

**ANALYTICAL REPORT
ON PROGRESS OF THE IMPLEMENTATION OF SUSTAINABLE PUBLIC
PROCUREMENT IN UKRAINE IN 2017-2020**

SUMMARY

Action implemented by:

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DEVELOPMENT OF SPP IN UKRAINE

Introduction of SPP in Ukraine started in 2014 by UNEP within the EaP GREEN project. Later actions on SPP were also supported by other Ukraine's international partners, such as GIZ, the SlovakAid, the World Bank, etc. The support for the development and implementation of SPP policies has become part of the EU4Environment program, which is being implemented with financial support from the European Union in six EaP countries: Azerbaijan, Belarus, Armenia, Georgia, Moldova and Ukraine. Based on the progress review, this analytical report frames possible actions and steps on SPP to be carried out in the framework of the EU-funded EU4Environment project in Ukraine in 2020-2022.

AMENDMENTS TO THE LAW OF UKRAINE ON PUBLIC PROCUREMENT

On April 19, 2020, the Law of Ukraine "On Amendments to the Law of Ukraine 'On Public Procurement' and Some Other Legislative Acts of Ukraine on Improving the Public Procurement"¹ (PPL 2020) came into force, being adopted on September 19, 2019. The updated new version of the PPL 2020 provides the following changes: it strengthens the responsibility of contracting authorities, bidders and suppliers; it makes the transition from the tender committee to authorized persons; it introduces new electronic tools for e-procurement; and introduces a new procedure of bidding with limited participation, as well as new fines for contracting authorities for the violation of the legislation in the field of procurement.

The new version of the PPL provides references to environmental performance and other selection criteria, such as non-price criteria, life-cycle cost analysis and eco-labelling. The social aspects of the law refer to inclusiveness and reduction of the impact on human health. In economic terms, the full cost of the life cycle assessment provides an objective view of the economic benefits of the offer and the overall procurement effectiveness. The new law allows suppliers to apply sustainability and/or non-price criteria on a voluntary basis, without restrictions. Specifically, the PPL 2020 provides for the following:

- **Non-price criteria** and sustainability criteria could be up to 30%;
- **Technical specifications** can be "in the form of environmental characteristics, provided that such requirements are sufficiently precise, and that the subject of the procurement is clearly understood by the customer and the participants".
- **Confirmation of compliance:** a participant in the procurement procedures should submit the supporting documents for compliance with the established requirements. If the contracting authority refers in the tender documentation to specific labels, test reports or certificates, it is obliged to accept the labels, test reports or certificates attesting conformity to equivalent requirements issued by the conformity assessment bodies.
- **Life cycle costing** (a technique to establish the total cost of ownership) is the sum of the cost of the item of purchase or its part (lot) and other costs that will be borne directly by the customer during the use, maintenance and termination of use of the item of purchase.

DEVELOPMENT OF THE CRITERION BASE FOR SPP

The PPL 2020 enabled applying environmental criteria, namely SPP criteria, developed by several technical assistance projects in Ukraine:

- SPP criteria were developed in 2016 by UNEP under EaP GREEN SP project for three categories of products: i) Detergents and cleaning products; ii) Paint and varnish materials; iii) Thermal insulation materials.
- For 10 new product categories, SPP criteria were developed in 2018, under GoLocal project using the UNEP's SPP approach: i) Road repair; ii) Repair and construction work; iii) Computer equipment and office equipment; iv) Catering services; v) Furniture (school, office); vi) Linen (bedding, underwear); vii) Cable products; viii) Office paper and paper products; ix) Timber; x) Cleaning services.
- For two more product categories, SPP criteria were developed in 2019 under GIZ led project "Energy Efficient in Communities II": i) Household appliances and equipment; ii) Outdoor lighting.

¹ <https://zakon.rada.gov.ua/laws/show/922-19>

The Type I ecolabelling program's ecological criteria may also be considered by the contracting authorities as SPP criteria in a case if i) they are established in accordance with DSTU ISO 14024; ii) they consider recommended requirements for the sustainability; and iii) the competence of the body which confirmed compliance with the established criteria is accredited in accordance with the Law of Ukraine "On accreditation of conformity assessment bodies".

