Integrating Responsible Business Conduct in Public Procurement

OECD

Integrating Responsible Business Conduct in Public Procurement

BETTER POLICIES FOR BETTER LIVES

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Note by Turkey
The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union
The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Please cite this publication as:
OECD (2020), *Integrating Responsible Business Conduct in Public Procurement*, OECD Publishing, Paris, *https://doi.org/10.1787/02682b01-en*.

ISBN 978-92-64-66393-0 (print)
ISBN 978-92-64-67354-0 (pdf)

Corrigenda to publications may be found on line at: *www.oecd.org/about/publishing/corrigenda.htm*.

© OECD 2020

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at *http://www.oecd.org/termsandconditions*.

Preface

Society has become increasingly aware of environmental and human rights-related risks in global supply chains. Both governments and business are under pressure to take greater responsibility to prevent and address these risks before they impact people and the planet. The purchasing power of governments is emerging as an important lever to promote transparency and sustainability in supply chains. This includes strengthening risk management systems in public procurement to integrate Responsible Business Conduct (RBC) objectives and risk-based due diligence along global supply chains.

The impact of public procurement is vast. It accounts on average for 12% of GDP in OECD countries and 20-30% of GDP in developing economies. Increasingly, governments view public procurement as a strategic policy tool to promote sustainability, inclusiveness, and resilience.

The COVID-19 pandemic illustrates the relevance of this agenda as disruptions in global supply chains have revealed gaps in risk awareness. Many public buyers have admitted they were unaware of the provenance of their supplies and the associated risks, including possible over-dependence on a few suppliers. Implementing OECD risk-based supply chain due diligence in public procurement processes can strengthen supply chain resilience, help buyers make well-informed business decisions to prevent and address risks, and be better prepared for future emergencies.

OECD members have long recognised the potential benefits of more sustainable and responsible public procurement practices, and in 2019 launched a programme to bridge both policy areas. This report contributes to the research and analysis component in this programme and sheds light on how countries incorporate RBC objectives in public procurement. It is an example of multidisciplinary research and cooperation across two significant areas of OECD expertise: Responsible Business Conduct and Public Procurement.

Societies and economies are responding to global challenges, to recent events like the COVID-19 pandemic and to ongoing mega trends like climate change. These challenges also provide an opportunity to explore agile approaches to reflect citizens' expectations on responsible behaviour. Governments are in a unique position to recognise their responsibility to avoid harmful impacts. While building back better, governments can implement efficient and effective measures to ensure responsible conduct in all areas of government action, including in public procurement. The OECD will continue to provide evidence-based analysis to support these efforts.

Ms. Elsa Pilichowski

Director of the Public Governance Directorate

Mr Greg Medcraft

Director of the Directorate for Financial and Enterprise Affairs

Foreword

OECD members have long recognised the potential benefits of more sustainable and responsible purchasing practices. To advance this agenda, in 2019 the OECD launched a programme to further integrate Responsible Business Conduct (RBC) considerations and risk-based supply chain due diligence into public procurement policies and processes. The OECD Working Party of Leading Practitioners on Public Procurement and the OECD Working Party on Responsible Business Conduct jointly manage this programme.

This report contributes to the research and analysis component of this multi-phased programme. In addition to analysis and research, this programme provides a platform for policy makers and practitioners to share lessons learned and agree on ways to increase the uptake of RBC objectives in public procurement.

The report analyses how countries incorporate RBC objectives into public procurement policies and practices. A survey to procurement policy makers and central purchasing bodies of countries adhering to the *OECD Recommendation of the Council on Public Procurement* and to the *OECD Guidelines for Multinational Enterprises* formed the basis of this analysis. The analysis also takes into account views from National Contact Points for Responsible Business Conduct (NCPs), business, industry associations, civil society and trade unions. The Working Parties on Responsible Business Conduct and of Leading Practitioners on Public Procurement discussed the recommendations of the report in a joint working party meeting on 28 October 2020.

This publication is a result of joint efforts between the OECD Infrastructure and Public Procurement Division (IPP) within the Public Governance Directorate and the OECD Centre for Responsible Business Conduct (RBC) within the Directorate for Financial and Enterprise Affairs, under the direction and oversight of Elsa Pilichowski and Greg Medcraft. It has been prepared jointly by Erika Bozzay, Tessa Cullen, Lena Diesing, Pauline Göthberg, Shivani Kannabhiran, and Gabriela Villa Aguayo, under the supervision of Edwin Lau, Paulo Magina, Mathilde Mesnard and Cristina Tebar Less.

Acknowledgements

This publication is a result of joint efforts between the OECD Infrastructure and Public Procurement Division (IPP) within the Public Governance Directorate and the OECD Centre for Responsible Business Conduct (RBC) within the Directorate for Financial and Enterprise Affairs, under the direction and oversight of Elsa Pilichowski and Greg Medcraft.

It has been prepared jointly by Erika Bozzay, Tessa Cullen, Lena Diesing, Pauline Göthberg, Shivani Kannabhiran, and Gabriela Villa Aguayo, under the supervision of Edwin Lau, Paulo Magina, Mathilde Mesnard and Cristina Tebar Less.

Many OECD colleagues supported the preparation of the report in its planning, survey and review stages, including Froukje Boele, Matthieu Cahen, Kenza Khachani, Marian Lemke and Tatyana Teplova.

Pamela Duffin, Roxana Glavanov, Juliet Lawal, Elisabetta Pilati, Lauren Thwaites and Andrea Uhrhammer provided editorial and communications support.

Pauline Alexandrov, Aleksandra Bogusz and Lauren Thwaites provided administrative assistance.

The report would not have been possible without the openness of policy makers and Central Purchasing Bodies that responded to the OECD survey. Additionally, numerous experts from business, trade unions, civil society organisations, experts, academia and others shared their perspectives and inputs to the report.

All contributors are named in alphabetical order.

Table of contents

Preface 3

Foreword 4

Acknowledgements 5

Executive summary 9

Part I Comparative Analysis: Uptake of Responsible Business Conduct in Public Procurement 11

1 Public Procurement – Supporting Responsible Business Conduct 12
- 1.1. Introduction 13
- 1.2. Evolution of public procurement practices and the link to RBC objectives 18
- 1.3. Political support and instruments to integrate RBC objectives into public procurement 25
- 1.4. Addressing adverse impacts in public procurement supply chains 27
- 1.5. Standards and tools to promote responsible supply chains 31
- 1.6. Public sector – leading by example 35
- 1.7. Summary of findings 38
- References 39

2 The Public Procurement Policy Environment and Responsible Business Conduct 43
- 2.1. Regulatory and strategic frameworks promoting RBC objectives in public procurement 44
- 2.2. RBC expectations beyond main contractors and subcontractors 52
- 2.3. Government support for implementation 56
- 2.4. Summary of findings 63
- References 64

3 Implementing RBC Objectives in Practice 66
- 3.1. Central Purchasing Bodies' role in promoting RBC 67
- 3.2. CPB policies and strategies to promote RBC objectives 68
- 3.3. Risk management frameworks of CPBs 70
- 3.4. Challenges of supply chain risk management throughout the procurement cycle 73
- 3.5. Summary of findings 87
- 3.6. References 88

4 Conclusions and Recommendations 89
- 4.1. Take a comprehensive approach to integrating RBC into public procurement frameworks 90

4.2. Integrate stakeholder perspectives to develop more effective frameworks on RBC in public procurement 90
4.3. Integrate RBC objectives throughout the public procurement cycle 91
4.4. Improve contracting authorities' knowledge, capacity and ability to integrate RBC objectives into public procurement 92
4.5. Improve monitoring and follow-up of the implementation of RBC objectives in public procurement 93
4.6. Integrate a risk-based due diligence approach to enhance strategic public procurement 94

Part II Country fact-sheets 95

Country fact-sheets 96
Australia 97
Belgium 99
Brazil 101
Canada 103
Chile 105
Costa Rica 107
Czech Republic 109
Denmark 110
Estonia 112
Finland 113
France 115
Germany 118
Hungary 120
Iceland 122
Israel 124
Italy 126
Japan 128
Korea 129
Latvia 131
Lithuania 133
Mexico 135
Netherlands 137
New Zealand 139
Norway 141
Peru 143
Poland 145
1.2. Portugal 147
Slovak Republic 149
Slovenia 150
Spain 152
Sweden 154
Switzerland 156
Ukraine 158

FIGURES

Figure 1.1. Government procurement as a share of GDP and of total government expenditure 14
Figure 1.2. The core pillars of sustainable public procurement and their overlap with RBC issues 21

Figure 1.3. Key RBC-related legislation 2010 to 2019 27
Figure 1.4. Sectors of forced labour exploitation 28
Figure 1.5. OECD risk-based due diligence process and supporting measures 34
Figure 2.1. Share of countries that have any type of framework to support RBC objectives 45
Figure 2.2. Share of countries with a regulatory or strategic framework to pursue RBC objectives in public procurement 46
Figure 2.3. Reasons why policymakers developed a framework to pursue RBC objectives in public procurement 48
Figure 2.4. RBC objectives where a lack of understanding is the largest challenge in developing a framework 50
Figure 2.5. Countries applying RBC-related frameworks to sub-contractors 53
Figure 2.6. Countries applying RBC-related frameworks in the supply chain 54
Figure 2.7. Mechanisms to enhance uptake of RBC objectives 57
Figure 2.8. Percentage of countries that monitor implementation of RBC objectives in public procurement 60
Figure 2.9. Where countries have monitoring frameworks, percentage of those that cover subcontractors and supply chains 62
Figure 3.1. Stakeholder responses to the 2019 Survey on RBC and public procurement 68
Figure 3.2. Share of CPBs with policies or strategic frameworks to promote RBC objectives 68
Figure 3.3. CPB's public procurement policies or strategies and coverage of the supply chain 69
Figure 3.4. RBC objectives in CPB risk management frameworks 70
Figure 3.5. The public procurement cycle 74
Figure 3.6. Frequency with which CPBs consult businesses when incorporating RBC objectives into procurement opportunities 75
Figure 3.7. Frequency of RBC objectives incorporated into the general requirements of a tender 77
Figure 3.8. The type of criteria used by CPBs when including RBC objectives in the tender 80
Figure 3.9. CPBs verifying compliance with RBC objectives prior to contract award 81
Figure 3.10. Percentage of CPBs that require potential suppliers to certify full supply chains 82
Figure 3.11. Percentage of CPBs that require their contractors to conduct due diligence on subcontractors and supply chains 83
Figure 3.12. Extent to which CPBs verify fulfilment of contractual RBC obligations by main contractors 85
Figure 3.13. Extent to which CPBs verify fulfilment of contractual RBC obligations in the supply chain 85
Figure 3.14. Mechanisms used to track compliance with RBC objectives 86

TABLES

Table 2.1. Specific and general frameworks on RBC and public procurement 45
Table 2.2. Countries with provisions for action against infringements of RBC standards 55
Table 3.1. Risk categories to help scope risks and prioritise due diligence 71
Table 3.2. High-risk product categories according to country CPBs 72

Follow OECD Publications on:

http://twitter.com/OECD_Pubs
http://www.facebook.com/OECDPublications
http://www.linkedin.com/groups/OECD-Publications-4645871
http://www.youtube.com/oecdilibrary
http://www.oecd.org/oecddirect/

Executive summary

Accounting for an average of 12% of gross domestic product (GDP) in OECD countries, public procurement is a strategic tool for achieving wider policy goals, including supporting innovation, addressing environmental challenges, mitigating inequalities, and promoting sustainable development. Public procurement can also be a means to promote responsible business conduct (RBC) and address global supply chain risks to people and the planet. Risk-based supply chain due diligence can help public buyers ensure value for money in its broader sense towards encompassing sustainability of procurement decisions.

This report highlights how OECD members and adherents to OECD instruments incorporate RBC objectives and risk-based due diligence into their public procurement systems. For the purposes of this report, RBC objectives include considerations related to the environment, human rights, labour rights, minorities, people with disabilities, the long-term unemployed, gender, and integrity. The analysis in the report considers three aspects of RBC: coverage of RBC objectives; their application along the supply chain; and, their integration throughout the procurement cycle.

The analysis shows that the uptake of RBC objectives in public procurement is incomplete and uneven and that limited systematic risk-based supply chain due diligence is incorporated in the frameworks and practices of central purchasing bodies (CPBs). Challenges also remain on the implementation of a number of RBC objectives and follow-up to monitor the uptake of RBC objectives is weak.

Key findings

- A majority of countries promote some RBC objectives through public procurement, but only a few have comprehensive frameworks addressing all RBC objectives throughout the entire supply chain. For example, all countries have a strategy or framework to support environmental objectives in public procurement, but few have frameworks linked to other RBC objectives. CPBs have their own policies and strategies for certain RBC objectives linked to the environment, human rights, and integrity, for example. At best, 20-25% of these institution-level policies and strategies apply to the entire supply chain.
- The most important reasons for governments to integrate RBC objectives into the public procurement framework are to achieve policy coherence nationally and to align with international expectations on RBC. When developing regulatory and policy frameworks, stakeholder feedback from business and civil society is not sought as consistently as possible.
- Different RBC objectives do not feature equally in the various phases of the public procurement cycle. When planning purchases, CPBs frequently consult with businesses regarding environmental considerations (53%), but rarely on other RBC objectives. This is noteworthy, as the lack of market engagement is an important challenge for companies responding to RBC objectives set by contracting authorities. Over two-thirds of CPBs verify whether the *main contractor* complies with environmental, labour rights and integrity-related requirements set in a contract, but do not verify compliance at the *sub-contractor* level to the same extent.

- Across all RBC objectives, the top challenge for policy makers is a lack of understanding of how to achieve them through public procurement. Implementation of these objectives appears particularly difficult for requirements related to minority concerns and related to human rights (flagged by around 40 and 50% of countries, respectively).
- Monitoring and follow-up of RBC objectives is weak. More than 80% of countries monitor the uptake of environmental considerations at least partially. Fifty percent of country frameworks provide for actions against suppliers infringing RBC standards in their supply chains. Around 30% of countries require that suppliers change their supplier in case of violations.
- In practice, public procurement processes rarely include a consistent due diligence approach. Four out of five CPBs use risk management frameworks considering at least some RBC objectives, and more than 80% CPBs have identified high-risk purchasing categories. More than half of CPBs require suppliers to certify that they know their supply chain, but only a limited number of CPBs require suppliers to actually conduct supply chain due diligence.

Key recommendations

The findings highlight several avenues to integrate RBC objectives in public procurement. Governments are encouraged to create comprehensive and consistent frameworks to strengthen RBC in public procurement, including by implementing risk-based supply chain due diligence in public procurement. Governments should also consider actions to support capacity building for public procurement practitioners. In implementing these recommendations, governments should take into consideration the experiences and perspectives of relevant stakeholder groups.

Priority measures to promote RBC through public procurement include:

- Adopting a comprehensive approach to considering RBC objectives in public procurement systems, covering aspects of RBC objectives throughout the entire supply chain. To do so, governments could align frameworks on RBC in public procurement with international standards such as the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct and the OECD Recommendation on Public Procurement.
- Integrating stakeholder perspectives, including from business, civil society, unions and other stakeholders, when developing and implementing RBC frameworks in public procurement.
- Integrating RBC objectives comprehensively throughout all phases of the public procurement cycle. This should include market engagement through to contract management, and give special attention to contractual obligations.
- Improving practitioners' knowledge, capacity and ability to implement RBC objectives in public procurement, drawing on existing tools, strategies and practices for supply chain mapping, risk management in public procurement and due diligence.
- Monitoring the implementation of RBC objectives in public procurement, especially through strengthened contract management strategies, and collecting and publishing data resulting from these activities.

Facilitating the closer collaboration of policy makers and practitioners through existing public procurement and RBC-related networks, such as the National Contact Points for RBC (NCPs) or public procurement networks.

Part I Comparative Analysis: Uptake of Responsible Business Conduct in Public Procurement

1 Public Procurement – Supporting Responsible Business Conduct

This section discusses public procurement as a policy instrument contributing to sustainability by including OECD standards for responsible business conduct (RBC) and supply chain due diligence. It looks at how the concept of sustainable public procurement (SPP), the incorporation of broader policy objectives in public procurement, has evolved over time and embeds many RBC objectives. It also shows that a risk-based due diligence approach can help public buyers lead by example and achieve RBC objectives in global supply chains.

1.1. Introduction

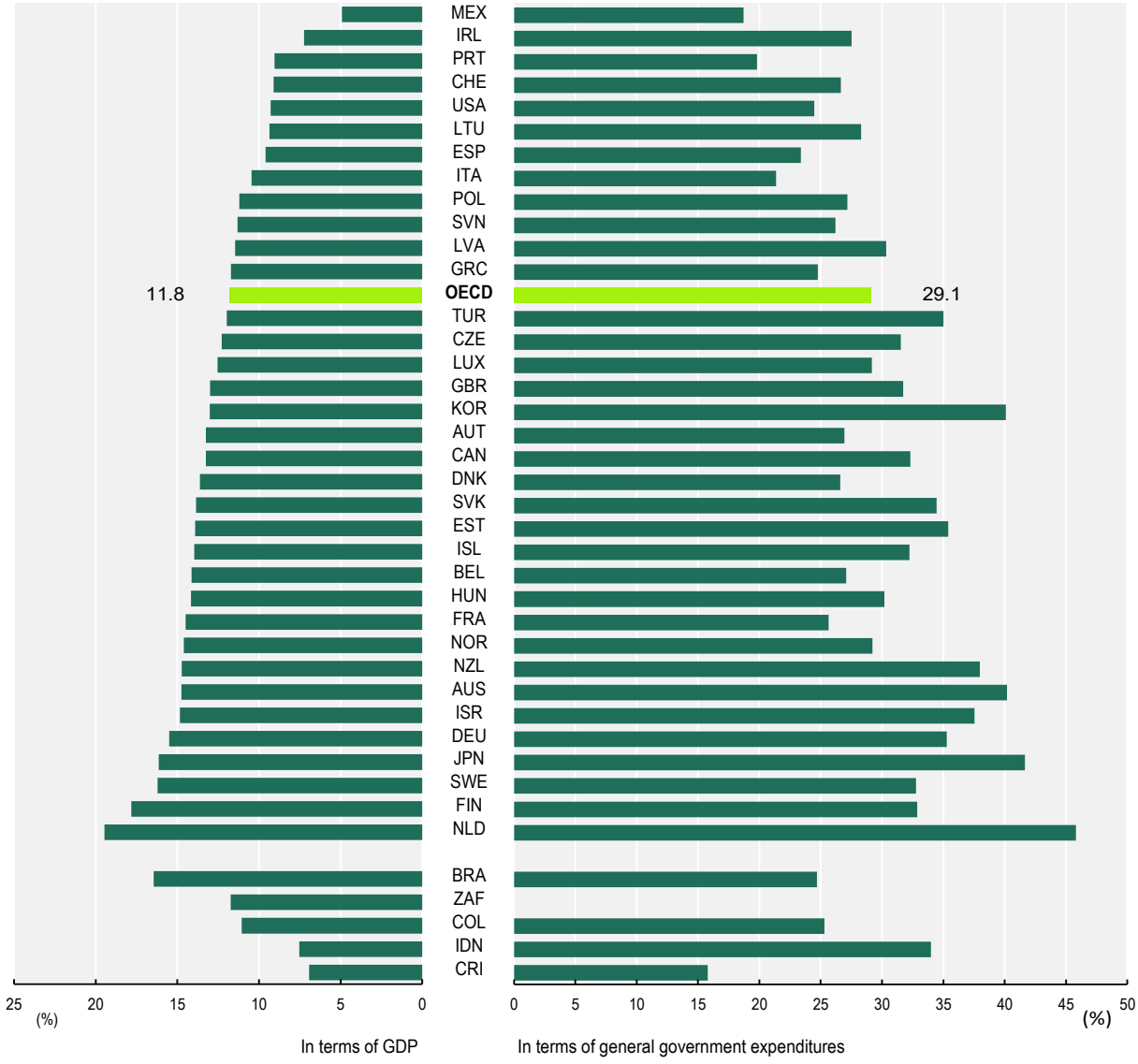
Public procurement refers to the many ways in which governments plan, source and manage the acquisition of goods, services and works using a range of contractual arrangements and purchasing tools. It operates across all levels of government in order to deliver goods, services and works for citizens. Approximately 63% of public procurement occurs at the sub-national level, with almost 134 000 authorities at local and regional level across the OECD (OECD, 2019[1]).

Public procurement is a strategic instrument and lever for achieving government policy goals. These goals can include stimulating innovation, promoting green public procurement and the circular economy, supporting access to public procurement contracts for small and medium sized enterprises (SMEs), or promoting Responsible Business Conduct (RBC) in global supply chains. Used strategically, public procurement can deliver goods and services necessary to accomplish a government's mission in a timely, economical and efficient manner, making economies more productive and increasing trust in public institutions.

Across OECD countries, public procurement represents 12% of gross domestic product (GDP) on average (OECD, 2019[1]). Governments are the largest purchasers of goods, services and works in many industries and, therefore, a key source of demand in those sectors (see Figure 1.1). Public procurement has a strong impact on all forms of public service delivery, as reflected in sectoral spending, from health to environmental protection, public order or economic affairs.[1] This buying power gives governments a strong lever for promoting more responsible production and consumption of goods and services. This, in turn, promotes sustainable growth, ensures value for money and helps governments meet commitments under the 2030 Agenda for Sustainable Development, notably Goal 12 (Responsible Consumption and Production).

[1] Comprising infrastructure, transport, communication, energy, and research and development (R&D)

Figure 1.1. Government procurement as a share of GDP and of total government expenditure



Note: Data for Chile are not available. Data for Turkey are not included in the OECD average due to missing time series.
A large share of general government procurement in the Netherlands is spent on social transfers in kind via market producers – this relatively high level could be due, in part, to the country's system of scholastic grants as well as the country's mandatory health insurance system whereby the government subsidises individuals' purchase of coverage from private providers.
On data for Israel, see http://doi.org/10.1787/888932315602.
Source: OECD National Accounts Statistics (database). Data for Australia are based on a combination of government finance statistics and National Accounts data provided by the Australian Bureau of Statistics

The *OECD Recommendation of the Council on Public Procurement* is the overarching OECD guiding framework that promotes the strategic and holistic use of public procurement. It is a reference for modernising procurement systems and can be applied across all levels of government and state-owned enterprises. The Recommendation addresses the entire procurement cycle while integrating public procurement with other elements of strategic governance, such as budgeting, financial management and other forms of services delivery. The Recommendation, adopted in 2015, has been a source of inspiration

for a number of other international standards, such as the Methodology for Assessing Procurement Systems (MAPS), the European Recommendation 2017/1805 on the professionalisation of public procurement, the Compendium of Good Practices on the Use of Open Data for Anti-corruption Across G20 Countries, and the G20 Principles for Promoting Integrity in Public Procurement (OECD, 2019[2]).

"Value for money" is a fundamental principle underpinning public procurement. It guides public procurement decisions and actions to focus on the "most advantageous combination of cost, quality and sustainability to meet defined requirements" (MAPS, 2018[3]). The economic argument (cost and quality) has been brought to the forefront of government considerations given budget pressures and citizens demanding accountability for public spending. However, for more than a decade now, value in public procurement increasingly focusses on the sustainability dimension, including more frequently objectives beyond cost and quality like environmental objectives. This is to ensure that goods and services do not unduly harm the environment.

Value for money also increasingly includes social considerations such as respect for human rights, labour rights including non-discrimination, and gender mainstreaming, as well as promoting economic opportunities for long-term unemployed people, minorities and people with disabilities. These considerations have primarily focused on citizens, within national boundaries.

In recent years, there has been growing awareness of the potential risks of human and labour rights abuses in global supply chains, especially risks related to child labour, forced labour or modern slavery and human trafficking. While public procurement can make a positive contribution to economic, environmental and social progress, if not used strategically, it can also be linked to adverse impacts on people, planet and society. This has resulted in growing calls for governments and business to take greater responsibility for their purchasing decisions and actions.

Responsible Business Conduct (RBC) acknowledges and encourages the positive contributions that business can make to economic, environmental and social progress. It also recognises that business activities through global supply chains can result in adverse impacts on people, society and the environment. The OECD Guidelines for Multinational Enterprises (MNE Guidelines)[2] are the most comprehensive international standard on RBC. They provide non-binding recommendations from governments to business on key areas of business responsibility, including workers' rights, human rights, environment, bribery, disclosure, etc. The MNE Guidelines align with other international instruments on RBC, including the UN Guiding Principles on Business and Human Rights and the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work, the ILO Conventions and Recommendations referenced within the MNE Guidelines, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. See Box 1.1 for a definition of RBC.

[2] The MNE Guidelines are referenced in a range of other OECD instruments that reinforce the interlinkages between RBC and these other areas, including: the G20/OECD Principles of Corporate Governance; the Guidelines on Corporate Governance of State-Owned Enterprises; the Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence; the Policy Framework for Investment; the Recommendations of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions and the Recommendations of the Council on Public Procurement.

Box 1.1. What is Responsible Business Conduct (RBC)?

Responsible Business Conduct (RBC) acknowledges and encourages the positive contributions that business can make to economic, environmental and social progress. It also recognises that business activities can result in adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance. The OECD Guidelines for Multinational Enterprises (MNE Guidelines) are non-binding recommendations addressed to multinational enterprises by governments on RBC. The MNE Guidelines recommend that businesses carry out risk-based due diligence to avoid and address adverse impacts associated with their operations, their supply chains and other business relationships.

Source: OECD Due Diligence Guidance for Responsible Business Conduct (2018)

These international instruments all recommend that business should carry out risk-based supply chain due diligence to avoid and address adverse impacts associated with their operations, supply chains and other business relationships. Like business, public procurement agencies face similar challenges to avoid and address adverse impacts in global supply chains. Given the power of public procurement to act as a lever for change, there is a growing expectation[3] that governments uphold RBC commitments in their role as an economic actor, through public procurement.

Many goods and services purchased by public buyers are produced through global supply chains which are fragmented, opaque and complex. Many supply chains originate in or pass through countries with a poor record of implementing global standards on human rights, women's rights, labour rights, corruption, and environmental protection. There is a significant risk that public buyers become linked to human rights abuses, corruption and environmental degradation in global supply chains. In recent years, it has come to light that public contracts are at times linked to serious human and labour rights violations such as forced labour, modern slavery, human trafficking, child labour as well as negative environmental impacts.[4] Governments need to ensure that their purchasing decisions are not linked to adverse social and environmental impacts. The progress report on the implementation of the *OECD Recommendation of the Council on Public Procurement* (OECD, 2019[2]) shows that only 50% of OECD countries have developed strategies to assess, prevent and manage risks in the public procurement cycle.

The concepts included in international instruments on RBC, notably the MNE Guidelines, can be summarised in eight RBC objectives in a public procurement context (hereafter "RBC objectives"). These eight RBC objectives form the basis of analysis for the purpose of this report. They include: the environment, human rights, labour rights, minority considerations, people with disabilities, long-term unemployed people, gender considerations and integrity (see Box 1.2 for detailed definitions).

[3] The UN Guiding Principles on Business and Human Rights clarify that all states are expected to ensure protection of and respect human rights in their role as economic actors. This aspect of the state duty to protect human rights – the "State-Business Nexus" – covers policy areas such as management of State-owned enterprises, export credit, official investment insurance, and public procurement. The UNGPs emphasise that states should both integrate human rights due diligence in the activity of entities in charge of these areas, as well as incentivise due diligence by business with which the State conducts commercial transactions (Guiding Principles 4-6). As part of this, Governments should ensure policy coherence between commitments to the Sustainable Development Goals (SDGs) and their human rights obligations. This includes using their control and leverage as economic actors to promote respect for human rights.

[4] (The Diplomat, 2019[29]) (Hall, 2020[43]) (DanWatch, 2013[44]) (SwedWatch, 2020[45]) (Difi, 2018[46]) (British Medical Association (BMA), BMA Medical Fair and Ethical Trade Group and European Working Group on Ethical Procurement, 2016[47])

Box 1.2. RBC objectives in public procurement

The following definitions were used for the purpose of this report:

1. **Environment** refers to any activity to maintain or restore the quality of the environment through preventing the emission of pollutants or reducing the presence of polluting substances in the environment. Within public procurement, environmental considerations can relate to pollution, carbon footprint, water footprint or use, biodiversity, micro-plastics, climate change, deforestation, chemicals, waste reduction (water, packaging), fossil fuels, land use or tenure, energy and renewable energy, circular economy.
2. **Human rights** as expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the other core international human rights treaties, and to the principles concerning fundamental rights set out in the 1998 ILO Declaration on Fundamental Principles and Rights at Work.
3. **Labour rights** which include the fundamental principles and rights at work as recognised in the ILO 1998 Declaration on Fundamental Principles and Rights at Work as well as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration). The 1998 Declaration includes the freedom of association and the right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation.
4. **Minority considerations** refer to certain categories of the society that need to be integrated in the economy through specific policies.
5. **People with disabilities** refer to those who have a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.
6. **Long-term unemployed people** refer to people who have been unemployed for 12 months or more.
7. **Gender considerations** refer to incorporating gender elements in the public procurement policymaking cycle and in the procurement processes.
8. **Integrity** refers to the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector. Integrity breaches include corruption, fraud, bribery and tax evasion.

This report takes stock of current practices by a selection of OECD and non-OECD governments on integrating RBC objectives into public procurement regulatory and strategic frameworks as well as ways in which these governments are implementing RBC objectives in purchasing practice. The report highlights the role that risk-based due diligence in supply chains can play to reinforce government efforts to model and support responsible business behaviour through public procurement. It encourages public procurement policy makers and practitioners to build on collaboration within their own government, between governments and with external stakeholders, including the private sector, civil society and social partners. Finally, it identifies possible avenues to increase the impact of public procurement strategies to promote RBC objectives and achieve sustainability commitments.

The Report is structured as follows.

- Part I, Section 1 (this section) addresses the concepts of strategic public procurement that enable the inclusion of RBC objectives and supply chain due diligence into public procurement.
- Section 2 analyses the uptake of the eight RBC objectives within public procurement regulatory and strategic frameworks and examines the scope and practical application of such frameworks. The section also examines mechanisms that support the uptake and monitoring of RBC objectives.
- Section 3 analyses the implementation of RBC objectives in public procurement, focusing mainly on the practices of Central Purchasing Bodies (CPBs) and sets out how to incorporate these objectives in the procurement cycle. It also explores the application of RBC objectives to subcontractors as well as the extended supply chain. Finally, this section addresses the actual and potential role of other stakeholders in the greater uptake of RBC objectives in public procurement.
- Section 4 summarises the main conclusions and includes recommendations to policy makers and procurement practitioners on actions to promote RBC objectives in public procurement. Recommendations may be of interest to OECD National Contact Points for RBC (NCPs) and companies supplying goods and services to governments to better understand the evolving concept of strategic public procurement and RBC.
- Part II includes country fact sheets for each of the respondent countries to the survey. The country fact sheets contain information about the strategic or regulatory framework in the country to support RBC objectives in public procurement, approaches to be applied during the public procurement cycle, and good practices applied in the respective country.

Data in this Report comes from the *OECD Survey on Leveraging Responsible Business Conduct through Public Procurement* conducted between November 2019 and February 2020. The objective of the survey was to take stock of the existing national regulatory and strategic frameworks, and their application in practice. The survey was sent to the 49 Adherent countries[5] to the MNE Guidelines, to public procurement policy makers as well as Central Purchasing Bodies (CPBs). A total of 28 survey responses were received from policy makers – 27 from OECD countries (Australia, Belgium, Canada, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Israel, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Netherlands, New Zealand, Norway, Poland, Slovak Republic, Slovenia, Spain, Sweden, and Switzerland), and 1 from a non-OECD country (Ukraine). 20 CPBs responded: Seventeen CBPs represented OECD member countries (Belgium, Canada, Chile, Costa Rica, Denmark, Estonia, Finland, France, Germany, Iceland, Italy, Korea, Mexico, New Zealand, Norway, Slovenia, Sweden) and 3 responses from non-OECD countries (Brazil, Peru and Ukraine). The survey also solicited perspectives from stakeholders from companies, industry associations, trade unions and civil society.

1.2. Evolution of public procurement practices and the link to RBC objectives

Public procurement is governed by regulatory and strategic frameworks to ensure that contracting authorities use public funds in a fair and open manner, to achieve efficiency and value for money through sound planning, design and delivery. Government purchases fall within the scope of domestic (national or sub-national) public procurement regimes and may be subject to general law (e.g. administrative, contract, environmental and anti-corruption laws). Depending on their monetary value, subject matter and prior government obligations, government contracts may also be subject to international and regional regimes. The Agreement on Government Procurement (GPA) within the framework of the World Trade Organisation[6] is an example for international public procurement rules. Examples for regional regimes

[5] 38 countries are OECD countries and 11 are non-OECD countries.

[6] The GPA is a plurilateral agreement within the framework of the WTO, meaning that not all WTO members are parties to the Agreement. At present, the Agreement has 20 parties comprising 48 WTO members. 36 WTO

include the European Union's Procurement Directives. Free Trade Agreements (FTA) can have a bearing on public procurement as well. Examples for FTA with public procurement provisions include the Comprehensive and Economic Trade Agreement (CETA)[7] between Canada and the EU, the FTA between the EU and the Republic of Singapore[8], or the North American Free Trade Agreement (NAFTA)[9], as well as various other bilateral FTA.

As highlighted earlier, public procurement frameworks were originally designed to achieve the best value for money by encouraging open competition and non-discrimination between tenderers to drive down costs and obtain monetary savings. In this context, value was defined as obtaining the highest quantity or quality for the lowest price. Tender outcomes were based primarily on this cost-focused approach.

Nevertheless, in recent years, these public procurement frameworks have undergone a considerable shift from a purely cost-focused approach to a full life-cycle approach, including the consideration of environmental and social costs as part of total value for money. This shift also reflects citizens' growing expectations towards their governments: citizens expect that public spending is both efficient and exemplary. This means that governments, in their expenses, should follow the principles of transparency and accountability, whilst contributing to societal well-being and preventing harm to people and the planet. Since the 1990s, public procurement has been recognised as a policy tool to achieve, for example, environmental goals consistent with broader policy objectives. However, this choice has historically been limited to criteria that could be directly linked to the subject matter of the public contract and included as an economic value (Stavenow, C., Sennström, L, 2013[4]). This means that any criteria used in the tender were required to relate to the procured works, supplies or services at any stage of their life-cycle, including production and trading. General company-wide policies, such as those on corporate environmental responsibility are not considered "linked to the subject-matter" of the specific contract as general corporate policies are too broad to be considered criteria.

These non-price objectives were initially defined as *secondary* or *complementary* policy objectives because they fulfilled *secondary* goals not necessarily directly related to the *primary* objective, the "subject matter" of the contract (Arrowsmith, Sue and Kunzlik, Peter, 2009[5]). Through these secondary or complementary policy considerations, governments can influence business behaviour. For example, some governments may place value on procuring goods and services from small and medium-sized enterprises (SMEs), businesses that invest in new or innovative products or services, or women- or minority-owned businesses. This approach is known as "strategic public procurement" and has been gaining prominence in the last 10 to 15 years (OECD, 2013[6]).

A second term associated with the pursuit of complementary or secondary public procurement objectives is Sustainable Public Procurement (SPP). SPP is a strategic approach that promotes the integration of the three pillars of sustainable development, i.e. economic development, social development and environmental protection. One of the earliest definitions of SPP from 2006, still applicable today, echoes the broadened concept of value for money. It defines SPP as a "process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment" (CIPS, 2008[7]).

In the context of public procurement, the term "strategic public procurement" is often used interchangeably with the term "Sustainable Public Procurement", encompassing the secondary or complementary policy

members/observers participate in the GPA Committee as observers. Out of these, 12 members are in the process of acceding to the Agreement. https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

[7] Chapter 19, https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/

[8] Chapter 9, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22019A1114(01)&from=EN#page=55

[9] Chapter 10, http://www.sice.oas.org/trade/nafta/CHAP-101.ASP#P.IV

objectives mentioned above. This report will use “strategic public procurement” (SPP) throughout, as it is the most encompassing term. “Green” public procurement can be considered one of the first instances where the concept of value in public procurement was expanded (see Box 1.3).

Box 1.3. “Green” and “social” public procurement

Green public procurement, i.e. the introduction of environmental considerations in public procurement, is usually considered as “public purchasing of products and services which are less environmentally damaging when taking into account their whole life cycle” (OECD, 2015[8]). It paves the way for including social considerations (focus of this report), such as increased employment opportunities, decent work standards and social inclusion into public procurement decisions (European Commission, 2011[9]). While the beneficiaries of integrating environmental measures into public purchasing may be globally dispersed (along global supply chains), “social” procurement has traditionally focused on local markets. This results in a clearly marked distinction between the scope and intention of social clauses in trade agreements. “Socially responsible”, “ethical” or “fair” public procurement initiatives also emerge, seeking to address social (notably labour) conditions beyond the borders of the purchasing country by integrating expectations into agreements with countries of production (i.e. along the full supply chain) (Martin-Ortega, 2017[10]).

Figure 1.2 illustrates the relationship between the concepts used in public procurement, where SPP is a foundational concept and concepts related to RBC, where the MNE Guidelines include many of these considerations. RBC objectives reflect the diversity of agendas and values of different stakeholders including policy makers, public procurement professionals, NGOs, business, workers’ representatives, trade unions, social partners and citizens (consumers). In addition, strategic public procurement differs from country to country. Issues such as the inclusion of indigenous people might be a priority for some countries, whereas addressing climate change, gender or favouring people with disabilities might be a priority for others.

Strategic public procurement includes many, but not all, aspects of RBC; and likewise RBC contains many but not all elements of strategic public procurement. Nevertheless, there is a strong overlap between the issues which both groups intend to address.

Figure 1.2. The core pillars of sustainable public procurement and their overlap with RBC issues

Public procurement can thus be viewed as a point where policy expectations converge, and where procurement authorities are called to balance competing demands (Martin-Ortega and Methven O'Brien, 2019[11]). This thinking is reflected in the *OECD Recommendation of the Council on Public Procurement*. The Recommendation provides guiding principles for countries on how to strike the right balance for public procurement systems that support both achieving value for money and furthering environmental and social objectives (OECD, 2015[12]). The Recommendation identifies the steps to be taken whenever such objectives are pursued (Box 1.4).

Box 1.4. OECD Recommendation on Public Procurement: The principle of balance

The Council

V. RECOMMENDS that Adherents recognise that any use of the public procurement system to pursue secondary policy objectives should be balanced against the primary procurement objective.

