appropriate when defining a product in tendering procedure, if certain requirements are met:

- the criteria and the method in which it is applied shall be consistent with European law, especially with principles of equal treatment and non-discrimination;
- the criteria concern the production of the products which are to be supplied to the purchasing authority;<sup>19</sup>

Working Staff Document also suggests that while formulating minimum technical or award criteria contracting authority should indicate relevant methods that it will use to check the conformity of the bid with the criteria that would allow tenderer to verify the compliance with environmental requirements. In the very complex cases, verification by performing tests in laboratories should be allowed.

**Life cycle costing.** Another obstacle hindering the uptake of green public procurement – misconceptions of the costs of “green” products and insufficient usage of life cycle costing factor – is also discussed in the Working Staff Document. Even though there are some truth in the statement that environmental products or services are more expensive, as it requires additional innovation while producing it, it should be observed that the price is higher only in a short term. High purchase price can be outweighed by cheaper operating costs. Therefore, Working Staff Document stress that to ensure efficient public spending, life cycle costing should be included in the award procedure. The following factors should be taken into consideration when determining life cost of certain products or services:

- Acquisition costs, which encompasses not only the purchase price, but all the expenditures that contracting authority incurs: transportation costs, taxes, registration fees, installation costs.
- Operation cost incurred during the whole time the product or service could have been used.

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<sup>19</sup> Ibid.

- End life cost - expenditures relating to disposal, replacement or termination of the product.<sup>20</sup>

**Targets and monitoring.** The renewed Sustainable Development Strategy sets out a target of green public procurement, aiming to achieve by 2010 an EU average level of Green public procurement equal to that currently achieved by the best performing Member States. This may be considered as a challenging target, as some Member States set very high individual goals. For instance, the Dutch government has set a 100 % Sustainable Procurement target to be reached by 2010. It should be noted that so far there is no uniform method to benchmark and identify the levels of Public Procurement. In the Communication on Public Procurement for a Better Environment, Commission proposes to use two indicators in order to assess the level of green public procurement. The first one, quantitative indicators could be used to assess the uptake of green public procurement by comparing the number and values of green procurements with the overall level of public procurement. A second one, impact-oriented indicators allows assessment of environmental and financial gains delivered by this type of procurement.<sup>21</sup>

Even though the targets set are very ambitious, the realization of those targets proved to be more cumbersome than expected. In 2011, when the period to achieve above mentioned targets was over, the Centre for European Policy Studies and the College of Europe, assigned by the European Commission, conducted a survey in 26 member states and assessed data from more than 850 public authorities.<sup>22</sup> The findings revealed that only 26% of public contracts included GPP criteria in the period of 2009-2010, instead of envisaged 50%. The result appears to be more positive when considering the value of procurement – 38% of total value of the contracts included green criteria in the relevant period. The study also showed

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<sup>20</sup> Ibid.

<sup>21</sup> Communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions - Public procurement for a better environment of 16 July 2008, COM(2008) 400 final.

<sup>22</sup> The uptake of green public procurement in the EU27 Submitted to the European Commission, DG Environment by Centre for European Policy Studies (CEPS) and College of Europe (core team) of 29 February 2012, Brussels.FWC B4/ENTR/08/006.

high differences between the countries in terms of the uptake of green public procurement. Top performing countries (Netherlands, Belgium, Denmark and Sweden) applied GPP criteria in around 60% of the contracts, while in one third of Member States this number was below 20%. Finally, the results of the survey indicated a disappointing trend that the price remains the predominant criteria for awarding contracts, while Life-cycle costing was used rarely. The statistics gathered in the study clearly shows that a significant review of current EU policy should be made in order to increase the uptake of green public procurement.

### **Legal framework of green public procurement**

Generally, the legal sources on green public procurement are the same as public procurement, - in particular the EU Treaties, the main public procurement Directives - 2004/18/EC<sup>23</sup> and 2004/17/EC<sup>24</sup>, case law, and rules concerning State Aid and Competition. Additionally, the European Commission presented a number of interpretative and non-binding documents, such as the Buying Green handbook, the Training Toolkit, and the Commission Interpretative Communications.

The TFEU does not contain explicit rules on green public procurement. However, it provides relevant principles which must be respected during the green public procurement procedure: the freedom of goods, establishments and to provision of services, non-discrimination, equal treatment, transparency, mutual recognition, best value of money and proportionality principles. These principles must be respected during all public procurement phases, and especially during the award contracts phase. Contracting authorities cannot discriminate between economic operators based on Member States of origin, and must ensure equal treatment of parties. The public entities must use taxpayers' money wisely by

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<sup>23</sup> 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 contract, L 134/114.