ANALYSIS AND EVALUATION OF THE SPP MONITORING SYSTEM

Pursuant to Article 8 of the new Law on Public Procurement, monitoring of the procurement procedures is carried out by the State Audit Service of Ukraine (central executive body that implements the state policy in the field of public financial control and its interregional territorial bodies). It also establishes the possibility of public control (Article 7, paragraph 5). Before, the automatic risk indicators mainly identified only the *procedural violations of the Law*. Now, it is possible to analyse the content of the *qualification criteria or non-price criteria* established by the tender documentation. The business intelligence module *BI Prozorro*² was created and integrated into the electronic procurement system Prozorro to analyse and monitor the information in the electronic procurement system.

APPLICATION OF THE SPP CRITERIA IN 2016-2019

Monitoring of the application of SPP criteria in Ukraine so far can only be carried out manually. In 2017-2019, over 150 tender procedures gained support from UNEP's subcontractor NGO "Living Planet", with the guidance of EaP GREEN Project SPP experts on how to apply the SPP approach. Below are some examples of successful sustainable procurement tenders held using SPP criteria, facilitated by the UNEP's local experts:

Construction work (174 802 873, 00 UAH)³: "Holosiv-budinvest", a capital construction, reconstruction and investment municipal enterprise, applied the resource and energy efficiency criteria, as well as the selection of the building materials with improved ecological characteristics in its procurement. The bid on renovation of the building of the gymnasium №59 named after O.M. Boychenko, in Kyiv, and on the building of some additional annexes and facilities included references to the ecological criteria of internationally recognized Type I eco-labelling⁴.

Repair and Maintenance Services (UAH 2 150 000)⁵: in the bid of the Ministry of Environmental Protection for services in repair and maintenance of electrical and mechanical equipment of buildings, the suppliers were required to provide contracts for the transfer of hazardous waste, as well as justify the availability of Type I ecolabels for the production.

Detergents and cosmetics: procurements of toilet soap and household soap⁶ and detergents^{7 8 9 10}.

Paints and varnishes^{11 12 13 14} tenders requested to provide a Certificate of Conformity of the proposed products with the environmental criteria for products developed in accordance with DSTU ISO 14024:2002.

² <https://bi.prozorro.org/>

³ <https://www.dzo.com.ua/tenders/2359408/questions>

⁴ <https://www.globalecolabelling.net/assets/Documents/GEN-2020-Building-Criteria-and-Certifications.pdf>

⁵ <https://prozorro.gov.ua/tender/UA-2020-02-26-001418-c>

⁶ <https://prozorro.gov.ua/tender/UA-2020-01-29-000288-a>

⁷ <https://prozorro.gov.ua/tender/UA-2020-01-31-000119-b>

⁸ <https://prozorro.gov.ua/tender/UA-2020-02-14-001420-c>

⁹ <https://prozorro.gov.ua/tender/UA-2019-11-15-000959-a>

¹⁰ <https://prozorro.gov.ua/tender/UA-2019-11-14-003188-b>

¹¹ <https://prozorro.gov.ua/tender/UA-2019-12-05-000997-c>

¹² <https://prozorro.gov.ua/tender/UA-2019-10-09-001217-b>

¹³ <https://prozorro.gov.ua/tender/UA-2019-06-24-000395-b>

¹⁴ <https://prozorro.gov.ua/tender/UA-2017-05-23-000122-b>

Pipes (water, sewer)^{15 16 17}: about 30 procurements in total applied the requirement of the Certificate in accordance with DSTU ISO 14024.

Fruit and vegetable juices (UAH 202 830)¹⁸: requested to provide Certificate for environmental certification and product labelling system DSTU ISO 14024: 2002 (ISO 14024: 1999, IDT).

Glass (UAH 111 630,96)¹⁹: required to provide a Certificate of Compliance with the environmental criteria requirements, developed in accordance with DSTU ISO 14024

Textile products: Procurements of industrial clothing²⁰, bed linen^{21 22}, home textile²³ required that products must comply with Oeko-TexStandart 100.