To this end, Adherents should:

i) Evaluate the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities, balancing the potential benefits against the need to achieve value for money. Both the capacity of the procurement workforce to support secondary policy objectives and the burden associated with monitoring progress in promoting such objectives should be considered.

ii) Develop an appropriate strategy for the integration of secondary policy objectives in public procurement systems. For secondary policy objectives that will be supported by public procurement, appropriate planning, baseline analysis, risk assessment and target outcomes should be established as the basis for the development of action plans or guidelines for implementation.

iii) Employ appropriate impact assessment methodology to measure the effectiveness of procurement in achieving secondary policy objectives. The results of any use of the public procurement system to support secondary policy objectives should be measured according to appropriate milestones to provide policy makers with necessary information regarding the benefits and costs of such use. Effectiveness should be measured both at the level of individual procurements, and against policy objective target outcomes. Additionally, the aggregate effect of pursuing secondary policy objectives on the public procurement system should be periodically assessed to address potential objective overload.

Source: (OECD, 2015[12])

Taking this principle of balance into consideration, public procurement practitioners have developed methodologies and approaches to advance broader societal outcomes. For example, environmental considerations have been used to enhance energy efficiency, limit the use of chemicals and toxic substances, reduce waste and packaging, and encourage recycling amongst other environmental considerations (OECD, 2019[2]). In addition, environmental considerations have also increasingly been integrated into evaluations on public infrastructure projects. Box 1.5 highlights examples of tools that public practitioners in the Netherlands have developed to integrate environmental considerations into a public tender.

Box 1.5. Netherlands: assessing environmental impacts in infrastructure projects

In 2010, the Dutch House of Commons ruled that Dutch public authorities had to implement 100% sustainable procurement by 2015. In response to this, the Department of Public Works of the Ministry of Infrastructure and the Environment (Rijkswaterstaat, RWS) developed a methodology for infrastructure projects which mandated the functional specification of the tender together with quality input from the client to ensure an innovative and high-quality solution.

The RWS focuses on two criteria when assessing the sustainability of offers: CO_2 emissions and the environmental impact. The RWS also developed two instruments to support the assessment: the CO_2 performance ladder and the DuboCalc.

CO_2 Performance Ladder

Contractors in the Netherlands can apply for a CO_2 performance ladder certificate. In order to receive the certificate, contractors need to take steps towards reducing their carbon footprints. The first step (or "rung" on the ladder) is to measure the company's CO_2 emissions. Subsequent steps (rungs) measure the CO_2 emissions of the contractor's supply chain and, more importantly, set goals toward reducing emissions. The higher rungs on the CO_2 ladder include steps towards CO_2 reduction in the supply chain. A commitment to a higher level of compliance results in a greater deduction from the submission price, which increases the contractor's chances of winning the contract. Each CO_2 ambition level corresponds to a different percentage reduction in the submission price.

DuboCalc

To quantify the sustainability of materials to be used as a part of a project, Dutch authorities developed a software tool that calculates the environmental impact of different construction materials. The software is called the Sustainable Building Calculator, or DuboCalc. DuboCalc was developed as a part of an overall shift toward performance-based tendering for assessing the overall environmental impact of constructions rather than prescribing details. With DuboCalc, the embedded environmental impacts of a material's use can be calculated, from raw material extraction and production to demolition and recycling. As such, DuboCalc measures the entire life cycle of materials. DuboCalc also calculates the energy consumed by infrastructure works during the use phase.

Source: (OECD, 2015[8])

Public procurement has been recognised as a policy instrument to promote new employment opportunities, see an example in Box 1.6. This is done either indirectly through supporting SMEs to participate in public procurement opportunities, or directly through requiring suppliers to recruit long-term unemployed people, indigenous people, migrant groups, people with disabilities or young people (OECD, 2017[13]).

Box 1.6. New employment opportunities – the case of Transport for London

Transport for London (TfL) is responsible for running London's public transport network and managing the capital's main roads. One of the goals in the Mayor's Transport Strategy is to create opportunities for new jobs. To support that goal, TfL require suppliers, in the invitation to tender, to demonstrate how they plan to incorporate at least one Strategic Labour Needs and Training (SLNT) output for every GBP 2 million or 3 million of spending, depending on the contract type.

SLNT outputs are:

- one apprenticeship start
- one workless job start
- 20 days of industry placement positions or "taster" days
- 20 days of school engagement activities
- 10 days of social mobility placements

Embedding these requirements in tenders helps TfL to tackle industry skills shortages in partnership with contractors. It helps them employ the right people to deliver TfL's projects and services, open up opportunities that address under-representation and, ultimately, contribute to economic regeneration. During the last 10 years, TfL has helped create more than 5 500 apprenticeships and 5 300 jobs for unemployed Londoners, including more than 100 ex-offenders.

Source: (Transport for London, 2020[14])

Public procurement can help advance gender equality as illustrated in Box 1.7. In the context of public procurement, it has been used to support the participation of women-owned companies in procurement opportunities and making equal pay between men and women mandatory for suppliers (OECD, 2019[15]) (Federal Office for Gender Equality[16]).

Box 1.7. Gender equality – Chile, Iceland and Switzerland

The Central Purchasing Body (CPB) in Chile introduced a programme to promote the participation of companies led by women in the public procurement market. There are, for example, training programmes for women and guidelines to help officials include gender considerations in their decisions by incorporating gender-specific evaluation criteria. Women received 36% of government contracts in 2015. Many of the women that participated were from rural areas. 64% were the family's main wage earner. To determine which companies were women-led or women-owned, ChileCompra introduced an electronic registry. This registry certifies "female enterprises" (sole proprietors) and includes this data in the civil registry. For more complex companies to be labelled "female enterprise" in the registry, additional criteria apply. Women have to own the majority of company shares and the CEO has to be a woman.

Iceland's equal pay certification legislation, passed in 2017, is aimed at closing the gender pay gap. All companies with 25 employees or more are obliged to obtain certification from a certifying body of Icelandic Standard ÍST 85 to prove that women and men receive equal pay for equal work. The Centre for Gender Equality oversees the certification process. Companies that do not meet the government requirements are fined. The Icelandic Act on Public Procurement allows for requirements of certification or equivalent.

Switzerland's public procurement law requires equal pay for men and women as a prerequisite for participation in public procurement. Government agencies are empowered to carry out random controls to ensure compliance. Infractions may lead to sanctions, such as a contractual penalty or the exclusion from the procurement market. The aim of these regulations is to ensure social achievements and to avoid distortions of competition.

The Swiss government developed an instrument named Logib to support the implementation of these requirements. Other things being equal, Logib shows whether there is a statistically significant gender effect on wage. The tool takes into account human capital related factors like level of education, years of service, potential working experience, and factors reflecting the performed function, like skill level and professional position. Companies can use Logib as a self-analysis tool. The tool is publicly available in various languages, anonymous, and free of charge. An equal pay self-check draws on readily available data.

In July 2020, the Excel-based application of Logib has been replaced with a powerful, modern web tool. This version meets the latest application and data privacy requirements. It also provides additional gender-specific indicators alongside the actual equal pay analysis. Publicly available since 2004, Logib is internationally recognised and has been adopted by various countries. In addition to the UN Public Service Award, it has received the EPIC Good Practice Label from the Equal Pay International Coalition (OECD, ILO, and UN Women). The previous, Excel-based version is still available for reference, but will not be developed further.

Sources: (Chile Compra, 2018[17]) Iceland Act on Public Procurement, no. 120/2016 (Art. 50); Iceland Act 10/2008; (Federal Department of Home Affairs, 2017[18]) ; Federal Act on Public Procurement, no. 172.056.1, https://www.jafnretti.is/en/vinnumarkadur/equal-pay-certification/equal-pay-certification

1.3. Political support and instruments to integrate RBC objectives into public procurement

A number of international policies and legal instruments, as well as high-level political calls (UN, G7, G20), encourage the integration of RBC objectives into public procurement. The revised GPA adopted in 2012 for example authorises technical specifications which "promote the conservation of natural resources or protect the environment". It also includes environmental characteristics among evaluation criteria[10].

At the EU level, steps towards integrating sustainability considerations in public procurement resulted in the 2014 European Directive on Public Procurement (Directive 2014/24/EU). The directive encourages EU governments to award (or reject) procurement contracts on the basis of social and environmental considerations. Governments are further encouraged to promote sustainable development by using a full life-cycle approach to assess the real cost of products, works and services.

Political support for integrating sustainability, notably environmental and social considerations, into public procurement has also gained momentum. SDG 12 on Responsible Consumption and Production specifically calls for the implementation of sustainable public procurement policies and action plans (SDG 12.7)[11]. In addition, a number of SDG targets have an indirect link to procurement, as the activities[12] referenced in these targets are delivered using public procurement.

[10] Art. X.6, Art. X.9 GPA

[11] https://sustainabledevelopment.un.org/sdg3

[12] This includes for example achieving higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high value-added and labour-intensive sectors and promoting

The adoption of the *OECD Recommendation of the Council on Public Procurement* in 2015 called on countries to ensure the strategic and holistic use of public procurement. In doing so, the Recommendation specifically defined the broader policy objectives to be pursued, including "sustainable green growth, [and], standards for responsible business conduct" (OECD, 2015[12]). In that same year, G7 leaders committed to strive "for better application of internationally recognized labour, social and environmental standards, principles and commitments (in particular UN, OECD, ILO and applicable environmental agreements) in global supply chains"[13]. The G7 Leaders Declaration recognised that governments and business have a joint responsibility "to foster sustainable supply chains and encourage best practices" [14], and called for tools to support public procurers in meeting social and environmental commitments.[15] In 2017, G20 Leaders further undertook to "work towards establishing adequate policy frameworks in our countries" to "foster… the implementation of labour, social and environmental standards and human rights in line with internationally recognised frameworks".[16]

In 2017, the International Organisation for Standardisation (ISO)[17] released guidance 20400:2017 on Sustainable Procurement that provides guidelines for organisations implementing sustainable procurement in the public and private sector with regards to managing risks, addressing adverse sustainability impacts through due diligence, setting priorities, and exercising positive influence.[18] More recently, the European Commission's public procurement strategy "Making Public Procurement work in and for Europe", adopted in October 2017, encourages public procurers to aim for "better value for public money".[19]

There has been an increasing number of laws seeking to legislate due diligence, see Figure 1.3. This includes legislation addressing specific issues such as conflict minerals, bribery, modern slavery, child labour, as well as legislation targeted to specific aspects of due diligence such as non-financial reporting. While most of these laws are aimed at business, a few are beginning to cover public procurement (see section 1.6).

development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalisation and growth of micro-, small- and medium-sized enterprises, including through access to financial services.

[13] Leaders' Declaration, G7 Summit, 7–8 June 2015; Available at: https://www.g7germany.de/Content/EN/_Anlagen/G7/2015-06-08-g7-abschlusseng_en___blob=publicationFile&v=3.pdf

[14] Leaders' Declaration, G7 Summit, 7–8 June 2015; Available at: https://www.g7germany.de/Content/EN/_Anlagen/G7/2015-06-08-g7-abschlusseng_en___blob=publicationFile&v=3.pdf

[15] Leaders' Declaration, G7 Summit, 7–8 June 2015; Available at: https://www.g7germany.de/Content/EN/_Anlagen/G7/2015-06-08-g7-abschlusseng_en___blob=publicationFile&v=3.pdf

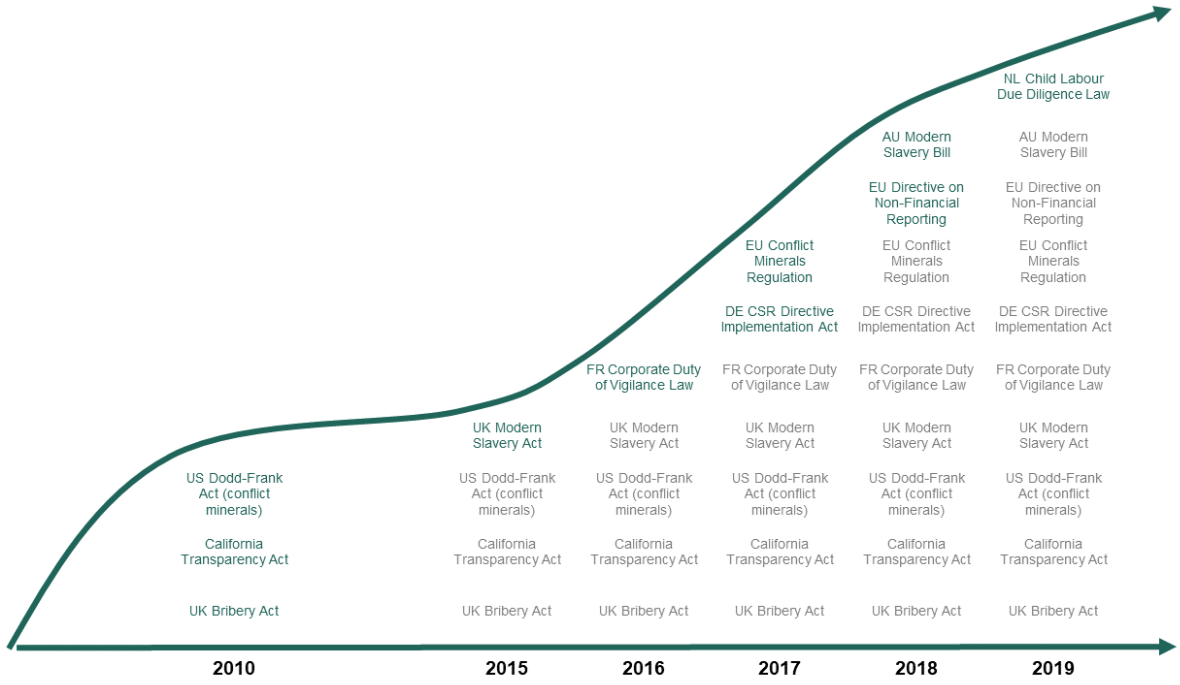
[16] G20 Leaders' Declaration: Shaping an interconnected world, Hamburg, 7/8 July 2017; Available at: https://www.g20germany.de/Content/EN/_Anlagen/G20/G20-leaders-declaration___blob=publicationFile&v=11.pdf

[17] ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies (ISO member bodies). The work of preparing International Standards is normally carried out through ISO technical committees. Each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work.

[18] International Organisation for Standardisation (2017) Sustainable Procurement – Guidance, www.iso.org/obp/ui/#iso:std:iso:20400:ed-1:v1:en

[19] European Commission (2017), Communication from the Commission to the Institutions: Making Public Procurement work in and for Europe, COM(2017) 572 final, https://ec.europa.eu/docsroom/documents/25612

Figure 1.3. Key RBC-related legislation 2010 to 2019



1.4. Addressing adverse impacts in public procurement supply chains

Intense competition within global trade often leads to downward pressure on prices, which in turn can lead to harsh working conditions to save costs, at the expense of workers' health, safety and standard of living (Institute for Human Rights and Business (IHRB), 2015[19]) or of environmental standards. As these risks can occur anywhere in the supply chain, measures to prevent and address them should also focus on the entire supply chain.

One of government's largest area of expenditure is economic affairs (16.3% of government expenditure) which includes the purchase of fuel and energy, mining, transport and communication (OECD, 2019[1]). This illustrates that governments are large buyers of products from sectors sometimes linked to forced labour, exploitation and environmental degradation, such as mining, agriculture and construction (Figure 1.4).

Figure 1.4. Sectors of forced labour exploitation

Source: (International Labour Office (ILO), 2017[20])

Severe risks such as environmental harms, child labour and human trafficking have been identified in the supply chains of building materials like concrete, wood, sand, asphalt and steel. Industries that produce natural stone, used for paving streets and squares, have also been linked to adverse human rights impacts in quarries (India Committee of the Netherlands, 2015[21]). There have been reports of human rights violations against people trying to protect their land and indigenous peoples' rights during the development of large infrastructure projects (International Labour Organization, Organisation for Economic Co-operation and Development, International Organization for Migration and United Nations Children's Fund, 2019[22]) (United Nations High Commissioner for Human Rights and the Heinrich Böll Foundation, 2018[23]).

Environmental and labour rights risks can occur in the information, communication and technology (ICT) industry (OECD, 2016[24]). NGOs have reported on public procurement of ICT equipment from suppliers that were violating labour rights in China (Electronics Watch, 2016[25]). Important components of ICT and health technology products contain gold, tin, tantalum, tungsten as well as cobalt. These materials may be sourced from mining operations associated with human rights abuses on workers, and communities linked to regional conflicts (Swedish Regions, 2019[26]). Among 39 large scale investments in agriculture analysed by the World Bank and UNCTAD, land tenure was identified as the most common cause of grievances for affected communities, particularly due to disputes over land over which communities had informal land use rights, and to a lack of transparency, especially on conditions and process for land acquisition (World Bank, United Nations Conference on Trade and Development, 2014[27]).

Another large area for government expenditure is healthcare (31.1% of government expenditure) (OECD, 2019[1]). Historically, there have been incidents of child labour in the surgical instrument industry (McVeigh, K., Janjua, H., 2018[28]) and cases of debt bondage in the medical gloves industry (The Diplomat, 2019[29]) (Apedo, 2019[30]). The COVID-19 pandemic has exposed further vulnerabilities in supply chains. At the same time, this pandemic highlights an ever greater need to incorporate RBC objectives in public procurement (see Box 1.8).

Box 1.8. COVID-19 and emergency procurement of healthcare supplies

The outbreak of the COVID-19 pandemic has exposed vulnerabilities in healthcare supply chains. Demand for procurement of essential goods and services across the globe peaked or dropped off at the same time (e.g. surge in requests for personal protective equipment and drop in airport traffic). Many public procurement authorities needed to procure with extreme urgency and applied emergency procedures to secure supplies. Central, regional and local governments competed for the same products and faced high price volatilities. There was an increased risk of purchasing fraudulent health products, as well as of labour rights violations in the global supply chains of essential products. In some cases, the situation was exacerbated by factory lockdowns imposed by governments in the producing countries to halt the virus. However, many suppliers continued business activity, which in turn increased the risk of excessive working hours and the risk of exposing workers to the virus. NGOs and the Media increasingly urged public procurement authorities to work towards maintaining supply chains of essential products for citizens. They also urged to protect vulnerable workers who are part of the global production chain.

An initial review of public procurement responses of OECD countries to the COVID-19 crisis evidenced that public buyers are engaging with suppliers more often to find innovative and alternative solutions for their needs, and they are considering alternative sourcing (such as in Canada, Italy, Korea, United Kingdom and USA). Sustainability objectives did not entirely fall out of focus. In organising their public procurement response to the COVID-19 crisis, many countries emphasised transparency and integrity (such as in Colombia, Latvia, Peru). However, considerations like environmental or social objectives did not emerge in any of the country responses in the review.

These findings show that it is paramount to prepare for emergency procurement before the fact, and employ risk management strategies to secure supply chains and associated objectives. Addressing the disruptive effects of such global crises requires procurement systems to embed responsive risk management strategies. Ultimately, such an approach can ensure more resilient supply chains. A due diligence approach in supply chains is particularly useful in times of emergency for public buyers. Public buyers with knowledge of their supply chains are able to make informed decisions. As a consequence, even in times of crises, public money is spent with consideration of effects for both consumers and workers. In this way, public procurement avoids and addresses adverse impacts to people, the planet and society.

Source: (OECD, 2020[31]) (The BMJ: The British Medical Journal, 2020[32]) (SVT Nyheter, 2020[33])

These examples show that the risk of adverse impacts on people and the planet are prevalent in many sectors where governments are large buyers. Many of these risks arise along the supply chain, including in the upstream segment. In this context, when procuring goods and services from sectors with high risk of adverse impact, governments need to identify, prevent or mitigate adverse impacts along the supply chain.

In many countries, government's experience with strategic public procurement relates to the "doing good" component of RBC. This means aiming at achieving positive impacts for certain groups through public procurement, like purchasing from minority-owned suppliers or favouring businesses that employ long-term unemployed people. There is less emphasis on the preventative side, meaning implementing due diligence in public procurement to ensure that purchasing decisions are not linked to adverse impacts on human rights, labour rights and the environment, and extending due diligence actions along the full supply chain.

Exclusion (or debarment) regimes are a common feature of public procurement systems. Key international and regional procurement regimes, namely the GPA[20], the Model Law on Public Procurement of the United Nations Commission on International Trade Law (UNCITRAL)[21] and the EU's Public Procurement Directives[22] include such a mechanism. These regimes allow contracting authorities to reject suppliers following a negative assessment of circumstances related to their general status, such as a criminal offence or breach of professional ethics by the supplier. In doing so, contracting authorities are not required to link the exclusion specifically to the risk of the specific contract. Exclusions are also commonly imposed for non-compliance with social and environmental legislation. Under the EU legal framework, there are opportunities to explicitly exclude those that have a poor track record of environmental, social or labour law compliance or convictions for child or forced labour (Institute for Human Rights and Business (IHRB), 2015[19]). The Directive also allows EU Member States to establish additional grounds for exclusion in their national legislation. Several EU countries have established additional national grounds for exclusion, aimed at implementing legitimate policies, such as the protection of labour law and competition law (OECD, 2018[34]).

The exclusion of certain economic operators from public procurement procedures aims to protect the integrity of the process by preventing the participation of companies that are deemed to be undesirable partners for the public sector. Exclusion from public contracts also serves as a tool to ensure a level playing field. It prevents economic operators engaging in unlawful or other inappropriate activity from gaining an unfair competitive advantage. The grounds for exclusion extend to corruption and other areas of criminal activity, professional misconduct and other causes of a lack of professional honesty, solvency and reliability. To further strengthen potential positive impacts for business practices, the EU Directive also foresees a procedure commonly referred to as "self-cleaning mechanism" (Article 57). The self-cleaning mechanism allows excluded suppliers to rehabilitate themselves and re-enter into public procurement competitions. For self-cleaning to take effect, suppliers have to prove that they have paid compensation, collaborated actively with the investigating authorities, and taken internal measures (technical, organisational and personnel-related) to prevent future wrong-doing. This approach provides an economic incentive for the remediation of adverse impacts from business operations and proactive systems of risk management by companies to prevent, mitigate and remediate adverse impacts on the environment, on workers and communities.

However, procedures for exclusion of economic operators are not the same as implementing a risk-based due diligence approach as part of management decisions. Even if there are strict mandatory rules for the exclusion of the main contractor, contracting authorities usually do not have an obligation to apply these requirements to the whole supply chain (Martin-Ortega and Methven O'Brien, 2019[11]). In most cases, contracting authorities do not have information on all elements of the supply chain.

---

[20] The GPA does not have mandatory rules on exclusion, see https://www.wto.org/english/tratop_e/gproc_e/gpa_1994_e.htm

[21] UNCITRAL Model Law on Public Procurement, United Nation, 2014. UNCITRAL is an organ of the United Nations General Assembly established to promote the harmonisation and unification of international trade. The UNCITRAL Model Law on Public Procurement aims to encourage the uniform development of national procurement laws globally in line with the principles of competition guiding the WTO while also helping states to achieve "value for money" and avoid abuses in the procurement process (for instance, corruption). It informs the public procurement regimes of numerous states, the Organisation of Security and Cooperation in Europe, the World Bank, the African, Asian and Inter-American Development Banks and the European Bank for Reconstruction and Development. See https://www.uncitral.org/pdf/english/texts/procurem/ml-procurement-2011/2011-Model-Law-on-Public-Procurement-e.pdf

[22] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&rid=3

1.5. Standards and tools to promote responsible supply chains

Expectations on RBC and responsible supply chains have not developed in a vacuum. The term "sustainable development" was first used by the Brundtland Report[23] *Our Common Future* in 1987. Since then, the expectations on governments and companies to address environmental and social challenges have increased (Borowy, I., 2014[35]).

The OECD, the UN and the ILO have developed instruments that provide guidance on responsible business and due diligence.[24] These instruments establish that all companies have the responsibility to avoid and address adverse impacts with which they are involved, including in their supply chains, while making a positive contribution to the economic, environmental and social progress of the countries in which they operate.

The 2011 *UN Guiding Principles for Business and Human Rights (UNGPs)* clarified the role of business to *respect* international standards in human rights and the role of government to *protect* human rights. The UNGPs indicated that a company's responsibility to respect human rights extends beyond its own operations to the activities of business partners, including suppliers and subcontractors, wherever they are located (Martin-Ortega, 2017[10]).The UNGPs also specified that government responsibility extended to public procurement (United Nations, 2011[36]). UN Guiding Principle 6 states that procurement provides states, individually and collectively, with a unique opportunity to promote awareness of, and respect for, human rights by businesses including through procurement contracts. UN Guiding Principle 8 requires governments to ensure "policy coherence" across all governmental departments, agencies and other state-based institutions that shape business practices. This approach is supported by the *OECD Recommendation on Policy Coherence for Sustainable Development*, which calls on Adherents to strategically draw on public procurement as a means to manage synergies and trade-offs. It can also serve in integrating sustainable development into sectoral policies. A number of governments (as described in Box 1.9) are now applying these expectations throughout their supply chains, in line with international recommendations.

[23] https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf

[24] Responsible Business Key. Messages from International Instruments, (International Labour Organization, Organisation for Economic Co-operation and Development, International Organization for Migration and United Nations Children's Fund, 2019[22])

Box 1.9. Integrating RBC objectives along the full supply chain in Canada and Sweden

The case of Canada

The Public Works and Government Services Canada have developed a policy on Ethical Procurement of Apparel which sets out a minimum level of expected behaviour amongst suppliers in regards to human rights and labour rights. The policy builds on internationally agreed on frameworks including the International Labour Organization (ILO) fundamental conventions and the United Nations (UN) Universal Declaration of Human Rights (UDHR).

As a binding part of bid solicitation and contract, the suppliers must self-certify that their suppliers comply with a range of requirements. They:

- do not employ child labour,
- do not use forced labour or compulsory labour in all its forms, including trafficking in persons,
- treat their employees with dignity and respect,
- do not discriminate against their employees,
- recognise and respect the right of employees to freely associate, organise and bargain collectively,
- provide workers with a safe and healthy work environment,
- provide fair wages, and
- do not require employees to work more than 48 hours per week and 12 hours overtime per week, or the limits on regular and overtime hours allowed by the law of the country of manufacture.

The case of Sweden

In Sweden, the Legal, Financial and Administrative Services Agency has a policy that stipulates that suppliers must accept a code of conduct requiring to live up to international frameworks such as the UN's Universal Declaration of Human Rights and the UN Convention on the Rights of the Child. This requirement is applicable throughout the supply chain and not only related to contract implementation.

Source: (Public Works and Government Services Canada, 2018[37]) (The Legal, Financial and Administrative Services Agency, 2020[38])

The *2015 OECD Recommendation of the Council on Public Procurement* recommends that governments integrate risk management strategies for mapping, detecting and mitigating risk throughout the public procurement cycle (OECD, 2015[12]). The Recommendation contains guiding principles that assist governments in developing risk assessment tools to identify and address threats to the proper functioning of the public procurement system, and publicise risk management strategies such as red flags and whistle-blower programmes (Box 1.10). To support the implementation of the Recommendation, a web-based platform, the OECD Public Procurement Toolbox, includes a comprehensive checklist for implementing the risk management principle.[25] The toolbox includes country examples on risk assessment tools to identify and address threats to the proper functioning of the public procurement system as well as on promotion of risk management strategies[26].

[25] https://www.oecd.org/governance/procurement/toolbox/search/Checklist%2010%20Risk%20management.pdf

[26] https://www.oecd.org/governance/procurement/toolbox/principlestools/riskmanagement/

Box 1.10. OECD Recommendation on Public Procurement: The principle of risk management

The Council

XI. RECOMMENDS that Adherents integrate risk management strategies for mapping, detection and mitigation throughout the public procurement cycle.

To this end, Adherents should:

i) Develop risk assessment tools to identify and address threats to the proper function of the public procurement system. Where possible, tools should be developed to identify risks of all sorts – including potential mistakes in the performance of administrative tasks and deliberate transgressions – and bring them to the attention of relevant personnel, providing an intervention point where prevention or mitigation is possible.

Publicise risk management strategies, for instance, systems of red flags or whistle blower programmes, and raise awareness and knowledge of the procurement workforce and other stakeholders about the risk management strategies, their implementation plans and measures set up to deal with the identified risks.

Source: (OECD, 2015[12])

The MNE Guidelines[27] were last updated in 2011, and include the recommendation that business carry out risk-based due diligence to avoid and address adverse impacts in their operations, their supply chains and other business relationships. The 2018 *OECD Due Diligence Guidance for Responsible Business Conduct (OECD Guidance for RBC)* explains in plain language how to implement the due diligence recommendations of the MNE Guidelines. The main body of the OECD Guidance for RBC describes the due diligence process and supporting measures in a step-by-step fashion[28]. In addition, practical actions are included in each step to further illustrate ways to implement, or adapt as needed the supporting measures and due diligence process. The OECD Guidance for RBC helps businesses to understand and implement due diligence for RBC as foreseen by the MNE Guidelines. It also seeks to promote a common understanding amongst governments and stakeholders on due diligence for RBC. The OECD due diligence framework has been developed in close collaboration with business, industry groups, supply chain experts, civil society, workers representatives and trade unions, international organisations and policy makers active in the field of responsible business and supply chain due diligence.

Sector guidance encompassing the due diligence framework has also been developed by the OECD in several areas including minerals (2011), agriculture (2016), and garment and footwear (2017). While the risks and mitigation actions described in this guidance reflect the specific challenges and nuances of the sector in question, the overall due diligence approach across sectors is the same. The OECD has launched implementation programmes with business and stakeholders for each of these sectors, to promote an increased understanding of due diligence. These implementation programmes enable learning and testing

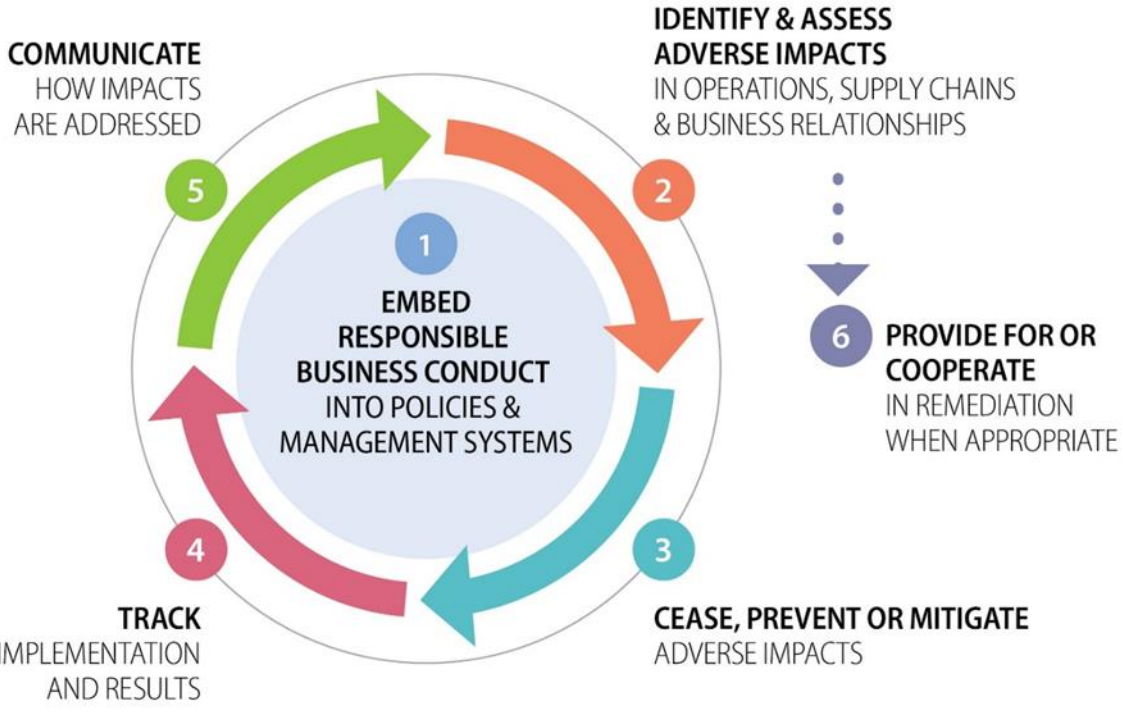
[27] The MNE Guidelines are recommendations addressed by governments to multinational enterprises operating in or from countries adhering to this instrument. They are the most comprehensive international RBC instrument, covering a broad range of issues including disclosure, human rights, employment and industrial relations, the environment, bribery, bribe solicitation and extortion, consumer interests, science and technology, competition and taxation.

[28] In practice, the process of due diligence is ongoing, iterative and not necessarily sequential, as several steps may be carried out simultaneously with results feeding into each other.

of the due diligence framework. In turn, they have helped improve an understanding of how due diligence works in practice.

The due diligence process includes six measures as described in Figure 1.5. These are (1) to embed RBC into policies and management systems, to undertake due diligence by (2) identifying actual or potential adverse impacts on RBC issues, (3) ceasing, preventing or mitigating them, (4) tracking implementation and results, (5) communicating how impacts are addressed; and (6) to enable remediation when appropriate.

Figure 1.5. OECD risk-based due diligence process and supporting measures



Source: OECD Due Diligence Guidance for Responsible Business Conduct (2018)

The OECD due diligence process enables buyers (including public buyers) to put in place a risk-based system to identify and address RBC risks in global supply chains. It should be noted that risk in the context of due diligence refers to the likelihood of adverse impacts on people and the environment that the organisation causes, contributes to or is linked to via a business relationship. It thereby goes beyond risks that affect the organisation itself but rather focuses on risk of adverse impacts related to people, the environment and society (i.e. an outward-facing approach to risk).

The OECD recommends that due diligence be commensurate to the risks found in the supply chain. This means that due diligence actions should be proportionate to the severity and likelihood of the adverse impact. When the likelihood and severity of an adverse impact is high, due diligence should be more extensive.

The due diligence process also enables prioritisation. Where it is not feasible to address all identified impacts at once, an organisation should prioritise the order in which it takes action based on the severity and likelihood of the adverse impact. Once the most significant impacts are identified and dealt with, the organisation should move on to address less significant impacts. Box 1.11 summarises the essential characteristics of due diligence which provides additional guidance for how organisations should tailor the six measures of the framework.

Box 1.11. Characteristics of due diligence

Due diligence is

- Preventative – the purpose is first and foremost to avoid causing or contributing to adverse impacts on people, the environment and society
- Involves multiple processes and objectives – the measures listed in Figure 1.5 are interrelated
- Commensurate with risk (risk-based) – takes into account severity and likelihood of an adverse impact
- Can involve prioritisation (risk-based) – address the most significant impacts first
- Dynamic – due diligence is on-going, responsive and changing. It aims to progressively improve systems and processes to avoid and address adverse impacts
- Does not shift responsibilities – the OECD recommends that each organisation address its own responsibility with respect to adverse impacts
- Concerns internationally recognised standards of RBC – the MNE Guidelines provide principles and standards of RBC consistent with applicable laws and internationally-recognised standards
- Appropriate to an enterprise/organisations' circumstances – the nature and extent of due diligence can be tailored to meet the size of an organisation and the context in which it operates
- Can be adapted to deal with the limitations of working with business relationships
- Informed by engagement with stakeholders
- Involves ongoing communication

Source: (OECD, 2018[39])

1.6. Public sector – leading by example

Governments are expected to lead by example by implementing the same expectations in areas where they are economic actors[29] (International Labour Organization, Organisation for Economic Co-operation and Development, International Organization for Migration and United Nations Children's Fund, 2019[22]). As large buyers, governments have the purchasing power to set standards that can shift markets towards more responsible business behaviour and levelling the playing field for suppliers who strive to respect human rights, labour rights, environmental requirements and other responsible business standards. The 2019 OECD report *Reforming Public Procurement* takes stock of progress to implement the *2015 OECD Recommendation of the Council on Public Procurement*. The report found that countries had advanced with regards to RBC and public procurement. Around a third of countries measured to what extent public procurement processes had results on at least some dimension of responsible business conduct. Around half of the countries incorporate objectives related to RBC in award and selection criteria for some purchases (OECD, 2019[2]).

Several legal frameworks have closed the link between governments as economic actors by introducing public procurement requirements into RBC regulations or vice versa. The Australian Modern Slavery Act as well as the United Kingdom (UK) Modern Slavery Act make specific reference to public procurement. The Australian Modern Slavery Act (2018) requires businesses based in or operating from Australia with

[29] These areas include trade and investment agreements, export credits, state-owned enterprises and public procurement

annual consolidated revenue of AUD 100 million or more to prepare annual modern slavery statements. These statements detail how they assess and address modern slavery risks in their supply chains. Statements will be published on a publically accessible online register. The Act also requires the Australian government to publish an annual Modern Slavery Statement covering both Commonwealth public procurement and investment activities. The first statement is due to be published in 2020 (Australian Government, 2020[40]). The UK Modern Slavery Act (2015) includes requirements for large companies to report annually on the steps they have taken to prevent modern slavery in their operations and global supply chains. In 2020, the UK government decided to publish the first Government Modern Slavery Statement. The UK government's efforts include building capacity across government and engaging suppliers. It also introduces incentives for government suppliers to improve their anti-slavery activity by evaluating social value. Alongside the US, Canada, Australia and New Zealand, the UK government also launched Principles to Combat Human Trafficking in Supply Chains. Ministerial departments are obliged to publish their own statements from 2021 onwards (UK Government, 2020[41]).

To implement RBC objectives, whether required by law or on a voluntary basis, some governments have developed support mechanisms for contracting authorities. In September 2020, the UK published a Procurement Policy Note (PPN 06/20) *Taking Account of Social Value in the Award of Central Government Contracts.* For the UK, social value should now be explicitly evaluated by all central public procurement units (related and proportionate to the subject-matter of the contract). The policy note gives concrete choices of social value policy outcomes that can be applied in new procurement.[30] Guidance on including social value in UK local government procurements was published by the Local Government Association in December 2019, as part of their Social Value Toolkit for District Councils. Another example of a practical tool supporting contracting authorities in implementing RBC objectives is provided in Box 1.12.

[30] (1) helping local communities to manage and recover from the impact of COVID-19; (2) creating new businesses, new jobs and new skills; (3) increasing supply chain resilience and capacity; (4) effective stewardship of the environment; (5) reducing the disability employment gap; (6) tackling workforce inequality; (7) improving health and wellbeing; and (8) improving community integration

Box 1.12. Sustainability Compass in Germany

The Sustainability Compass was launched in 2010 to support practitioners in implementing sustainability criteria in public procurement. Since then, the Compass has been extended with additional functionalities. The platform is provided by Engagement Global with its Service Agency Communities in One World on behalf of the Federal Ministry for Economic Cooperation and Development in cooperation with Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ).