<sup>24</sup> 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, L 134.

considering value and cost-effective solutions.<sup>25</sup> This does not mean that they have to choose the cheapest offer, but trade of different aspects: costs, efficiency, and quality of the relevant goods or services. All these TFEU principles on public procurement were developed and interpreted by the Court of Justice of the European Union (hereinafter-CJEU). The Court has issued a few judgments which are significant for the development of green public procurement.

The first of case was the *Concordia Bus* case.<sup>26</sup> This ruling established that the environmental criterion can be considered while making decisions on awarding a contract to a tenderer who submits the most economically advantageous tender (hereinafter-MEAT). In this case the Helsinki authority submitted a tender notice that the evaluation criteria will consist of three categories: first, the overall price of operation; second, the quality of the bus fleet; and third, the operator's quality and environmental management.<sup>27</sup> With regards to the second criteria, additional points could be granted for the level of nitrogen oxide emissions, and the noise level of the buss. The Concordia, the tenderer who took the second place, argued that the levels of nitrogen oxide emissions and noise levels were unfair and discriminatory, and additional points were favoring one tenderer. The national court made reference for the preliminary ruling to the CJEU asking whether the environmental requirements can be included at the award stage and awarded extra points for certain ecological criteria.

The Court stated that the criteria for the award of a public contract to the MEAT are not listed exhaustively and criteria must not be necessarily of a purely economic nature.<sup>28</sup> Finally, the CJEU concluded that contracting authorities are allowed to use environmental criteria when assessing the MEAT. However, the Court gave four conditions for the usage of environmental criteria:

- they should be linked to the subject-matter of the contract;

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<sup>25</sup> European Commission, *Buying Green! A Handbook on Green Public Procurement*, 2<sup>nd</sup> ed., Publications Office of the European Union, Luxemburg 2011, p. 16.

<sup>26</sup> Case C-513/99, *Concordia Bus Finland Oy Ab v Helsinki Kaupunki and HKL-Bussiliikenne*, [2002] ECR I – 7213.

<sup>27</sup> *Ibid.*, para. 21.

<sup>28</sup> *Ibid.*, para. 54-55.

- they must not confer an unrestricted freedom of choice on the authority;
- they must be expressly mentioned in the contract documents or the tender notice;
- they must comply with all fundamental principles of EU law, in particular the principle of non-discrimination.<sup>29</sup>

Indeed, the environmental award criterion satisfied these conditions. Further, they were objective, equally applied to all tenders, directly linked to the fleet offered, were an integral part of a system, and finally, additional points were available for other criteria.<sup>30</sup> Therefore, the criterion (levels of nitrogen oxide emissions and noise levels) which can be satisfied by a few undertakings or one undertaking do not breach the principle of equal treatment. Consequently, the outcome of the judgment was strengthened when Directive 2004/18/EC in article 53(1) included ‘environmental characteristics’ as a criterion to be considered at the contract award stage. However, the four conditions above must still be fulfilled.

In the *Wienstrom* case<sup>31</sup> Austrian authorities called tenders to apply for the contracts for the electricity supply of the Austrian Federal Republic’s offices. The potential supplier was required to supply 22.5 GWh of electricity from renewable energy sources to the Federal offices. Nevertheless, they were not required to prove of their electricity sources. The two award criteria were set as: 1) net price per kWh, with weight of 55%, and 2) energy produced from renewable energy sources, with a weight of 45%. In addition, points could be awarded based on the amount of electricity from renewable sources which the supplier could supply in excess of 22.5 GWh requirements.<sup>32</sup> Initially, the tenders had to provide evidence that they produced 22.5 GWh electricity from the renewable energy sources in the previous two years and confirmation that they will do so in the next year. The award criterion was chosen the MEAT on the basis of impact of services on environment. However,

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<sup>29</sup> Ibid., para. 64.

<sup>30</sup> Ibid., para. 83.

<sup>31</sup> Case C-448/01, *EVN AG and Wienstrom GmbH v Austria*, [2003] ECR I – 14527.

<sup>32</sup> Ibid., para. 18.

the EVN AG and Wienstrom GmbH complained because they considered award criterion which was based on electricity produced from renewable energy sources and other requirements unlawful.