Paper products (UAH 95 000): procurement of office paper²⁴ requested to provide a photo of the product or packaging with ecolabels (Type I).

LAWS AND REGULATIONS ADOPTED IN 2017-2019 HAVING AN IMPACT ON ENHANCING THE POTENTIAL OF SUSTAINABLE PUBLIC PROCUREMENT IMPLEMENTATION IN UKRAINE

Sustainable Development Goals of Ukraine for the period up to 2030 ensure the balance of economic, social and environmental dimensions of sustainable development of Ukraine; and ensure the transition to rational consumption and production models.

The State environmental policy of Ukraine for the period up to 2030 specifies these main areas: climate change mitigation; Ukraine's achievement of the SDGs; integration of environmental requirements in sectoral policies; and the implementation of sustainable consumption and production tools.

The National Waste Management Plan till 2030²⁵ for the National Waste Management Strategy in Ukraine until 2030, ²⁶ provides methodological recommendations for sustainable (green) public procurement; the introduction of economic incentives for the introduction of environmentally friendly production technologies and the expansion of recycling opportunities; the establishment of requirements for packaging labelling and design; and restrictions on the use of hazardous substances in packaging.

The Low Carbon Development Strategy of Ukraine until 2050 defines a nationally agreed stakeholder vision to separate the country's further economic growth and social development from the increase in greenhouse gas emissions. It's a tool for the public administration and the formation of a climate-responsible behaviour of business and citizens.

The Cabinet of Ministers of Ukraine amended two resolutions of April 4, 2001 №332 and December 26, 2011 № 1399, which expanded the use of electric vehicles for public authorities, institutions and organizations.

Eco-design: a system for defining eco-design requirements for energy products has been developed to ensure the free movement of such products in the Ukrainian market.

The Law of Ukraine "On Energy Efficiency of Buildings" brings Ukraine closer to the emergence of zero energy homes that meet the international standards and will significantly save on utilities. It introduces a mandatory energy certification and definition of classes of buildings according to the European method. According to **the Decree of the Cabinet of Ministers of Ukraine № 1420-p, dated December 4, 2019**, the State Agency of Automobile Roads of Ukraine, Kyiv Oblast and Kyiv City State Administrations are

¹⁵ <https://prozorro.gov.ua/tender/UA-2020-01-23-000168-a>

¹⁶ <https://prozorro.gov.ua/tender/UA-2019-02-13-001787-a>

¹⁷ <https://prozorro.gov.ua/tender/UA-2019-10-23-002378-b>

¹⁸ <https://prozorro.gov.ua/tender/UA-2020-01-03-000555-a>

¹⁹ <https://prozorro.gov.ua/tender/UA-2019-08-29-001254-a>

²⁰ <https://prozorro.gov.ua/tender/UA-2019-12-27-001892-b>

²¹ <https://prozorro.gov.ua/tender/UA-2019-10-25-000611-c>

²² <https://prozorro.gov.ua/tender/UA-2019-11-12-003785-b>

²³ <https://prozorro.gov.ua/tender/UA-2019-11-28-000818-c>

²⁴ <https://prozorro.gov.ua/tender/UA-2019-10-24-001895-c>

²⁵ <https://zakon.rada.gov.ua/laws/show/117-2019-%D1%80>

²⁶ <https://zakon.rada.gov.ua/laws/show/820-2017-%D1%80>

recommended to use a non-price “environmental” criterion with a specific gravity of at least 10 percent. It will be characterized by an indicator on "the level of utilization of production waste and road construction materials obtained with their use as placeholders" for the public procurement of works for the construction and the services for the maintenance of public roads.

The Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality" establishes a requirement for all food market operators to have prerequisites for the implementation of the HACCP system²⁷.

The Decree of the President of Ukraine dated December 07, 2019 №894/2019 "**On the urgent measures to improve the health of children**", was the prerequisite for the introduction of a healthy diet and the preservation of the good health of the younger generation.