The Sustainability Compass provides comprehensive information on sustainable public procurement on a single website:

- **Practical examples of sustainable public procurement from municipalities:** over 80 German municipalities have published more than 800 examples in 14 product groups. This includes tender documents, council orders and administrative regulations. The examples are grouped by state ("Land"), as well as through an interactive map and filter criteria.
- **Search and comparison of labels:** sustainability standards, labels and certifications can be filtered by ecological, social and credibility criteria as well as by pre-set filters linked to legal requirements and recommendations on national or state level.
- **Text modules for tender documents:** formulation recommendations to implement criteria into tender documents are provided according to the filters set by the user.
- **Suppliers of certified products:** suppliers are listed according to the label comparison results to inform procurers on the market of certified products.
- **Procurement Tool for tender preparation:** by asking the most relevant questions for the successful preparation of a sustainable procurement process, the Procurement Tool guides public buyers step by step to find the way of implementation suiting best to the actual procurement case.
- Comprehensive background information on various aspects of sustainable public procurement is provided in other sections of the website:
  - legal framework (national and state level)
  - sustainability in the procurement process
  - social and environmental challenges
  - introductory videos and other media on SPP

The Sustainability Compass is available in German as well as in English (with reduced content). EU-level legal requirements can also be chosen as filters alongside German national and state level legal requirements, with the intention of providing information to international public procurers. The service is supplemented by online seminars, introduction videos and other material introducing the website and its functions as well as supporting procurers having individual questions.

Source: (OECD, 2019[42]), www.sustainability-compass.org

With government leadership, public procurement can contribute to a more resource-efficient economy, encourage the development of new, sustainable products and services, and promote responsible ways of production and consumption benefiting society as a whole. Box 1.13 details an example for an encompassing view. The example illustrates how national and international stakeholders can work together to impact society and economy through public procurement on an international level.

Box 1.13. UK Digital Buying Guide

In October 2020, the UK Government Digital Service (GDS) launched its Digital Buying Guide, to support buying digitally with social purpose by presenting modern approaches to public procurement that are fair, open, transparent, effective, multidisciplinary, and focused on users' needs. This work is part of the GDS Global Digital Marketplace Programme, which was set up to help tackle global corruption.

The Digital Buying Guide provides practical step-by-step guidance and illustrative case studies on the different stages of the public procurement cycle. The guide aligns with the SDGs, as well as with standards and guidelines on corruption prevention and gender-responsive procurement. The guide is sponsored by the UK's Foreign, Commonwealth & Development Office (FCDO) Global Anti-Corruption Programme, the OECD Working Party of Senior Digital Government Officials, and the United for Smart Sustainable Cities (U4SSC) initiative from the United Nations' International Telecommunication Union (ITU).

At the time of its launch, the Digital Buying Guide was available in English, Bahasa Indonesia and Spanish, including draft guidance to specifically support public procurement in an emergency. In addition, the guide included case studies from national and local governments in Mexico, UK, Ecuador, Colombia, Dominican Republic and New Zealand.

Source: UK Government Digital Service

1.7. Summary of findings

Strategic public procurement, or sustainable public procurement, has been increasingly pursued by governments and is firmly rooted in the practices of public procurers. Beginning with "green" public procurement, strategic public procurement has increased in scope to encompass all three pillars of sustainability (environmental, social and economic aspects of sustainability).

Public procurement and RBC pursue similar objectives, albeit from different perspectives. In public procurement, the initial impetus has been to boost strategic objectives like environmental protection or specific objectives such as support for SMEs. RBC standards aim to support positive actions *and* avoid harm, notably through applying a risk-based due diligence approach in global supply chains. Public procurement practices stand to gain from this risk-based approach which can help public buyers identify, prioritise and address risks in global supply chains to prevent and mitigate adverse impacts and meet broader sustainability goals.

Opportunities to increase collaboration between public procurement and RBC policy makers and practitioners exist. This could include a stronger integration of stakeholder perspectives into the development of frameworks. In addition, existing due diligence tools could be adapted for use in public procurement. Finally, policy makers and practitioners in public procurement and RBC could work together to increase the uptake of RBC objectives as a whole in public procurement policies and specifically implement risk-based supply chain due diligence in public procurement.

References

Apedo, S. (2019), "Forced Labour in Malaysia is being funded by EU Healthcare Systems", *International Learning Lab on Public Procurement and Human Rights*, https://www.hrprocurementlab.org/blog/forced-labour-in-malaysia-is-being-funded-by-eu-healthcare-systems/. [30]

Arrowsmith, Sue and Kunzlik, Peter (2009), *Social and Environmental Policies in EU Procurement Law: New Directives and New Directions*, Cambridge University Press. [5]

Australian Government (2020), *Modern Slavery*, https://www.homeaffairs.gov.au/criminal-justice/Pages/modern-slavery.aspx#content-index-5. [40]

Borowy, I. (2014), *Defining Sustainable Development for Our Common Future: A History of the World Commission on Environment and Development (Brundtland Commission)*, Routledge. [35]

British Medical Association (BMA), BMA Medical Fair and Ethical Trade Group and European Working Group on Ethical Procurement (2016), *In good hands. Tackling labour rights concerns in the manufacture of medical gloves*, https://www.bma.org.uk/media/1093/in-good-hands-medical-gloves-report-web-23-03-2.pdf. [47]

Chile Compra (2018), *Contratacíon Pública Una herramienta estratégica para la eficiencia del Estado*, https://www.wto.org/english/tratop_e/womenandtrade_e/s02_01_trinidad_inostroza.pdf. [17]

CIPS (2008), *Sustainable Procurement*, https://www.cips.org/documents/KS_Sustainable_Procurement.pdf (accessed on 27 August 2020). [7]

DanWatch (2013), *IT Workers Still Pay the Price for Cheap Computers. Case study of labour conditions at 4 Dell suppliers in China*, https://old.danwatch.dk/wp-content/uploads/2015/03/IT-workers-still-pay-the-price.pdf. [44]

Difi (2018), *Undersøkelse av etterlevelse av forskrift om lønns og arbeidsvilkår i offentlige kontrakter [Examination of compliance with regulations on wages and working conditions in public contracts]*, https://www.anskaffelser.no/nyhet/2018/01/stat-og-kommune-har-blitt-bedre-pa-krav-til-lonns-og-arbeidsvilkar. [46]

Electronics Watch (2016), *Public Procurement and Human Rights Due Diligence to Achieve Respect for Labour Rights Standards in Electronics Factories: A Case Study of the Swedish County Councils and the Dell Computer Corporation*, https://electronicswatch.org/en/public-procurement-human-rights-due-diligence-a-case-study-of-the-swedish-county-councils-and-the-dell-computer-corporation-february-2016_2456642.pdf. [25]

European Commission (2011), *Buying social - a guide to taking account of social considerations in public procurement*, http://dx.doi.org/doi:10.2767/18977. [9]

Federal Department of Home Affairs (2017), *Standard analysis model for monitoring compliance with wage equality between women and men in federal procurement (methodology)*, Federal Department of Home Affairs, Bern, https://www.ebg.admin.ch/dam/ebg/en/dokumente/lohngleichheit/infos-zu-analysen/standard-analysemodellzurueberpruefungderlohngleichheitzwischenf.pdf.download.pdf/methodological_approachformonitoringcompliancewithwageequalitybe.pdf. [18]

Federal Office for Gender Equality (n.d.), *Government Controls of Public Procurement*, http://doi.org/10.1787/g2g9faa5-en. [16]

Hall, A. (2020), "Don't forget the people behind the PPE – migrant workers meeting the surge in demand for medical gloves", *The Telegraph*, Vol. 17 April, https://www.telegraph.co.uk/global-health/science-and-disease/dont-forget-people-behind-ppe-migrant-workersmeeting-surge/. [43]

India Committee of the Netherlands (2015), *Rock Bottom - Modern Slavery and Child Labour in South Indian Granite Quarries*, http://www.indianet.nl/pdf/RockBottom.pdf. [21]

Institute for Human Rights and Business (IHRB) (2015), *Protecting Rights by Purchasing Right: The Human Rights Provisions, Opportunities and Limitations Under the 2014 EU Public Procurement Directives*. [19]

International Labour Office (ILO) (2017), *Global estimates of modern slavery: Forced labour and forced marriage*, Geneva, https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf. [20]

International Labour Organization, Organisation for Economic Co-operation and Development, International Organization for Migration and United Nations Children's Fund (2019), *Ending child labour, forced labour and human trafficking in global supply chains*, http://mneguidelines.oecd.org/Ending-child-labour-forced-labour-and-human-trafficking-in-global-supply-chains.pdf (accessed on 25 August 2020). [22]

MAPS (2018), *Methodology for Assessing Procurement Systems*, http://www.mapsinitiative.org/methodology/. [3]

Martin-Ortega, O. (2017), *Advancing Respect for Labour Rights Globally through Public Procurement*, http://dx.doi.org/10.17645/pag.v5i4.1073. [10]

Martin-Ortega, O. and C. Methven O'Brien (2019), *Public Procurement and Human Rights, Opportunities, Risks and Dilemmas for the State as Buyer*, Edward Elgar, http://dx.doi.org/10.4337/9781788116312. [11]

McVeigh, K., Janjua, H. (2018), *NHS admits doctors may be using tools made by children in Pakistan.*, https://www.theguardian.com/global-development/2018/jan/29/nhs-admits-doctors-may-be-using-tools-made-by-children-in-pakistan. [28]

OECD (2020), *Public Procurement and Infrastructure Governance: Intitial policy responses to the Coronavirus (COVID-19) crisis*, https://read.oecd-ilibrary.org/view/?ref=135_135391-eb6wiwbrmn&title=Public-Procurement-And-Infrastructure-Governance. [31]

OECD (2019), *Fast Forward to Gender Equality: Mainstreaming, Implementation and Leadership*, OECD Publishing, Paris, https://dx.doi.org/10.1787/g2g9faa5-en. [15]

OECD (2019), *Government at a Glance 2019*, OECD Publishing, Paris, https://dx.doi.org/10.1787/8ccf5c38-en. [1]

OECD (2019), *Public Procurement in Germany: Strategic Dimensions for Well-being and Growth*, OECD Public Governance Reviews, OECD Publishing, Paris, https://dx.doi.org/10.1787/1db30826-en. [42]

OECD (2019), *Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendation*, OECD Public Governance Reviews, OECD Publishing, Paris, https://dx.doi.org/10.1787/1de41738-en. [2]

OECD (2018), *Implementing the EU Directives on the selection of economic operators in public procurement procedures*, SIGMA Papers, OECD Publishing, https://doi.org/10.1787/f511e46f-en. [34]

OECD (2018), *OECD Due Diligence Guidance for Responsible Business Conduct*, http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf. [39]

OECD (2017), *Public Procurement for Innovation: Good Practices and Strategies*, OECD Public Governance Reviews, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264265820-en. [13]

OECD (2016), *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264252479-en. [24]

OECD (2015), *Going Green: Best Practices for Sustainable Procurement*, https://www.oecd.org/gov/public-procurement/Going_Green_Best_Practices_for_Sustainable_Procurement.pdf. [8]

OECD (2015), *OECD Recommendations of the Council on Public Procurement*. [12]

OECD (2013), *Government at a Glance 2013*, OECD Publishing, Paris, https://dx.doi.org/10.1787/gov_glance-2013-en. [6]

Public Works and Government Services Canada (2018), "Ethical procurement certification", https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/A/A3006T/1. [37]

Stavenow, C., Sennström, L (2013), *Miljö- och sociala hänsyn i offentlig upphandling : juridik och praktik*, Jure Forlag. [4]

SVT Nyheter (2020), *Extrem efterfrågan på vårdhandskar under coronakrisen*, https://www.svt.se/nyheter/lokalt/stockholm/extrem-efterfragan-pa-vardhandskar-under-coronakrisen-okad-risk-for-arbetarna. [33]

Swedish Regions (2019), *Action plan for health technology, Sustainable Public Procurement – a cooperation between the Swedish Regions*, http://www.hallbarupphandling.se. [26]

SwedWatch (2020), *The Health Paradox. Environmental and human rights impacts from pharmaceutical production in India and the need for supply chain transparency*, https://swedwatch.org/wp-content/uploads/2020/02/96_Pharma-report.pdf. [45]

The BMJ: The British Medical Journal (2020), *The Face Mask Global Value Chain in the COVID-19 Outbreak: Evidence and Policy Lessons*, https://doi.org/10.1136/bmj.m1676. [32]

The Diplomat (2019), *Clean Gloves, Dirty Practices: Debt Bondage in Malaysia's Rubber Glove Industry*, https://thediplomat.com/2019/11/clean-gloves-dirty-practices-debt-bondage-in-malaysias-rubber-glove-industry/. [29]

The Legal, Financial and Administrative Services Agency (2020), “Fokusomraden hallbarhet”, https://www.avropa.se/fokusomraden/hallbarhet/. [38]

Transport for London (2020), , https://www.london.gov.uk/what-we-do/transport/our-vision-transport/mayors-transport-strategy-2018?intcmp=46686; https://tfl.gov.uk/corporate/publications-and-reports/procurement-information. [14]

UK Government (2020), *UK Modern Slavery Statement*, https://www.gov.uk/government/news/government-announces-new-action-to-prevent-modern-slavery-in-its-supply-chains. [41]

United Nations (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf. [36]

United Nations High Commissioner for Human Rights and the Heinrich Böll Foundation (2018), *The Other Infrastructure Gap: SustainabilityHuman Rights and Environmental Perspectives*, http://creativecommons.org/licenses/by/3.0/igo. [23]

World Bank, United Nations Conference on Trade and Development (2014), *The Practice of Responsible INvestment Principles in Larger-scale Agricultural Investments. Implications for Corporate Performance and Impact on Local Communities*, The International Bank for Reconstruction and Development/The World Bank, Washington DC, https://openknowledge.worldbank.org/bitstream/handle/10986/18662/861750RAI0P1253560Box385174B00PUBLIC0.pdf?sequence=1&isAllowed=y. [27]

2 The Public Procurement Policy Environment and Responsible Business Conduct

This section describes the extent to which public procurement regulatory and strategic frameworks consider and enable Responsible Business Conduct (RBC). The section discusses the application of such frameworks to supply chains and describes mechanisms to support the uptake of RBC standards, especially supply chain due diligence in public procurement, and ways to monitor compliance with these frameworks. Analysis in this section is based on the findings from the OECD Survey on Responsible Business Conduct and Public Procurement conducted with public procurement policy makers.

2.1. Regulatory and strategic frameworks promoting RBC objectives in public procurement

The OECD conducted a survey to better understand how countries are integrating RBC, including the supply chain due diligence, into public procurement regulatory and strategic frameworks. The survey focused on eight RBC objectives covered by international frameworks on RBC and sustainable procurement[31]. Unless otherwise noted, information in this section results from this survey.

This section focuses on data collected from policymakers from 28 countries.[32] It also integrates input from civil society, trade unions and business. These non-governmental stakeholders were asked to provide information on their interaction with public procurement policy makers to shed light on ways to enhance the uptake of RBC objectives in public procurement from the perspective of stakeholders outside of government.

2.1.1. Regulatory and strategic frameworks to incorporate RBC objectives in public procurement processes

Strategic and regulatory frameworks, beyond signalling political support, are a critical foundation for government agencies to apply RBC in public procurement. Without these enabling factors it can be difficult, or even impossible, for public buyers to procure socially and environmentally responsible products and services.

To capture a comprehensive analysis of country frameworks, a relatively broad set of definitions was used in the survey:

- A *regulatory framework* is defined as a system of rules such as laws, decrees, cabinet directions or any other legal documents that governs and regulates specific policies.
- A *strategic framework* is defined as a high-level document approved by national authorities, such as parliament and government, that sets out a country's policy goals and ambitions for a specific sector or area of public policy such as health care or the environment. Strategic frameworks can also include targets, roadmaps and action plans.

Regulatory and strategic frameworks can be specific (frameworks focused on RBC and public procurement) or general frameworks. Specific frameworks narrowly focus on RBC in public procurement, without any other considerations included in the framework (e.g. a strategy to tackle modern slavery in public procurement or a sustainable public procurement strategy). General frameworks can take two forms: 1) frameworks on public procurement in general, which include references to specific RBC objectives; or 2) frameworks on RBC considerations which include public procurement-specific references. Table 2.1 illustrates this distinction with examples.

[31] The eight RBC objectives in this Report include environmental standards, human rights, labour rights, inclusion of minorities, long-term unemployed people and people with disabilities, gender mainstreaming and integrity standards (see section 1 for detail).

[32] A total of 28 survey responses were received from policy makers – Australia, Belgium, Canada, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Israel, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Netherlands, New Zealand, Norway, Poland, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and Ukraine.

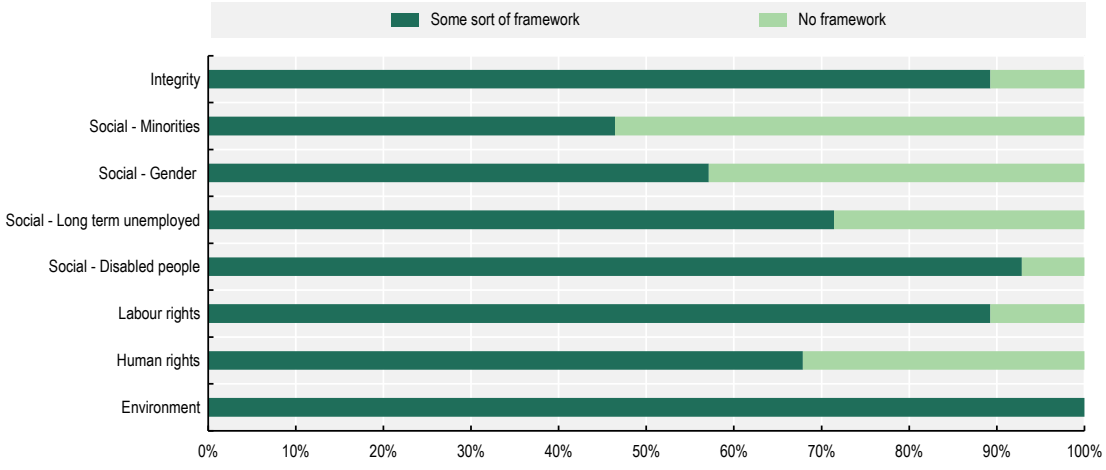
Table 2.1. Specific and general frameworks on RBC and public procurement

Type of framework	Specific Frameworks	General Frameworks
Definition	Framework on one or more RBC considerations and public procurement	Framework about one entire policy area + consideration of the other policy area
Example	A sustainable public procurement strategy including social and environmental objectives for public procurement A government strategy to improve social impact of public procurement A stand-alone law requiring that government contractors observe ILO core norms	A public procurement law includes a paragraph on one of the RBC objectives, like environmental objectives, ILO norms, preferences for minorities or persons with disability A national RBC strategy includes a section on public procurement

Most respondents have a framework related to many RBC objectives in public procurement, be it as regulation or as strategy (see Figure 2.1). Many countries have both a strategic *and* regulatory framework in place. This approach is common, especially for environmental objectives, where more than two thirds of countries have both a strategic and regulatory framework.

Encouragingly, all countries have either a strategic or regulatory framework to pursue environmental objectives. On the other hand, many "social" RBC objectives, including those related to human rights as well as long-term unemployed people, gender, and minorities, are relatively less supported by either regulatory or strategic frameworks. At the same time, these objectives are still fairly well-covered (by over 40% of countries). 57% of countries have a framework to support gender considerations. Minority issues are supported by frameworks in less than half of respondents. Surprisingly, only 68% of countries have a regulatory or strategic framework for human rights.

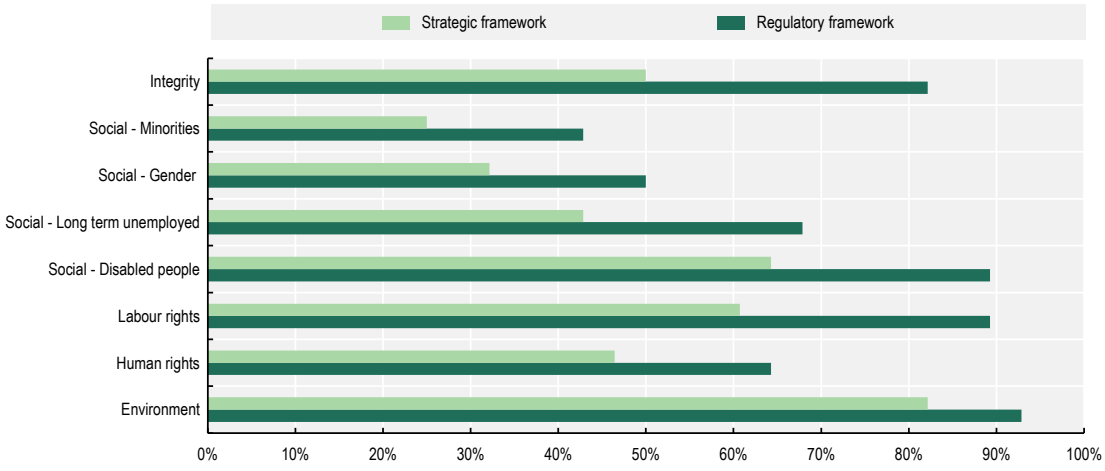
Figure 2.1. Share of countries that have any type of framework to support RBC objectives



Note: Based on data from 28 countries; either regulatory or strategic framework
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement, 2020

Across all objectives, regulatory frameworks are more commonly used than strategic frameworks to support RBC objectives in public procurement (see Figure 2.2).

Figure 2.2. Share of countries with a regulatory or strategic framework to pursue RBC objectives in public procurement



Note: Based on data from 28 countries
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

Over 90% of countries have a regulatory framework that supports the uptake of environmental policy objectives, while 82% have a strategic framework in this area. This is unsurprising as governments have pursued environmental policy objectives through public procurement to accomplish their green goals for decades (OECD, 2015[1]) (OECD, 2019[2]). In addition, policy makers increasingly recognise that "green" public procurement can be a major driver for innovation as it provides industry with incentives for developing environmentally-friendly goods, services and works. This is the case particularly in sectors where public purchasers represent a large share of the market, such as construction, health services or public transport (European Commission, 2011[3]).

82% of countries have an integrity-related regulatory framework in place, while only 50% have a strategic framework in place. Integrity breaches include corruption, fraud, bribery and tax evasion.[33] Integrity objectives are more likely to be based in legislation to allow countries to prosecute those who commit integrity-related violations.

The survey confirmed findings of other studies which have found that the use of public procurement as a tool for the promotion and protection of human rights in supply chains is underdeveloped both in theory and practice (Martin-Ortega, 2018[4]) (International Learning Lab on Public Procurement and Human Rights, 2016[5]). The inclusion of human rights policy objectives, within both regulatory and strategic frameworks, is lower than that of labour rights. For human rights, 64% of countries have a regulatory framework and 46% have a strategic framework. In contrast, 89% of countries have a regulatory framework on labour rights, and 61% a strategic framework.

A number of policy makers answered that they do not differentiate between labour rights and human rights-related policy objectives. This may provide an explanation for the lower result on human rights frameworks. Similarly, initiatives related to socially responsible procurement usually do not separate human rights from labour rights considerations. This is illustrated for example by the collection of good practice cases on

[33] https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0451

socially responsible public procurement recently published by the European Commission (European Commission, 2020[6]).

There are also examples of legislative and strategic frameworks that address selected human rights issues rather than all human rights. For example, the UK Modern Slavery Act[34], adopted in 2015, addresses modern slavery and human trafficking in supply chains of public sector customers. In the United States, the Federal Acquisition Regulation[35] prohibits the sale of products sourced through federal contracts that are produced or manufactured with forced or indentured child labour. In Norway, the Public Procurement Act requires public authorities to implement appropriate measures to promote the respect of fundamental human rights in public procurement when there is a risk of such violations[36].

A number of countries have programmes to achieve social objectives beyond the RBC objectives in this survey. In New Zealand, the Broader Outcomes Policy Programme encourages authorities to leverage their public procurement contracts to achieve a range of outcomes beyond the primary objective of the contract (see Box 2.1). The programme helps identify key priorities that authorities should target or prioritise in public procurement.

Box 2.1. Achieving wider benefits from government procurement

The Broader Outcomes Policy Programme in New Zealand

In 2018, the New Zealand Government agreed to a set of priority outcomes for contracting authorities. The government also identified specific contracts and sectors for focus.

New Zealand contracting authorities are expected to focus on four priority outcomes:

- Access for New Zealand businesses – Increase access to government contracts for New Zealand businesses, particularly those less able to access opportunities and those working in priority sectors such as ICT, Maori and Pasifika businesses, and businesses in the regions.
- Construction sector skills and training – Increase the size and skill level of the domestic construction sector workforce and provide employment opportunities to targeted groups.
- Employment standards – Improve conditions for workers and future-proof the ability of New Zealand business to trade.
- Reducing emissions and waste – Support transition to a zero net emissions economy and reduce waste from industry by supporting innovation.

To implement this work, the central purchasing body, New Zealand Government Procurement and Property, committed to:

- Work with agencies and stakeholders to identify the best approach to put each outcome into practice.
- Update the Government Rules of Sourcing, and develop guidance and support for agencies.
- Develop a monitoring and reporting framework to track agency adoption and outcomes achieved. Results will be reported to the Cabinet annually and findings will inform practice improvements.

Source: (New Zealand Government Procurement and Property, 2019[7])

[34] Modern Slavery Act (2015) https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted

[35] Federal Acquisition Regulation (2001), Title 48, Art. 1, Subpart 22.15: Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labour.

[36] Public procurement law, https://lovdata.no/lov/2016-06-17-73/§5)

2.1.2. Drivers for developing regulatory and strategic frameworks on RBC objectives

Countries strive to achieve policy coherence and fulfil international commitments when they develop regulatory and strategic frameworks to incorporate RBC objectives in public procurement. The survey asked policy makers to indicate the three most important reasons why regulatory and strategic frameworks have been developed for each of the RBC objectives in scope.

Across all objectives, policy coherence and alignment with international obligations or commitments were the most important reasons for developing frameworks to support RBC objectives (Figure 2.3). Alignment with international obligations and policy coherence was the reason to create a framework in almost a third of the countries.

In particular, alignment with international obligations was a strong impetus for developing frameworks related to human rights (named by 44% of policy makers). Policy coherence was particularly important on frameworks related to gender (44% of policy makers) and minorities (33%). Frameworks on the social issue of disabled people are shaped mostly by policy coherence (32%) and international commitments (40%).

Figure 2.3. Reasons why policymakers developed a framework to pursue RBC objectives in public procurement

Note: Based on data from 28 countries
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

For regulatory and strategic frameworks on labour and minority-related policy objectives, civil society and media pressure was a driver in 24% and 25%, respectively. On average, across RBC objectives, 6% of policy makers cited country reputation and scandals. Human rights scandals were highest here at 11%. However, scandals and pressure by media and civil society often go hand in hand. Indeed, considered together, these two categories (scandals and country reputation, as well as demands by civil society or media) account for a fifth (21%) of the reasons why frameworks were developed.

In 2007, the Swedish NGO SwedWatch investigated the production conditions for surgical instruments procured by the Swedish regions for the public healthcare service. The investigation detected child labour, hazardous working environments and pay below the minimum wage in factories in Pakistan. In response to these violations, and the subsequent media critique, all 21 regions in Sweden committed to addressing

sustainability considerations when procuring healthcare supplies. A Code of Conduct for suppliers was adopted by the political assemblies in the regions.

Finally, attracting investors as a reason to develop RBC-related policy frameworks was low. The idea of using sustainability frameworks and regulations to boost investment was only noted for the area of integrity (4%).

Policy makers also named initiatives linked to RBC objectives that did not refer to international obligations or commitments as other reasons for developing RBC frameworks. These included parliamentary or cabinet initiatives and strategies mandating the pursuit of specific RBC objectives as a national priority. This category also included mission goals of individual procurement authorities and older strategic frameworks that needed to be updated. ChileCompra recommends that procuring entities give additional evaluation points to companies employing long-term unemployed people.

2.1.3. Engaging stakeholders when developing frameworks to boost RBC objectives through public procurement

The *OECD Recommendation of the Council on Public Procurement* recommends that Adherents "foster transparent and effective stakeholder participation" (Principle VI.) (OECD, 2015[8]) To this end, governments should develop and follow a standard process when formulating changes to the public procurement system. Such standard processes should include public consultations, invite comments from the private sector and civil society, ensure the publication of the results of the consultation phase, and explain the options chosen in a transparent manner. Countries engage with various stakeholder groups in developing regulatory and strategic frameworks. However, opportunities remain to increase engagement with RBC stakeholders, notably the OECD National Contact Points for RBC (NCPs).[37]

The survey asked countries how they organise consultation processes when developing strategic and regulatory frameworks to enable RBC objectives. The survey targeted stakeholders, such as policy makers outside of public procurement in charge of the specific policy considerations (such as NCPs), businesses, contracting authorities, civil society, worker representatives and trade unions, experts, and end-users.

All responding countries consult with the relevant policy maker for the subject in question. For example, when a public procurement policy maker is developing a framework related to improving human rights, they work closely with human rights policy makers. This is a pre-requisite to ensure policy coherence. About two-thirds of policy makers consulted with both businesses and contracting authorities in developing frameworks. For frameworks relating to human rights, labour rights, long-term unemployed and people with disability, workers organisations were specifically consulted. A little over a third of policy makers consulted the NCPs when developing frameworks linked to RBC objectives.

Over 50% of countries asserted that consultations on such frameworks were openly advertised and promoted on government channels. As such, all interested stakeholders would have an opportunity to provide input. In Sweden, all regulatory acts (law, decree, rules) are published on the proposer's website for a period of at least 30 days. This is to ensure efficient public consultations. The proposer may also highlight specific issues, which are, along with invitation to participate, accompanied by a draft regulation, addressed to a specific organisation, civil society entity or individual expert. All comments received have to be answered in writing, explaining the reasons why the proposals or opinions have not been taken into account. While creating guidelines and other soft-law documents, specific stakeholders (e.g., chambers of commerce and other business sector associations, labour unions, NGOs) are consulted.

[37] National Contact Points for Responsible Business Conduct (NCPs) sit within national government entities, and promote the MNE Guidelines and related OECD due diligence guidance. NCPs also handle cases as a non-judicial grievance mechanism. NCPs provide a mediation and conciliation platform to help resolve cases relating to non-observance of the MNE Guidelines. Currently, 49 governments have an NCP.

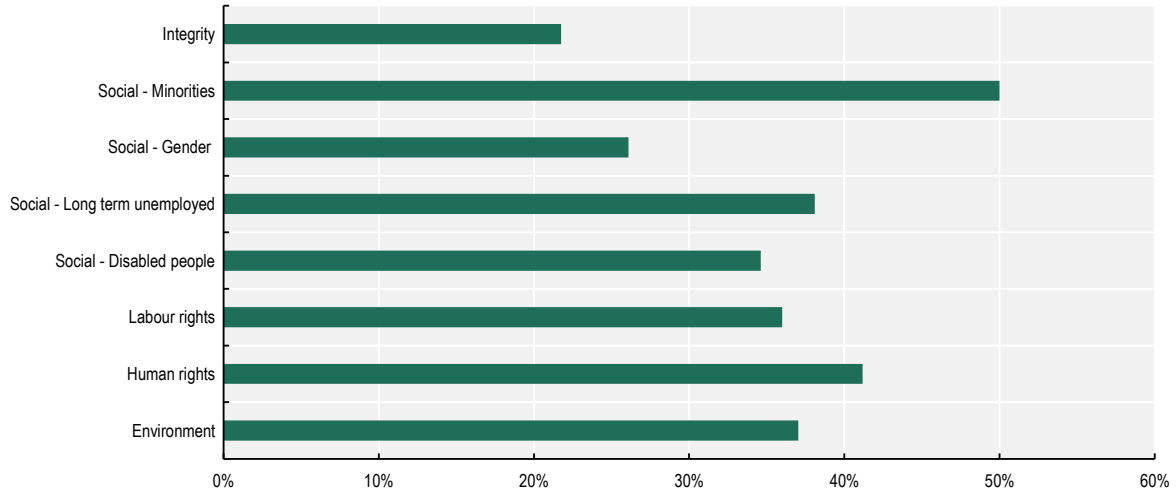
2.1.4. Challenges in developing regulatory and strategic frameworks

A lack of knowledge on implementation is the most important challenge for governments in creating regulatory and strategic frameworks. The survey asked policy makers to describe the biggest challenges they faced in developing strategic and regulatory frameworks to include RBC objectives. Countries had to select the three most significant challenges from the following: lack of political support, lack of market readiness, financial barriers, lack of clear understanding of how to implement this policy through public procurement, existing regulatory measures preventing the inclusion of these considerations and other challenges.

Diverging numbers of responses were received for each RBC objective. Twenty-eight countries responded to this survey question, but not all countries listed a challenge for all RBC objectives. For example, 27 countries listed a challenge for environmental considerations, but only 14 countries (i.e., about half of the survey respondents) listed a challenge for the RBC objective "minorities". This result in itself points to a lack of governments' insight into potential barriers to adopting regulatory or strategic frameworks, notwithstanding the named challenges.

The top reason named by policymakers across the eight RBC objectives is "a lack of understanding as to how to implement this policy through public procurement". Figure 2.4 provides a breakdown of which RBC objectives were the most challenging to implement. The area with the highest perception of lacking understanding on implementation is "social - minorities". Here, 50% of countries stated that the lack of understanding on implementing the policy was the biggest challenge faced. This was followed by human rights (41% of countries) and long-term unemployed (38%). Integrity appears as the area where a lack of understanding on implementation seemed least problematic, with just 22% stating that a lack of understanding was the largest challenge in implementing the policy area.

Figure 2.4. RBC objectives where a lack of understanding is the largest challenge in developing a framework



Note: Based on data from 28 countries. The visualisation depicts the share of countries that named at least one challenge for this RBC objective
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

In line with findings of previous OECD analysis (OECD, 2019[9]), respondents highlighted challenges related to the complexity of strategic public procurement and the need for increased capacity and training.

Many respondents stated that delivering public procurement contracts is already difficult, and contains a number of intricacies. Given that the understanding on implementation is already weak, adding many RBC objectives heightens the administrative burden and work load for both contracting authorities and bidders. Public procurers are increasingly responsible for achieving a growing number of RBC objectives. These objectives have to be prioritised following the principle of balance. It also raises the question as to whether the right balance is being struck in the pursuit of RBC objectives through public procurement procedures. The progress report on the implementation of the *OECD Recommendation of the Council on Public Procurement* confirms this perspective. The report found that countries have been concerned about balancing a large number of policy objectives through public procurement, employing techniques to prioritise and balance different objectives according to their specific context (OECD, 2019[9]). This concept of balance or prioritisation is compatible with OECD recommendations on RBC. The OECD risk-based due diligence framework provides a set of parameters that can help prioritise due diligence actions.

While many countries have measures in place to enhance the uptake of RBC objectives, these are, in general, voluntary measures. In many countries, the decision to include RBC objectives in the tendering process depends solely on the contracting authorities. This is amplified when the public procurement system is decentralised. Here, contracting authorities take their own procurement decisions, rather than purchasing from centralised contracts.

Policy makers highlighted that the contract implementation phase is a key challenge in implementing RBC objectives in public procurement, notably ensuring that all contractual requirements are met during contract implementation. Encouragingly, a number of countries are deploying measures to ensure that the implementation of RBC objectives is reflected in the building blocks of public procurement, including contracts and contract implementation (see Box 2.2).

Box 2.2. Examples of government measures integrating RBC objectives into contracts

In **Poland**, the Public Procurement Office developed a broad information and training campaign for contracting authorities and representatives of control bodies to build their knowledge of what environmental objectives should be considered during the tendering process of a specific product/category group. This campaign also includes how this might be done in the course of the contract award procedure (i.e. subject-matter of contract, award criteria, contract performance clauses, qualification criteria with reference to economic operators). The information and training campaign covers not only public procurement provisions, but environmental-related legislation as well.

In **Latvia**, the Ministry of Finance, together with experts and the Procurement Monitoring Bureau, has organised training seminars for contracting authorities on how to incorporate sustainable policy objectives into award criteria. This includes good practice examples. The social entrepreneurship association in Latvia also organised conferences to educate contracting authorities on how to include sustainable policy objectives into public procurement contracts. Latvia also stated that in order to gain the budget to promote such sustainable policy objectives through procurement, it was important to secure political support by highlighting the benefits of the specific policy to Latvia.

The Public Procurement Authority of **Hungary** continuously monitors the draft legislation and initiatives related to the enforcement of sustainability aspects (including environmental, social and innovative considerations) in contract award procedures. One of the key objectives of the Authority is to raise awareness of the importance of taking sustainable policy objectives into account. It also provides information on the opportunities to promote sustainable public procurement and on the relevant regulations, updates and good practices. To this end, the Public Procurement Authority launched the program titled *2018 - Year of Sustainable Public Procurement* and then *Innovative Public Procurements in Focus 2019 - 2020*. The programmes seek to draw attention to the importance of green and social public procurement by sharing relevant information and by publishing studies and other publications on its website and on a *Daily Public Procurement* mobile application.

Source: (Public Procurement Office, 2004[10]) (Ministry of Finance of the Republic of Latvia, 2019[11]) (Public Procurement Authority of Hungary, 2019[12])

2.2. RBC expectations beyond main contractors and subcontractors

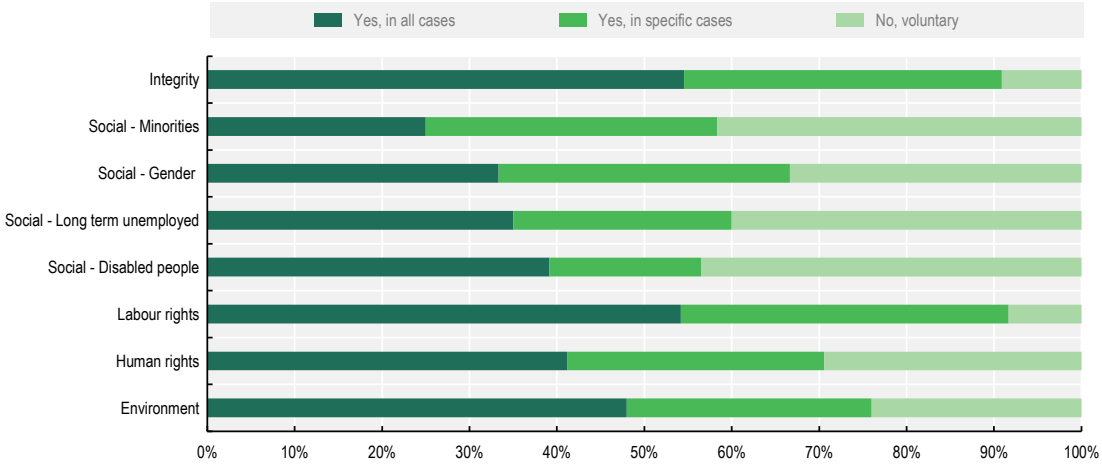
The majority of countries have regulatory or strategic frameworks that are applicable to their main contractors. However, a major gap relates to the application of these frameworks to companies in the rest of the supply chain. As highlighted in section 1, international RBC standards expect due diligence to be carried out along the full supply chain.