The CJEU reaffirmed the *Concordia Bus* judgment that award criterion need not to be purely economic in nature.<sup>33</sup> Therefore the Austrian contracting authorities are legally permitted to have a criterion for suppliers to provide electricity produced from renewable energy sources, provided that the criterion met all four conditions found in *Concordia Bus* case. Furthermore, the Court held that using electricity produced from renewable sources was a useful tool in protecting the environment, and such usage of electricity has been an EU priority. More specifically they found that the criterion did not infringe EU law.

Further, the Court was asked whether contracting authorities can apply award criteria which they do not intent to verify. The Court found such criteria incompatible with EU law because it infringes principle of equal treatment. The fact that the information will not be verified does not ensure transparency and objectivity of the tender procedure.<sup>34</sup>

In addition, the Court stated that the failure of the contracting party to define an electricity supply period in the invitation tender could be an infringement on the principles of equal treatment and transparency if the omission made it difficult for tenderers to know the exact scope of the criterion.<sup>35</sup> Despite this failure, the Austrian court has to determine if the award criterion was sufficiently clearly formulated to satisfy the requirements of equal treatment and transparency of procedures for awarding public contracts.<sup>36</sup>

Finally, the award criterion which required statement of the total amount of electricity, including points for those tenders exceeding the estimated amount was found incompatible with EU public procurement law. This is because such a criterion is not linked to the subject-matter of the contract and could lead to

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<sup>33</sup> Ibid., para. 32-33.

<sup>34</sup> Ibid., para. 51.

<sup>35</sup> Ibid., para. 58.

<sup>36</sup> Ibid., para. 72.

unjustified discrimination against tenderers whose tender is fully able to meet the requirements linked to the subject-matter of the contract.<sup>37</sup>

Consequently, the contracting parties can use ecological or environmental award criteria even if it does not bring economic benefits. However, the environmental criterion must be linked to the subject-matter of the contract and information presented by the economic operators must be verified. The contracting parties must accept all kinds of evidence (certification, labels, or data), not discriminate against the evidence, and verify it.

### **Directive 2004/18/EC**

Both public procurement directives provide several possibilities for how to incorporate environmental considerations into the public procurement procedure. However, the Directive 2004/17/EC will not be analyzed at all in order to avoid repetition as it contains very similar provisions and treatment as the Directive 2004/18/EC. Relevant provisions of the Directive 2004/18/EC will be analyzed in detail.

Directive 2004/18/EC established the possibility for contracting authorities to include environmental considerations; however, they have to meet four conditions found in the *Concordia Bus* case. Therefore this directive clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts.<sup>38</sup> Additionally, there are other EU measures which includes environmental considerations. For instance, the Clean Vehicle Directive 2009/33/EC<sup>39</sup> intends for MS's contracting authorities to consider the operational lifetime energy and environmental impacts when purchasing road transport vehicles.

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<sup>37</sup> Ibid., para. 69.

<sup>38</sup> Recital 5 of the Preamble of the 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 contract, L 134/114.

<sup>39</sup> Article 5(1) of the Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles Text with EEA relevance, L 120.



As case law established, the environmental criterion must be linked to the subject-matter. The contracting parties have wide discretion to determine what they want to procure. However, they are limited to the scope of the Treaty principles and public procurement rules. Generally, subject-matter is the title of the tender (e.g. ‘Electricity with low impact on environment’). The subject matter must be clear and not discriminate or favor one of the specific tender(s).

Namely, Article 23(3)(b) of the Directive 2004/18/EC permits the addition of environmental requirements in the technical specifications. Technical specifications provide information, requirements and standards for the necessary goods, services or work, and they are included in the contract notice or tender documents. With the technical specifications, contracting authorities specify the subject-matter (e.g. subject-matter of the tender notice is ‘Electricity with low impact on environment’, and then specifications define that certain amount of supplied electricity must be produced from renewable energy sources). In addition, article 5(3) of the Clean Vehicle Directive 2009/33/EC permits to setting of technical specifications for energy and environmental performance, or the inclusion of energy and environmental impacts into award criteria. Therefore, contracting entities may formulate technical specifications in terms of environmental performance levels of a material, product, supply, and service, or specify given production processes and methods for goods, services, or work.<sup>40</sup> Moreover, as stated in article 23(3)(a), a technical specification might be defined referring to the international, European or national standards and always accompany by the words ‘or equivalent’. In this way the tenders will not be discriminated against when they have a different but equivalent standard. However, contracting authorities cannot specify exactly which production processes must be used unless such a reference is justified by the exceptional circumstances of the contract and accompanied by the words ‘or equivalent’.<sup>41</sup>

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<sup>40</sup> Annex VI and Recital 29 of the Preamble of the 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 contract, L 134/114.

