



## TRADUCCIÓN INGLÉS-CASTELLANO

(Perfil 3)

### **Is public procurement fit for reaching sustainability goals? A law and economics approach to green public procurement**

Rules are always trade-offs between different objectives and impact analysis is currently a part of every legislative exercise. However, the discussion on the economic impact of individual rules and their efficiency in achieving targeted goals is still often limited to provisions that generate immediate economical effect such as taxation, state aid etc. The value of public procurement massive and amounts to 11–20% of GDP in each EU and EEA Member State, with a total value of €2 trillion, but legislative proposals seldomly address the statistics or research on potential economic impact of different rules even though the knowledge and research around these topics are constantly growing.

Law and economics is a study of the economics of law and it is based on the hypothesis that legislation and legal practices have an impact on economic activities and society. Legal rules guide the behaviour and choices of companies and consumers. Law and economics suit well when it comes to analysing public procurement rules. According to the 2014/24/EU Procurement Directive, public procurement rules' objectives are twofold: they are viewed as a significant mechanism to foster market-based smart and sustainable growth, while ensuring the best value for money. The latter could also be described as an aim to use public funds efficiently. These objectives do not necessarily align. In fact, they can even be in conflict at times. One could ask whether the sustainability objectives should in fact be a starting point for all public contract awards, or whether they should be applied only when considered effective from the perspective of effective competition and use of public funds. In research, the law and economics approach has been considered as a functional method to analyse public procurement rules and practices. For example, law and economics have previously been applied, when studying compliance with public procurement rules, their potential distortions of dynamic competition in the relevant markets, the fight against corruption or the effectiveness of the legal framework as a whole.

There are several separate or overlapping measures through which the EU and its Member States can fight climate change and pursue global carbon neutrality targets. Due to its size (€2 trillion), the public procurement market is seen as one of the key areas for reaching sustainability goals. Usually discussion on the importance of green public procurement (GPP) is not highlighted through its environmental effects, but rather with the argument that the public sector needs to lead by example, be the driver for green transformation and demonstrate through its own purchasing strategies that public spending will be directed more and more towards green alternatives. Moreover, public procurement is viewed as an important tool to support and test green innovations and consequently paving the way



MINISTERIO  
DE ASUNTOS EXTERIORES,  
UNIÓN EUROPEA  
Y COOPERACIÓN

**TRIBUNAL CALIFICADOR  
PRUEBAS PARA EL INGRESO EN EL CUERPO  
DE TRADUCTORES E INTÉRPRETES DEL  
ESTADO**

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for innovative products and services into the markets. These arguments and legal rules encouraging or obliging to GPP are rarely analysed from a cost perspective and their suitability to reach the desired outcome.

The public procurement rules, and in this event the rules on GPP in particular, do not operate in a vacuum. GPP rules are instruments, policy tools that aim for environmental impact. GPP rules are not independent: environmental impact and costs resulting from the adoption and application of such rules both at the level of the contract award in question as well as at the specific product or service market more generally, are subject to the formulation of the legal provisions.