2.2.1. How regulatory and strategic frameworks apply to subcontractors

The majority of countries do not set binding expectations for subcontractors in their regulatory and strategic frameworks. Subcontracting occurs when the main contractor entrusts another entity with the performance of part of the works or services within the contract. The contractor may use one or more subcontractors. For example, the main contractor holds a contract to clean a building. As the building is large and the main contractor cannot clean the whole building on its own, it can subcontract another entity to clean a small portion of the building. This second entity is the subcontractor (Segerstedt and Olofsson, 2010[13]). A subcontractor may also subcontract elements of the works or services it is required to deliver in accordance with the subcontracting arrangements with the contractor (further subcontracting).

The survey shows that regulatory or strategic frameworks that contain integrity-, labour rights-, and environment-related policy objectives are those most likely to apply to sub-contractors (Figure 2.5).

Figure 2.5. Countries applying RBC-related frameworks to sub-contractors



Note: Based on data from 28 countries
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

Just over half of countries expect that subcontractors apply both labour rights and integrity in all instances (54% and 55% respectively). For the other RBC objectives, less than 50% of countries require subcontractors to follow regulatory or strategic frameworks in all instances.

Policy makers are also prioritising the application of frameworks on specific RBC objectives. Some frameworks foresee application in specific cases. Counting these, indeed just over 90% of countries require application of frameworks by subcontractors for labour rights and integrity issues. For environmental considerations, 76% of countries require application of regulatory or strategic frameworks to subcontractors in all or specific cases.

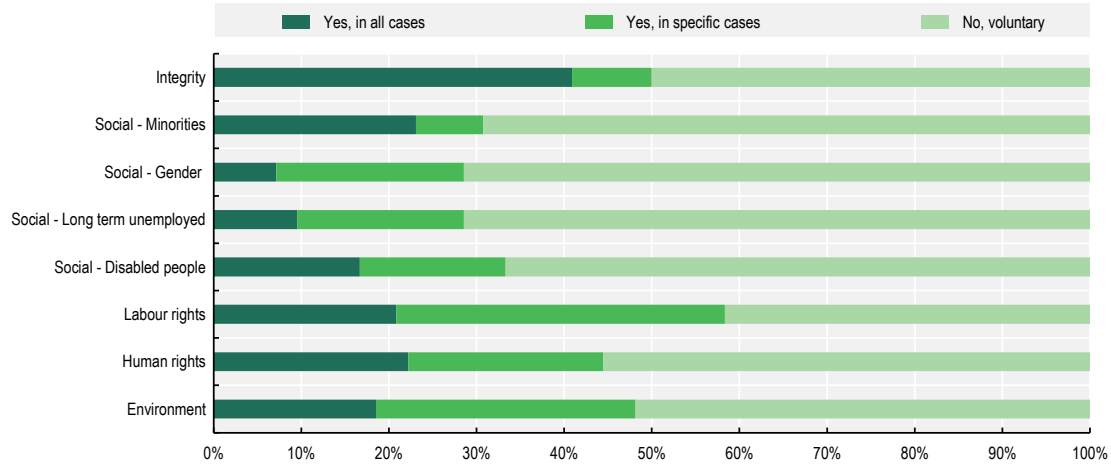
Other social RBC objectives, such as minorities or disabled persons, are not associated with binding requirements for subcontractors in many countries. A relatively high share of respondents allow subcontractors to apply regulatory and strategic frameworks on a voluntary basis. This number is highest with regards to disabled people (43% of respondents foresee only voluntary application by subcontractors). For the remaining social aspects among the RBC objectives, the share varies at a relatively high level from around 29% to 42% of countries that foresee only voluntary application of frameworks for sub-contractors related to human rights, gender and minorities.

2.2.2. How regulatory and strategic frameworks cover the full supply chain

Regulatory and strategic frameworks that incorporate RBC objectives in public procurement are unlikely to apply to the full supply chain. Mandatory application is rare across all RBC objectives. Integrity considerations are those most likely to apply to the entire supply chain: in 41% of the countries, integrity-related frameworks apply in all cases to the supply chain (see Figure 2.6). Social RBC objectives are rarely applied to the full supply chain. Objectives related to the long-term unemployed are applied to the supply chain in only 10% of the countries, and gender considerations in only 7%. In some circumstances, the application of regulatory frameworks to the supply chain is only applicable in specific cases. For example,

in Japan, the framework applies to the full supply chain for specific products such as paper (Ministry of the Environment of Japan, 2019[14]).

Figure 2.6. Countries applying RBC-related frameworks in the supply chain



Note: Based on data from 28 countries
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

Overall, the objective with the largest extent of application is labour rights; 58% of countries require application of regulatory or strategic frameworks in the entire supply chain at least in specific cases. In all other RBC objectives, voluntary application is the norm (50% and more of countries). In 28% of the countries, frameworks on gender apply in at least specific cases, for example within certain sectors such Information Communications & Technology (ICT), construction and textiles.

In fifteen countries regulatory or strategic frameworks are applicable to supply chains that transcend national borders in at least one RBC objective. These countries answered that the global application of these frameworks concerns to environmental-, human rights-, labour rights- and integrity-related RBC objectives. Gender, disabled people, long-term unemployed people and minorities-related objectives were more likely to be related to national or domestic-level legislation, and were more difficult to monitor in an international setting.

2.2.3. Action taken against infringements on RBC standards

A number of countries have provisions within their regulatory or strategic framework that allow for action to be taken against suppliers if their supply chains infringe RBC objectives (see Table 2.2). Fourteen out of twenty-eight survey respondents (just under half) foresee sanctions for suppliers that infringe RBC objectives. Eight foresee that the supplier implements changes in its supply chain to mitigate the infringement (28%). Nine countries do not foresee any action in their frameworks if a supplier infringes upon RBC objectives.

Table 2.2. Countries with provisions for action against infringements of RBC standards

	Frameworks foresee sanctions	Frameworks foresee that suppliers will be changed / changes to the supply chain	Actions depend on provisions in the contract	No action foreseen in framework
Australia	•	•		
Belgium				•
Canada	•	•		
Czech Republic				•
Denmark	•	•		
Estonia		•		
France	•			
Germany	•			
Hungary				•
Israel	•	•		•
Italy	•			
Japan				•
Korea		•		
Latvia				•
Lithuania			•	
Mexico	•			
Netherlands	•	•		
New Zealand	•		•	
Norway	•			
Poland	•	•	•	
Slovak Republic	•	•	•	
Slovenia				•
Spain				•
Sweden	•	•		
Switzerland	•			
Costa Rica				•
Ukraine	•			

Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

Countries have enacted a wide range of escalating sanctions, from warnings to exclusion from contracts, in order to take action beyond subcontractors. In Switzerland, for integrity related breaches, sanctions include a ban from all procurements at central government level for a maximum of five years (Swiss Confederation, 2019[15]). In New Zealand, the regulatory framework does not mandate sanctions or prescribe specific sanctions, but procuring entities have discretion to apply appropriate sanctions.

Some breaches may result in action by other authorities, including for example criminal charges (New Zealand Government Procurement and Property, 2019[7]).

Another measure is requiring suppliers to make changes to the supply chain after a breach has been found. Countries such as Canada have certification frameworks in place for human and labour rights that identify breaches in supply chains. They have developed a system in which contract clauses place the responsibility for addressing any such breach with the main contractor (see Box 2.3) (Public Works and Government Services Canada, 2018[16]).

Box 2.3. Actions taken against suppliers for RBC infringements in Canada

For human and labour rights abuses in Canada, an ethical procurement certification is incorporated into the bid solicitation on its closing date. This becomes a binding part of the contract. The main contractor must ensure compliance with the provisions of the ethical procurement certification that was signed during the bidding process throughout the duration of the contract.

An "origin of work" clause is also incorporated into the bid solicitation on its closing date, and forms a binding part of the contract. It is the main contractor's responsibility to ensure continuous accuracy with the origin of work information provided with their bid. They must immediately inform the Canada Public Works and Government Services in writing of all changes affecting the information provided under the origin of work clause during the entire contract period.

The certification is subject to verification by Canada at any given time during the period of the contract. If the certification is found to be untrue, Canada may declare a bid non-responsive or may declare a contractor in default, whether it be knowingly or unknowingly during the bid evaluation period or during the contract period. The continuing obligation of maintaining this certification is a material obligation of the main contractor. Therefore, if at any time during the performance of the contract, the contractor no longer meets the obligations of the contract, the main contractor can be found to be in default of their contracting obligations. This could result in them being barred from contracting with the Government of Canada for a defined period.

Source: (Public Works and Government Services Canada, 2018[16])

2.3. Government support for implementation

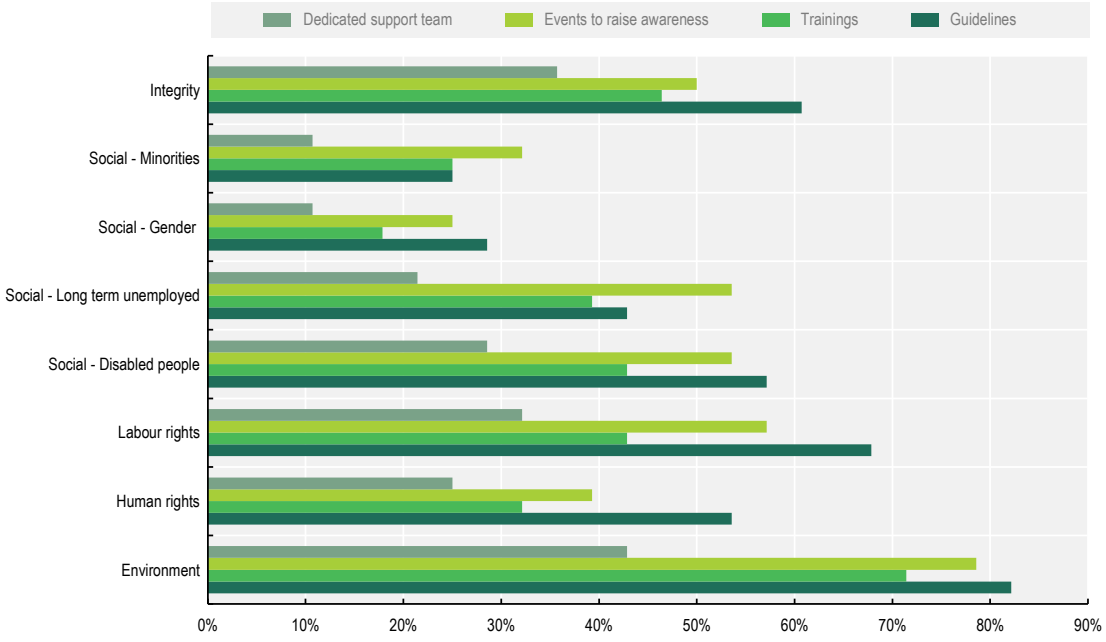
2.3.1. Mechanisms enhancing implementation of frameworks to pursue RBC objectives in public procurement

Countries support and promote greater uptake of RBC objectives mostly through training, and awareness raising events and the development of guidance materials (guidelines). Support is strongest for environmental objectives, integrity, as well as labour and human rights.

Figure 2.7 provides an overview of the four most-used mechanisms to enhance the uptake of and compliance with RBC objectives. Other, less frequently used mechanisms include IT platforms to share information, sharing of audit results, specific tools to conduct audits (notably in the area of human and labour rights), and certificates.

On average, across the RBC objectives, the most used mechanisms are guidelines (available in 52% of the cases), events to raise awareness (applied in 49% of the cases) and training (available in 40% of the cases). In general, countries appear to have more guidelines than trainings in place to enhance uptake of RBC objectives.

Figure 2.7. Mechanisms to enhance uptake of RBC objectives



Note: Based on data from 28 countries
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

Issues related to gender and minorities are the areas where the least number of countries have developed guidelines or training. Unsurprisingly, the policy objective related to minorities was also the area named most often when asked where a lack of understanding was hindering implementation, see above.

The RBC objective with most support are environmental considerations. 82% of countries have developed guidelines to enhance the uptake of this objective in public procurement. In Latvia, the Ministry of Environmental Protection and Regional Development has developed the *Requirements for Green Public Procurement and Procedures for Application*. These guidelines give instructions on where green criteria for groups of products, services or works can be included and applied within public procurement. The Ministry, in collaboration with experts and the Procurement Monitoring Bureau, has also organised training seminars with contracting authorities to support the application of these guidelines.

Belgium, the Netherlands and Germany have established knowledge and expertise centres that focus on sustainable development issues, which include a number of RBC objectives (see Box 2.4). Centralisation of expertise and resources on particular topics can be highly beneficial. This is the case especially in countries with highly decentralised public procurement systems or numerous smaller sized contracting authorities.

Box 2.4. Examples of government efforts to increase knowledge of RBC in public procurement

FIDO – The Belgian knowledge centre

In 2014, the Belgian Government established a knowledge centre, the Federal Institute for Sustainable Development (FIDO). It has developed a Sustainable Procurement Guide, a web-based guide which outlines the technical sustainability criteria to be included in specifications for the purchase of supplies and services. The guide matches the characteristics of the sector concerned, without losing sight of competition and price considerations FIDO continuously updates the Sustainable Procurement Guide and advises on the correct interpretation of technical specifications and other clauses contained within it. FIDO also conducts studies on methodologies such as life cycle costing.

In addition, a methodology was developed to reach out to businesses when compiling or updating technical specifications for products and services belonging to an industrial sector. FIDO established a standing working party. This working party consists of members of the community, regions, provinces and municipal councils, and industry associations. The industry associations mobilise companies that it believes are best placed to help establish technical specifications that match the capabilities of suppliers in the sector in question. This working method has helped establish realistic specifications that support improved levels of competition.

The Dutch expertise centre: PIANOo

The Dutch Minister of Economic Affairs is responsible for PIANOo which is a centre that supports contracting authorities with tools, training and fact sheets. It also distributes news and best practices, and develops practical guidelines including sustainable public procurement considerations. The aim of PIANOo is to enhance professional skills of purchasers regarding different markets, risks, innovative tendering and the interpretation of rules. The centre employs around 20 people to support the network of approximately 4 500 professionals in public procurement.

Competence centres in Germany: KNB and KOINNO

To support the implementation of strategic procurement in Germany, the government has established a number of dedicated bodies to house expertise in specific areas of strategic procurement.

The Competence Centre for Sustainable Procurement (KNB) plays a key role in the achievement of sustainability goals. The KNB was established in 2012 within the Federal Procurement Office of the Ministry of the Interior (Beschaffungsamt des Bundesministeriums des Innern, BeschA). The centre has the status of a federal authority. The KNB helps contracting authorities consider sustainability criteria in their procurement projects. It offers the approximately 30 000 contracting agencies of the federal government, as well as states and municipalities, information and training. It also develops new approaches for anchoring the sustainability principle in the activities of contracting authorities.

The Centre draws on the assistance of an expert body set up for this purpose. It uses a variety of channels for disseminating information and knowledge-building related to sustainable procurement, such as a telephone and email hotline to respond to questions, provide advice to procurement staff, including training. Many approaches have been developed in collaboration with stakeholders such as contracting authorities from across government, members of industry and NGOs.

The German Competence Centre for Innovation Procurement (Kompetenzzentrum innovative Beschaffung, KOINNO) supports innovation in public procurement. KOINNO is a registered association hosted by the Association of Materials Management, Purchasing and Logistics (BME) on behalf of the Federal Ministry for Economic Affairs and Energy (BMWi). KOINNO's objective is to increase public procurement of innovative goods and services in Germany, and, by doing so, trigger innovation and increased competiveness in the German economy. In order to measure progress towards this objective,

KOINNO has targeted a considerable increase in the percentage of procurement procedures for new technologies, products and services. The services provided by KOINNO are similar to those of KNB in that they provide contracting authorities with training, workshops, networking opportunities, on-call consulting and a website containing best practices, templates and guidance.

Both the KNB and KOINNO co-ordinate their work in order to learn from successes and challenges.

Source: (OECD, 2015[1]) (PIANOo, n.d.[17]) (OECD, 2019[18])

Several countries have also developed risk assessment tools to assist contracting authorities to identify and prioritise risks in their supply chains. Several include a focus on high-risk products and categories as a priority (see Box 2.5).This approach, to prioritise by product or category, is also recommended by the OECD risk-based due diligence framework.

Box 2.5. National tools to assess RBC risks in public procurement

The Norwegian High Risk List

In Norway, contracting authorities are obliged by the Norwegian Procurement Act (§5 LOA) to implement appropriate measures to promote respect for human rights where there is a risk of a negative impact. The Norwegian Digitalisation Agency (DigDir) provides all contracting authorities with information on high risk products such as ICT, textiles, medical consumables, and coffee. This high risk list extends to identifying risks throughout the full supply chain from raw material extraction to component production until finishing assembling (Norwegian Digitalisation Agency, 2020[19]).

The US Responsible Sourcing Tool (RST)

The US State Department has a risk assessment tool for contracting authorities and companies to identify, prevent, and address any risks of human trafficking in supply chains. The Responsible Sourcing Tool (RST) assesses country- and sector-based risks of human trafficking. The tool covers a number of categories such as ICT, textiles and apparel, construction and healthcare. It also includes sample vendor agreements and self-assessments for follow-ups.

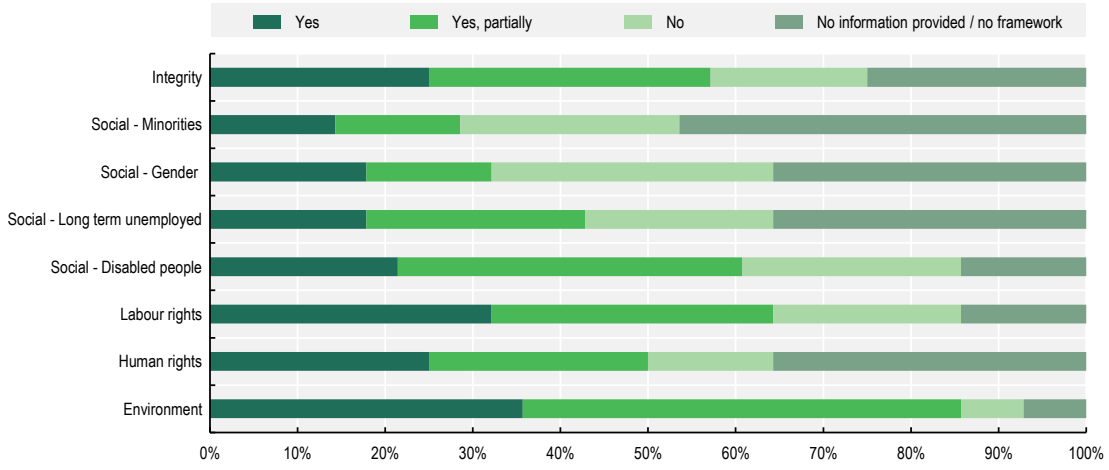
Source: (The Norwegian Digitalisation Agency, 2020[20]) (The US State Department, 2020[21])

2.3.2. Monitoring and reporting frameworks for measuring uptake of RBC objectives

As highlighted by the 2019 progress report on the implementation of the *OECD Recommendation of the Council on Public Procurement*, countries increasingly develop evaluation mechanisms for public procurement systems. However, monitoring remains a challenge: 45% of countries have a performance monitoring framework established, and only 30% have an authority with a clear responsibility for monitoring of public procurement (OECD, 2019[9]).

A majority of countries have developed, or are in the process of developing, monitoring and reporting approaches to measure the uptake of at least specific RBC objectives in public procurement, as foreseen by their frameworks (see Figure 2.8).

Figure 2.8. Percentage of countries that monitor implementation of RBC objectives in public procurement



Note: Based on data from 28 countries
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

Monitoring and reporting of the uptake of RBC objectives is not consistent. Of the surveyed countries, 86% monitor the uptake of environmental considerations at least partially. This is followed by the monitoring of requirements related to labour rights and disabled people (over 60%). The area of minorities is the least monitored, with 29% of countries responding that they conduct some form of monitoring. In Estonia, the use of environmental criteria in public procurement is monitored through the central public procurement register (Ministry of the Environment of the Republic of Estonia, n.d.[22]).

Some countries conduct ad-hoc reporting in the form of a survey, questionnaire or audit as part of their monitoring strategy. In November 2019, the National Agency for Public Procurement in Sweden carried out a survey on how Swedish contracting authorities apply the legislation on specific labour law requirements that came into force in June 2017.[38] The survey included questions on human rights, labour rights, environmental protection and anti-corruption and integrity in the supply chain. In the Netherlands, the Ministry of Foreign Affairs evaluated the country's policy on international responsible business conduct between 2012 and 2018. The report includes a substantial section on public procurement.[39]

Some countries have overarching monitoring frameworks that do not focus on RBC objectives, but rather the entire procurement system. The Italian Anticorruption Authority (ANAC) manages the National Database on Public Contracts, a unified database containing all information on the procurement cycle, including needs analysis, tendering and contract management. The data is publicly available on the ANAC official website.

Other jurisdictions have developed monitoring frameworks to monitor exclusively the uptake of their designated policy objectives. In Finland, the OECD supported Hansel, the Public Procurement authority, to create a productivity framework to monitor four policy objectives (see Box 2.6) (OECD, 2019[23]).

38 http://www.konkurrensverket.se/globalassets/english/publications-and-decisions/swedish-public-procurement-act.pdf

39 https://www.iob-evaluatie.nl/publicaties/evaluaties/2019/09/01/433---iob---evaluation-of-the-dutch-governments-policy-on-international-responsible-business-conduct-2012-2018---mind-the-governance-gap-map-the-chain

Box 2.6. Measuring public procurement impact in Finland

The OECD has worked with Finland to identify a path forward to measure the impact of public procurement on achievement of specific policy outcomes:

- Unlocking innovation.
- Increasing access and competition from SMEs.
- Increasing exports and employment.
- Pioneering clean technology.

An OECD report identified gaps and further work required in collecting data to demonstrate that the outcomes have been achieved. A productivity framework was defined. As part of this framework, a set of performance indicators were suggested including some for measuring the impact of public procurement on achieving the goals related to secondary policy objectives. Examples of the performance indicators are set out below:

- SME participation: Number of bids submitted for tenders by businesses categorised as SMEs.
- Reduction in energy consumption: Comparison of energy consumption of historical goods and services bought by the government and new goods and services selected using Most Economically Advantageous Tender (MEAT) criteria or other criteria.
- Reduction of emissions: Comparison between emissions from historical goods and services bought by government and new goods and services selected using emissions as criteria.
- Improvement in air/water quality: Comparison between impacts on air/water quality of historical goods and services bought by government and new goods and services selected using environmental considerations as criteria.
- Incorporation of social considerations in government contracts: Ratio of public contracts pursuing social objectives (including the aggregation of social outcomes secured through public contracts).
- Skills/jobs creation: Number of jobs/training qualifications generated through public procurement.

Source: (OECD, 2019[23])

In Denmark, the NCP plays an important role in monitoring public procurement, see Box 2.7.

Box 2.7. The investigative role of the Danish NCP

The mandate of the National Contact Point for Responsible Business Conduct (NCP) of Denmark includes the possibility to launch specific investigations related to responsible business conduct at the NCP's own initiative. In 2018, the NCP initiated an investigation of the Danish Ministry of Defence's procurement process after allegations of forced labour in relation to the procurement and construction of an inspection vessel. The investigation was focused on whether the Ministry had performed due diligence in accordance with the OECD Guidelines for Multinational Enterprises (MNE Guidelines) during their procurement process.

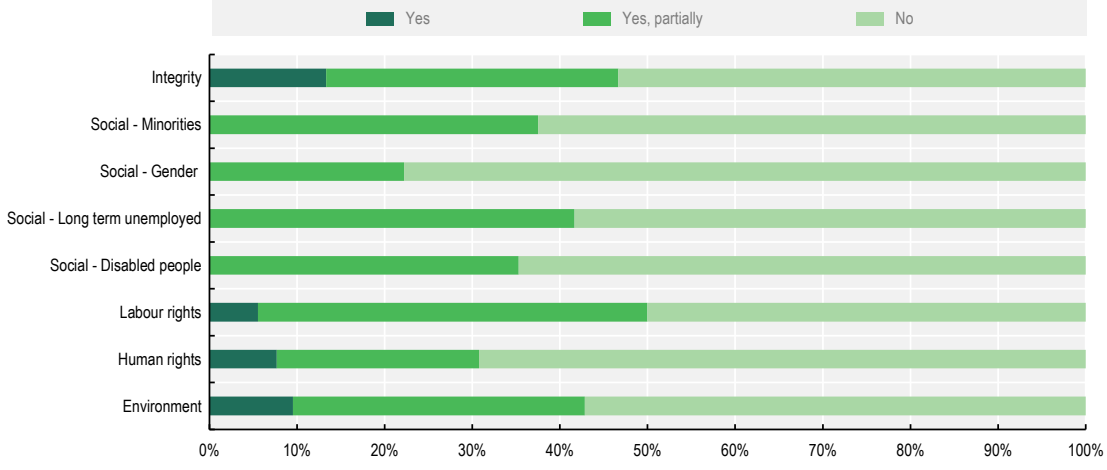
The enquiry concluded that the Ministry had not imposed requirements that respected human rights in connection with the monitoring of the contract. It also concluded that the Ministry did not systematically assess the potential for adverse impacts on human rights, labour rights and the environment nor the potential for corruption. On that basis, the NCP drafted a number of recommendations to the Ministry with a view to be utilised in future when procuring goods and services.

As part of the follow-up procedure, the Ministry provided a report to the NCP. The report showed a significant increase in focus on due diligence. The Ministry had made substantial efforts to strengthen their work on responsibility in order to comply with the MNE Guidelines. The initiatives included the incorporation of risk-based due diligence processes into procurement processes, including the establishment of standard procedures for managing actual or potential adverse impacts. It also set up a CSR Governance Board. The Ministry of Defence are now currently informing other public authorities about their work on due diligence and RBC, thereby securing focus on the topic. As a result, the visibility of the Danish NCP and, more importantly, focus on RBC for the public authorities has expanded.

Source: (Danish National Contact Point, 2019[24])

Monitoring frameworks rarely include subcontractors or the rest of the supply chain. Of those countries that conduct monitoring, the majority do not monitor subcontractors or supply chains – with the exception of integrity objectives (Figure 2.9).

Figure 2.9. Where countries have monitoring frameworks, percentage of those that cover subcontractors and supply chains



Note: Based on data from 28 countries
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

2.3.3. Sub-national uptake of RBC objectives in public procurement

Countries have limited knowledge of the RBC-related activities in public procurement at a sub-national level, which is a gap given the large share of public procurement conducted at sub-national level (63%). The OECD's 2017 report *Public Procurement for Innovation. Good Practices and Strategies* identified the definition of targets at national, sub-national and regional levels as a good practice for securing strong political commitments (OECD, 2017[25]). Studies show that there are several initiatives on sustainable public procurement on sub-national levels. In 2019, the OECD conducted a review of the public procurement system in Germany. The review looked at approaches the German states (*Länder*) use to pursue strategic objectives through public procurement. It found that the majority of German states have a broad suite of instruments in place to support complementary policy objectives (OECD, 2019[18]). A second example rests on a number of sub-national authorities in Belgium (Flanders) and the Netherlands. The TruStone Initiative is a multi-stakeholder initiative between government, NGOs, trade unions and individual companies to ensure public authorities source natural stone responsibly.[40]

The survey which was distributed to national level procurement policy makers also asked respondents about their knowledge of any sub-national level initiatives which supported the uptake of RBC objectives in public procurement. Almost all respondents to the survey answered that they had no visibility on the procurement activities of their sub-national governments. In addition, respondents stated that they did not have the means to obtain information about RBC objectives in public procurement at any level below the national level. Many procurement systems are decentralised. This means that often, contracting authorities procure according to their own, individual objectives. Many sub-national governments have regulations to clarify which sustainability aspects (or RBC objectives) should be taken into consideration. However, these sub-national requirements are not monitored by the national level procurement function.

The 2019 Germany public procurement review found that laws and strategies are the most common instruments to pursue strategic public procurement at sub-national level in Germany, i.e. among German states (*Länder*). In most cases, these laws and strategies also contain mandatory requirements for the pursuit of sustainable public procurement policy objectives, which include many RBC objectives. In most states, capacity-building initiatives and monitoring support high-level strategic and regulatory frameworks. Evidence presented in the 2019 Germany public procurement review suggests that few states are advanced in gathering data for monitoring purposes (OECD, 2019[18]).

2.4. Summary of findings

Countries are progressively strengthening their policy environments to incorporate RBC in public procurement. A majority of countries promote some aspects of RBC in public procurement through regulations and strategic frameworks. Environmental objectives are covered by some sort of framework in all countries. Objectives related to integrity and persons with disabilities are also well supported. Objectives associated with other social dimensions of RBC such as human rights, minorities, gender, disabled people or long-term unemployed, are not covered to the same extent. Overall, comprehensive and coherent frameworks addressing RBC objectives are rare.

While public procurement policy makers increasingly require consideration of RBC objectives when selecting main contractors, RBC expectations rarely extend to suppliers beyond subcontractors. Regulatory or strategic frameworks do not cover the entire supply chain for the majority of objectives. Integrity and labour rights are the two objectives where frameworks set requirements for the supply chain most often.

[40] https://www.imvoconvenanten.nl/en/trustone/

Overall, monitoring and reporting of the uptake of RBC related frameworks remains limited and is not consistent. In over half of the countries, it is not mandatory to monitor whether subcontractors or the rest of the supply chain comply with RBC objectives set by frameworks. At best, countries conduct partial monitoring. Countries draw on diverse tools, methodologies and stakeholders to enhance monitoring, but often efforts remain limited. Almost all respondents answered that they had no visibility on the procurement activities of their sub-national governments.

International commitments or obligations are the strongest driver in the development of regulatory and strategic frameworks, followed by government aims to achieve greater policy coherence internally.

Public procurement systems face capacity constraints, hindering implementation of RBC objectives in public procurement. The heightened expectations on public procurement practitioners to 1) incorporate RBC objectives into tenders, 2) manage sustainability risks and 3) consult diverse stakeholders increases the need for specific skills and resources that are not currently being met. Training and guidance cover mainly environmental objectives, followed by labour rights considerations.

References

Danish National Contact Point (2019), , https://businessconduct.dk/file/675984/Follow-up-statement-18-12-2019.pdf. [24]

European Commission (2020), *What is GPP*, https://ec.europa.eu/environment/gpp/what_en.htm. [6]

European Commission (2011), *Buying social - a guide to taking account of social considerations in public procurement*, http://dx.doi.org/doi:10.2767/18977. [3]

International Learning Lab on Public Procurement and Human Rights (2016), *Public Procurement and Human Rights: A Survey of Twenty Jurisdictions*. [5]

Martin-Ortega, O. (2018), "Public Procurement as a Tool for the Protection and Promotion of Human Rights: A Study of Collaboration, Due Diligence and Leverage in the Electronics Industry", *Business and Human Rights Journal*, Vol. 3:1/3, pp. pp75-95, http://dx.doi.org/10.1017/bhj.2017.35. [4]

Ministry of Finance of the Republic of Latvia (2019), "Overview of Public Procurement in Latvia", http://www.vvc.gov.lv/advantagecms/LV/tulkojumi/meklet_dokumentus.html?qu. [11]

Ministry of the Environment of Japan (2019), "Basic Policy on Promoting Green Procurement", http://www.env.go.jp/policy/hozen/green/g-law/archive/bp/h31bp_en.pdf. [14]

Ministry of the Environment of the Republic of Estonia (n.d.), "Green public procurement", https://www.envir.ee/et/keskkonnahoidlikud-riigihanked. [22]

New Zealand Government Procurement and Property (2019), "Broader Outcomes", https://www.procurement.govt.nz/broader-outcomes/. [7]

Norwegian Digitalisation Agency (2020), *The High Risk List*, https://www.anskaffelser.no/public-procurement/socially-responsible-public-procurement/information-about-high-risk-products. [19]

OECD (2019), *Government at a Glance 2019*, OECD Publishing, https://doi.org/10.1787/8ccf5c38-en. [2]

OECD (2019), *Productivity in Public Procurement. A Case Study of Finland: Measuring the Efficiency and Effectiveness of Public Procurement*, https://www.oecd.org/gov/public-procurement/publications/productivity-public-procurement.pdf. [23]

OECD (2019), *Public Procurement in Germany: Strategic Dimensions for Well-being and Growth*, OECD Publishing, https://doi.org/10.1787/1db30826-en. [18]

OECD (2019), *Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendation*, OECD Publishing, Paris, https://dx.doi.org/10.1787/1de41738-en. [9]

OECD (2017), *Public Procurement for Innovation: Good Practices and Strategies*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264265820-en. [25]

OECD (2015), *Going Green: Best Practices for Sustainable Procurement*, https://www.oecd.org/gov/public-procurement/publications/Going_Green_Best_Practices_for_Sustainable_Procurement.pdf. [1]

OECD (2015), *Policy Shaping and Policy Making: The Governance of Inclusive Growth*, OECD Publishing, https://www.oecd.org/governance/ministerial/the-governance-of-inclusive-growth.pdf. [8]

PIANOo (n.d.), *PIANOo*, https://www.pianoo.nl/sites/default/files/documents/documents/sharingexpertiseonpublicprocurementoktober2009.pdf. [17]

Public Procurement Authority of Hungary (2019), "Sustainable activity of the Public Procurement Authority of Hungary", https://ec.europa.eu/environment/gpp/pdf/GPP_Hungarian_PP_Authority_activities.pdf. [12]

Public Procurement Office (2004), "Act of Public Procurement Law (Poland)", http://www.uzp.gov.pl/cmsws/page/?F;370. [10]

Public Works and Government Services Canada (2018), "Ethical procurement certification", https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/A/A3006T/1. [16]

Segerstedt, A. and T. Olofsson (2010), "Supply chains in the construction industry", *Supply chain management: an international journal*. [13]

Swiss Confederation (2019), "Federal Public Procurement Law", https://www.admin.ch/opc/fr/federal-gazette/2019/4329.pdf. [15]

The Norwegian Digitalisation Agency (2020), "The High Risk List", https://www.anskaffelser.no/public-procurement/socially-responsible-public-procurement/information-about-high-risk-products. [20]

The US State Department (2020), "The Responsible Sourcing Tool", https://www.responsiblesourcingtool.org/visualizerisk. [21]

3 Implementing RBC Objectives in Practice

This section describes the implementation of RBC objectives in public procurement, focusing on the practices of Central Purchasing Bodies (CPBs). It examines whether and how RBC objectives are applied to subcontractors and the extended supply chain by CPBs. The section also addresses role of other stakeholders in the greater uptake of RBC objectives in public procurement.

3.1. Central Purchasing Bodies' role in promoting RBC

As seen in section 2, many countries have developed regulatory or strategic frameworks to support RBC objectives. Large public buyers such as Central Purchasing Bodies (CPBs) have a strategic role in implementing national policy objectives and can promote the attainment of RBC objectives significantly.

CPBs are public purchasers who (OECD, 2011[1]):

- acquire goods or services intended for one or more contracting authorities;
- award public contracts for works, goods or services intended for one or more contracting authorities;
- negotiate framework agreements for works, goods or services intended for one or more contracting authorities.

The *OECD Recommendation of the Council on Public Procurement* (OECD, 2015[2]) points to the role of centralised procurement in creating efficiencies and spill-over effects in the procurement system (Principle on efficiency, paragraph VII). CPBs have different legal statuses across OECD countries. Some operate as part of a ministry, while others are independent government agencies or even corporations. These different forms and degrees of independence provide opportunities for CPBs to implement different procurement strategies.

CPBs can realise economies of scale through their aggregate purchasing power and influence the business sector towards more responsible behaviour by integrating RBC objectives into procurement expectations. CPBs conduct repeated purchases. This has two effects: 1) it provides incentives to businesses to "win and maintain" contracts with CPBs, supporting RBC uptake by rewarding responsible business behaviour. 2) CPBs can develop a strong expertise on the best strategies to procure, enhancing the results in terms of efficiency and impact (OECD, 2017[3]) (OECD, 2019[4]).

To understand how CPBs are implementing RBC objectives in their purchasing practices, the survey was sent to CPBs in the Adherent countries to the *OECD Recommendation on Public Procurement* and OECD Guidelines for Multinational Enterprises (MNE Guidelines). As with the survey to public procurement policy makers, the scope was limited to the eight RBC objectives.[41] The survey sought information on i) current frameworks in place within CPBs to promote RBC objectives, ii) how CPBs implement RBC objectives in the procurement cycle and iii) existing implementation tools within CPBs to support the promotion of RBC objectives.

Responses were received from 20 CPBs in total. Seventeen CBPs represented OECD member countries[42], and three responses came from non-OECD countries[43]. Unless otherwise noted, information in this chapter results from the survey to CPBs.

The survey also solicited perspectives from stakeholders from business, trade unions and civil society regarding the practical application of the regulatory and strategic frameworks presented in section 2. The questions to stakeholders focused on how stakeholders interact with public procurement practitioners, and sought information from stakeholders on challenges in the implementation of RBC objectives in public procurement procedures. Stakeholders were asked to provide examples of good practice cases or approaches they have identified. The survey asked about specific initiatives by stakeholders to enhance

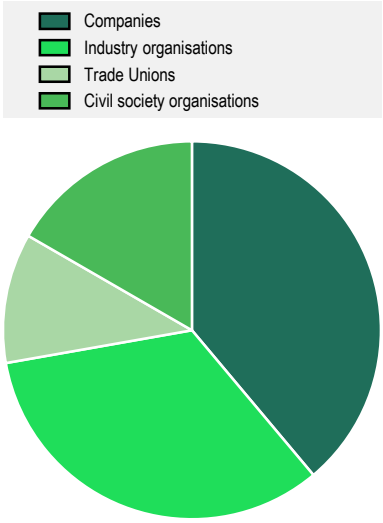
[41] The eight RBC objectives in this Report include environmental standards, human rights, labour rights, inclusion of minorities, long-term unemployed people and people with disabilities, gender mainstreaming and integrity standards (see chapter section 1 for detail.)

[42] Belgium, Canada, Chile, Costa Rica, Denmark, Estonia, Finland, France, Germany, Iceland, Italy, Korea, Mexico, New Zealand, Norway, Slovenia, Sweden

[43] Brazil, Peru, Ukraine

the uptake of RBC objectives in public procurement. The following stakeholders provided responses to the survey: seven companies (from the ICT, pharmaceutical and medical technology sectors), six industry organisations, three civil society organisations and two trade unions (see Figure 3.1).