<sup>41</sup> European Commission, *Buying Green! A Handbook on Green Public Procurement*, 2<sup>nd</sup> ed., Publications Office of the European Union, Luxemburg 2011, p. 29.

Further, article 23(6) of the Directive 2004/18/EC allows for contracting entities to require the products or services to meet specifications which are indicated in eco-labels (European eco-label, (multi)national eco-labels, or any other eco-labels). Eco-labels may be used as a source of requirement specifications, environmental criteria, evaluation during the award phase, and as a form of verification.<sup>42</sup> Nevertheless, procurers cannot require from the companies' that their products or services have an eco-label, but the product must meet the requirements set in the eco-label. In addition, contracting authorities have to accept alternative evidence of quality and verify it. Importantly, the usage of eco-labels in technical specifications must fulfill the criteria:

- specification of eco-labels must be appropriate to define the characteristics of the product or service;
- the requirement for the label must be based on a scientific basis;
- the eco-label adoption procedure must be transparent and involve all stakeholders for consultation, and
- they must be available to all interested parties.<sup>43</sup>

Furthermore, article 26 of the Directive 2004/18/EC authorizes contracting authorities to set environmental conditions for the performance of the contracts. Certainly, as indicated in the article, the environmental conditions must respect EU law and be listed in the contract notice or specifications.

Article 27 of the Directive 2004/18/EC requires economic operators in the contracting procedure to show that they have met their environmental obligations.

During the selection stage, according to the article 45, public authorities can exclude certain tenders, particularly those who participated in a criminal organization, corruption, fraud or money laundering. In addition, contracting parties might exclude an economic operator on environmental grounds if it has been convicted of having broken national environmental legislation.<sup>44</sup>

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<sup>42</sup> European Commission Green Public Procurement Training Toolkit, Green Public Procurement and European Eco-label, Fact sheet, 2008.

<sup>43</sup> Article 23(6) of the Directive 2004/18/EC.

<sup>44</sup> Recital 43 of the Directive 2004/18/EC.

Moreover, article 48(2)(f) of Directive 2004/18/EC states that during the selection stage the contracting authorities may ask if economic operators can perform a contract in line with environmental management measures. However, it may only ask this when environmental management measures are appropriate and relevant. Appropriate cases are those in which the nature of work and/or services justifies applying environmental management measures or schemes during the performance of a public contract.<sup>45</sup> Further, Article 50 provides a list of valid environmental management standards such as the Community Eco-Management and Audit Scheme (EMAS), or other relevant European, MS or international standards. Firms which want to improve their environmental performance use these environmental management measures as a tool. While implementing environmental management measures the firm might require certification. Nevertheless, Article 50 states that economic operators can present other evidence (not certification) that environmental management measures apply to them. This was done in the *Evropaiki Dynamiki v EEA* case.<sup>46</sup> In this case candidates were asked to fulfill the ‘General environmental policy of the company’ criterion for points during tender evaluation. The claimant stated that the contracting authority wrongly used this criterion. The General Court found that the contracting authority made a comparative assessment of the tenders, evaluated whether the environmental policies submitted by the tenderers were genuine, and it found that only one of candidates had officially practiced such a policy, while the others merely indicated good intentions to practice.<sup>47</sup> Thus verification in this stage was necessary, and important.

Finally, article 53 of the Directive 2004/18/EC states that the award criteria under the MEAT option can include environmental characteristics and not all of the environmental criterion must be pure of economic nature. The award criteria must be objective, verifiable and specific. It must be included in the contract notice or tender documents.

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<sup>45</sup> European Commission, *Buying Green! A Handbook on Green Public Procurement*, 2<sup>nd</sup> ed., Publications Office of the European Union, Luxemburg 2011, p. 36.

<sup>46</sup> Case T-331/06, *Evropaiki Dynamiki v EEA*, Judgment of the General Court (Fifth Chamber) of 8 July 2010.

<sup>47</sup> *Ibid.*, para. 76.