The Law of Ukraine “On Information for Consumers on Food Products” introduced a number of changes and clarifications that directly relate to the quality of the products and the availability of information to the consumer (i.e., the requirements for the use of the word ‘natural’ in its designation of food products).

The Law of Ukraine "On the basic principles and requirements for organic production, circulation and labelling of organic products" (2018) establishes the requirements for the production of organic products, their circulation, labelling and sale, as well as the mechanism of certification of organic production. It provides for the creation of registers of operators, certification bodies, organic seeds and planting material.

The Strategy for the Development of the Agricultural Sector for the Economy until 2020 identifies food security of the country as a priority for achieving strategic goals by promoting the development of organic farming, especially in private peasant and medium-sized farms.

TRAINING IN THE FIELD OF SPP AND PROFESSIONALIZATION

In 2018-2019, a series of procurer training activities were carried out: i) 6 trainings for contracting authorities (CA) and suppliers on priority product categories in Prozorro, Kyiv²⁸ (163 participants); ii) training “Implementation of Sustainable Public Procurement in Ukraine”, Lutsk (35 participants)²⁹; iii) training “Requirements for Environmental Protection Measures and Life Cycle Assessment in Public Procurement”, November 22, 2018, Kyiv (40 participants)³⁰.

The updated Law on Public Procurement foresees the new standards of professionalization of public procurement and capacity development. Several institutions, including Kyiv School of Economics, offer public procurement professionalization courses and programmes. The Ministry of Economy posts on the Infobox ProZorro³¹ the methodical materials, explanatory articles, on-line self-study courses, a library of sample specifications and a forum for discussing public procurement issues.

THE ANALYSIS AND EVALUATION OF THE IMPLEMENTATION OF THE COMMUNICATION STRATEGY FOR THE SPP PROMOTION OF SUSTAINABLE PUBLIC PROCUREMENT

The communication activities for the SPP implementation in Ukraine in 2016 were developed within the framework of SPP EaP GREEN Project. The State Environmental Academy of Postgraduate Education and Management was responsible for the implementation of the communication strategy in a partnership with NGO “Living Planet”, SE Prozorro, the Institute of Environmental Governance and Sustainable Nature Management, with the involvement of other project experts. The target audience included i) authorities responsible for the implementation of SPP policy (Ministry of Economy, the Ministry of Environmental Protection, the Ministry of Social Policy of Ukraine); ii) local authorities and supervisory authorities; iii) SE “Prozorro”, authorized electronic platforms; iv) contracting authorities in the public procurement system;

²⁷ HACCP (Hazard Analysis and Critical Control Points) is a system of hazard analysis and critical control points that identifies, evaluates, and controls hazardous factors that are critical to food safety.

²⁸ <http://www.greenmind.com.ua/novyny/12-06-2019-novi-servisi-prozorro-dlya-efektivnikh-zakupivel-remontno-budivelnikh-robot.html>

²⁹ <http://www.zhiva-planeta.org.ua/novuny/471-new.html>

³⁰ <http://www.greenmind.com.ua/novyny/22-11-2018-vimogi-do-zakhodiv-iz-zakhistu-dovkillya-ta-vartist-zhittevogo-tsiklu-pri-zdiisneni-publichnikh-zakupivel.html>

³¹ <https://infobox.prozorro.org/>

v) manufacturers and suppliers. The main channels used for communication were: i) conferences and trainings; ii) internet resources (sites, social networks); iii) publications in the media.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions:

- The new version of the Public Procurement Law expands customer capabilities and strengthens the potential of SPP in Ukraine. To achieve the best result, it is necessary to update existing tools and develop new ones, which could be used by the contracting authorities.
- The changes in the legislation of Ukraine that took place in 2018-2019 significantly expand the possibilities of contracting authorities to apply the criteria of energy efficiency, resource efficiency, safety, and the improved quality characteristics of food, ecolabelling and organic standards. This, in turn, enhances the potential for further development of the SPP and the Ukrainian green products market.
- SPP criteria were developed for 15 product categories, however, their use remains limited.
- Currently it is not possible to monitor the SPP criteria use in the e-procurement Prozorro system. UNEP, under EU4Environment, is working to enable this function.
- The training programs on public procurement need to be reviewed in connection with the reform and application of the new version of the PPL 2020.
- The SPP Communication Strategy (2016) was implemented with technical support under the SPP EaP GREEN and other technical support projects.