Figure 3.1. Stakeholder responses to the 2019 Survey on RBC and public procurement

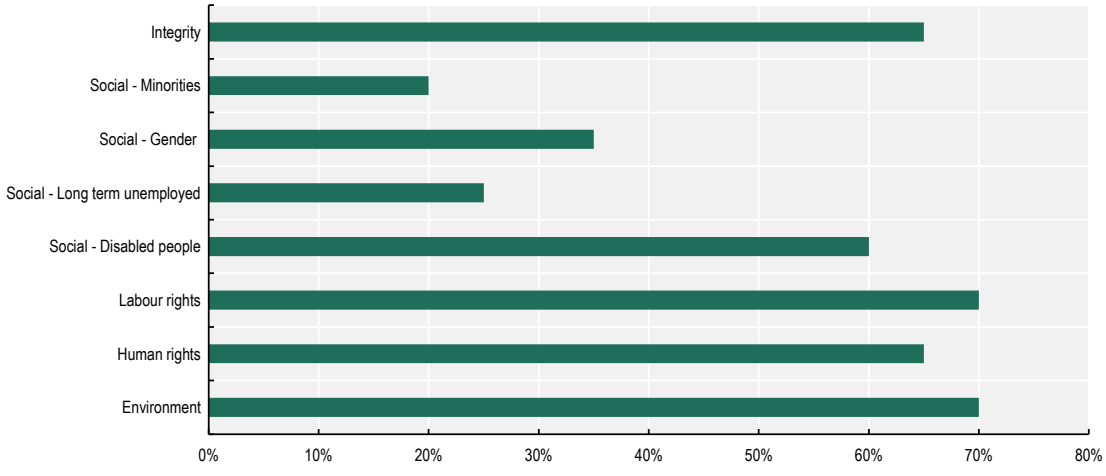


Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

3.2. CPB policies and strategies to promote RBC objectives

To support implementation of RBC objectives, many CPBs complement national regulatory or strategic frameworks with their own policies and strategies. Availability of frameworks for the different RBC objectives differs greatly. The majority of CPBs (85%) have at least one organisational policy or strategic framework to promote RBC objectives (see Figure 3.2).

Figure 3.2. Share of CPBs with policies or strategic frameworks to promote RBC objectives



Note: The figure is based on data from 20 Central Purchasing Bodies
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

Labour rights and environmental considerations are the most prominent RBC objectives amongst CPBs' policies and frameworks, with 70% of CPBs having a policy or strategic framework in place. 65% of CPBs have frameworks referring to human rights and integrity considerations, and 60% include considerations related to disabled people.

This is not surprising, as section 2 demonstrated that most countries have a national level strategic or regulatory framework that include objectives related to the environment, labour rights, disabled people, integrity and human rights. As such, it follows that a high number of CPBs correspondingly have established organisational-level strategies that mirror these national frameworks. When CPBs have obligations by law to fulfil specific objectives, these are expected to be included in subsequent policies and strategic frameworks.

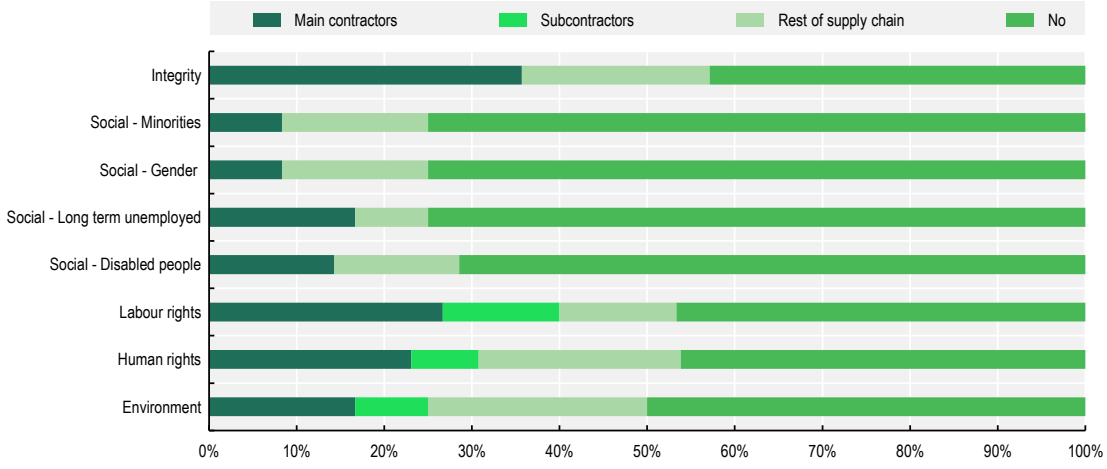
Areas where relatively few CPBs have policies or strategic frameworks include minorities (only 20% have strategies or policies at the CPB level), and the long-term unemployed (25% indicated policies here.) This mirrors the findings in section 2, where these RBC objectives were rarely included in regulatory or strategic frameworks at the national level.

3.2.1. How CPBs' strategies and policies apply to the full supply chain

CPB's public procurement policies or strategy cover the supply chain to varying degrees. The survey asked those CPBs that have internal policies or strategies reflecting the eight RBC objectives if these are extended to the full supply chain including main contractors, subcontractors and suppliers further along the supply chain.

The majority of CPB's do not extend their policies or strategies for RBC objectives to the full supply chain (Figure 3.3). However, it is reassuring to see that across RBC objectives, between 20% to 25% of CPBs apply polices and strategies to suppliers beyond subcontractors in the areas of environment, human rights, integrity and labour rights.

Figure 3.3. CPB's public procurement policies or strategies and coverage of the supply chain



Note: Share of CPB's policies or strategies covering different tiers of the supply chain for the different policy areas. The figure is based on data from 20 Central Purchasing Bodies.
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

As described in section 2, national regulatory and strategic frameworks are most likely to apply to the supply chain for RBC objectives related to labour rights, the environment, and integrity. The survey results show that CPB strategies and policies also reflect these objectives. However, although there is progressive

development, the data shows that even for integrity issues, 43% of respondents do not extend their policies or strategies beyond the subcontractor level. This may be because traditionally CPBs have not been expected or obliged to consider RBC objectives beyond their main contractors and subcontractors.

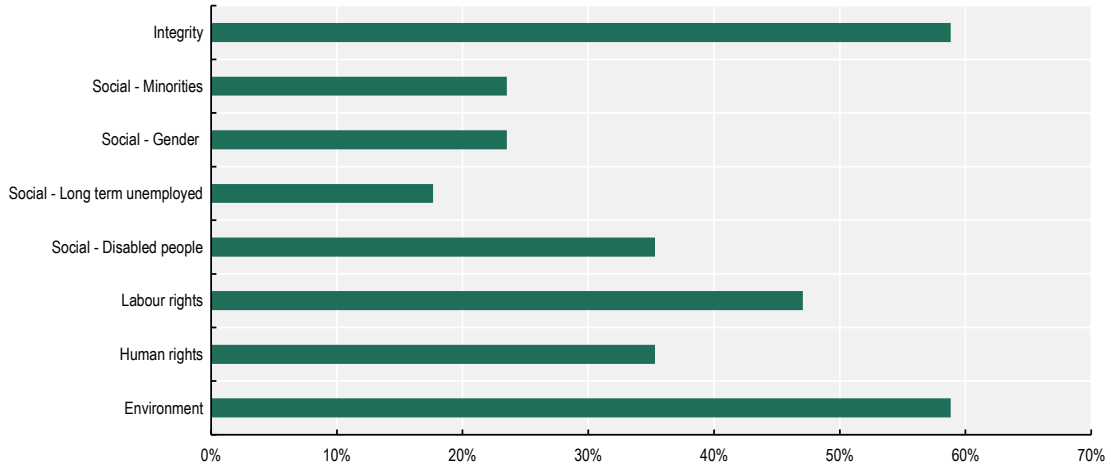
3.3. Risk management frameworks of CPBs

CPBs increasingly use risk management frameworks in relation to RBC objectives, but emphasis on different RBC objectives varies. CPBs pay strongest attention to integrity and the environment. A risk management framework encompasses a methodology for assessing risks. This includes an assessment of the nature, causes and the consequences of risks as well as mitigating them (OECD, 2019[5]). The *Recommendation of the Council on Public Procurement* (OECD, 2015[2]) calls on Adherents to integrate risk management strategies for mapping, detection and mitigation of risks throughout the public procurement cycle (Principle on Risk, paragraph XI). Results from previous studies also show that countries are increasingly developing risk management frameworks that are integrating both environmental and social considerations. The progress report on the implementation of the *OECD Recommendation of the Council on Public Procurement* found that 52% of the responding countries have a strategy for the assessment, prevention and mitigation of public procurement risks. In other countries, a general risk management policy might apply (OECD, 2019[4]).

Public procurement can be subject to many different risks potentially affecting the outcome of procurement processes. Risks can arise at any stage of the public procurement cycle.

The survey investigated whether CPBs have a risk management framework in place and if the risk management framework takes into account RBC objectives.[44] The majority of CPBs (80%) have developed a risk management framework. However, as expected, the extent to which they integrate all RBC objectives varies (Figure 3.4).

Figure 3.4. RBC objectives in CPB risk management frameworks



Notes: Share of CPBs that consider different policy considerations as part of their risk management framework ("yes" or "yes, in specific cases"). The figure is based on data from 17 CPBs
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

[44] For the second question only 13 out of 20 CPBs responded.

Out of the 17 CPBs that responded to this question, 10 (59%) included integrity and environmental considerations in their risk frameworks, and 8 (47%) integrate labour rights. Similar to findings in previous sections, social RBC objectives, notably those related to long-term unemployed, gender and minorities, are less represented in risk management frameworks. Overall, less than a third of CPBs took disabled people, the long-term unemployed, gender or minority considerations into account in their risk management frameworks.

The Chilean CPB (ChileCompra) has a system to detect integrity risks. The tool serves to detect errors in tender documents, such as notices, and errors in the procedures. The framework includes a monitoring and alert system that flags when violations of rules are detected. This mechanism also serves to flag opportunities to improve processes. In addition, it has a "whistle blower" channel, to enable civil society, suppliers or public officers to inform of any situation that may infringe the transparency or integrity of the public procurement process.

As described in section 2, several governments have developed risk assessment tools that can assist public procurement authorities in identifying risks in supply chains for specific categories. The supply chain risks covered by these assessment tools include risks linked to RBC objectives (see section 2). The *OECD Due Diligence Guidance for Responsible Business Conduct* (OECD Guidance for RBC) recommends that companies map the structure of their supply chains and identify general areas of risks based on "specific geographic, sectoral, product or enterprise factors"[45]. Considering risks along these dimensions (see Table 3.1) can help scope risks, serving as a broad, initial exercise to enable prioritisation.

Table 3.1. Risk categories to help scope risks and prioritise due diligence

Risks categories	Description	Example
Sector risks	Risks that are prevalent within a sector globally as a result of characteristics of the sector, its activities, products and production process	Extractive sector – environmental footprint, impact on local communities Garment & Footwear sector – low wages. Occupational health and safety etc.
Product risks	Risks related to inputs or production processes used in the development or use of specific products	Garment – beading or embroidery hold a higher risk of informal employment Electric batteries – cobalt may be sourced from mines with child labour
Geographic risks	Conditions in a particular country which may make sector risks more likely	Regulatory frameworks, rule of law, level of corruption, strength of inspectorates; poverty, education rates, discrimination against women etc.
Enterprise risks	Risks associated with a specific enterprise	Weak governance; poor history in relation to respecting human rights, labour rights, anti-corruption scandals, environmental standards etc.

Source: OECD Due Diligence Guidance for Responsible Business Conduct (2018)

Tools used in the private sector to aid in scoping include market research services, civil society reports, National Human Rights Institute (NHRI) reports, reports from government agencies, information from trade unions, employers or business associations, media reports, grievance mechanisms and direct engagement with stakeholders on the ground. These resources may also be of use to public procurement practitioners, such as procurers in CPBs.

Once a broad prioritisation or scoping of risks has taken place, the OECD Guidance for RBC recommends a more detailed risk assessment to identify and evaluate prioritised risks and potential negative impacts. In the private sector, many enterprises do this through self-assessments and external audits or inspections. In some cases, such assessments are regulated by domestic law. Common examples are labour inspections, environmental inspections required for licensing, environmental impact assessments, anti-

[45] OECD Due Diligence Guidance for Responsible Business Conduct, Section A2, Q. 19 and Q20

corruption compliance management systems, know-your-counterpart (KYC) processes, financial audits, human rights impact assessments, and product-licensing processes.

Risk assessment tools which focus on identifying risk associated with the environment, human rights, labour rights and integrity could also explain why CPBs take these RBC objectives into greater account in their risk management frameworks. By comprehensively identifying the various sustainability risks related to RBC objectives in the supply chain, CPBs can increase their ability to make decisions in line with national and international sustainability objectives.

In the last five years, 85% of CPBs have identified high-risk sectors in relation to their procurement activities. Table 3.2 describes examples of the categories that CPBs have identified.

Table 3.2. High-risk product categories according to country CPBs

Country CPB	High-Risk Product Category
Canada	Textiles
Denmark	Facilities Management
Finland	Facilities Management Furniture ICT Transportation
France	Facilities Management Intellectual services Multi-technical maintenance
Germany	ICT Textiles
Iceland	Construction
Italy	Facilities Management Food Public works Textiles Intellectual Services Waste management Energy
Korea	Textiles Public works
Mexico	Public works and services
New Zealand	Construction Facilities Management ICT Office consumables Textiles Vehicles
Peru	ICT
Sweden	Facilities Management Fuel (gas and diesel) ICT Transportation

Note: This illustration was compiled by the authors based on free-text responses provided by the countries. No standardised choice of options for the purchasing category had been provided. Facilities management includes various aspects, such as cleaning services, security services, as well as facilities management in general. Transportation includes related services as well as goods such as vehicles and related purchases.
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

A risk management approach that prioritises the supply chain for specific product categories helps CPBs understand the provenance of raw materials and the conditions under which goods are produced, manufactured and transformed. A small number of CPBs are starting to integrate a due diligence approach as recommended by the OECD into their procurement process to identify, prioritise and mitigate risks (see Box 3.1).

Box 3.1. CPBs' due diligence practices

The case of the Danish Central Purchasing Body

The Central Purchasing Body of Denmark (SKI) requires suppliers to conduct due diligence in relation to child labour, forced labour, freedom of association, and migrant labour. Suppliers are obliged to identify and mitigate human rights risks in connection with their own business activities and in their supply chain. The purpose of including these requirements is to ensure decent work and environmental conditions for the production of the products which are procured by the public procurement authority. The agreements include requirements based on internationally recognised principles and international initiatives, such as the UN Guiding Principles on Business and Human Rights (UNGPs), and the OECD Guidelines for Multinational Enterprises (MNE Guidelines).

SKL Kommentus in Sweden – due diligence support for regional authorities

SKL Kommentus is a Central Purchasing Body owned by the Swedish Association of Local Authorities and Regions (SALAR). Members of SALAR are Sweden's 290 municipalities and 21 regions. SKL has developed human rights due diligence support for their members. The system starts with a mapping of supply chains, identifying adverse impacts in the supply chain related to human rights, labour rights, environment and integrity based on public available information such as MVO Netherland's CSR Risk Check. The risks are then prioritised according to their severity, which steers the development of award criteria and contract clauses for the central purchasing agreements.

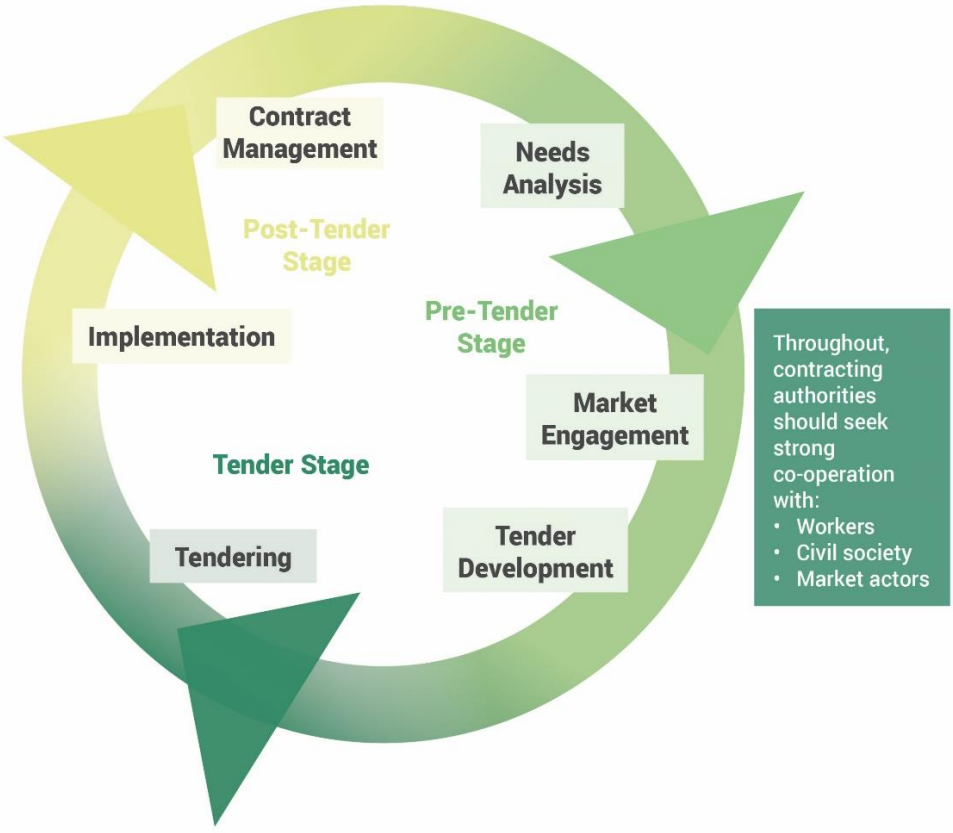
Source: (SKL Kommentus, 2020[6])

3.4. Challenges of supply chain risk management throughout the procurement cycle

Throughout the procurement cycle, the RBC objectives that receive the most consideration are environmental considerations. Most attention to RBC objectives is paid in the tender specifications. This is an indication that public buyers could expand the breadth of tools used to pursue strategic public procurement. To understand how RBC objectives are implemented, the survey analysed how CPBs applied the eight RBC objectives throughout the procurement cycle.

The procurement cycle includes a pre-tender phase, a tender phase and a post-tender phase. Figure 3.5 presents a generic schema outlining these phases and the policies and strategic frameworks that typically guide the procurement process.

Figure 3.5. The public procurement cycle



3.4.1. Integrating RBC objectives in the pre-tender phase

Market engagement on RBC objectives is relatively rare in the pre-tender phase, and most emphasis is given to environmental considerations. The pre-tender phase refers to activities involved in the tendering process prior to award of a project. This includes for example defining the organisation's internal needs, preparing the budget, designing the procurement strategy, scheduling the project, researching or analysing the market, defining the requirements and award criteria as well as developing the tender documents. If it is a repeated purchase, the pre-tender phase should also be used for evaluating the performance of the previous tender and contract for the same purchasing category.

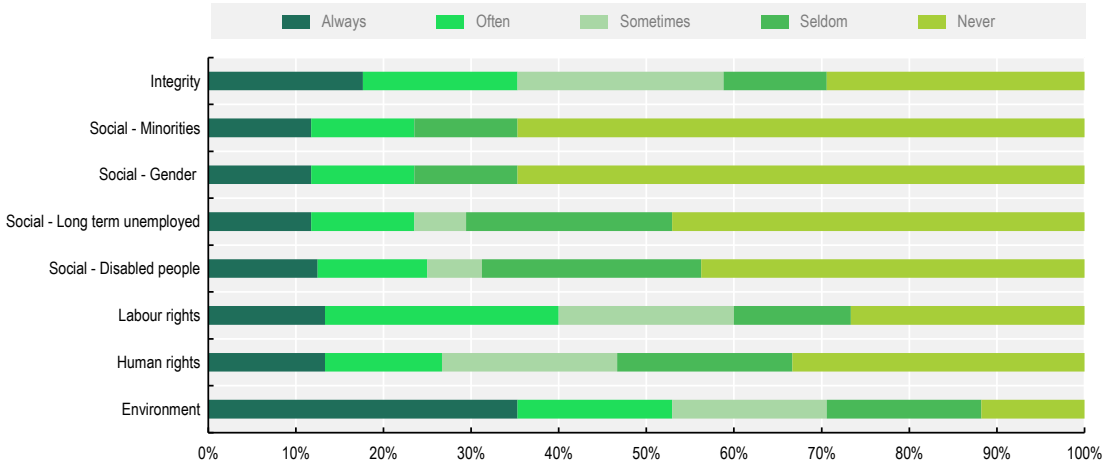
In the pre-tender phase, contracting authorities can engage in dialogue with suppliers and other key stakeholders on the objectives of the planned procurement to understand if suppliers are able to meet the requirements. Suppliers often have a more up-to-date and comprehensive understanding on new products and services including information on the price, market trends and risks associated with the product, service or sector. Engaging or consulting with suppliers and stakeholders at this pre-tender phase often results in the ability for more suppliers to participate in the tender procedures and for CPBs to build their knowledge of the market, product and relevant risks.

The pre-tender phase is important to establish the ability of potential suppliers in meeting RBC objectives and addressing risks. Engagement at this stage of the procurement cycle can help CPBs (and in general public buyers) to understand the types of measures and actions suppliers have put in place to identify, prevent and manage risks, including lessons learned in working with the wider supply chain and sector. The pre-tender market consultation can help public buyers identify actions and risk mitigation measures in a specific industry. It can also help identify stakeholders CPBs may wish to engage to mitigate any potential

negative impacts. Public buyers can test their approach with the market to ensure that their RBC-related requirements will not deter bidders, or create unnecessary burdens during the bidding process or contract delivery.

The survey asked CPBs how often they engage with companies when incorporating RBC objectives into procurement opportunities (see Figure 3.6).[46]

Figure 3.6. Frequency with which CPBs consult businesses when incorporating RBC objectives into procurement opportunities



Note: The figure is based on data from 20 Central Purchasing Bodies
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

A minority of CPBs consult with business "always or often" in the pre-tender phase across RBC objectives. Environmental aspects are the only objective where more than half of CPBs (53%) indicated that they always or often consult with businesses during the pre-tender stage. In the survey, UGAP France stated that market consultations are an important part of the procurement process to ensure that the purchasing categories meet the regulatory obligations and the strategic goals of the government. Centrale de Marchés FORCMS Belgium conducts market consultation in the procurement of ICT products to help develop relevant environmental requirements.

In contrast, for all other RBC objectives, only 12-18% of CPBs always consult with companies. In the case of labour rights, this figure is slightly higher when adding CPBs that consult with businesses "often", but it reaches 40% at most for labour rights (consulting "always or often"). For people with disabilities, long-term unemployed, gender and minorities around 70% of CPBs replied that they "never or seldom" consult businesses during the pre-tender phase.

Feedback from business stakeholders indicated that one of the three most significant challenges perceived in incorporating any RBC objective in government contracts was the lack of market engagement from contracting authorities, including CPBs. In relation to fulfilling human rights obligations, many contracts include requirements that apply throughout the supply chain. For businesses, violating these requirements can result in fines or contract termination. In certain cases, business noted that CPBs did not have clear

[46] Seldom was defined as less than 25% of procurement opportunities, sometimes was defined as between 25% and 50% of procurement opportunities, often was defined as between 50% and 75% of procurement opportunities and always was defined as over 75% over procurement opportunities.

specifications on what are sufficient processes and routines in order for business to fulfil these requirements.

Engagement with civil society organisations and worker representatives and trade unions, as well as business representatives or industry associations is a useful source of information to identify risks related to a specific product, service or geography. The survey addressed trade unions, civil society organisations and industry associations to see if and how they are consulted by contracting authorities on the integration of RBC objectives.

Civil society and trade unions highlighted the importance of social dialogue and the value of including non-commercial stakeholders during market consultation (pre-tender phase). Non-commercial stakeholders can provide valuable expert advice and input on specific risks such as forced labour, child labour, migrant labour or the use of toxic chemicals in products. As they do not stand to gain commercially from a contract, civil society and worker representatives can provide an additional perspective and help CPBs ask suppliers the right questions about risks and about their due diligence practices.

The UGAP France and the Swedish Legal, Financial and Administrative Services Agency engage with trade unions early in the procurement process to receive input on issues such as labour rights or collective agreements. Public Procurement Service Korea consults organisations representing disabled veterans in order to include their perspectives in procurement opportunities. When the guidelines related to socio-economic considerations were developed in Canada, civil society, trade unions, external experts as well as people with disabilities were consulted. The Canadian Ethical Procurement of Apparel framework also included feedback from civil society and trade unions in addition to business organisations. In the survey, two trade unions provided information on cases when they had engaged with contracting authorities (see Box 3.2).

Box 3.2. Engaging procurement authorities from the perspective of trade unions in France and the United Kingdom

Trade unions are increasingly recognising public procurement as a lever for promoting labour rights both nationally and internationally.

Since 2017, the CFDT Interco union has co-operated with the Bordeaux Metropolitan Region and engaged in an innovative approach for responsible public procurement practices. Their first pilot focused on laundry contracts for municipal workers' uniforms. The local CFDT Interco team – involving agents from the public procurement department – developed a method based on the SDGs to identify and prioritise social and environmental risks in supply chains. The CFDT team initiated meetings with service suppliers and conducted on-site visits. The site visits were not inspections but supported the procurement department to identify any areas for improvement and to work with suppliers to improve sustainability performance. This model has assisted the procurement department to sharpen and develop procurement-specific RBC objectives and is now under development in other purchasing categories.

UNISON is the UK's largest union with more than 1.3 million members in public services. It has developed a strategy to put supply chain workers at the heart of public procurement. It focuses on developing sustainable public procurement models, initially targeting local authorities. Aims are to advance sustainable purchasing practices and promote unionisation and collective bargaining through working in social partnership. Key to this work are regionally based tripartite training courses bringing together elected councillors, public procurement staff and union representatives to learn and trial new ways of working.

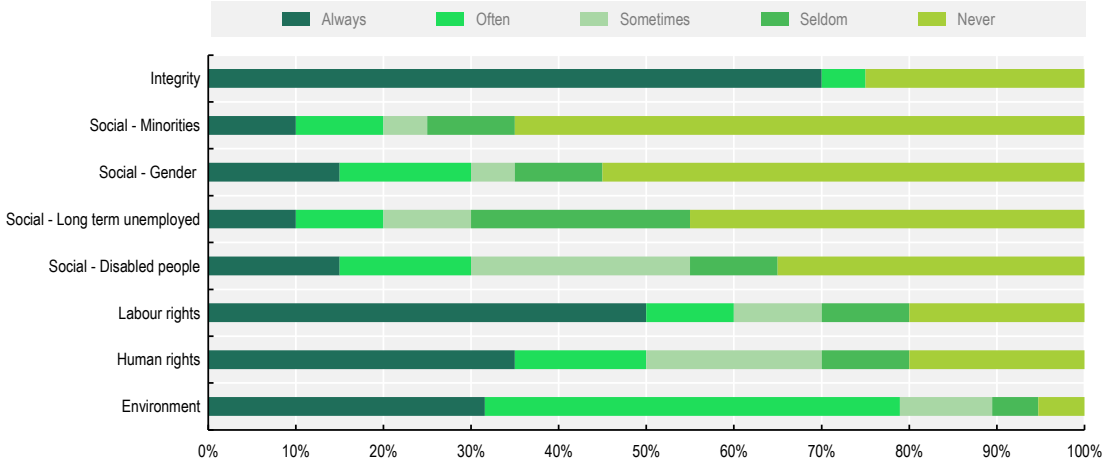
Source: (Public Services International, 2019[7]) (UNISON, 2020[8])

3.4.2. Integrating RBC objectives in the tender phase

More than two thirds of CPBs include environmental and integrity objectives in the tender phase. The tender phase is where tender requirements are presented to the market. It often takes the form of a Request for Proposal (RFP), which is a structured invitation to suppliers to submit a proposal or tender to supply products or services in line with the requirements of the procurement documents that were developed in the pre-tender phase.

The survey results show that CPBs either often or always incorporate RBC objectives into the general requirements for a tender for some RBC objectives, namely the environment (79%), integrity (75%), labour rights (60%) and human rights (50%) (see Figure 3.7). The frequency by which CPBs include the other RBC objectives is considerably lower (reaching 30% at most – for gender and disabled people).

Figure 3.7. Frequency of RBC objectives incorporated into the general requirements of a tender



Notes: The figure is based on data from 20 Central Purchasing Bodies
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

When CPBs include human rights and labour rights considerations in the general requirements of a tender, they refer to the leading international frameworks on RBC such as the UNGPs, the ILO conventions and the MNE Guidelines. For example, the Finnish CPB Hansel Ltd. Finland has included requirements for the prohibition of forced labour and respect for freedom of association according to the ILO core conventions. Hansel Ltd. Finland has also included requirements on reduction in the use of conflict minerals in its procurement contracts for ICT equipment. The Danish Agency for Public Finance and Management and the Swedish Legal, Financial and Administrative Services Agency ask suppliers to demonstrate social responsibility by adhering to internationally recognised principles such as the UNGPs, the MNE Guidelines and the UN Global Compact.

Companies and industry organisations confirmed that they see an increase in public tenders that include environmental, human rights, labour rights and integrity considerations, from contracting authorities in both OECD countries and non-OECD countries. To further encourage this, the industry organisation Responsible Business Alliance (RBA) has developed tools that may be of interest to contracting authorities (see Box 3.3).

Box 3.3. Industry initiative to support public procurement – Responsible Business Alliance

Responsible Business Alliance (RBA) is an industry coalition dedicated to responsible business in global supply chains. RBA has nearly 400 members with combined annual revenues in excess of 7.7 USD trillion with products manufactured in more than 120 countries. The RBA enables member companies and their suppliers to conduct human rights and environmental due diligence deep into their supply chains through an audit platform, risk assessments, training, corrective action support and high-impact programmes to address and mitigate risks and advance RBC globally.

The RBA has a number of tools to help address responsible procurement.

Due Diligence for Public Procurement: RBA developed tools and programmes that can support public buyers in addressing responsible business issues in the procurement cycle.

Transparency: RBA Practical Guide to Transparency in Procurement maps out a spectrum of maturity related to meaningful transparency that company buyers can use as a resource to assess companies' disclosures on social and environmental responsibility and meet their own sustainable purchasing goals.

Engagement: Responsible Factory Initiative (RFI) is a unifying architecture for RBA factory-level tools and programmes for companies looking to assess and develop their supply chain partners and factories at all levels of maturity.

Source: (Responsible Business Alliance, n.d.[9])

Other coalitions such as Electronics Watch (see Box 3.4) also provide platforms which may be of use to public buyers.

Box 3.4. Collaborative approaches to verify compliance – Electronics Watch

Electronics Watch is an NGO whose members are contracting authorities such as municipalities, universities, national government agencies, and other public organisations that buy electronics products. Electronics Watch assists contracting authorities, and collaborates with civil society, to monitor factories in their ICT supply chains and conduct follow-up on contractual demands. They do this through worker-driven monitoring. This methodology builds on engagement with workers employed by electronics manufacturers through monitoring partners located near workers' communities.

In addition, Electronics Watch assists contracting authorities to develop due diligence criteria for decent working conditions in electronics supply chains. To ensure these criteria are fulfilled, they conduct risk assessments and compliance investigations, and provide a platform for contracting authorities to promote social responsibility in ICT supply chains collectively.

Source: (Electronics Watch, 2020[10])

Collaboration with stakeholders includes pooling resources to obtain reliable and credible intelligence about supply chains and sectors. It can also include engaging suppliers and ultimately creating effective market demand for the implementation of RBC objectives. Through their activities, these organisations can help untangle the complexity of supply chains and help public buyers to understand, influence and transform business behaviour.

Companies and business organisations indicated that expectations by CPBs on RBC objectives varied between countries and from one procurement process to the next. For example, between two processes in the same country, contracting authorities requested different environmental criteria, varying levels of

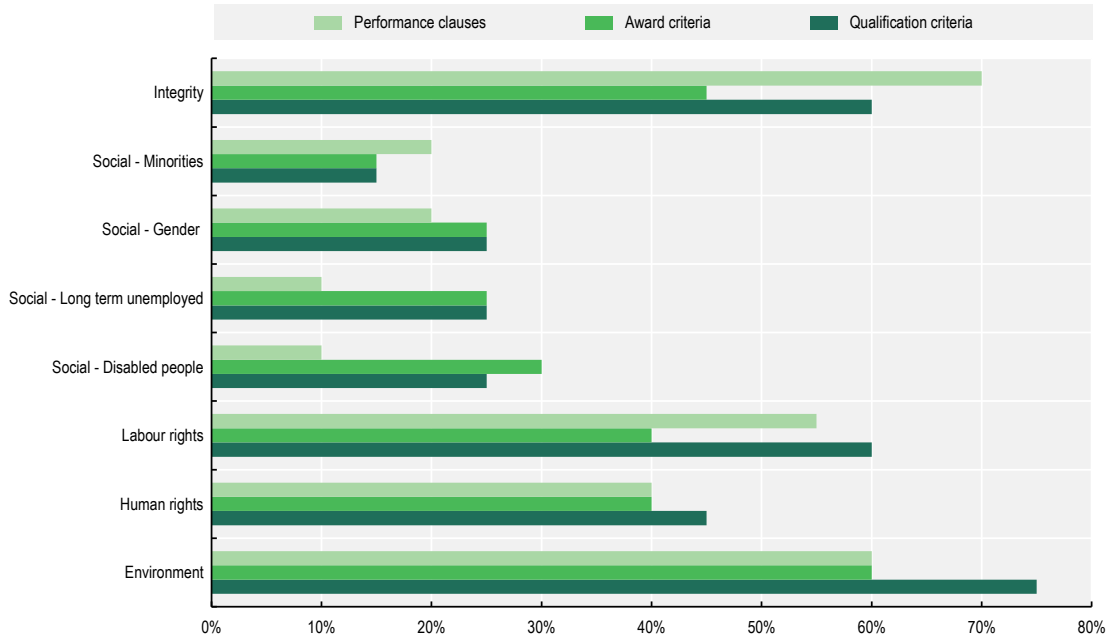
transparency and different levels of verification of labour rights compliance. There is a risk that when CPBs develop unique requirements, it increases the overall administrative burden and costs for both companies and CPBs. Given that a majority of procurement occurs at sub-national level, with limited resources and capacity, companies expressed a need for greater consistency. In addition, companies highlighted that where recognition of company verification schemes are in place which could be of use to contracting authorities as they conduct their due diligence of suppliers.

The use of qualification and award criteria and performance clauses

In implementing RBC objectives in the tender specifications, CPBs emphasise environmental and integrity concerns. RBC objectives can be incorporated into tenders as qualification criteria, award criteria or performance clauses. *Qualification criteria* are specifications that suppliers must meet to submit a tender for a contract. These mandatory requirements on the supplier are stipulated in the supplier's technical and professional abilities and capacity. RBC objectives can also be incorporated as *award criteria* (evaluation criteria). The award criteria can be based on the lowest-price criterion or the Most Economically Advantageous Tender (MEAT) criterion. The MEAT criterion means applying criteria on the basis of both quality and price (SIGMA, 2016[11]). According to the EU Directive 2014/24, contracting authorities should apply award criteria corresponding to MEAT that enable the integration of environmental and social considerations. Unlike qualification criteria or contracting clauses, award criteria are not mandatory for suppliers to fulfil.

In addition to qualification criteria and award criteria, RBC objectives can also be incorporated into *performance clauses* over the contract period (see Figure 3.8). Performance clauses are terms which outline the specific performance criteria that a supplier must fulfil in order to successfully carry out the contract during the contract period and receive payment. Considerations included as performance clauses take effect after the contract is awarded. The fulfilment of the terms is evaluated during the contract period. A breach might lead to sanctions or even termination of the contract.

Figure 3.8. The type of criteria used by CPBs when including RBC objectives in the tender



Note: The figure is based on data from 20 Central Purchasing Bodies. This graph represents the share of CPBs that responded they considered RBC objectives "always", "often" or "sometimes" in the respective phase of the tender in the last three years. Other options for this question were "seldom" or "never".
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

Qualification criteria are requirements that suppliers have to fulfil in order to be considered for the winning bid in a public procurement procedure. 41% of CPBs use qualification criteria to promote RBC objectives in procurement procedures. This is the most used approach across all RBC objectives. Most CPBs consider environmental objectives (75% of CPBs), followed by labour rights and integrity objectives (60%). Qualification criteria are a strong signal to suppliers on expectations, as suppliers must meet these criteria to obtain the contract. Public Procurement Service Korea uses qualification criteria for integrity considerations. Italy uses qualification criteria for environmental considerations. In certain cases, qualification criteria are also used by CPBs when specific purchasing categories are identified as high risk. The Danish Agency for Public Finance and Management uses qualification criteria when procuring products containing minerals from conflict-affected areas. The Public Works and Government Services Canada uses qualification criteria when procuring apparel.

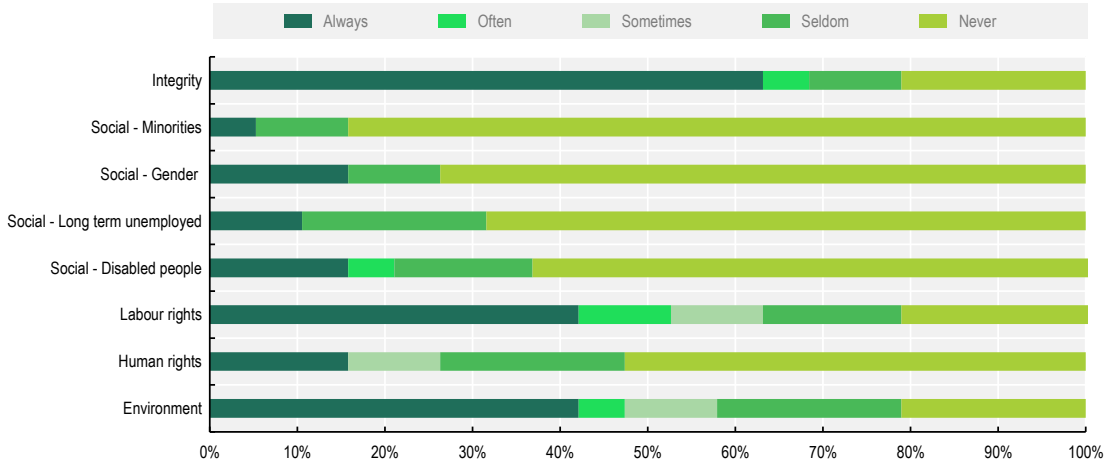
The award criteria constitute the basis on which a contracting authority chooses the best tender and awards a contract. These criteria must be established in advance by the contracting authority and must not be prejudicial to fair competition (SIGMA, 2016[11]). Award criteria are most likely to be used by CPBs for the environment (60%) and integrity (45%). For environmental considerations, the use of award criteria is often linked to the maturity of the market. The Finnish CPB Hansel Ltd. uses award criteria for environmental considerations and labour rights when they know, based on the market analysis, that suppliers would not be able to fulfil all requirements (i.e., that qualification criteria, which are mandatory, would not be feasible.) Hansel Ltd. Finland also use award criteria for labour rights to provide an advantage to suppliers who can demonstrate that they address specific labour objectives. For example, they give points to suppliers that pay a living wage at the final assembly factories of computers, as well as to suppliers that limit total working hours, including overtime, to no more than 48 hours per week on average.