## **Lithuanian public procurement system**

After Lithuania gained independence in 1990, the country faced a challenge to turn its economy from planned to market driven. Consequently, it also meant that a totally new system of public procurement had to be created from scratch, as such thing hadn't even existed in the Soviet Union. Of course, the newly established state did not have to reinvent the wheel – there were plenty of examples of public procurement systems in Western Europe which could have been applied. Nevertheless, the process was burdensome and onerous – before adapting public procurement regime it was first necessary to ensure that private enterprise was developing in a sufficient pace – another challenge while adopting free market economy. For this reason, it was only 1996 when Lithuanian Parliament passed first Law on Public Procurement.<sup>48</sup> It was primarily based on UNCITRAL Model Law on Public Procurement. Today it can be argued that such decision was made very short-sightedly, as after two years, 1998, Lithuania had started the negotiations of EU accession. Developing its first Law on Public Procurement in line with EU legislation would have allowed to avoid significant modifications later on. Another important aspect to emphasize – is the lack of experience by Lithuanian officials in regulating public procurement. In comparison - first EU legislation in the field of public procurement has been passed in 1971.<sup>49</sup>

As mentioned above, the new Law on Public Procurement had been significantly amended in 1999 and 2002 in order to fulfill the requirements of EU accession and comply with the contemporary EU directive. Finally, in 2004 two new EU public procurement directives were adopted and fierce discussion took place in Lithuania about their implementation. Different parties could not agree on whether both directives should be transposed into one single or two separate legislative acts. Finally, it was decided to follow “Swedish model” and currently Law on Public

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<sup>48</sup> Law on public procurement of the Republic of Lithuania of 13 August 1996, No. I-1491.

<sup>49</sup> Public Procurement Development in Lithuania. ( Conference speech: *Public Procurement Development in Lithuania and other countries.*) Alina Mačiulytė, 2006.

Procurement encompasses both directives.<sup>50</sup> In the same year Lithuania signed WTO plurilateral Agreement on Government Procurement (GPA), which did not require major changes in national legislation, but significantly increased the possibilities for Lithuanian undertakings to engage in public procurement outside national borders.

### **Lithuanian legal framework of green public procurement**

Interestingly, in the December 3<sup>rd</sup> 2002 edition of the Law on Public Procurement, the MEAT award criteria already included environmental characteristics – however there were no further ‘green provisions’.<sup>51</sup> Later, more green public procurement aspects were incorporated into the legislation. The Law is fully in conformity with both Directive 2004/18/EC and Directive 2004/17/EC - particularly with eco-labels, environmental management standards, contract performance, and award criteria provisions.

Article 24 of the Law on Public Procurement governs the requirements of contract documents. For instance, Paragraph 3 obliges the contracting authority to determine contract requirements for energy efficiency, environmental friendliness, and/or other criteria determined by the Lithuanian government, or other institutions. Indeed, the Ministry of Transport and Communication adopted a guideline to consider energy efficiency, and additional environmental protection requirements, when purchasing motor vehicles.<sup>52</sup> Further, a Lithuanian legislator incorporated article 26 of Directives 2004/18/EC into article 24(4) of the Law on Public Procurement. This article allows public authorities to set specific conditions for the contract which are related to social and environmental demands - provided that those conditions comply with EU regulations. The contracting authority may provide, in the contract documents, a contact institution to which the tender may enquire for

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<sup>50</sup> Ibid.

<sup>51</sup> Article 33(4)(1) of the Lithuanian Public Procurement Act, No. IX-1217, amended 3<sup>rd</sup> December 2002.

<sup>52</sup> Order of the Lithuanian Ministry of Transport and Communication, ‘Energy efficiency and environmental protection requirements, when purchasing motor vehicles’, Valstybės žinios, 2011-02-24, No. 23-1110.

information relevant to environmental/other obligations deemed necessary for the contract.

Furthermore, article 25(3)(2) states that the contracting entity may formulate technical specifications, in terms of performance or functional requirements, including specifications relating to environmental characteristics. However, such characteristics must be sufficiently clear to all parties. In this case, the contracting authority may use specifications which are indicated in eco-labels (European, (multi)national, or any other eco-labels), provided that:

- specifications are appropriate for the subject of the contract;
- requirements on the label are based on a scientific basis; and
- eco-labels are adopted in a procedure where interested parties can participate (state institutions, consumers, manufacturers, distributors, environmental organizations, etc.).<sup>53</sup>

Moreover, the Lithuanian authority has decided to provide the option to exclude tenders who have violated national environmental regulations. Namely, in Article 33(2)(4), contracting authorities are allowed to exclude suppliers who have committed grave professional misconduct. Professional misconduct in the environmental context means that the party violated of environmental laws and has received an administrative punishment or economic sanction, implemented by the court less than one year ago.