Recommendations:

No	Recommendations on Activities for capacity-building on SPP in Ukraine
Development of regulatory and methodological framework for the application of SPP criteria	
1	Development and support (until adoption) of the Guidelines for the use of SPP criteria
2	Identification of priority categories and market readiness analysis
3	Update and revision of the developed SPP criteria
4	SPP criteria development for 30 new categories
5	Conducting pilot SPP tenders applying, updated / developed criteria (development of tender documents and expert assistance until the signing of the contract)
6	Establishment of updated / developed procurement criteria in accordance with the Guidelines
7	Development of an updated structure of BI Prozorro module templates and their implementation
8	Update of the SPP Guidelines in Ukraine
Technical assistance for the integration of SPP criteria into the Prozorro system, SPP monitoring and reporting	
1	Develop a Technical requirement for the development of an electronic service for the integration of SPP criteria into Prozorro Market, which will include: <ul style="list-style-type: none"> a) Definition and integration of SPP criteria into the product profile b) Decision support module on the choice of goods according to certain SPP criteria c) Completion of the Bidder's Cabinet d) Development of guidance documents for users and directories on SPP criteria
2	Develop a Technical requirement on the inclusion in the electronic tender documentation of the relevant fields on the SPP criteria and extension of the functionality of the BI Prozorro analytics module, which will include: <ul style="list-style-type: none"> a) Scaling CDB considering increasing load on the system b) Completion of the functionality analytics module c) Finalization of the electronic tender documents considering experience of procurement with using SPP criteria d) Completion of functionalities of the technical specifications and non-price criteria constructor e) Development of a module for life cycle cost calculators using SPP criteria f) Creation of SPP criteria Directory and providing content g) Integration with the BI analytics module

	h) Develop a method of data analysis and ensure its implementation through the BI analytics module
	i) Completion of the Contracting Authority's Cabinet
	j) Completion of the Bidder's Cabinet
	k) Testing and experimental use of developed services
	l) Development of User Guides and SPP criteria directories
3	Development and implementation of a training course for service users
Development of training in the field of SPP and professionalization of public procurement	
1	Development of new training modules on SPP
2	Integration of the training module into the Procurement Professionalization Program
3	Integration of tests provided by the training module into the authorized persons testing program
4	Preparation and creation of video lectures on SPP for the Public Procurement Specialist and Procurement Manager course
5	Preparation of and conducting training webinars on the application of SPP criteria
6	Preparation of and holding workshops on the SPP criteria application
7	A selection of SPP criteria application best practices for the year (2021, 2022)
Development of communications to promote SPP	
1	Development of the Communication Strategy for the period 2020 - 2022
2	Establishment of a Working Group on SPP implementation
3	Development and implementation of a 2-day training course for journalists and other stakeholders
5	Introduction of the annual All-Ukrainian competition of SPP application best practices
6	<i>Message Box Development</i>
7	Creation of an Information partners network
8	<i>Press Kit Development</i>
9	Scheduling Implementation of first-priority measures plan № 1 (2020-2021)
10	Conducting activities according to the schedule № 1 and their performance measurement.
11	Scheduling of the second stage measures plan № 2 (2021-2022)
12	Conducting activities according to the schedule № 2 and their performance measurement.
Communications tools and channels	
1	Chapter on the official website of the authorized body - the Ministry of Economy
2	Updated Chapter on the official website of the Ministry of Ecology
3	Videos of educational activities (training videos)
4	Publications
5	Thematic Chapters on Infobox Prozorro and e-mailings
6	SMM and social media targeting
7	Annual survey of customers, manufacturers and participants of procurement procedures
Reporting	
1	Participate in monitoring and reporting activities under SDG 12.7 to emphasize the progress on implementation of SPP in the country