Performance clauses are specifications (conditions) in the contract that determine how a contract should be implemented (i.e. performed). Aside from the qualitative specifications of the procured good, works or service, performance clauses allow promoting RBC objectives by specifying aspects of the implementation or delivery. For example, contracts can prescribe that a cleaning service should be performed under observation of ILO core norms. CPBs use *performance clauses* to pursue objectives related to integrity (70%) and the environment (60%).

Verification of requirements before the contract award

The survey asked how often, within the last three years, CPBs had verified that awarded suppliers would meet the requirements set by the compliance of qualification and award criteria before the award (i.e. signing) of the contract (see Figure 3.9). The results show that for human rights, the long-term unemployed, gender and minorities less than 16% of responding CPBs verify criteria “always or often”.

Figure 3.9. CPBs verifying compliance with RBC objectives prior to contract award



Note: The figure is based on data from 20 Central Purchasing Bodies
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

The frequency with which CPBs verify compliance of integrity, and environmental considerations is higher than other areas. Furthermore, 68% of CPBs responded that they always or often verify integrity-related criteria prior to contract award. 48% of CPBs verify labour rights objectives.

Mapping the supply chain

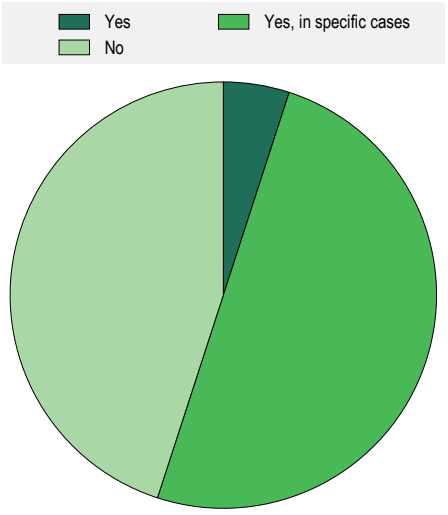
In the tender phase, just over half of CPBs ensure that a potential supplier can certify its entire supply chain in all or specific cases. This is important as RBC-related adverse impacts can occur at any point in the supply chain. In order to be able to identify and mitigate risks, suppliers must be able to map their supply chains. Supply chain mapping provides suppliers with information on a number of crucial aspects, such as:

- who their suppliers are,
- where these suppliers are located,
- which segments of the supply chain they are active in (e.g. production, aggregation, processing, distribution),

- which segment of the supply chain could be a "control point"[47],
- dynamics in the supply chain which relate to workers (how workers are recruited for example),
- percentage and location of women who work in the supply chain, among others.

Only 5% of CPBs expect potential suppliers to certify their full supply chain, with an additional 50% requiring certification of supply chain knowledge in specific cases. However, 45% (i.e. almost half) of CPBs do not require potential suppliers to certify they know their full supply chain (see Figure 3.10).

Figure 3.10. Percentage of CPBs that require potential suppliers to certify full supply chains



Note: The figure is based on data from 20 Central Purchasing Bodies
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

For those CPBs that do require suppliers to certify that their supply chain complies with certain RBC objectives, this was strongest in relation to integrity and environment, followed by human and labour rights concerns. In some cases the request for supply chain transparency is connected to specific categories, such as textiles and ICT, which have been identified as high risk categories by some CPBs (as seen in Table 3.2).

Hansel Ltd. Finland developed award criteria to reward those companies that could show transparency in their supply chain. Suppliers receive additional points if they include: a) a list of final assembly locations of computers; b) a list of final assembly locations and of component suppliers of computers; c) a list and proof that the trademark owner has openly published a list of final assembly locations of computers; or d) proof that the trademark owner had openly published a list of final assembly locations and of component suppliers of computers.

Business supported having more clarity from CPBs on types of information they would need. If CPBs explicitly stated how specific RBC objectives will be taken into consideration (i.e. additional points for high

[47] Control points or "choke points" are key points of transformation in the supply chain where traceability or chain of custody information may be aggregated or lost. The number of actors are relatively few, and are typically process or handle a majority of inputs that they then pass down the supply chain. Enterprises here typically have high leverage over upstream enterprises. This is also the point in the supply chain where schemes and audit programmes exist. Examples of enterprise at control points are refiners and smelters in the minerals supply chain

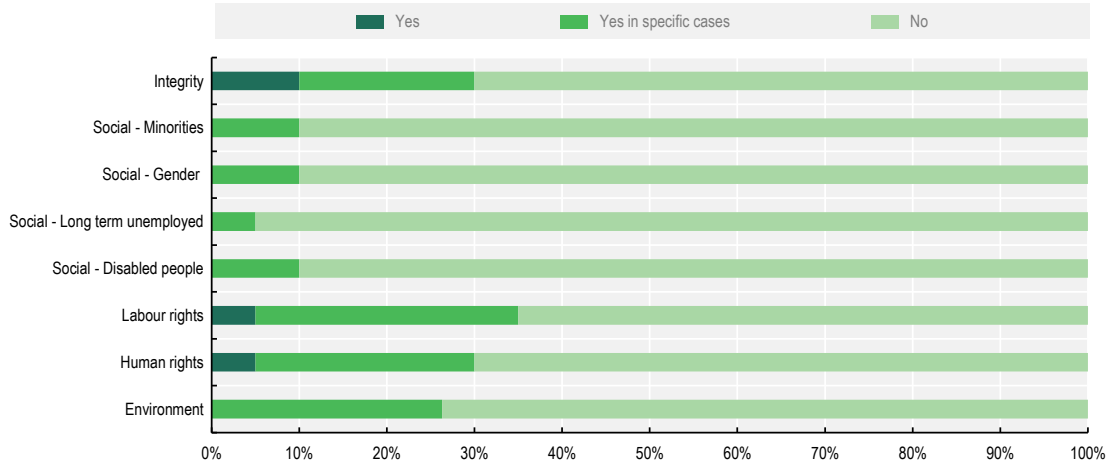
environmental performance in the tender evaluation, or for supply chain mapping), companies would know that this data is a priority for the contracting authority. Demonstrated performance on meeting RBC objectives or following OECD recommendations on due diligence for RBC could be rewarded and give suppliers who are able to meet these requests a competitive advantage.

There is scope for CPBs to ask for such evidence from suppliers. For example, the Swedish Legal, Financial and Administrative Services Agency requires that human rights objectives must be fulfilled by hired subcontractors in all parts of the supply chain and that the measures are to be taken in accordance with the UNGPs or similar frameworks.

The implementation of due diligence by CPBs

CPBs rarely set requirements on supply chain due diligence. If they do, these relate to environmental considerations or integrity. The survey asked whether CPBs require main contractors to conduct due diligence on their subcontractors and extended supply chain. In general, a minority of CPBs require contractors to conduct due diligence on subcontractors and the extended supply chain. The RBC objectives in which this level of extended due diligence is required is highest in labour rights (35% at least in specific cases), followed by human rights and integrity (30%) (See Figure 3.11).

Figure 3.11. Percentage of CPBs that require their contractors to conduct due diligence on subcontractors and supply chains



Note: The figure is based on data from 20 Central Purchasing Bodies
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

As described previously, considerations related to social issues see the lowest share of due diligence requirements set by CPBs. This includes the long-term unemployed (required by just 5% of CPBs), disabled people, gender considerations and minorities (each required by 10% of CPBs.).

There are some CPBs that require due diligence in the extended supply chain. The Danish Agency for Public Finance and Management includes due diligence criteria in tenders. The agency requires suppliers to include a policy describing their commitment to responsible business conduct per the UNGPs and the MNE Guidelines. Requirements include responsible management of the supply chain, risk analysis of the full supply chain, implementation of the policy and risk analysis including activities based on these, as well as reporting on the implementation and its results. In Peru, the procurement legislation does not require contracting authorities to investigate subcontractors or the supply chain. However, a supplier is responsible

for correctly performing all duties for the execution of the contract. For this, it must carry out all actions that are within its reach, using due diligence and supporting adequate contract implementation and administration development to achieve the expected public objectives.

3.4.3. Challenges in the post-tender phase

CPBs rarely verify tender specifications related to RBC objectives during contract management. Monitoring contracts is essential to establish accountability that RBC objectives are implemented in practice. It is the supplier's responsibility to ensure that the requirements in the contract are met. However, CPBs need to monitor that the supplier fulfils the requirements of the tender documents and contract.

Follow up methods for contractual obligations during the post tender phase

CPBs employ a variety of methods to verify supplier's compliance with the requirements related to RBC objectives in the contract during the post tender phase. CPBs have developed a range of verification methods to verify, for example, environmental considerations. CPBs responded that they use eco-labels, standards and certificates approved by third parties and test reports to verify environmental objectives. In Peru, suppliers provide a certificate issued by the National Water Authority that certifies the company abided to Peru's Water Footprint Program. The International Organisation of Standardisation (ISO) 14001 certificate was also cited as another useful document. Technical documentation, surveys on specific indicators, or simply providing information on electricity consumption were mentioned as additional examples.

For verifying labour rights, the methods used by New Zealand's CPB includes site visits. The State Shared Service Centre Estonia checks that salaries paid by the main contractor and that subcontractors fulfil the requirements in the tender. ChileCompra is obliged to verify the supplier's performance related to labour obligations during the contract execution phase before any payments are distributed. In addition to other methods used, the Norwegian Digitalisation Agency meets with suppliers to discuss the fulfilment of requirements as a method for verifying compliance with labour rights requirements.

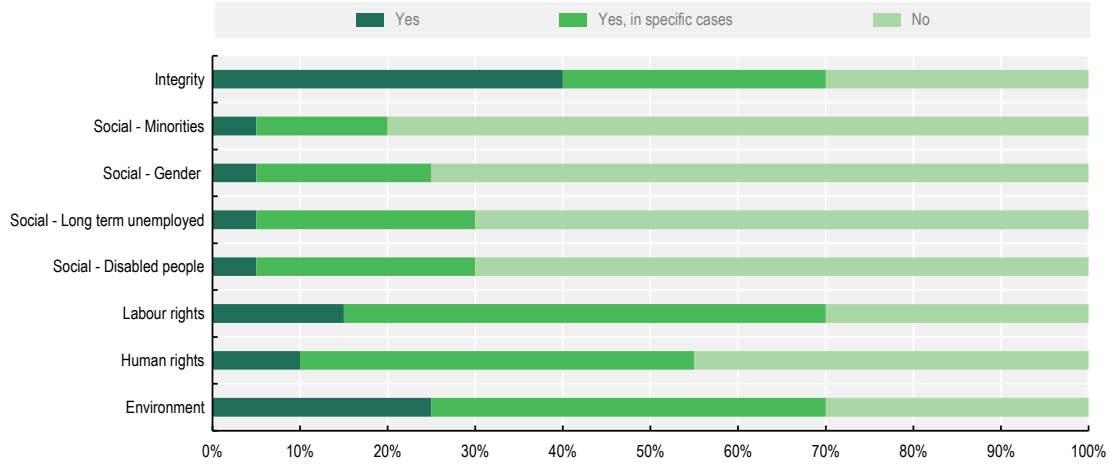
For integrity criteria, the government of Chile maintains a list of companies that have been convicted of bribery, money laundering and terrorist financing offenses and that are banned from contracting with the government. This list is publicly available on the website of ChileCompra and used by contracting agencies. In Peru, all suppliers need to certify they have an anti-bribery management system in place issued by an accredited certification body. In Finland and Korea, there is a digitalised service which enables CPBs to verify information. One CPB commented that even if integrity breaches are a mandatory exclusion ground and need to be verified, it can sometimes be difficult to find the appropriate information when there is no publicly available information provided.

Frequency of and methods to verify contract clauses

In the post-tender phase, CPBs often do not follow-up the majority of RBC requirements. If they do, environmental considerations and integrity concerns are most often verified. Indeed, when RBC criteria are included as performance clauses, the requirements should be followed-up during the contract period. CPBs often state in the procurement documentation when this follow-up should occur. In addition to exploring how often and what methods CPBs use to verify the implementation of contract clauses by main contractors, the survey also explored whether CPBs have oversight over subcontractors and suppliers in the extended supply chain, in relation to fulfilling requirements associated with RBC objectives during the contracting phase (as opposed to verifying ex-ante, during the award phase, discussed above).

During the contract performance phase, more than two thirds of CPBs verify the implementation of environment-, labour rights- and integrity-related contract terms by main contractors whereas just over half (55%) verify human rights criteria (see Figure 3.12).

Figure 3.12. Extent to which CPBs verify fulfilment of contractual RBC obligations by main contractors

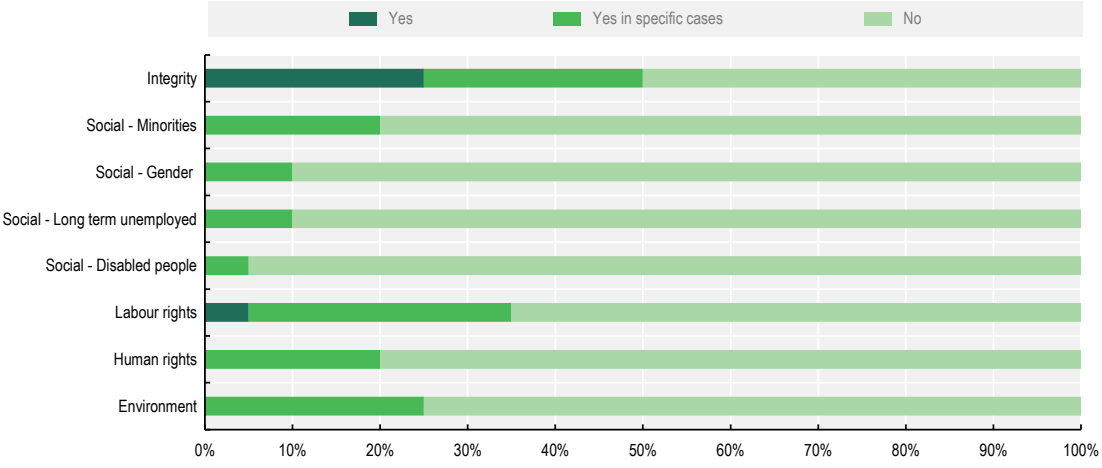


Note: The figure is based on data from 20 Central Purchasing Bodies
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

With regards to the additional RBC objectives, even for main contractors, only 30% of CPBs verify criteria related to people with disability and long-term unemployed. 25% verify gender criteria and 20% verify minority criteria. Even when RBC objectives are part of contract performance clauses (which should be followed up during the contract period), there is a lack of follow-up with regards to requirements related to disability, the long-term unemployed, gender and minority considerations.

Considering that breaches of contract clauses can occur in the supply chain, CPBs were asked if they verify that subcontractors or suppliers in the extended supply chain fulfil the requirements (see Figure 3.13). As expected, answers were lower than that for main contractors.

Figure 3.13. Extent to which CPBs verify fulfilment of contractual RBC obligations in the supply chain

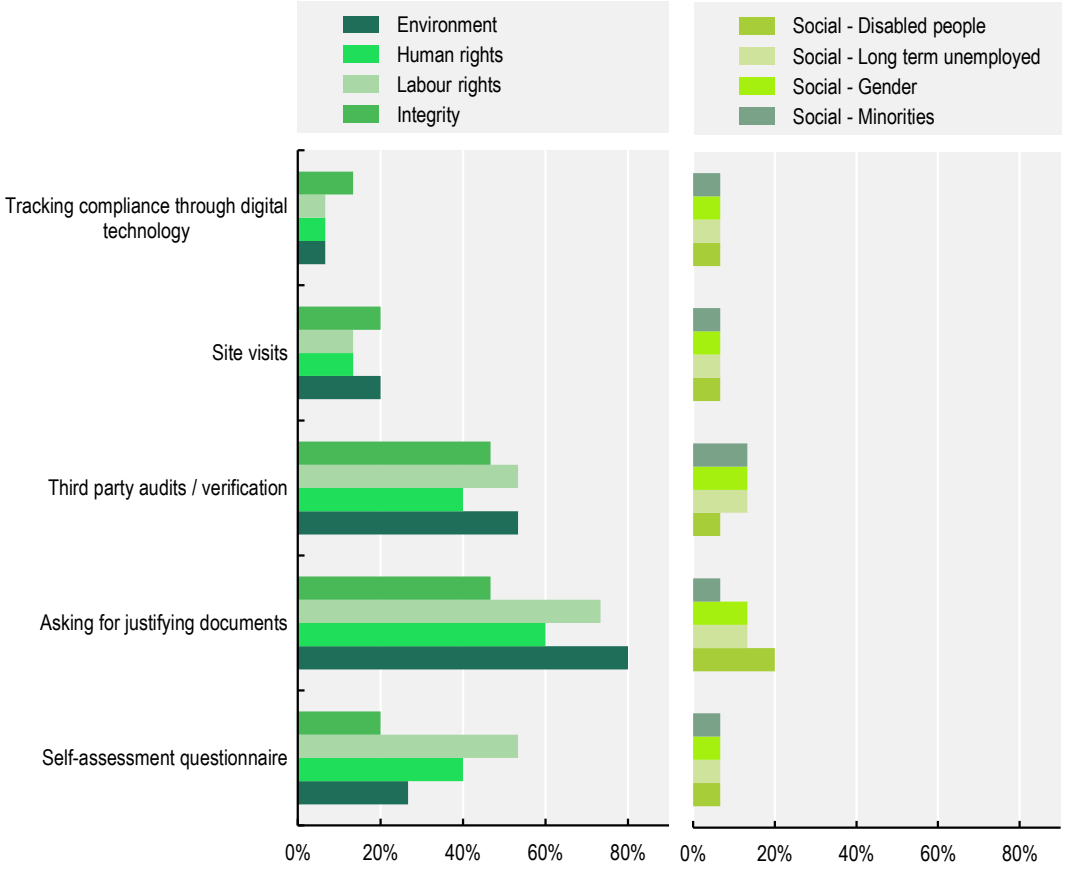


Note: The figure is based on data from 20 Central Purchasing Bodies; it illustrates responses where CPBs verify fulfilment at least at subcontractor level
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

In relation to oversight of subcontractors and beyond, integrity is the most advanced RBC objective, with half of CPBs verifying to at least the subcontractor level in all or specific cases. However, mandatory verification on the subcontractor level only takes places for integrity objectives and labour rights, and only in a few countries. Out of these, only two countries, New Zealand and Sweden, verify compliance in the supply chain beyond the subcontractor, and even then, only in specific cases. Sweden replied that they verify compliance with requirements related to environment, human rights, labour rights and integrity criteria in the supply chain.

CPBs were also asked to specify what methods they use for follow up (see Figure 3.14). To verify environmental considerations, 80% of CPBs ask for justifying documents, 53% use third party audit assessment or verification services and 20% conduct site visits. For verifying labour rights, CPBs use justifying documents most often (73%) followed by 53% that use third party audit assessment or verification services, as well as self-assessment questionnaires. For verifying human rights, the method most commonly used by CPBs was justifying documents (60%) followed by self-assessment questionnaires and third party audit (40%). For the social RBC objectives, relatively few responses were provided, with only one or two countries providing specific information on the mechanisms employed to track compliance.

Figure 3.14. Mechanisms used to track compliance with RBC objectives



Note: The figure is based on data from 15 Central Purchasing Bodies
Source: OECD Survey, Leveraging Responsible Business Conduct through Public Procurement

Only the Norwegian Digitalisation Agency responded that they conduct site visits and commission third party audits. There are also a small number of cases where contracting authorities initiate their own site visits and factory audits (see Box 3.5).

Box 3.5. CPB methods to follow up RBC objectives

The case of Denmark

Copenhagen Municipality in Denmark conducts unannounced site visits with suppliers. The decision to conduct such a visit is based on a risk-assessment whereby sites with a higher risk of subcontracting and reliance on migrant workers and other vulnerable groups are prioritised.

The case of Sweden

The Swedish central purchasing body SKL Kommentus audits suppliers under their framework agreements through third party audits. Each year, two or three high risk categories of goods within 11 priority product areas are chosen for further monitoring through a three-step process of supplier self-assessment, desktop audit and on-site factory audit. The results and corrective action plans are available to all municipalities and regions and are published on the SKL Kommentus website.

Source: (Rights, 2020[12]) (SKL Kommentus, 2020[6])

Peru Compra and Public Services Korea, mentioned that they use digital technology to verify compliance. Korea developed a digital system where government institutions, certification bodies and other organisations submit information on the compliance of suppliers, which is then accessed by the CPB, for example the number of employees or electricity consumption. This system aims to mitigate against the possibility that false documents are accepted. One CPB mentioned that it had decided to become a member of the NGO Electronics Watch (see Box 3.4) in order to be assisted in verifying compliance for specific purchasing categories.

3.5. Summary of findings

CPBs are increasingly adopting risk management systems in their procurement practices. 80% of CPBs have risk management systems that take into account RBC objectives. These risk management systems are most developed for environmental considerations and integrity.

There are opportunities to apply risk-based due diligence throughout the procurement cycle and for all RBC objectives. These objectives do not currently feature in all stages of the public procurement cycle to the same extent – and not all RBC objectives are equally prominent.

A minority of CPBs consult with business on a regular basis (“always or often”) in the pre-tender phase across RBC objectives. While just over half of CPBs always or often consult with businesses regarding environmental considerations, there is a lack of consultation in regards to the other RBC objectives such as human rights, labour rights, minorities, long-term unemployed, people with disabilities, and integrity. Market engagement was perceived by companies and non-commercial stakeholders as one of the most significant untapped opportunities to incorporate RBC objectives in public procurement. Companies also highlighted that a lack of clarity of RBC requirements from CPBs, and often multiple requirements between and within countries, added to the challenge of meeting RBC objectives in public procurement.

Over two thirds of CPBs incorporate environmental requirements into qualification requirements, and more than half incorporate integrity or labour rights requirements. Other aspects – notably the inclusion of

minorities, support for persons with disabilities or long-term unemployed – are incorporated considerably less. Uptake is lower for award criteria, but reflects the same picture: environmental and integrity considerations are considerably more frequently incorporated than other RBC objectives.

Verification of requirements focuses on the main contractor and the objectives that are well-covered by frameworks and in practice – environmental, integrity and labour rights. Almost 70% of CPBs replied that they verify compliance of integrity-related requirements prior to contract award. At the subcontractor level and beyond, integrity considerations are the criteria most followed up during contract implementation (just over half of respondents). However, mandatory verification at the subcontractor level only takes place for integrity objectives and labour rights, and only in few countries. To aid verification and compliance monitoring, some CPBs utilise digital technology.

3.6. References

Electronics Watch (2020), "Electronics Watch", http://www.electronicswatch.org. [10]

OECD (2019), *Government at a Glance 2019*, OECD Publishing, Paris, https://dx.doi.org/10.1787/8ccf5c38-en. [5]

OECD (2019), *Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendation*, OECD Public Governance Reviews, OECD Publishing, Paris, https://dx.doi.org/10.1787/1de41738-en. [4]

OECD (2017), *Government at a Glance 2017*, OECD Publishing, Paris, https://dx.doi.org/10.1787/gov_glance-2017-en. [3]

OECD (2015), "Policy Shaping and Policy Making: The Governance of Inclusive Growth", https://www.oecd.org/governance/ministerial/the-governance-of-inclusive-growth.pdf. [2]

OECD (2011), *Centralised Purchasing Systems in the European Union*, OECD Publishing, https://doi.org/10.1787/5kgkgqv703xw-en. [1]

Public Services International (2019), "Les agents territoriaux et syndicalistes CFDT Interco s'engagent dans une démarche innovante sur les achats publics responsables à Bordeaux Métropole", http://www.world-psi.org/fr/les-agents-territoriaux-et-syndicalistes-cfdt-interco-sengagent-dans-une-demarche-innovante-sur-les. [7]

Responsible Business Alliance (n.d.), *Responsible Business Alliance*, http://www.responsiblebusiness.org/focus-areas/public-procurement/. [9]

Rights, D. (2020), "Driving Change Through Public Procurement - A toolkit on human rights for procurement policy makers and practitioners", https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrb_2020/dihr_toolkit_public_procurement_2020_72dpi.pdf. [12]

SIGMA (2016), *Public Procurement Policy Brief 8 - Setting the Award Criteria*, http://www.sigmaweb.org/publications/Public-Procurement-Policy-Brief-8-200117.pdf. [11]

SKL Kommentus (2020), *SKL Kommentus Hallbarhetskollan*, https://www.sklkommentus.se/om-oss/vi-tar-ansvar-for-hallbarhet/hallbarhetskollen/. [6]

UNISON (2020), *Working internationally*, https://www.unison.org.uk/about/what-we-do/working-internationally/ https://www.unison.org.uk/about/what-we-do/working-internationally/. [8]

4 Conclusions and Recommendations

This section consolidates conclusions and recommendations across the findings and analysis in this report. These conclusions and recommendations could serve as the basis for discussions among policy makers and stakeholders to prioritise actions to integrate RBC in public procurement going forward.

4.1. Take a comprehensive approach to integrating RBC into public procurement frameworks

Why is this important? A comprehensive approach to RBC objectives in line with international standards on RBC is gaining traction with business in their supply chain due diligence. Contracting authorities, including CPBs, are more likely to implement issues effectively on the basis of an overarching framework, accepted at the international level.

A majority of countries promote aspects of RBC, such as environmental issues, integrity, human and labour rights through public procurement, but comprehensive frameworks addressing RBC objectives along the entire supply chain are rare. For environmental RBC objectives, all countries have a form of framework in place. Over 90% of countries have a regulatory framework and over 80% have a strategic framework in place. Confirming previous studies, human rights in supply chains are less well-covered. Labour rights, people with disabilities, and integrity-related policy objectives are also typically included in regulatory and strategic frameworks, but RBC objectives such as gender, minorities, and long-term unemployed are covered less frequently. CPBs have their own organisation-specific frameworks that translate these national frameworks into their own work. These institutional frameworks include RBC objectives to a similar extent as national frameworks.

Regulatory or strategic frameworks on RBC objectives rarely apply to the full supply chain. The RBC objective with the largest extent of application is labour rights, where more than half of countries require application of regulatory or strategic frameworks in the entire supply chain at least in specific cases.

CPBs' institutional policies and strategies cover the entire supply chain in only about a fifth to a quarter of certain RBC objectives such as the environment, human and labour rights and integrity. For other RBC objectives, such as minorities or disabled persons, many countries do not foresee binding requirements for subcontractors.

Across all RBC objectives, achieving policy coherence nationally and alignment with international obligations were the most important reasons to create a framework, named by around a third of the countries for both reasons.

4.1.1. Recommendations:

- Governments could promote RBC in public procurement in an increasingly comprehensive manner in terms of the objectives covered and the coverage of the entire supply chain, in line with the OECD Guidelines for Multinational Enterprises and other international standards on RBC.
- Governments could incentivise appropriate transparency in subcontracting relationships by requiring bidders to disclose RBC commitments throughout their sub-contractual arrangements and extend due diligence beyond main contractors to the full supply chain.
- Practitioners could leverage existing efforts to improve due diligence practices, tools and approaches to map the supply chain, identify priority actions and develop plans to prevent, mitigate and address risks.

4.2. Integrate stakeholder perspectives to develop more effective frameworks on RBC in public procurement

Why is this important? Regulatory and strategic frameworks are most successful where they reflect and utilise the comprehensive knowledge and perspectives of relevant stakeholders and experts.

Stakeholder feedback has shaped regulatory and policy frameworks, but further efforts could be undertaken to break silos between public procurement and RBC. About two-thirds of countries consult with both businesses and contracting authorities in the development of regulations or strategies. All countries consult with relevant policy makers beyond public procurement for specific topics. For strategic and regulatory frameworks relating to human rights, labour rights, unemployed and disabled people, workers organisations are often consulted. A little over a third of countries contact National Contact Points for Responsible Business Conduct (NCPs) when developing RBC frameworks.

Recommendations:

- Public procurement policymakers could strengthen links with institutions tasked with pursuing RBC objectives as policy makers and oversight bodies (notably NCPs) and incorporate their expertise when developing and updating frameworks on RBC objectives in public procurement, maintaining regular exchange to build capacity (see item 5.4).
- Further engagement with civil society, business and social partners in the development of frameworks should also be promoted to better understand risks in specific sectors, product categories, supply chains and regions.

4.3. Integrate RBC objectives throughout the public procurement cycle

Why is this important? Market engagement can provide the necessary knowledge to gain insight into RBC risks that might otherwise go unnoticed and incorporate RBC objectives in a meaningful and effective way. Adopting an RBC lens in the post-tender phase allows assurance that RBC objectives have been met, and creates an opportunity to gather data and insights for future purchases, and making improvements over time.

RBC objectives do not feature at all stages of the public procurement cycle to the same extent – and not all RBC objectives are pursued to the same extent A minority of CPBs consult with business always or often in the pre-tender phase across RBC objectives. 53% of CPBs always or often consult with businesses regarding environmental considerations. There is a lack of consultation with regards to the other considerations such as human rights, labour rights, minorities, long term unemployed, disabled people, minorities and integrity. A lack of market engagement was also cited by companies as one of the three most significant challenges in incorporating RBC criteria in contracts.

More than two thirds of CPBs incorporate environmental requirements into qualification requirements. Around 60% incorporate integrity and labour rights requirements. Social considerations, such as the inclusion of minorities, support for disabled persons or long-term unemployed, are incorporated considerably less. Uptake is even lower in award criteria, and reflects a similar picture: environmental and integrity considerations are considerably more frequently incorporated than social RBC objectives.

Verification of requirements focusses on the main contractor and on the same issues – environmental, integrity and labour rights: Around 70% of CPBs verify compliance of integrity-related contract terms prior to awarding a contract. Around half of CPBs verify compliance with integrity-related contract requirements in the supply chain in specific cases. Mandatory verification on the subcontractor level only takes places for integrity objectives and labour rights, and only in few countries.

4.3.1. Recommendations:

- Public procurement practitioners could aim to increasingly incorporate RBC objectives at all stages of the procurement cycle, from market engagement to contract management, with attention to contractual obligations.

- Public procurement practitioners could build on the experience of incorporating environmental and integrity objectives and expand practices to other RBC objectives.
- Public procurement practitioners could use market engagement in the pre-tender phase as widely as possible to communicate government priorities on RBC objectives in public procurement and to understand the market maturity well before the procurement is formally launched.
- Governments could increasingly ensure the public procurement system is equipped with sufficient capacity in terms of available skills and resources to integrate RBC objectives throughout the public procurement cycle (see recommendation 4).

4.4. Improve contracting authorities' knowledge, capacity and ability to integrate RBC objectives into public procurement

Why is this important? Good implementation depends on the capacity of those who are tasked with implementing.

Contracting authorities have an increased need for resources to meet a broadened set of demands: 1) incorporating RBC objectives into tenders, 2) managing sustainability risks and 3) consulting diverse stakeholders. The top challenge named by policymakers across the eight RBC objectives is "a lack of understanding as to how to implement this policy through public procurement". RBC objectives related to minorities were most frequently named, presenting a challenge for half of the responding countries followed by human rights (41%).

A minority of countries (30% and less) offer guidance or training on implementing RBC objectives like minorities or gender. Under a third offer training on human rights issues – one of the areas with the greatest lack of understanding, according to policy makers.

Providing a central contact point with expertise has proved effective in building the capacity of public procurement systems as a whole. To address the increased need for expertise, some countries have established knowledge and expertise centres that focus on sustainable development issues, including RBC objectives. This approach illustrates how focusing expertise and resources on particular topics can help disseminate knowledge throughout the public procurement system.

4.4.1. Recommendations:

- Governments could aim at providing contracting authorities and CPBs with adequate resources and expertise to support practical implementation of RBC objectives into procurement strategies as much as possible, for example by creating dedicated focal points in the form of expertise centres or helpdesks specifically on RBC and public procurement, develop a specific training action plan to train procurers on RBC, or to train and connect RBC champions in contracting authorities. The role of technology could also be considered to improve efficiencies.
- Policy makers and practitioners could convene an international platform to exchange on solutions in implementing RBC in public procurement. The platform could focus on exchanging tested approaches to increase uptake of RBC objectives in public procurement. Initial examples could focus on effective monitoring and existing training on risk-based due diligence in supply chains. The platform could leverage existing national knowledge centres and tools on due diligence (e.g. existing risk management strategies for mapping, detecting and mitigating risks throughout the public procurement cycle, follow-up tools, supplier self-assessments, etc.) to be shared with other public purchasing authorities. The platform could also convene and solicit input, feedback and sharing of due diligence tools, programmes and lessons learned in conducting due diligence from business, trade unions and worker representatives, as well as civil society.

- Practitioners on both public procurement and RBC could collaborate and exchange information on tools and good due diligence practices, including in planning, tendering and monitoring. This could include notably closer exchange with NCPs to leverage understanding of RBC and OECD recommendations on due diligence.

4.5. Improve monitoring and follow-up of the implementation of RBC objectives in public procurement

Why is this important? Citizens, businesses and governments (practitioners and policy makers) gain from monitoring in two ways: through the confirmation that RBC expectations have been met, and through performance data for future purchases. Higher levels of visibility on public spending throughout all levels of government would provide a clearer picture on what RBC objectives are in scope and what progress is being made towards achieving them.

Monitoring the implementation of RBC objectives faces challenges – limitations concern the coverage of RBC policy objectives, supply chain and consistent implementation across different governmental levels. Overall, monitoring and reporting of the uptake of RBC objectives is inconsistent. More than 80% of countries monitor the uptake of environmental considerations set by frameworks at least partially. This is followed by the monitoring of labour rights and disabled people (over 60%). The implementation of other RBC objectives set by frameworks (like inclusion of minorities) is monitored less. In addition, verification of requirements typically focuses on the main contractor. Almost all policy makers answered that they had no visibility on the procurement activities of sub-national governments. Some countries do not conduct standardised monitoring but rather seek ad-hoc reporting in the form of a survey, questionnaire or audit.

Countries draw on diverse tools, methodologies and stakeholders to enhance monitoring. Countries such as Canada have certification frameworks in place for human and labour rights that identify breaches in supply chains. They have developed a system that includes clauses in contracts to ensure that the main contractor is responsible for addressing any such breach. In Denmark, the NCP plays an important role in monitoring public procurement activity on relevant issues.

Follow up actions to monitoring can catalyse uptake of RBC objectives in public procurement. Half of the countries have frameworks that allow for actions to be taken against suppliers if their supply chain infringes RBC standards, and most of them include sanctions. Approximately 30% require changes to the supply chain.

4.5.1. Recommendations:

- Governments could undertake more comprehensive and systematic monitoring, and extend it to key points in the supply chain. In doing so, governments should co-ordinate efforts with the existing audit institutions or assessment programmes.
- Public procurement policy makers could develop effective and cost-efficient methods for follow-up during contract execution and monitoring that contracting authorities (including at the sub-national level, to the degree possible) can draw upon.
- Policy makers could consider including mandatory responses in case of serious violations or infringements.
- Governments could leverage existing RBC-focused networks, such as the NCP network or public procurement networks, or work with other stakeholders to help improve monitoring and tracking.

4.6. Integrate a risk-based due diligence approach to enhance strategic public procurement

Why is this important? A risk-based due diligence approach helps procurement practitioners understand the conditions under which goods are produced, manufactured and transformed. Due diligence is a key concept within international frameworks for RBC promulgated by the UN, the ILO and the OECD and is increasingly integrated into national legislation across many OECD countries. Risk management is also one of the 12 integrated principles of the OECD Recommendation on Public Procurement.

There are a number of public procurement practices that use a due diligence approach. Several countries, like Norway and the US, have developed risk-assessment tools to assist contracting authorities to identify and prioritise risks in their supply chains. Several provide contracting authorities with a practical approach by focusing on high-risk products and categories as a priority.

Almost 80% of CPBs have developed risk-management frameworks that include a subset of RBC objectives (notably environmental, labour right and integrity considerations). 85% of CPBs have identified high-risk purchasing categories in relation to their procurement activities. More than 50% of CPBs require in all or in specific cases suppliers to certify that they know their supply chain, but only a limited number of CPBs require suppliers to actually conduct due diligence. This was mainly in relation to the policy objectives of labour rights, integrity and human rights. For other RBC objectives, even fewer CPBs require suppliers to conduct due diligence.

4.6.1. Recommendations:

- Contracting authorities could integrate the risk-based due diligence framework recommended by the OECD into public procurement practices.
- Policy makers could explore how existing national risk-assessment strategies and tools, and existing business or multi-stakeholder approaches, can be adapted to reflect international standards on due diligence and best serve the needs of public procurers.

Part II Country fact-sheets

Country fact-sheets

The country fact sheets presented in this second part of the report were developed on the basis of the survey responses from policymakers and central purchasing bodies.

This part showcases 1) the current policy and strategic frameworks in the country to incorporate the eight RBC objectives; 2) how the country incorporates these considerations throughout the public procurement cycle; 3) good practices, highlighting measures or actions implemented by countries or CPBs to improve compliance with the RBC objectives.

Australia

1. Policy

The Australian Commonwealth Procurement Rules form the core of Australia's procurement framework. This framework includes the following RBC objectives – additional frameworks apply depending on the RBC objective:

Environment

The Sustainable Procurement Guide shows how to include sustainability considerations in all stages of the procurement process. One of the goals is to reduce adverse impacts of purchased products and services throughout their lifecycle.

Human rights

The Australian Government's Commonwealth Modern Slavery Act 2018 establishes an annual reporting requirement, requiring the federal government and businesses based or operating in Australia with annual consolidated revenue of AUD 100 million or more to prepare annual modern slavery statements. These annual statements detail how these entities assess and address modern slavery risks in their operations and supply chains.

Labour rights

Australian Government regulates the employee-employer relationship in Australia through their Fair Work Act 2009 and Fair Work Regulations 2009.