Further, Article 36 establishes that a public entity has the right to assess and verify an economic operator's technical and professional capacities. As indicated in Article 36(7), the economic operator may be asked to prove if it is capable of applying environmental management measures while performing the contract. In such a case the contracting authorities may ask for certification of environmental management standards, such as EMAS, or other relevant European, or international standards concerning certification. Equivalent certificates from bodies established in another MS, or other evidence of equivalent environmental measures should be

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<sup>53</sup> Article 25(6)(1) of the Lithuanian Public Procurement Act, No. I-1491, amended 31<sup>st</sup> March 2012.

accepted by the contracting authorities.<sup>54</sup> Finally, Article 39(4)(1) establishes that the award criteria, under the MEAT option, can include environmental characteristics.

Since the Lithuanian Government set target objectives for green public procurement, the Lithuanian Ministry of Environment has followed suit, and provided guidelines on the consideration of environmental criteria for contracting authorities while purchasing products, services or works.<sup>55</sup> These guidelines aim to promote green public procurement – i.e., to reduce negative environmental impacts. The guidelines is mandatory for contracting authorities implementing green public procurement. In addition, it distinguishes between ‘minimal environmental criteria’ and ‘extended environmental criteria’: both criteria are determined by the Ministry of Environment, are concerned about the product’s negative environmental impacts, and are directly verifiable; however the ‘extended environmental criteria’ contain more product requirements, and require more detailed proof of compliance from economic operators, or a detailed verification from the contracting authority.

In the implementation section of guideline, it was emphasized that green procurement is an important part of sustainable public procurement – however its’ relative weight should be limited. That is, the contracting authority, before procuring ‘green’, should determine the procurement object, its necessity, and the viability of environmental requirements and constraints – keeping in mind the overall objective. More specifically, in the procurement process, it is recommended to first conduct research on existing market offerings. With the resulting knowledge, the public authority can formulate environmental requirements in terms of specific objects, determine selection criteria/requirements for suppliers, include environmental award criteria under the MEAT option, and determine the contract conditions.<sup>56</sup> The contracting authority may also include ‘extended environmental criteria’ or other environmental requirements. Further, public authorities, while

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<sup>54</sup> Article 37(2) of the Lithuanian Public Procurement Act, No. I-1491, amended 31<sup>st</sup> March 2012.

<sup>55</sup> Order of the Lithuanian Ministry of Environment, ‘Environmental criteria for contracting authorities while purchasing products, services or works’, Valstybės žinios, 2011-07-12, No. 84-4110.

<sup>56</sup>Ibid., para. 12.

assessing award criteria under the MEAT, may ask tenders to present an alternative green procurement offer, and/or assess the products life cycle cost. Finally, the Public Procurement Agency was delegated to collect data about green procurement and provide it to Minister of Environment.

### **Green public procurement policy in Lithuania**

Law on Public Procurement allowed contracting authorities to insert environmental criteria to the tendering documents, but there was no systematic way for doing it, each authority could come up with its own criteria, causing unnecessary uncertainty for economic operators. National Strategy for Sustainable Development, adopted by Lithuanian government in 2003, urged the production and usage of environmentally friendly products and expressed the need to increase the development of environmental technologies.<sup>57</sup>

Even though the National Strategy for Sustainable Development could have served as an impetus for “greening” public procurement, the aims of the strategy were not fully realized in practice until additional reinforcement has been laid down by EU. Commission Communication on Integrated Product Policy (2003) encouraged Member States to draw up publicly available action plans for greening their public procurement, containing an assessment of the existing situation and ambitious targets for the situation in three years time. It also urged Member States to create product group database consisting of structured existing environmental product criteria.<sup>58</sup> In accordance to the recommendations of the European Communication, in August 2007 Lithuanian government issued a resolution titled “National Green Procurement Implementing Program”, which is an equivalent of National Actions Plans defined in the Commission Communication (hereinafter-GPP NAP).<sup>59</sup>

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<sup>57</sup> National Strategy for Sustainable Development of 11 September 2003. Nr. 1160.

<sup>58</sup> Communication from the Commission to the Council and the European Parliament - Integrated Product Policy - Building on Environmental Life-Cycle Thinking of 18 June 2003, COM(2003) 302 final.

<sup>59</sup> National Green Procurement Implementing Program of August 8 2007. Nr. 804.



First of all, GPP NAP provides an important provision, regarding the targets of green procurement. It is set out that the procurement of goods and services, using the environmental criteria established by the Ministry of Environment, should amount to at least 25% of such procurement in general by the year of 2011. Second of all, GPP NAP introduces a definition of green public procurement for the first time in Lithuania. According to Article 2, green procurement (*“žalioji pirkimas”*) – is a type of public procurement when contracting authority insert into public procurement documents at least minimal criteria set by the Ministry of Environment and chooses the goods, services and works not only according to their price and quality, but also by the impact made to the environment in all the phases of products life-cycle. The emphasis should put be put on the fact, that the definition refers to concrete environmental criteria, which is envisaged to enhance legal certainty, ensure transparency and increase competitiveness. Finally, GPP NAP sets out the main goals it aims to achieve in a given period of 2007-2011:

- Strengthen the capacity of contracting authorities to carry our green procurement;
- Ensure that green procurement are being carried out in compliance with predetermined criteria and that the purchased products are environmentally friendly;
- Collect and store information concerning environmentally friendly products. Inform contracting authorities about them and the environmental criteria authorities must to apply;
- Monitor green public procurement.<sup>60</sup>

In order to achieve the goals set in the GPP NAP, the annex "The Implementation Measures of GPP" was added. The measures provided therein could be grouped into several categories, each having its individual deadline, budget and governmental institution responsible:

1. In order to strengthen the capacity of contracting authorities to carry our green procurement, the training program of green public

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<sup>60</sup> Ibid.

procurement should be created and constantly updated. The trainings for contracting authorities should be organized continually. In addition to this, the website of green procurement must be created.

2. To ensure that green procurement are being carried out in compliance with predetermined criteria, those criteria should be established at the first place. The annex provides that 4 groups of products must be created, based on environmental research, and special environmental criteria are set for those groups.

3. Collecting on information about environmentally friendly products, according to the NAP, must be done by a mean of constant research. The analysis of public procurement impact to environment was essential for creating common set of environmental criteria.

4. In order to monitor green procurement the annex envisaged to modify forms of reports that contracting authorities must fill each time purchasing goods, services or works. Public Procurement Office of Lithuania is put under duty to collect and systemize systematize that information.

Soon after the adoption of GPP NAP and its annex, Lithuania held parliamentary elections. Newly elected government faced serious challenges of the global economic crisis and implemented a serious austerity measures. Green public procurement was also influenced. After lengthy debates, the GPP NAP of 2007-2011 was abolished and the renewed “Implementation Measures of GPP for the period of 2010 - 2011” was adopted.<sup>61</sup> The essence of the NAP remained the same, but some changes were made. First of all, the number of product groups was decreased to three, planning to introduce more groups in the longer term and allowing additional time to assess the criteria of current groups. In addition, the information regarding environmental criteria should be disseminated not only to contracting authorities, but also economic operators.

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<sup>61</sup> Implementation Measures of GPP for the years 2010–2011 of 28 September 2010. Nr. D1-833.

## Implementation and current progress

Here we study some statistics of green public procurement in Lithuania. In 2007 the Lithuanian Government started to implement green public procurement policy and set the target for governmental institutions to procure 'green' by 10% immediately, and increase to 25% in 2011. These figures are very challenging, especially over such a short time. Indeed, practice has shown that implementation of green public procurement was neither smooth nor effective in achieving its' objectives. Over the years green procurement has been: 5,6%, in 2009,<sup>62</sup> 5,8% in 2010, and 7,4% in 2011 (969 of a total of 13064 public procurements were 'green')<sup>63</sup> of the total number of public procurement performed. Indeed these numbers are far short of the ambitious 2011 objective, and even never obtained the immediate target objective of 10%. Indeed the financial crisis did not help this issue – the value of green procurement decreased from 30,7% to 21,3% in 2009,<sup>64</sup> and decreased again to 18,4%<sup>65</sup> in 2010, increasing slightly to 23,5% in 2011.<sup>66</sup> Even though those contracting authorities who are obliged to perform green public procurement performed only 10,9%.<sup>67</sup> Finally, the biggest share of performed green public procurement is related to construction works: motorway construction, road maintenance and repairs, school construction and renovations, street construction, etc.<sup>68</sup> The products which were most frequently procured 'green' were paper, office products and equipment, IT equipment, etc; electricity, textile, food and catering had the lowest incidence of 'green' procurement.<sup>69</sup>

The data and results show that green public procurement policy in Lithuania has had a difficult start. The incidence of green public procurement is lower than

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<sup>62</sup> 2009 Report on green procurement results, p. 3.

<sup>63</sup> 2011 Report on green procurement results, p. 6.

<sup>64</sup> 2009 Report on green procurement results, p. 3.

<sup>65</sup> 2010 Report on green procurement results, p. 10.

<sup>66</sup> 2011 Report on green procurement results, p. 6.

<sup>67</sup> Ibid., p. 6.