People with disabilities

The Disability Discrimination Act 1992 regulates the protection and insertion of people with disabilities into society. The Australian Age Discrimination Act 2004 protects people from age discrimination in employment and provision of goods and services, among others. Australia also has the Sex Discrimination Act 1984 targeting unfair treatment based on their sex, sexual orientation, gender identity, intersex status, marital or relationship status, sexual harassment, pregnancy and breastfeeding.

Long-term unemployed people

Integrity

The Australian Government adopted a number of policy and strategic frameworks that regulate accountability and transparency. These frameworks are also applicable when officials undertake procurement activities: the Public Service Act 1999, the Public Governance, Performance and Accountability Act 2013, the Criminal Code Act 1995 and the Corporations Act 2001.

Other policy frameworks

- Minority considerations

  The Indigenous Procurement Policy aims to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy by setting targets for purchasing from Indigenous enterprises.

- Gender considerations

  According to the Workplace Gender Equality Act 2012, employers that do not comply with the specification of the Act may not be eligible to compete for public contracts.

Strategic frameworks

- National Waste Policy
- Workplace Gender Equality Procurement Principles and User Guide
- Sustainable Procurement Guide

2. Implementation

Tender phase

- During the tender phase, Commonwealth procurement officials must consider, among others, the environmental sustainability of the proposed goods and services (such as energy efficiency, environmental impact and use of recycled products).
- Australia has established a target to award 3% of its domestic contracts to indigenous enterprises each financial year, from 2019-2020.
- Commonwealth procurement officials must obtain declarations from all tenderers confirming that they have not had a judicial decision against them and have not satisfied any resulting order.
- Building contractors and building industry participants may be excluded from a tender or from being awarded if they do not comply with the Code for the Tendering and Performance of Building Work 2016.

3. Good practices

- To support the implementation of the Modern Slavery Act, as mentioned above, the Australian Government has developed a Toolkit of resources to assist government procurement officers in incorporating modern slavery risk mitigation at all stages of a procurement process. The Toolkit includes a suite of resources designed to assess, address and mitigate risks of modern slavery in procurement. These include a supplier questionnaire, tender guidance, contract clauses, e-learning modules and a risk screening tool. The Toolkit is intended to be used within existing Commonwealth procurement frameworks.
- BuyAbility Procurement is a contract management service that assists both the Australian Government and private business to procure products and services from Disability Enterprises for specific contracts and projects. This service is designed to increase employment opportunities for people with disabilities through the promotion, connection and management of socially responsible procurement opportunities for Australian Disability Enterprises.
- Supplier Pay On-Time or Pay Interest Policy is a policy that requires entities to make all payments to a supplier under a certain threshold within the maximum payment terms. The objective of this policy is to facilitate timely payment to suppliers, assist with their cash flow, and reduce the cost of supplying to the Commonwealth.

Belgium

1. Policy and implementation

Federal policies:

The federal Circular of 16 May 2014 is the strategic and operational framework for the sustainability of federal public procurement. In this Circular, the federal government includes different sustainable policy objectives, for example the inclusion of at least eight considerations relevant to reducing the environmental impact of goods, services and works in the context of public procurement. The Circular also addresses the social dimension of sustainability by offering model contract clauses, measures to support SMEs and to integrate persons that are not easily integrated into the labour market. Objectives include the participation in public social economy enterprises, training or socio-professional integration of low-skilled job-seekers, students, interns or trainees, people with physical and/or mental disabilities or people suffering from discrimination.

Policies in the Wallonia region (SPW)

Environment

The Circular of 28 November 2013 promotes creating a sustainable procurement policy for Walloon regional contracting authorities.

Labour rights

The Circular of 30 March 2017 on social dumping in public procurement encourages regional public authorities to integrate social, ethical and environmental concerns into their activities, particularly in the procurement procedures of public works.

People with disabilities and long-term unemployed

The Circular of 21 July 2016 regulates social clauses for public procurement of public works. The social policy objectives may include socio-professional aims. The contracting authority may target the training or employment of job seekers, students, interns or trainees and/or the integration of people with disabilities. Contracting authorities may also seek to improve ergonomics and safety at work, combating poverty and job insecurity, promoting equal opportunities.

Policies of the Flemish community

Environment

The Government of the Flemish Community adopted a circular on the acquisition of service vehicles (Circular letter KB/BZ/2017/4). This circular includes, among others, a strategic objective on sustainability, a minimum "ecoscore" per vehicle class and a ban on diesel vehicles for some classes. They also approved the CO2 performance ladder project and a Green Deal Circular Purchases.

Labour rights

The Flemish Government adopted a Protocol jointly with the Social Intelligence and Investigation Service (*Sociale Inlichtingen-en Opsporringsdients*, SIOD) to promote governmental co-operation and fight against social fraud.

Strategic frameworks

- The action plan for enterprise and human rights is the general strategic framework for all regions and federal Belgium that also targets public procurement.
- Federal level: The national sustainable development strategy, adopted in 2017, is the subject of work at the Belgian federal level, which includes the federal administration as well as the administrations of the various federated entities.
- Regions: Wallonia (SPW): The action plan on responsible Public Procurement, includes specific actions that target labour rights, people with disabilities and unemployed aspects. To achieve these objectives, the action plan pays special attention to public procurement procedures that: avoid social dumping, that are SME-friendly, foster professional integration, contribute to the fight against climate change and contribute to efficient resource management.
- Communities: The Flemish Public Procurement Plan pursues a strategic and co-ordinated policy for public contracts within the Flemish government and by extension for Flanders. The starting point is the effective and efficient use of public procurement to contribute to the achievement of policy objectives of the Flemish government.

2. Good practices

- Various Belgian authorities have developed co-operation instruments to support sustainable procurement services. The authorities keep each other informed of their activities and working on arrangements through the Technical Working Group on Sustainable Public Procurement of the Inter-ministerial Conference on Sustainable Development (CIMDD).
- To raise awareness and keep relevant stakeholders informed and involved, the Belgian federal government has added information on eco-labels, environmental management systems and standards to their website. The website also refers to the GPP Training Toolkit website for the relevant product groups, and supplements it with information for stakeholders and good examples from Belgium.
- On 10 May 2019, the Flemish Government approved the TruStone Initiative for better working conditions in the production of natural stone. As part of this initiative, the Flemish Government will include specific clauses in its mission documents towards achieving this goal. Efforts are also being made to disseminate the initiative to local authorities. More information can be found in the Flemish Government website dedicated to any actions taken in relation to natural stone.
- To monitor the compliance with RBC objectives, the university Radboud Universiteit (Nijmegen) on behalf of the Federal Institute for Sustainable Development (*Institut Fédéral pour le Développement Durable*, IFDD) carried out a big data study from 2011 – 2016, analysing 144 749 opinions of the Belgian market and 28 452 files (specifications, technical specifications, etc.), measurements, plans, etc.). These documents have been placed online by several authorities (via e-notification).

Brazil

1. Policy

The Brazilian Public Procurement Law № 8 666 includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

Human rights

Labour rights

Law № 13 467 (2017) applies to contracts by the Federal Public Administration and establishes, among others, legal working hours, night and day shifts and rest days.

People with disabilities

Law № 13 146 (2015) establishes measures to include people with disabilities in society.

Long-term unemployed people

Minority considerations

Decree № 9 450 (2018) covers social inclusion of current and ex-convicts. In addition, Law № 123 (2006) and its reform № 147 (2014) determine how contracting authorities should ease the public procurement procedures so that SMEs can participate and enhance their economic and social development.

Integrity

Several subnational laws[48] require companies hired by local public administration to adopt and maintain an integrity programme. Each law establishes sanctions for companies that do not comply with the requirement within a specific timeframe, as well as a threshold above which the requirement is applicable (depending on the value of the contract). The Ministry of Agriculture has an ordinance that entered into effect in 2018 with similar requirements for contracts above BRL 5 million in value.

Law № 13 303 (2016) which provides the legal statute of state-owned companies (SOEs), government-controlled companies and their subsidiaries, also determines the adoption, by SOEs, of a Code of Conduct and Integrity to prevent conflicts of interest and to ban acts of corruption and fraud. The Law is regulated at the federal level by Decree № 8 945 (2016). Both legal frameworks mandate the adoption of internal control, risk management systems, as well as anticorruption compliance measures by SOEs. They also require SOEs to establish a risk department as well as an integrity department, headed by a statutory Executive Director, reporting directly to the CEO. In addition, the law provides rules and procedures for public procurement conducted by SOEs and determines that all related parties' transactions observe the company's integrity policies.

[48] Law № 7 753 (2017) of Rio de Janeiro, Law № 4 730 (2018) of Amazonas, Law № 20 489 (2019) of Goiás, Law № 15 228 (2018) of Rio Grande do Sul, Law № 6 112 (2018) of the Federal District, Law № 5 241 (2019) of the City of Aracaju (State of Sergipe)

Strategic frameworks

- The National Strategy to Combat Corruption and Money Laundering (ENCCLA) addresses Integrity in Public Procurement.

2. Implementation

Tender phase

- In the bidding notes for contracting of services, the Central Purchasing Unit (the Brazilian Central Purchasing Body, CPB), may require that a minimum percentage of the contractor's workforce relates to the prison system, with the purpose of re-socializing the convicts.
- In the case that two suppliers' circumstances are equal in a tender procedure, contracting authorities shall give preference to the goods and services that are produced or provided by companies that have proven to comply with the required minimum percentage of hiring of people with disabilities, in accordance with Law № 13 146.
- Brazilian contracting authorities must carry out bidding procedures with exclusive participation of SMEs for procurement items up to BRL 80 000.

3. Good Practices

- In 2020, the Government of Brazil prepared a guidance booklet presenting elements and situations that can guide public managers in the area of public procurement in their daily work. The booklet clarifies important aspects related to identification of risks, the analysis of conflicts of interest, the importance of the segregation of functions and monitoring internal control mechanisms of public institutions.
- The Pro-Ethics programme is conducted by the Office of the Comptroller General (CGU), and provides public recognition for companies that, upon evaluation by the CGU, are found to have a robust compliance program and promote a culture of integrity, especially in their relations with the public sector. Among the aspects evaluated by the CGU are the policies and procedures maintained by each company to prevent fraud and corruption in their participation in public procurement processes.

Canada

1. Policy

Environment

The Policy on Green Procurement requires an active promotion of environmental measures for the procurement procedures of all goods and services.

Human and labour rights

In 2019, Canada launched a National Strategy to Combat Human Trafficking, which includes initiatives to address human trafficking in federal procurement supply chains.

The guidance Ethical Procurement of Apparel includes a requirement for suppliers to declare that they, as well as their first-tier subcontractors, comply with minimum human rights and labour standards.

People with disabilities

The Accessible Canada Act requires organisations (under federal jurisdiction) to identify, remove and prevent barriers to accessibility in, amongst others, the procurement of goods, services and facilities.

The Treasury Board Contracting Policy requires departments to consider and include certain measures like accessibility criteria in the procurement procedures.

Gender considerations

The Women in Procurement Action Plan applies: The 2018 Canadian Budget called for action to boost the participation of women-owned businesses and to reduce the current barriers to federal procurement.

Integrity

In 2015, the Government of Canada established the Integrity Regime to help ensure that the federal government does business with ethical suppliers. The Integrity Regime holds suppliers accountable for their misconduct, and encourages them to co-operate with legal authorities and take corrective action. Through the application of its Ineligibility and Suspension Policy, the regime is designed to foster ethical business practices, ensure due process and uphold the public trust in the federal procurement system.

2. Implementation

Tender phase

- Potential bidders must self-certify that they comply with a set of specific requirements, such as freedom from child labour, forced labour, discrimination and abuse, access to fair wages and safe working conditions.
- Both the Ethical Procurement Certification and the Origin of Work Clause must be included in the bid solicitation on its closing date.
- The Ineligibility and Suspension Policy sets out the charges and convictions that may result in suspension and ineligibility. Integrity provisions (clauses) are incorporated into bid solicitations, contracts and real property agreements; and require suppliers to certify and identify all charges and convictions (domestic and foreign) as specified in the policy.

Post-tender phase

- The supplier must ensure continuous compliance with the provisions of the Ethical Procurement Certification signed during the bidding process throughout the duration of the contract.
- It is the contractor's responsibility to ensure continuous compliance with the Origin of Work Clause information provided with their bid. In addition, the contractor has the obligation to inform the government in writing of any changes that affect the information provided under the origin of work clause during the entire contract period.
- Prior to the award of a contract or property agreement, an integrity verification of the supplier is conducted to confirm their status under the Integrity Regime.

3. Good Practices

- Canada developed a draft of Social Procurement Guidelines, introducing a set of instructions for procurement officers to include the ethical procurement requirements in bids and contracts for all goods and services.
- Regarding accessibility for people with disabilities, the Canadian government offers information sessions, tools, guidance and online videos for the procurement community (YouTube: 1) The Accessible Canada Act and Government Procurement and 2) What does it mean to consider accessibility in government procurement?).
- Public Services and Procurement Canada supports government buyers by providing technical guidance and best practices to incorporate environmental considerations into procurement decision-making, particularly when it comes to greenhouse gas emissions and plastic waste.
- In 2019, the Treasury Board released the Guidelines on Making Information Technology Useable by All; it aims to facilitate the incorporation of accessible standards in the procurement procedures.
- The Government of Canada has released a guide along with several information bulletins to assist suppliers with understanding their responsibilities under the Integrity Regime, and to help clarify information in the Ineligibility and Suspension Policy. The government also released Integrity Directives to elaborate on or clarify aspects of the policy. These directives form a binding part of the policy.

Chile

1. Policy

The Chilean Public Procurement Law № 19 886 and its Bylaws include the following RBC objectives:

Environment

Labour rights

People with disabilities

Integrity

Other policy frameworks

The Public Procurement Directive № 17 titled "Instructions for inclusive and proactive public procurement - equal opportunities in the public market" is a guidance document for public officers to conduct more inclusive procurement procedures which includes the following RBC objectives:

Minorities

People with disabilities

Long-term unemployed

Gender

Strategic frameworks

- National Plan for Business and Human Rights
- National Plan for Human Rights to guarantee the respect of human rights for all people living in Chile.

2. Implementation

Pre-tender phase

- ChileCompra, the Chilean CPB, considers all eight RBC objectives in the market analysis for framework agreements.

Tender phase

- When evaluating bids for recurrent services, procurement officers are expected to give additional evaluation points to suppliers who provide proof of improved labour conditions and salaries.
- Companies sentenced for bribery infractions are not allowed to be awarded National contracts. The Chilean government has a track list of those companies. This list is available for registered users in the e-procurement system Mercado Público.

Post-tender phase

- In accordance with the Chilean Labour Code, public entities must verify the suppliers' performance related to labour obligations before partial payments.
- Public contracts may contain sanctions in case of violations to integrity standards.

3. Good Practices

- There are general guidelines to help public buyers include RBC objectives like energy efficiency, environmental issues (№ 25) and labour rights throughout the procurement cycle (№ 15).
- ChileCompra developed Ethics Codes for both for suppliers (2018) and public officers (2017). The Ethics Codes sets out obligations and ethical standards that suppliers must meet when selling their goods and services to the state, reflecting the best international practices.
- ChileCompra, through its Observatory Department, launched preventive and corrective monitoring campaigns of procurements targeted at the user level. Their main objective is to detect errors or omissions at an early stage, during the design of the specifications and in the execution of the tenders, to promote their correction.

Costa Rica

1. Policy

The Costa Rican National Policy on Sustainable Procurement includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

This aspect is also included in the Technical standards for sustainable government procurement.

Human rights

The Government of Costa Rica signed the International Labour Organization's Convention № 105 regarding the abolition of forced labour.

Labour rights

The Government of Costa Rica signed the International Labour Organization's Convention № 0094 regarding the respect of labour clauses in public contracts. In addition, the Guidelines on social criteria in government procurement processes include various elements of this objective. Law № 7 739 on Childhood and Adolescence in Chapter VII regulates a special regime for the protection of adolescent workers. Furthermore, Executive Decree 29220-MTSS sets forth a regulation on hiring and occupational health conditions of adolescents.

People with disabilities

This objective is regulated by several additional policies, including Law № 7 600 on Equal Opportunities for People with Disabilities, Law № 8 661 Convention on the Rights of Persons with Disabilities, Law № 8 662 on Inclusion and Labour Protection of People with Disabilities in the Public Sector, Law № 7 092 on Income Tax and the Guidelines on social criteria in government procurement processes.

Moreover, Costa Rica's National Policy on Disability promotes the establishment, review, strengthening and improvement of incentives, tax exemptions and public procurement aimed to promote the creation and offer of employment contracts for people with disabilities.

Minority considerations

The Guidelines on social criteria in government procurement processes include a regulation on discrimination based on age, sex, disability, health, ethnicity and religion, which is consistent with this objective.

Gender considerations

The Guidelines on social criteria on government procurement process promote dispositions to avoid discrimination based on gender.

Integrity

Both Law № 8 422 against Corruption and Illicit Enrichment in Public Service and Law № 7 494 on Public Procurement regulate integrity in the public sector.

Strategic frameworks

- National strategy to replace single-use plastics

2. Implementation

Tender phase

- According to the Law № 8 839 on Integral Waste Management, contracting authorities must give an additional score of 20% in the qualification for any bidders who, under equal conditions, demonstrate that their products comply with waste management requirements.
- According to Law № 6 727 on Labour Risks, contracting entities cannot award contracts to contractors or suppliers that have not presented valid insurance against occupational hazards.
- Law № 17 on the Constitution of the Costa Rican Social Security Fund states that bidders must be up to date with the payment of their social contributions with the Costa Rican Social Security Fund in order to participate in any public procurement process.

3. Good Practices

- The Costa Rican Executive Decree № 39310- MH - MINAE - MEIC - MTSS "National Policy for Sustainable Public Procurement and Creation of the National Steering Committee for Sustainable Procurement" (CDNCS) intends to stimulate, through purchasing authorities, innovative goods and services. It also takes into account the best economic, environmental and socially responsible performance. A study by the Inter-American Development Bank, Organization of American States and Intern-American Network on Government Procurement (INGP) on the work of the Committee is available in the following link.
- The Government of Costa Rica has been issuing guidelines to raise awareness of good procurement practices, like the Green Public Procurement Guidelines. In addition, the government offers training to help procurement officials use digital tools more efficiently. In 2018 for example, 143 public officials were trained in the use of the MECS tool.

Czech Republic

1. Policy

The Czech Republic uses three main frameworks: the European Union Directive on Public Procurement, the Czech Public Procurement Act and the Government Resolution on Responsible Public Procurement 531/2017 that include the following RBC objectives:

Environment

Labour rights

People with disabilities

Long-term unemployed people

Integrity

Strategic frameworks

- The Government of the Czech Republic adopted a resolution № 531 dated 24 July 2017, which regroups the Guidelines for the Application of Responsible Public Procurement and Commissioning Applied by the Public Administration and Local Authorities.

2. Implementation

Tender phase

- In some product categories, such as office paper and cleaning products, environmental certification or requirements must be added to the award or qualification criteria.

3. Good Practices

- To extend the scope of Resolution №. 465 (2010), which only addressed environmental application in public procurement procedures, the Ministry of Environment joined with the Ministry for Labour and Social Affairs to develop a new resolution (№ 531) that broadened both the environmental scope and added social and integrity aspects. The outcomes and benefits of this Resolution are evaluated every two years.
- The Government of the Czech Republic developed and implemented training and workshops about sustainable considerations in public purchasing, involving effectiveness, efficiency and the economy of purchases.

Denmark

1. Policy

Environment

In 2013, the Danish government implemented a strategy called Strategy for Intelligent Public Procurement, which contains guidelines to promote sustainability in public procurement. Principle 6 “Green conversion” focuses on green public procurement, and encourages contracting authorities to transition towards greener procurement options.

Currently, the Danish Government is preparing a new strategy on green public procurement.

Human rights, people with disabilities and long-term unemployed people

The Strategy for Intelligent Public Procurement contains guidelines for the promotion of human rights in public procurement procedures.

Labour rights

Denmark has a Circular regarding labour clauses in public contracts, which aligns with all provisions of ILO Convention №. 94, and requires public procurement authorities to include contract clauses on regular wages.

Integrity

The Public Procurement Act contains measures to fight bribery, anti-competition, among others. This act also provides guidelines and measures for bribery.

Strategic frameworks

- In 2018, the Danish Government launched a strategy on circular economy. This strategy provides analysis on the environmental and economic effects of circular procurement, containing several public procurement measures, such as:
  - Tools to make Total Cost of Ownership (TCO) / Life Cycle Cost (LCC) calculations;
  - The Green Public Procurement Partnership and Forum for Sustainable Procurement;
  - The Tender Portal for Responsible Procurement regarding circular procurement and the reinforcement of procurer competences; and
  - The Mobile Task Force of Green Public Procurement, to include counselling on circular procurement for the supplier side.

2. Implementation

Pre-tender phase

- When carrying out market analysis for high-risk areas such as facility management (guards and cleaning services), the Danish CPB, the Agency for Public Finance and Management, usually focuses on labour rights considerations such as compliance with collective agreements, minimum wages, etc.

Tender phase

- According to Principle 6 “Green conversion” of the Strategy for Intelligent Public Procurement, green products and environmental technology solutions for public tenders must be taken into account in the tender phase. The strategy aims at reducing resource consumption and climate and environmental impacts.
- According to the Danish Act on Public Procurement (2016), a public purchaser may exclude tenderers that do not observe environmental, social or labour requirements.
- The Danish Agency for Public Finance and Management developed several voluntary grounds for exclusion from tenders, targeting the integrity of their suppliers.

3. Good Practices

- The Tender Portal for Responsible Procurement (*Den Ansvarlige Indkøber*) contains guidelines, manuals and best practice on considerations relating to the environment, human and labour rights, other social aspects and integrity in public procurement procedures.
- The Danish Agency for Public Finance and Management bases their due diligence guidelines on the UN Guiding Principles for Business and Human Rights and the OECD Guidelines for Multinational Enterprises. These due diligence guidelines may include a policy describing the supplier’s commitment to responsible management of the supply chain, risk analysis of the supply chain, implementation of the policy and risk as well as reports on the implementation and its outcomes.
- The implementation of the Partnership of Green Public Procurement promotes green public procurement through common goals and policies.
- The Forum of Sustainable Procurement promotes green and responsible procurement through a set of guidelines, tools and networks. In 2019, the Forum launched a guide on how to support SDGs throughout the public procurement procedure.

Estonia

1. Policy

The Estonian Public Procurement Act includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

Labour rights

People with disabilities

Long-term unemployed people

Integrity

This aspect is also covered by the Estonian Penal Code, tax legislation and the Anti-Corruption Act.

2. Implementation

Tender phase

- Contracting authorities may exclude suppliers that have violated environmental, integrity, social or labour law duties from public procurement procedures.
- Additional rules may apply to public works contracts or concessions where the estimated value is equal to or exceeds the public procurement threshold. In this case, contracting authorities are required to consult the contractor regarding the most suitable tender.

  Contractors may be required to provide certificates to evidence:

  - the average salary paid by the tenderer; and
  - the average salary of each subcontractor specified in the tender; and the average salary during the six calendar months preceding the start of the public procurement in the field corresponding to the subject matter of the public works contract. Documentation must also make reference to the country where the tenderer and the subcontractor are established.

3. Good Practices

- The Estonian government has a website that includes general guidelines for green procurement. Some of the guidelines include advice on the different eco-labels available for goods and services, or examples of award criteria that are adequate to procure construction, IT devices, office supplies, cleaning services.

Finland

1. Policy

The Finnish Act on Public Procurement and Concession Contracts № 1397/2016 includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

This aspect is also included in the Climate Change Act, № 609/2015, the Government Programme 2019; and Act №1509/2011, which defines aspects related to energy and the environment to be taken into account when procuring motor vehicles.

Human rights

The Government Programme 2019 promotes this objective.

Labour rights

The Government Programme 2019 promotes this objective.

People with disabilities

The Act on Providing Digital Services № 306/2019 refers to the principles and technologies that must be followed in the design, development, maintenance and updating of digital services in order to make them more accessible to people with disabilities.

Long-term unemployed people

Other policy frameworks

- Gender

  The Act on Equality between Women and Men, № 609/1986.

- Integrity

  The Finnish Act on Contractor's obligations and liability and the Government Programme 2019.

Strategic frameworks

- The National Public Procurement Strategy (2020) intends to increase the level of ecological, social and economic responsibility in public procurement.
- Hansel Ltd. is a non-profit limited company that acts as a CPB for central and local governments in Finland. They have a specific policy, described in their Corporate Responsibility Report (2017). The policy includes environmental and social considerations in the CPB's work. The most recent Hansel Compliance programme was accepted in November 2019.

2. Implementation

Hansel Ltd. aims at including environmental policy objectives during each phase of the procurement cycle.

Pre-tender phase

- During this phase of the procurement procedure, Hansel Ltd. conducts a risk analysis on social issues. Depending on the risk analysis' outcomes, a specific requirement on human rights are included as a general contract performance clause.

Tender phase

- Regarding the respect of environmental considerations, Hansel Ltd. uses the Green Public Procurement toolkit of the European Commission to learn best practices and include them in procurement procedure. They also use the Nordic Swan Ecolabel and EU-Ecolabel criteria as basis for their procurement requirements.
- Hansel Ltd. requires suppliers to present a report on tax payments, pension insurance payments and requirement for reporting credit information. To improve reporting and ease the procedure, a digitalised service is used to check this information during the contract phase.
- When procuring computers through its framework agreement, Hansel Ltd. gives extra awarding points in the following cases:
    - If the supplier submits a list on final assembly locations of the computers and component supplier of the computers;
    - If the supplier submits a list and means of proof that the trademark owner had openly published a list of final assembly locations of the computers;
    - If the supplier had attached lists a) and b), and provided proof that the trademark owner had openly published a list of final assembly locations and of component suppliers of the computers.
    - If the supplier can proof that:
        - living wage was paid at the final assembly factories of the computers.
        - if the actual total working hours (including overtime) were at the most 48 hours per week on average.

3. Good Practices

- Hansel Ltd. has a dedicated support team on sustainability issues, helping Hansel's own purchasing experts and lawyers on including sustainability consideration in their framework agreements and dynamic purchasing systems. A customer support team is available to provide occasional support on sustainability issues.
- Hansel Ltd. has developed some ecolabels, such as the Green Label (2011). This label signals that environmental considerations have been taken into account in a framework agreement. Other social and economic labels were established in late 2019.

France

1. Policy

The French Public Procurement Code includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

The general framework for environmental concerns is the French Environmental Code; in addition, there is a Roadmap for a Circular Economy (2018) that highlights how public procurement can lever the circular economy. Law № 2016-1087 (2016) for the recovery of biodiversity, nature and landscapes, Law № 2020-105 (2020) on the fight against waste reduction and the circular economy and Law № 2015-992 (2015) on energy transition for green growth contain additional provisions.

Human and labour rights

The French National Action Plan is the general framework for this issue, implementing the United Nations Guidelines on Human Rights and Business (2017).

In addition, the public procurement Law №. 2017-399 (2017) refers to the duty of care by parent companies and principal contractors; Law № 2014-790 (2014) covers unfair social competition.

People with disabilities

Law № 2018-771 (2018) on the freedom to choose a career applies.

Long-term unemployed people

The French Growth pact for the social and solidarity economy (2018) aims at developing responsible purchasing. In addition, Law № 2014-856 (2014) on the social and solidarity economy and the Pact of Labour Inclusion through Economic Activity apply.

Gender considerations

Law № 2014-873 promotes gender equity. A Diversity and Equality Label aims to prevent discrimination and promote diversity in the public and private sectors. This document includes a specific chapter on relations with suppliers.

Integrity

Law № 2016-1691 (2016) on transparency, the fight against corruption and the modernisation of the economic life, Law № 2019-486 (2019) on the Growth and Transformation of Enterprises and the Decree № 2012-557 (2012) on the transparency obligations of companies in social and environmental matters apply.

Strategic frameworks

- The strategy sheet Strengthening responsible government procurement includes certain sustainable policy objectives, such as considerations related to the environment, labour rights, people with disabilities, gender and unemployed people.
- On integrity, the French CPB (*Union des groupements d'achats publics*, UGAP) has a Code of ethics for their stakeholders (suppliers, customers and partners). To ensure its effectiveness, the

Code is referenced in public procurement documents for suppliers, and in the general conditions of sale for customers.

2. Implementation

Pre-tender phase

- When preparing calls for tenders, the UGAP often requests participation of business federations and trade unions representing different sectors. These groups are involved in the early, preliminary planning of the tender and in the division of lots.
- When preparing contracts, the French State Procurement Department assesses all social (including human rights) and environmental considerations. This is to determine the considerations to include in the tender documentation and the corresponding level of requirement. This expertise is based on the information gathered during the pre-tendering stage.

Tender phase

- The UGAP incorporates concerns relating to the environment, labour rights and people with disabilities in the selection criteria and/or the technical specifications. For environmental aspects, selection criteria can include eco-design, recycled, recyclable or reused materials, ecolabel products, etc.
- After the needs analysis, the French State Procurement Department (*Direction d'achats de l'État,* DAE), integrates social and environmental considerations:
    - in the contract execution conditions;
    - in the technical specifications;
    - as a combination of these two possibilities; or
    - under a combination of these possibilities with award criteria.

  The social or environmental award criteria are independent from the technical assessment and have a minimum weight of 10% of the total contract award volume. The French State Procurement Department also asks for reliable, transparent and valid means of proof from bidders in support of their environmental and/or social claims. If the awarded supplier does not comply with the requirements of the contracts, penalties may apply.

3. Good Practices

- An audit and control plan for the UGAP stakeholders will be deployed in 2020. Among others, the plan serves to verify compliance with legal requirements, matters of ethics, social aspects, environmental concerns and personal data protection matters.
- To mitigate risks of human rights violations related to contracts in the IT sector and for furniture, the French State Procurement Department includes a mandatory questionnaire about the transparency of supply chains and the due diligence procedures carried out by companies.
- The French government has implemented different actions to raise awareness about sustainability, and to include sustainability objectives more frequently into their procurement procedures. These actions include:
    - An annual seminar to exchange best practices between the French State Procurement Department and the Institute of Public Management and Economic Development *(Institut de la gestion publique et du développement économique,* IGDPE).

- The use of various ecolabel and certifications, such as Forest Stewardship Council (FSC), Programme for the Endorsement of Forest Certification *(Programme de reconnaissance des certifications forestières,* PECF), European Ecolabel, type 1 ecolabels, NF-Environnement Mark's standard and TCO label (IT equipment).
- An IT-sharing platform called "*Réseau des administrations publiques intégrant le développement durable"* (RAPIDD) serves as a network to integrate sustainable development into the procurement procedures. This platform is open to all state and non-state public buyers.
- The professional social network of State buyers "*Réseau social professionnel des Achats de l'État"* (RESPAE) is open to all procurement officials of the State and its public establishments.
- Tools and guides contribute to the professionalisation of public procurement workforce in the public sector.

Germany

1. Policy

Germany reformed its Procurement Law in 2016, extending the possibilities for contracting authorities to include more sustainable policy objectives in procurement procedures. The current legal framework (2016) includes the following RBC objectives:

Environment

Human rights

Labour rights

People with disabilities

Long-term unemployed people

Minority considerations

Gender considerations

Integrity

Strategic frameworks

- Germany has different national strategies in regards to sustainability, each one focusing on different sustainable objectives. The two most important ones are:
    - The National Sustainability Strategy (*Deutsche Nachhaltigkeitsstrategie)* mentions public procurement in the context of environmental issues, among others, and how to achieve the Sustainable Development Goals (SDGs).
    - Regarding human and labour rights, the National Action Plan on Business and Human Rights (*Nationaler Aktionsplan Wirtschaft und Menschenrechte,* NAP) includes measures in the field of public procurement.

2. Implementation

Pre-tender phase

- The German procurement law gives procurers the opportunity to identify sustainable products and services as part of market research. Thus, procurers become aware of more sustainable offers and can, if necessary, include more sustainable criteria in the procurement process.

Tender phase

- The Procurement Law specifically lists the social, environmental and innovative aspects as possible specifications for selection and award criteria. It is also possible to consider these criteria in technical specifications or contract performance conditions.

- German contracting authorities can exclude companies from the tender process for violations of environmental, social or labour law obligations or fraudulent actions from past procurement procedures. This includes violations of the International Labour Organization Core Conventions.
- In order to ensure that the tenderers did not use child labour in the manufacturing of the procured product or that the employees have been paid the minimum wage, contracting authorities require a self-declaration for each procurement procedure.

3. Good Practices

- Even though Germany is highly decentralised and has more than 30 000 contracting authorities, the federal government has supported the implementation of strategic procurement throughout the entire public procurement system, across governmental levels. To this end, the German government has established a number of bodies dedicated to providing expertise in specific areas of strategic procurement, such as the Competence Centre for Sustainable Procurement (*Kompetenzstelle für nachhaltige Beschaffung*, KNB), or the German Competence Centre for Innovation Procurement (*Kompetenzzentrum innovative Beschaffung,* KOINNO).
- Both of the competence centres, KNB and KOINNO, work together to help contracting authorities to deliver innovative solutions and sustainable outcomes. Services provided by both include training courses, workshops, seminars, networking opportunities, websites detailing best practices, templates and telephone and email guidance.
- When purchasing ICT equipment, the CPB of the Procurement Office (*Beschaffungsamt des Bundesministeriums des Innern)* requires tenderers to commit to comply with selected labour and social standards along the supply chain, until maximum supply chain level tier 3 by virtue of the latest edition of the Declaration on Social Sustainability in the Context of Public Procurement of Information Technology. For instance, suppliers need to certify that they know their supply chains and do not violate selected requirements that go beyond the ILO core standards.

Hungary

1. Policy

Act CXLIII of 2015 on Public Procurement includes the following RBC objectives:

Environment

Labour rights

People with disabilities

Long-term unemployed people

Integrity

2. Implementation

Pre-tender phase

- The procurement documents shall ensure that economic operators can submit tenders that are technically suitable, physically feasible and economically reasonable. The Procurement Act asks contracting authorities to design the tender in such a way that suppliers can perform the contract to a high standard, whilst protecting the environment, by taking into account not only sustainability considerations, but also the elimination of any contract amendments.

Tender phase

- According to the Procurement Act, the contracting authorities may exclude economic operators from participating in the tender if they have committed a serious violation of environmental, social, and labour law requirements.
- For public works, the technical specifications must consider the needs of the people with disabilities and the elderly during the preparation of the public procurement procedure. Following an initiative of the National Council of Associations of Persons with Disabilities (FESZT) in 2017, it has been mandatory to take into account the universal design criteria within the technical specifications for public works tenders.

Post-tender phase

- Contracting authorities may establish special conditions with regards to social (including unemployed persons or prisoners) or environmental considerations that must be observed for the duration of the contract.

3. Good Practices

- The Hungarian Public Procurement Authority launched a program called “Innovative Public Procurements in Focus 2019 - 2020” to promote innovative public procurement. In 2018, the Authority founded the Public Procurement Prize and the Public Procurement Excellence Award. On its mobile application titled “Daily Public Procurement”, the Authority shares up-to-date information related to public procurement.

- The Hungarian Public Procurement Authority issued a Guideline on Life Cycle Costing Calculation, maintains a website dedicated to sustainability and provides regular trainings to raise awareness about green and social public procurement and the integrity of public procurements.
- Since 2012, Hungary has been collecting information about contract award notices to develop statistics on green and social aspects in contract procedures below EU thresholds. This data is collected and published by the Public Procurement Authority in their annual reports.

Iceland [49]

1. Policy

The Act on Public Procurement № 120/2016 of Iceland includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

Chapter IX of the Act on Climate Action № 70/2012 includes provisions for the public procurement of energy efficient vehicles. The Climate Action Plan for 2018-2030 includes provisions for purchasing green vehicles as well and the Procurement Policy that will be soon issued and called "Sustainable and economical government procurement".

Human rights

Labour rights

This aspect is also covered by in the Cabinet Direction on Supply Chain Responsibility, developed in co-operation with different stakeholders.

People with disabilities

Long-term unemployed people

Minority considerations

Gender

Act № 10/2008 on Equal Status and Rights of Women and Men requires that economic operators or public agencies with more than 25 employees provide a special certification to prove equal pay for women and men (Icelandic Standard ÍST 85).

Integrity

This aspect is also included in other Icelandic legal frameworks, such as the second chapter of the Administration Act №. 37/1993 on ethics for public buyers issued by the Minister of Finance and Economic Affairs in Iceland, which specifies the good practices for procurement officials.

Strategic frameworks of Ríkiskaup, the Icelandic CPB:

- The Green Steps Program is a programme developed for government agencies in Iceland with the overall aim of decreasing environmental impacts from daily operations in the public sector. The participating agencies to this program must follow five different steps. Ríkiskaup has taken four steps and will soon take the fifth step by, among other things, aligning climate policy with the environmental policy and setting up an action plan related to it.
- Ríkiskaup's Environmental Strategy

[49] This country fact sheet has been drafted based on the information provided by the Icelandic CPB Rikiskaup.

- Equal wage management systems
- Gender equality of Ríkiskaup's personnel policy
- Ríkiskaup's Ethical Rules

2. Implementation

Tender phase

- When purchasing works, supplies or services with specific environmental or social characteristics, the Icelandic contracting authorities may require specific labels as a means of proof that the required conditions are fulfilled.
- Ríkiskaup has a set of requirements regarding labour rights for procurement documents. One of the requirements is for the main contractor to ensure that all workers or staff members receive fair wages, and that they benefit from their rights in accordance to collective agreements.
- Ríkiskaup instructs project managers to conduct research about the awarded companies, to ensure absence of exclusion grounds, such as human rights violations.

3. Good Practices

- Ríkiskaup's quality management system is certified in accordance with ISO 9001:2015 Certification and they assure the equal wage management system with ÍST 85:2012 Certification.
- The environmental, personnel and general data protection regulation (GDPR) policies as well as the code of ethics are open to employees in Ríkiskaup's quality manual.
- Twice a year, Ríkiskaup holds internal and external training for their staff, buyers and sellers in the University of Iceland, in which the RBC objectives are included in the learning program.

Israel

1. Policy

The Israeli Mandatory Tender Regulation № 57-1993 is the procurement legal framework that includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

Government decision № 1 057 on Green government and its correction, government decision № 5 090, instruct all concerned ministries to consider environmental issues in their procurement procedures.

Long-term unemployed people

People with disabilities

The Equal Rights for People with Disabilities Law № 5758-199 defines disability. Contracting authorities may not discriminate between bidders based on disability.