<sup>68</sup> Renata Dagiliūtė, Kristina Anikova, 'Green Public Procurement in Lithuania: Volumes and Possibilities for Environmental Impact Reduction', Department of Environmental Sciences, Vytautas Magnus University, 2001, p. 44.

<sup>69</sup> 2011 Report on green procurement results, additional information by product groups.

hoped for, thus not delivering the expected positive environmental impacts, and not being substantial enough to encourage a 'green' product market.

There are several issues which must be solved in order to improve the green procurement performance: First, there is a lack of political commitment to have more ambitious green public procurement policy implementation. It is necessary to have more defined institutional responsibilities, and clear procedures for green public procurement. Currently, the institutional responsibilities are vaguely defined; it is not clear which contracts must be performed as green procurement contracts and which contracting authorities are obliged. Therefore more mandatory policy is necessary. Governmental institutions should take a more active role in encouraging green procurement in their institutions and between economic operators.

Second, the main obstacles for wider applications of the environmental criteria in public procurement are lack of 'green' products in the market.<sup>70</sup> The Ministry of Environment ordered a survey of eco-friendly products in 2011. With this survey around 600 suppliers were questioned. The survey showed that 75,6% respondents do not participate in the green procurement (only 8,4% participate) and the main reasons were: shortage of 'green' products in the market (35,3%) and lack of information about green procurement (32,8%).<sup>71</sup> Additionally, many suppliers have misbelief that eco-friendly products are more expensive and they not are aware of the positive impacts of the product for the environment. Therefore Lithuanian governmental institutions should look for the eco-business encouraging measures to develop the market with eco-friendly products and services. The economic operators should be provided with the information and benefits of such products and services. Institutions should share the best examples and know-how.

Finally, businesses are not well informed about the applicability of the environmental criteria in the public procurement procedure. Improving awareness could attract more eco-friendly proposals. In order to overcome shortcomings experienced in the period 2007-2012, a new GPP NAP was adopted in 2012 for the

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<sup>70</sup> Renata Dagiliūtė, Kristina Anikova, 'Green Public Procurement in Lithuania: Volumes and Possibilities for Environmental Impact Reduction', Department of Environmental Sciences, Vytautas Magnus University, 2001, p. 45.

<sup>71</sup> Eco-friendly products market survey, Klaipėda, 2011, p. 53-55.

period of 2012-2015.<sup>72</sup> Despite the disappointing results of the first period, the new GPP NAP did not introduce many novelties. It continues to promote the dissemination of information to the stakeholders concerned, raise the awareness and improve communication tools, such as Green Procurement website. The most important change is that the government is obliged, in the line with environmental research, to set up two more groups (five in general) to whom the environmental criteria should apply.

### **Conclusion**

It would not be an overstatement to claim that the concept of “Green Public Procurement” is still relatively fresh, not only on EU level, but in the rest of the world as well. EU, national governments and contracting authorities were lacking experience implementing the policy and the pool of best practices was very limited. Nevertheless, despite these hurdles, the first steps made by EU in this field were firm and ambitious. Even though EU public procurement legislation provides a possibility to add environmental criteria, setting high targets by means of soft law tools European Commission provided Member States incentives to increase the use of such possibilities. Furthermore, by creating common GPP criteria and providing legal guidance and solutions to the main obstacles, European Commission hoped to substantially increase the uptake of green public procurement. Several goals were envisaged to be achieved – increasing the production of eco-friendly products across the Europe, consolidating EU position as a worldwide leader in environmental protection and sustainable development and adding impulse to the internal market, as common environmental criteria should encourage foreign tenderers to participate in public procurement procedures.

However, the results so far are indicating that additional measures are necessary to achieve the targets set. Member States were unable to reach the targets envisaged and the environmental criteria are not given enough weight to substantially influence public procurement. European Commission will be reviewing

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<sup>72</sup> Implementation Measures of GPP for the years 2012–2015 of 14 December 2011. Nr. D1-973.

policy and legal framework of green public procurement in 2012 and the possible changes may include more binding instruments or increased consideration of market conditions in individual Member States.

The analysis of Lithuanian green public procurement situation reveals, that the problems faced on European level are especially relevant to small new Member States, such as Lithuania. Having little experience not only in green public procurement, but in public procurement itself, Lithuania bluntly implemented EU policies, without taking into a consideration such factors as very limited and still developing market of eco-products. Unfortunately, Lithuanian GPP NAP for 2012-2015 do not address these factors. Major changes in Lithuanian green public procurement could be expected only after such changes are made on EU level.