Gender considerations

Other policy frameworks

The Israeli Public Bodies' Transactions Law № 5736-1976 contains different restrictions related to the following RBC objectives:

Labour rights

People with disabilities

Integrity

2. Implementation

Tender phase

- Contracting authorities may not discriminate between bidders based on gender, sexual orientation, marital status, among others.
- It is forbidden to carry out any type of transaction between a public body and any supplier that has been convicted for violating either the Foreign Workers Law № 5751-1991, or the Minimum Wage Law № 5747-1987, or for not complying with the Equal Rights for People with Disabilities Law № 5758-1998 and the Strengthening the Enforcement of Employment Rights Law № 5772-2012.
- Contracting authorities must ensure that all suppliers have a written affidavit stating the compliance with the labour law provisions, such as employee rights.
- According to the section *Encouragement of Women in Business*, contracting authorities can give preference to the supplier who certifies that it is a woman-owned business in a bidding process where the circumstances are otherwise equal between two suppliers.

3. Good Practices

- Within the Administrative Code, the Accountant General published a number of guidelines to clarify what “green procurement” entails, and how to incorporate environmental considerations in public procurement.

Italy

1. Policy

The Italian public contract code (legislative decree № 50/2016) includes the following RBC objectives:

Environment

Human rights

Labour rights

People with disabilities

Minority considerations

Integrity

Strategic frameworks

- In 2013, Italy adopted the National Action Plan for Green Public Procurement. Among other tasks, the plan instructed the Ministry of Environment to establish minimum environmental criteria as a reference for public procurement procedures at national level.
- Even though the National Action Plan "Business and Human Rights" 2016-2021 is not a specific strategy for public procurement and human rights, this topic is mentioned in it.
- The Italian Ministry of Foreign Affairs and International Co-operation implemented the Italian Development Co-operation Disability Action Plan: Accessibility Standard Guidelines for Buildings Funded by Directorate General for Development Co-operation. This strategic framework focuses on an inclusion plan for people with disabilities.
- The tasks of the Italian National Anti-Corruption Authority (ANAC) include regulating public procurement with regards to integrity, enhancing competition and preventing corruption. ANAC has implemented general frameworks in the form of anticorruption plans in recent years, and the most recent one in 2019 included a reference to public procurement (ANAC National Anti-Corruption Plan).

2. Implementation

Consip, the Italian CPB, must include sustainable policy objectives during each phase of the procurement cycle.

Pre-tender phase

- In the planning and conduct of the procurement procedure, some documentation may be used. In Italy, the provided documentation cannot distort competition and cannot result in a violation of the principles of non-discrimination and transparency.

Tender phase

- Contracting authorities intending to purchase supplies, works or services with specific environmental, social or other aspects may require a specific label. This label should be reflected in the technical specifications, the award criteria or in the contract performance conditions.
- Contracting authorities may reserve the right to participate in the tender process of economic operators and social co-operatives and consortia whose main aim is the social and professional integration of people with disabilities.

Post-tender phase

- In the execution of contracts and concessions, Italian economic operators must comply with obligations regarding the environmental, social and labour aspects included in both the Italian and the European Union Law.
- Contracting authorities may demand specific requirements for the performance of the contract, such as to comply with European Law and the principle of non-discrimination, equal treatment, transparency, proportionality and innovation. These principles must be specified in the call for tender or the invitation (when appropriate).

3. Good Practices

- To overcome the challenges faced by the Italian government regarding public procurement, such as lack of clear understanding or implementation challenges amongst others, ANAC has the power to issue "soft regulation acts". ANAC's guidelines include the following: Guidelines № 13 relating to "The discipline of social clauses", draft Guidelines relating to public tendering rules of social services, Guidelines № 15 on Identification and management of conflicts of interest in public contract award procedures.
- To monitor the outcomes of the National Action Plan for Green Public Procurement, the Ministry of Environment and ANAC signed an agreement in 2018, establishing that the Central Section of the Observatory of ANAC shall monitor the application of the minimum environmental criteria.

Japan

1. Policy

- The Act on Promotion of Procurement of Eco-Friendly Goods and Services by the State and Other Entities refers to environmental considerations.
- Regarding Gender considerations, the Act on the Promotion of Female Participation and Career Advancement in the Workplace promotes work-life balance. In tender evaluations, companies that have certain certifications related to good work-life-balance receive additional points. The certifications relate to women's career advancement ("Eruboshi" certification), childcare possibilities ("Kurumin" and "Platinum Kurumin" certifications) and youth employment ("Youth Yell" certification).

2. Implementation

Tender phase

- During the evaluation process, those corporations that have the work-life balance certifications receive additional points.

3. Good Practices

- The Ministry of the Japanese State has developed Green Purchasing Guidelines to reduce the environmental impact in all areas of government, and to raise awareness of contracting authorities that make green purchases.
- The implementation of the Guidelines for the Use of Public Procurement and Subsidies for the Promotion of Women's Careers in March 2018 has improved the efficiency of Japan's public procurement operations. The guidelines give information on securing and establishing a diverse workforce, including women, to improve its planning capabilities and to respond to market changes.

Korea

1. Policy

The Korean CPB, the Public Procurement Service (PPS), applies the Act on Contracts to Which the State is a Party, which includes the following RBC objectives - additional frameworks apply, depending on the RBC objective:

Environment

Human rights

This aspect is also covered by the Act on the Safety of Products for Children.

Labour rights

The Labour Relations Decree and Minimum Wage Act applies.

People with disabilities

This aspect is also included in the Social Enterprise Promotion Act.

Long-term unemployed people

Gender considerations

Integrity

This aspect is also covered by the Integrity Agreement.

2. Implementation

Tender phase

- PPS gives extra points to suppliers that have either the Green Building Certification or the Green Certification and achieve high scores in Building Energy Efficiency Rating.
- PPS is entitled to give extra points to suppliers that have excellent records of employment management (e.g. reduced working hours, elder-friendly environment) and create job opportunities for the youth and people with disabilities. PPS can give penalty points in case of violation of employment-related obligations, (e.g. a delay in payment of wage).
- PPS gives advantages to suppliers that create job opportunities in general, but also that employ people with disabilities. Advantages are also given to women-owned enterprises and businesses that employ a high number of women.
- For veteran, welfare organisations and SMEs, PPS allocates certain goods or materials to be contracted with these kind of suppliers.
- On integrity, it is mandatory for suppliers to submit an integrity agreement.

Post-tender phase

- PPS manages payments for subcontractors online. PPS also operates the Subcontractor Payment Management System in the public sector to allow public buyers (end users) to monitor payments.

3. Good Practices

- To promote and enhance the employment of minorities, the PPS makes an announcement every month to disclosure contract awards to those enterprises that are headed by or hire socially disadvantaged groups.

Latvia

1. Policy

The Latvian Public Procurement Law includes the following RBC objectives:

Environment

Human rights

Labour rights

People with disabilities

Long-term unemployed people

Minority considerations

Integrity

Other policy frameworks

- Environmental considerations
    - The Regulations of the Cabinet of Ministers № 353, № 180 and № 106, adopted in 2017, include several sustainable policy objectives and specific sustainability requirements.
    - Every year, the Ministry of Environmental Protection and Regional Development submits reports on green public procurement targets to the Cabinet of Ministers. The targets were set by the Green Public Procurement Support Plan 2015-2017. Originally spanning the period 2015-2017, reporting on the indicators outlined in the plan has continued.
- Integrity
    - Two general frameworks apply in the area of public procurement: the Corruption Prevention and Combating Bureau Guidelines 2015-2020 and the Law on Prevention of Conflict of Interest in Activities of Public Officials.
    - Secondly, there is a specific framework in form of the Operational Strategy of the Corruption Prevention and Combating Bureau 2018-2019.

2. Implementation

Pre-tender phase

- Environmental considerations must be taken into account from the beginning of the procurement process, aiming to prevent or reduce potential environmental and human risks.
- In the field of measures targeting certain groups of people, the Latvian contracting authorities have the right to reserve the possibility of participating in the tendering procedure only for those candidates where more than 30% employees are disabled.

Tender phase

- According to the Regulation of the Cabinet of Ministers №. 353, certain green criteria need to be observed when procuring specific types of goods. For instance, contracting authorities must consider environmental and human health aspects of the procurement, the environmental impact of a product, and conduct a comparison of environmental impacts (magnitude, reversibility or geographical scale).
- Contracting authorities are also entitled to exclude economic operators that have committed criminal acts, such as human trafficking, bribery, fraud, misappropriation or money laundering and evasion of tax payments or equivalent payments.

Post-tender phase

- Latvian contracting authorities may require special conditions for the performance of a contract, in particular requirements concerning economic and social circumstances, innovation or environmental protection.

3. Good Practices

- The Latvian social entrepreneurship association organises conferences to introduce contracting authorities to public procurement regulations. These conferences aim to educate contracting authorities on socially responsible procurement.

Lithuania

1. Policy

The Law on Public Procurement of the Republic of Lithuania is the country's main regulatory framework and includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

Human rights

Labour rights

People with disabilities

Long-term unemployed people

Minority and Gender considerations

Integrity

This aspect is also included in the Law on the Adjustment of the Public and Private Interests in the Civil Service applied in the area of integrity in public procurement. This law requires members of the Public Procurement Commission and people carrying out public procurement procedures to declare their private interests before starting their respective duties.

Strategic frameworks

- Integrity

  Both the Lithuanian Government and the Public Procurement Office have approved a number of programs to enhance the importance of integrity, including:

  - The National Anti-Corruption Program for 2015-2025
  - The 2016-2019 Sectorial Program on Prevention of Corruption in Public Procurement

- Environment

  Resolution № 828 (2017) of the Government sets specific goals for the percentage of green public procurement procedures in the overall procurement spending. For example, the resolution sets a goal that all public procurement contracts must consider environmental aspects in the award criteria.

2. Implementation

Tender phase

- The Lithuanian Public Procurement Law requires tender documents to include environmental, social and labour rights standards.
- In order to maintain the integrity of public procurement procedures, the contracting authorities may invite representatives of state, municipal institutions or external bodies to play an observer role.

The contracting authorities are also entitled to exclude economic operators that have committed criminal acts (for instance, human trafficking or child labour).

- When carrying out simplified procurement procedures, the contracting authorities are obliged to award a minimum of 2% of the total value of their contracts to social enterprises owned by people with disabilities and similar enterprises.

Post-tender phase

- The contracting authority may require special conditions for the performance of a contract related to economic, innovation, social and environmental objectives.

3. Good Practices

- The Lithuanian Government has made it mandatory for all contracting authorities to observe environmental aspects in the award criteria in at least 50 % of their purchases of certain groups of goods and services.

Mexico

1. Policy

At the Federal level, Mexico has two general regulatory frameworks regarding public acquisitions, 1) the Acquisitions Act dedicated to goods and services, 2) the Public Works Act. These frameworks include the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

Human rights

Labour rights

People with disabilities

Minority considerations

Gender considerations

Integrity

This aspect is also included in the Ethics Code and Integrity Rules for public servers.

2. Implementation

Tender phase

- When purchasing timber or wooden furniture, contracting authorities must ensure that the wood is certified by the Ministry of Environment and Natural Resources. This requirement aims to guarantee the origin and sustainable management of forests. In addition, when purchasing paper, contracting authorities must ensure that the product contains a minimum of 50% recycled or natural fibres (not derived from wood or forest raw materials).
- In order to promote social aspects, contracting authorities are required to adapt their evaluation criteria, based on the "points and percentages" method. Contracting authorities must give additional points or percentages to suppliers who are disabled, companies that employ at least 5% people with disabilities or companies applying practices to reduce the gender inequalities.
- The General Attorney's Office (*Procuraduría General de la República*, PGR) is not authorised to close a contract with a potential supplier that has not complied with obligations related to social security and housing.
- Contracting authorities can use the direct award procedure when purchasing goods and services from farmers or marginalised rural groups.
- Bidders are required to sign a declaration of integrity stating that they will adopt correct behaviour throughout the tender and will not seek to alter the results of the procurement procedure in any way.

3. Good Practices

- Mexico is part of a regional initiative to support the implementation and regional integration of sustainable public procurement. The project “Regional Integration for the Promotion of Sustainable Production and Consumption” was launched in the context of the Pacific Alliance. It is based on the principles agreed on in the United Nations Conference on Sustainable Development (Rio + 20), and UN Environment’s guidance “Implementing Sustainable Public Procurement. Introduction to the UNEP Approach”.

Netherlands

1. Policy

The Dutch Public Procurement Act includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

The Clean Energy Directive, Energy Performance of Buildings directive and IT-products set environmental criteria for public buyers.

Human rights

Labour rights

People with disabilities

Long-term unemployed people

Integrity

The Code of ethics at both national and subnational level. The Public Administration Probity Screening Act obliges authorities and public services to apply new instruments in procurement procedures to prevent criminals from making use of specific government provisions.

Strategic frameworks

The Action Plan for Responsible and Sustainable Procurement by governments (2015-2020) targets, among others, environmental goals (reducing environmental impact), human rights considerations (based on ILO and SDGs standards), labour rights and considerations related to people with disabilities.

2. Implementation

Pre-tender phase

- To understand the possible risks that could occur during the procedure, public buyers can conduct a risk analysis, allowing them to choose which social conditions will apply for the specific tender. The agreed social conditions must be published in the announcement of the tender.

Tender phase

- Contracting authorities may require bidders to submit compliance declarations with specific requirements related to environmental and labour laws.
- To prevent human rights violations, contracting authorities can exclude bidders who have committed human rights infractions.
- Contracting authorities can reserve tender procedures to companies that have proven to comply with the required minimum percentage (30%) of hiring of people with disabilities or unemployed people.

Post-tender phase

- Local governments can reserve up to 10% of contract performances for disabled or unemployed persons.

3. Good Practices

- A new law is currently being enacted that provides for the introduction of a duty of care. This new rule aim to prevent child labour.
- The Manifest MVI (*MVI Manifesto*), is an initiative in which all signatory contracting authorities (including decentralised) commit to creating and implementing an action plan detailing their policy objectives and commitments regarding strategic public procurement.

New Zealand

1. Policy

The Government Procurement Rules form the regulatory framework that governs public procurement in New Zealand. These rules are mandatory for approximately 136 public sector agencies, but are applicable throughout all levels of government. These rules take into account all eight RBC objectives – additional policy documents apply, depending on the RBC objective:

Environment

This aspect is also included in the Supplier Code of Conduct.

Human rights

This aspect is also included in the Supplier Code of Conduct and New Zealand's Human Rights Act.

Labour rights

The Supplier Code of Conduct and New Zealand's Employment Contracts Act applies.

People with disabilities

This aspect is also covered by the Supplier Code of Conduct and New Zealand's Human Rights Act.

Long-term unemployed people

The Construction Procurement Guidelines include additional rules.

Gender and minorities considerations

This aspect is also included in the Construction Procurement Guidelines and New Zealand's Human Rights Act.

Integrity

Several policies apply, including the Code of Conduct for the State Services, the Supplier Code of Conduct and the Crimes Act.

Other policy frameworks

- The five principles of Government procurement, included in the government procurement rules, instruct all concerned agencies to consider the possible social, environmental, economic effects and cultural outcomes of the procurement procedures.

2. Implementation

New Zealand Government Procurement must always include integrity considerations as a standard contract provision.

Pre-tender phase

- The Government Procurement Rules include a requirement to consider the environmental, economic, social and cultural outcomes that could be achieved from the procurement when planning the procurement. Any such outcomes that are to be considered in the procurement must be included in the published procurement notice.

Tender phase

- According to the Government Procurement Rules, mandated government agencies must support the procurement of low-emission and low-waste goods and services, in the contract areas of vehicles, stationary heat, and office supplies.
- Regarding labour rights and worker's protection, agencies must require their suppliers to prove that they, and their domestic supply chain, comply with all health, employment and safety requirements.

Post-tender phase

- The rules requiring consideration of secondary outcomes also include a requirement to monitor the contract and ensure that the outcomes sought are being delivered.

3. Good Practices

- New Zealand Government has a document called the *Government Procurement Charter* that outlines the government's expectations for how agencies conduct procurement procedures. This document includes ten directives such as the promotion of environmental responsibility, good employment practices and a risk management procedure. To support implementation of these practices, a number of good practice guides and online training modules are available to procurement officials.
- When developing the regulatory and strategic framework that includes sustainable policy objectives, New Zealand Government Procurement opened their consultation publicly to all interested stakeholders in order to give them all an opportunity to share their points of view.
- To monitor uptake of sustainable policy objectives in public procurement, the New Zealand Government is currently developing a centralised monitoring and reporting framework.

Norway

1. Policy

Norway has both a Public Procurement Act and a Regulation on Public Procurement № 974 that include the following RBC objectives:

Environment

Human rights

People with disabilities

Labour rights

Integrity

Other policy frameworks

- Regarding environmental issues, more specifically on green energy and procurement of vehicles, the Norwegian government adopted the Regulation № 1 995 on Energy and Environmental Requirements when Purchasing Vehicles for Road Transportation (Green Vehicles) in December 2017.
- Regarding labour rights, the Norwegian regulations on wages and working conditions in public contracts № 112 were adopted in February 2008, setting specific rules throughout its sections.

Strategic frameworks

- Even though the 2015 National strategy for combating work-related crime is not a specific strategy for Public Procurement and labour rights, it does address public procurement.
- In 2019, the Norwegian Government presented a white-paper on public procurement, which considers how to work with environmental issues, human and labour rights and integrity considerations in public procurement procedures.
- The Norwegian Government is working on an action plan to increase green public procurement and innovation.
- The Norwegian Digitalisation Agency (DigDir) is the national CPB, which has a strategic public procurement framework that in some aspects goes beyond the national one. This strategy states that human and labour rights clauses are mandatory in all of their procurement procedures.

2. Implementation

The Public Procurement Act and the Regulation on Public Procurement № 974 covers the following procurement phases:

Pre-tender phase

- According to §6, when planning a procurement procedure, the Norwegian contracting authorities must take human rights, universal design and environmental consequences, including Life Cycle Cost (LCC), into account.

Tender phase

- During the tender phase, contracting authorities must pay special attention to minimise the environmental impact of the purchase and to promote climate-friendly solutions. To this end, they shall set environmental requirements and award criteria in all stages of the procurement.
- When purchasing vehicles, the contracting authorities, operators and subcontractors are obliged to take into account, at the very least, some environmental requirements and the energy and environmental effects.
- It is mandatory for the contracting authorities to ensure short supply chains in contracts for construction and cleaning services.

Post-tender phase

- It is mandatory for contracting authorities to ensure that contracts clearly stipulate that employees of suppliers or any subcontractors must have wages and working conditions that are in accordance with the Norwegian Regulation № 112.
- The Norwegian Agency for Public and Financial Management *(Direktoratet for forvaltning og økonomistyring*, DFØ) uses special contract clauses for safeguarding human and labour rights in the supply chain.

3. Good Practices

- The Norwegian Ministry on Trade, Industry and Fisheries and DFØ have developed extensive guidelines for stakeholders to better understand and comply with the sustainable policy objectives.
- In 2020, the Office of the Auditor General conducted a special project to monitor how contracting authorities implement environmental considerations in their procurement practices.
- DFØ has developed a risk analysis procedure for all of their public procurement and contract management processes. This risk analysis procedure identifies high-risk sectors in regards to human rights like construction, transport or furniture, among others.

Peru[50]

1. Policy

The State Procurement Law №. 30 225 of Peru includes the following RBC objectives:

Environment

People with disabilities

Integrity

Strategic frameworks

Peru Compras, the CPB of Peru, developed the following:

- Institutional Eco-efficiency Plan 2019-2021
- Anti-Corruption Plan
- The Working Group on Gender Equality was established to co-ordinate, articulate and monitor the incorporation of the gender perspective into policies, plans and institutional management.

2. Implementation

During the design and development of public procurement procedures, contracting authorities must consider practices and criteria to contribute to both environmental and social protection and human development.

Tender phase

- Contracting authorities use the following evaluation criteria to determine which supplier submitted the best offer:
    - Holding the Blue Certificate (issued by the National Water Authority). This certificate proves that the supplier is a water responsible company as part of the "Water Footprint Programme".
    - Holding the Certification "Safe Company, free from violence and discrimination against women", issued by the Ministry of Women and Vulnerable Populations (MIMP).
    - Holding a certificate for an anti-bribery management system, which must have been issued by either the Quality National Institute (INACAL), (formerly the National Institute for the Defence of Competition and the Protection of Intellectual Property, INDECOPI) or another internationally recognised accreditation body.
    - Verification of the supplier's registration in the Registry of Promotional Companies for People with Disabilities (REPPCD) of the Ministry of Labour and Employment Promotion.

[50]This country fact sheet has been drafted based on the information provided by the Peruvian CPB Perú Compras.

- Contracting authorities also establish the following as qualification requirements:
    - Verification of the supplier's registration in the National Registry of Companies and Entities that carry out outsourcing activities (RENEEIL), issued by the Ministry of Labour and Promotion of Employment, in the case of labour intermediation services.

Post-tender phase

- For the contract implementation, environmental and social clauses can be added, such as:
    - Verifying that energy-efficient equipment or equipment with low levels of noise, radiation, vibrations, emissions, etc. is used;
    - Implementing environmental or energy efficiency measures;
    - Using inputs with a lower environmental impact;
    - Using forest products from certified, organic or recycled sources;
    - Adequately managing solid waste;
    - Verifying inclusive conditions for people with disabilities; and
    - Verifying anti-bribery clauses.

3. Good Practices

- In May 2020, Peru Compras was granted the NTP-ISO 3001-2017 Anti-Bribery Management System Certificate, through which complaint channels were established and implemented, such as a face-to-face table of parties, e-mail, telephone, and web form.
- Peru Compras implemented of a channel for inquiries via telephone and WhatsApp on the use of electronic tools.

Poland

1. Policy

The Polish Public Procurement Law (2019, in force from January 2021) includes the following RBC objectives:

Environment

Human rights

Labour rights

People with disabilities

Long-term unemployed people

Minority considerations

Integrity

Strategic frameworks

- Environment

  Poland adopted their fourth National Action Plan on Sustainable Public Procurement in 2017. This document promotes the inclusion of environmental and social considerations into the tendering process for contracting authorities.

- Human rights, labour rights, people with disabilities/long-term unemployed people

  The Council of Ministers of Poland adopted recommendations on social aspects in public procurement by government administration units. These recommendations encourage all government administration units to use social aspects to the widest extent possible within their public procurement procedures.

- Integrity

  The Government Programme for Counteracting Corruption is a Polish strategic framework that targets corruption issues, aimed at reducing corruption in procurement procedures. To this end, the Public Procurement Office co-operates with the Central Anti-Corruption Bureau, the National Appeals Chamber, the Office for Competition and Consumer Protection, the Main Adjudicating Committee in cases concerning violation of public finance discipline, the Ministry of Digitisation, the Ministry of the Interior and Administration and the Ministry of Finance.

- The Polish government adopted a new public procurement law (entry into force in 2021); this new legal framework will also come with a new strategic document called National Purchasing Strategy including more references to different considerations and tender phases. Its aim is to better understand and apply environmental and social aspects in public procurement processes.

2. Implementation

Pre-tender phase

- Regarding integrity considerations, contracting authorities are obliged to prepare contract award procedures in a manner ensuring fair competition and equal treatment of economic operators as well as in accordance with principles of proportionality, transparency, impartiality and objectivity.

Tender phase

- In general, the use of environmental, social and integrity aspects in the tendering process is voluntary, with some exceptions. For instance, in the exclusion criteria, contracting authorities shall exclude economic operators and in some cases subcontractors that have been sentenced for a violation of environment rules, employee rights, human trafficking, and other criminal offences.
- Contracting authorities can apply social aspects as part of non-price criteria related to for example fair trade or employment of people from disadvantaged groups.

Post-tender phase

- When contracting authorities detect an abnormally low price in the awarded goods or services, an examination is carried out to cross-check the tender with the obligations arising from labour law and social security regulations.
- Appropriate clauses such as control instruments and sanctions should be included in the contract to ensure the practical implementation of social aspects.

3. Good Practices

- According to the National Action Plan on Sustainable Public Procurement, the Polish Public Procurement Office organises a series of training events, conferences, guidebooks and collection of best practices to inform and raise awareness to the relevant public procurement parties.

Portugal

1. Policy

The Portuguese eSPap is the manager of the Public Procurement System in Portugal (SNCP). The following RBC objectives feature in eSPap's procurement function:

Environment

Labour rights

Social considerations

Integrity

Strategic frameworks

- Portugal has a National Strategy for Green Procurement 2020 (ENCPE 2020), which defines 21 priority categories of goods and services for Green Public Procurement (GPP).

2. Implementation

The eSPap, acting as a Portuguese central purchasing body (CPB), takes into account RBC policies in every stage of the procurement cycle either in the selection or in qualification criteria of the awarded suppliers.

Tender phase

- Contracting authorities must ensure that the technical specifications of the tender take into account environmental considerations, such as a maximum level of CO_2 emissions, online licensing of software, minimum level of recyclable parts of specific goods, paint or materials used in furniture complying with environmental legislation.
- To promote higher participation of SMEs, eSPap structures some of its framework agreements in regional lots (when applicable). In addition, for any framework agreement, SMEs can participate in the tender as a consortium.
- Most framework agreements awarded by eSPAP use green criteria, even for the categories that are not included in the National Strategy for Green Procurement , such as Software Licensing, Maintenance Services for heating, ventilation, and air conditioning (HVAC) Systems or Maintenance Services for Lifting Equipment.
- To ensure comprehensive inclusion of environmental criteria in call for tender for framework agreements, public entities can draw on a model for evaluating proposals. In addition, at the stage of selection and qualification of suppliers or during the selection of goods for the framework agreements, public entities must respect environmental aspects.
- To avoid price increases above the maximum price, suppliers are qualified with the maximum unit price presented in the proposals during the call stages, even if later on the public entities define other ecological criteria during the calls.

3. Good Practices

- To promote the inclusion of environmental criteria in the procurement procedures, the Portuguese Direct Public Administration must comply with the National Strategy for Green Procurement. Indirect Public Administration, such as public companies and municipalities, can also adopt this strategy voluntarily. In addition, all Portuguese entities must respect the legislation regarding the recycling of goods or parts of goods.
- There are labour rules that establish the maximum working hours per day, per week, per year, minimum number of days off, minimum wage and other benefits such as insurance, lunch allowance, etc. These rules are mandatory and public entities should include them when hiring staff (e.g. security or cleaning services).
- According to the Public Procurement Code, a supplier can only be awarded a public contract if the company proves that it is free from debts with Social Security or the Tax Authority and that its directors have a clean criminal record.
- In the qualification and evaluation phases (when and if applicable) public entities can include performance criteria, i.e. criteria related to the way the contract will be executed (e.g. by disabled people, by ex-employees) and may give additional points in the evaluation of the proposal to the supplier that meets the criteria established in the documents of procedure.

Slovak Republic

1. Policy

The Slovak Public Procurement Act includes the following RBC objectives:

Environment

People with disabilities

Long-term unemployed people

Minority considerations

Strategic frameworks

- National Action Plan of Green Public Procurement for 2016-2020
- Greener Slovakia - Strategy of Environmental Policy of the Slovak Republic until 2030 (Envirostrategy 2030)

2. Implementation

Tender phase

- Since January 2020, the contracting authorities and concerned entities of the Slovak Republic are obliged to use a minimum of 6% of the social criterion in tenders (e.g. people with disabilities, long-term unemployed people and minorities).

3. Good Practices

- To raise awareness with the Slovak authorities at both federal and regional level that Green Public Procurement is not more costly, methodology training and workshops were organised to educate the Slovak contracting authorities in co-operation with the Ministry.

Slovenia

1. Policy

The Slovenian Public Procurement Act (PPA) (Official Gazette № 91/15 and 14/18) includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

The secondary act Decree on Green Public Procurement (Official Gazette № 51/2017 and 64/19) makes Green Public Procurement mandatory and extends the scope to twenty different green subject matters.

Human rights

Labour rights

People with disabilities

Long-term unemployed people

Integrity

The Slovenian Government took measures to strengthen transparency and integrity through several regulatory acts, including the Integrity and Prevention of Corruption Act (Official Gazette № 69/11), which sets the general framework on integrity.

2. Implementation

Tender phase

- When procuring software, architectural, engineering, translation and consulting services, contracting authorities shall take into account social aspects (beyond price) as part of the award criteria.
- In accordance with labour rights requirements, and to support the long-term unemployed, contracting authorities may reserve the right to participate in sheltered workshops and employment centres when carrying out procurement procedures.
- Contracting authorities must exclude suppliers or contractors from participating in a tender if they have violated worker's fundamental rights or committed enslavement acts towards their employees.
- When the end users of a purchase are natural persons, the contracting authority shall take into account accessibility criteria for the people with disabilities or design requirements tailored to all users when drafting technical specifications.
- To ensure transparency and integrity for contracts exceeding the value of EUR 10 000, contracting authorities should obtain a statement on the participation of natural and legal persons in the bidder's assets, including the participation of silent partners.

Post-tender phase

- In performing a public procurement contract, economic operators shall comply with applicable obligations in the fields of environmental, social and labour law established by EU law, regulations

in force in the Republic of Slovenia, collective agreements, or by international environmental, social and labour law provisions.

3. Good Practices

- The Slovenian authorities identified some risk areas in which violations of human rights can occur. In response, the authorities are currently preparing guidelines and recommendations to combat this risk. During the stage of preparation, identified stakeholders are consulted (e.g. chambers of commerce and other business sector associations, labour unions, NGOs).
- Every year, in order to be transparent and coherent, public procurement officers and officials must disclose financial information to the Anti-Corruption Commission.
- According to the Slovenian PPA, subcontractors are always required to respect environmental, human and labour rights, people with disabilities and integrity objectives.
- The Ministry of Public Administration and the Public Procurement Directorate periodically offer education, training and awareness-raising events regarding public procurement legislation and related issues, which are accessible to contracting authorities and economic operators.

Spain

1. Policy

The Spanish procurement legal framework, Act № 9/2017, includes the following RBC objectives – additional frameworks apply, depending on the RBC objective:

Environment

Human and labour rights

The principles of fair trade established in Section 2 of the European Parliament Resolution on Fair Trade and Development include the respect of both human and labour rights. The Spanish government guarantees the respect for human rights throughout the production chain by requiring compliance with the ILO Core Conventions.

People with disabilities / long-term unemployed people / gender and minorities

The Spanish government recognises and respects the rights included in the United Nations Convention on the Rights of Persons with Disabilities.

Integrity

The principles of transparency and integrity during the public procurement process are highlighted in the object section of the Act.

Strategic frameworks

- Green Public Procurement Plan for Central State Administration, Public Bodies and Social Security Entities
- Plan for fostering socially responsible public procurement in the framework of Act № 9/2017

2. Implementation

Spanish contracting authorities are expected to incorporate environmental criteria throughout the procurement cycle in all public procurement procedures.

Pre-tender phase

- When planning public procurement procedures, contracting authorities are required to consider environmental aspects.

Tender phase

- Contracting authorities must ensure that the technical specifications of the tender take into account environmental considerations, like a reduction in the level of greenhouse gas emissions, energy-savings and energy-efficiency measures, and social aspects such as non-discriminatory objects and compatibility with European Law.

Post-tender phase

- In the contract management phase, the Act prescribes legal consequences and procurement sanctions in the case of contract breach. There are also compulsory implementation clauses related to RBC objectives linked to penalties in case of breach.

3. Good Practices

- The Independent Office for Regulating and Monitoring Procurement was created to monitor public procurement procedures and collect statistical information.

Sweden

1. Policy

The Swedish Public Procurement Act includes the following RBC objectives:

Environment

Human rights

Labour rights

People with disabilities

Long-term unemployed people

Gender considerations

Integrity

Strategic frameworks

- Sweden has a National Public Procurement Strategy that includes a range of objectives for contracting authorities, in order to take greater responsibility for their procurement purchasing. The following considerations make reference to RBC objectives:
    - Objective number six refers to the importance of green public procurement and how uptake of this aspect must be increased throughout the public sector;
    - Objective number four concerns the achievement of well-functioning public procurement which relies on integrity and trust;
    - Objective number seven refers to the social aspects enhancing more responsible public procurement for a more socially sustainable society. Some considerations included in this objective comprise the respect of human rights, reasonable working conditions, promotion of employment, equal opportunities and respect for different groups.
- The Swedish CPB Kammarkollegiet has developed guidance to align labour rights requirements with the ILO conventions, which go beyond national-level frameworks.

2. Implementation

Pre-tender phase

- During the pre-study phase, the Kammarkollegiet's internal processes requires them to investigate environmental requirements linked to the subject of the procurement.

Tender phase

- The Swedish Agency for Public Procurement promotes environmental considerations in public procurement. It is responsible for a wide-ranging programme to define model criteria for contracting authorities, for example regarding animal welfare.

- According to the Swedish Public Procurement Act, when the user of the purchase is a natural person, the technical specifications shall be determined on the basis of the needs of the users; this includes accessibility for persons with disabilities.

Post-tender phase

- Regarding labour rights, contracting authorities are expected to set requirements that the supplier will implement the contract in accordance with agreed standards on wages, holidays and working hours for the employees. Contracting authorities shall also require the supplier to ensure that its subcontractors directly contributing to the performance of the contract comply with the same considerations.

3. Good Practices

- In November 2019, the National Agency for Public Procurement released a survey about how Swedish contracting authorities apply the legislation on specific labour law requirements. This survey includes RBC objectives such as human rights, labour rights, environmental protection and anti-corruption in the supply chain and contributes to the Sweden's efforts to monitor implementation of RBC objectives in public procurement.
- The Kammarkollegiet goes to beyond the third tier in its extension of the supply chain for seven out of the eight RBC objectives.
- The Kammarkollegiet commissioned a risk analysis team to identify risks for the provisions (including sourcing, manufacturing) of selected goods and services, in terms of environment, human rights, labour rights and corruption.

Switzerland

1. Policy

Switzerland's revised Federal Law on Government Procurement (entry into force on 1 January 2021) includes the following RBC objectives:

Environment

When the place of operation of the supplier is within Switzerland, suppliers are required to comply with local environmental regulations. However, if the location is outside Switzerland, the supplier needs to comply with international environmental conventions designated by the Federal Council.

Labour rights and gender considerations

If the place of the contract's performance is Switzerland, the supplier is required to comply with local regulations on the protection of workers, working conditions and on equal pay for men and women. If the place of performance is abroad, the bidder needs to comply with at least the eight International Labour Organisation's Core Conventions. In addition, the contracting authority may require compliance with other important international labour standards, in the form of principles derived from other ILO conventions provided Switzerland has ratified them.

Long-term unemployed people

In specific situations, elderly workers are also taken into account within the above-mentioned law.

Integrity

One of the objectives of the above-mentioned law is transparency and the fight against collusion and corruption. To achieve these objectives, contracting authorities must take measures against conflicts of interest, collusion and corruption. At the government's level, corruption is tackled by the Interdepartmental Working Group on Combatting Corruption, which comprises all offices of the Federal Administration. The working group has elaborated the first Anti-Corruption Strategy of the Federal Council, which is expected to be adopted soon.

Strategic frameworks

- Sustainable Development Strategy of the Federal Council
- Recommendation on Sustainable Buildings by the Co-ordination of Federal Building and Real Estate Authorities (KBOB)
- Recommendation on sustainable procurement (CA)
- National Action Plan on Business and Human Rights
- Charter for equal pay in the public sector
- CSR Position Paper and Action Plan

2. Implementation

Tender phase

- During the tender phase, more specifically in the development of award criteria, the Swiss contracting authorities consider sustainable development and Life Cycle Cost among the possible criteria. For contracts not subject to international agreements, the contracting authorities may take into account the extent to which tenderers offer reintegration of long-term unemployed people and elderly workers as an award criteria.
- Contracting authorities may use technical specifications to allow the preservation of natural resources or to protect the environment.
- The Swiss contracting authorities can exclude or sanction suppliers that do not comply with provisions related to the protection of employees, labour conditions, equal pay and environmental regulations.
- Suppliers who have been convicted for bribery can be debarred from government contracts for a certain period.

3. Good Practices

- Regarding compliance and monitoring of social considerations, Switzerland has implemented a reporting system producing an annual public report. The reporting is mandatory for the procurement of textiles, cleaning services, all-purpose cleaner, paper, ICT and mobile phones, furniture, vehicles and infrastructure.
- To reduce the gender pay gap by enhancing equal pay between men and women, the Federal Office for Gender Equality is mandated by the Confederation's procurement offices to conduct equal pay controls and thus to monitor the compliance of such controls in Switzerland's procurement.
- The Swiss government developed a tool called Logib that works as a standard analysis tool to check that companies pay equally, regardless of gender. Suppliers with at least 100 employees must provide proof of compliance with equal pay based on Logib.

Ukraine

1. Policy

The Ukrainian Public Procurement Law includes the following RBC objectives:

Environment

Human rights

People with disabilities

Integrity

Other policy frameworks

- Even if the labour rights objective is not included in the new Public Procurement Law, it is included and regulated in a dedicated policy framework, the Code of Labour. Some labour rights requirements in this code have to be applied to public procurement contracts.

Strategic frameworks

- The Public Procurement Strategy 2016-2022 (Road-Map) includes most of the aforementioned RBC objectives, except for considerations related to gender, minorities and long-term employment. However, the aspects not included are reflected or mentioned in sectorial strategic documents of the Ukrainian Government (e.g. Actions Programme of the Cabinet of Ministers).

2. Implementation

Pre-tender phase

- According to the new Procurement Law, the technical specifications for a tender may include environmental aspects.

Tender phase

- Contracting authorities may require bidders to confirm that their proposed goods, services or works meet environmental characteristics set in the tender documents.
- When the final users of purchase are natural persons, the contracting authority must ensure that the technical specifications take into account the accessibility criteria for persons with disabilities or specific design conditions for all users.

3. Good Practices

- The Ukrainian government adopted a new Procurement Law that came into force in April 2020, introducing more social and environmental aspects. Social aspects were not an essential part of the previous Public Procurement Law of 2015, and environmental considerations were not mandatory.
-

Integrating Responsible Business Conduct in Public Procurement

Society has become increasingly aware of environmental and human rights-related risks in global supply chains in recent years. Public procurement can make a positive contribution to economic, environmental and social progress. If not used strategically, though, people and the planet may face more negative impacts. Meanwhile, governments and businesses face calls to take greater responsibility for their purchasing decisions. Risk-based supply chain due diligence can help public buyers to boost responsible business behaviour through public procurement.

This report takes stock of current practices integrating responsible business conduct (RBC) in public procurement and identifies possible avenues to increase the impact of public procurement strategies to promote responsible business conduct objectives. Based on a survey with both OECD Members and Adherents to OECD instruments on public procurement and RBC, it covers a wide geographical range and features data focused on responsible business conduct aspects in public procurement. The report encourages policy makers and practitioners in public procurement and RBC to collaborate with all relevant stakeholders, drawing on good practices from across policy areas.

PRINT ISBN 978-92-64-66393-0
PDF ISBN 978-92-64-67354-0

9 789264 663930