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# Legal Review for the Implementation of Sustainable Public Procurement in Ukraine



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## INTRODUCTION AND METHODOLOGY

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The proposed analysis of the existing legal possibilities for the introduction of Sustainable Public Procurement (SPP) in Ukraine was developed based on the review of a number of documents.

Firstly, the applicable legal and regulatory framework was assessed, in particular:

- International treaties and agreements ratified by Ukraine the terms of which may affect SPP;
- The Constitution of Ukraine;
- The Ukrainian law 'On Public Procurement' which is the main regulatory and legal act for public procurement;
- The Ukrainian laws which regulate specific aspects of procurement in specific areas and for individual products;
- The budgetary and financial legislation;
- Strategic and policy norms and regulations;
- Existing regulations establishing environmental, social and economic standards which can contribute to, influence, or be used in SPP;
- Draft legal acts that may contribute, influence, or be used in SPP.

In addition, it was important to review bidding documents in order to identify the existing practices of including sustainability elements in the bidding processes. A number of domains were assessed with this regard:

- Construction, building materials and machinery;
- Computers, office appliances and software;
- Household goods, cultural and household products;
- Light industry (consumer goods manufacturing);
- Furniture;
- Health and social services;
- Research and development;
- Real estate and rental;
- Energy, fuel, chemicals;
- Printing, publishing;
- Agriculture;
- Food industry and catering;
- Technological equipment, components and materials, maintenance;
- Vehicles and components, maintenance, transportation services;
- Goods, works and services;
- Metals and metal products;
- Consulting services, training;
- Housing and utilities, consumer services and special equipment;

- Construction, building materials and special machinery.

The bidding documents reviewed were extracted from the official public procurement web portal [www.tender.me.gov.ua](http://www.tender.me.gov.ua) for the period starting from 01.04.2014.

The analysis of the findings of the survey conducted among contracting authorities was also useful to identify the current public procurement practices and define the implementation challenges for SPP. Lastly, this report contains a comparative analysis of the current legislation in force in both developed and developing countries with regard to sustainable and green public procurement. The analysis focuses on the European Union Member States, Japan, the United States of America, Mauritius, Colombia, Uruguay, Lebanon, Tunisia, Chile and Costa Rica.

## CHAPTER 1. MAJOR INTERNATIONAL TREATIES AFFECTING SPP

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From among the major international treaties of Ukraine which affect SPP, we can distinguish three main platforms of international law and treaties, namely:

- i. **International economic law** which regulates international trading relations among the states, international organizations and other stakeholders, and applies to issues of international trade in goods and commodities, services, works, property rights, and monetary assets. In this legal field, one should highlight the recommendations of the UN Commission on International Trade Law (UNCITRAL).

Also, one should include the *WTO Agreement*, according to which all WTO member states commit to the implementation of the ground agreements and legal documents with the combined title 'Multilateral Trade Agreements' (MTS). Thus, from a legal point of view, the WTO system is a kind of multilateral contract (package of agreements) the rules and regulations of which govern about 97% of the total world trade in goods and services. One of the agreements included in the MTS is the Agreement on Government Procurement. Since 2009, Ukraine has enjoyed observer status to the WTO Agreement on Government Procurement. Since 2012, negotiations on accession to the Agreement have been underway.

- ii. **International law in the field of environmental protection.** Ukraine is a party to over 100 international instruments of universal (global) regional and bilateral nature. In particular, the international instruments in the field of environment encompass more than 10 agreements related to SPP, in particular the UN Framework Convention on Climate Change, the Agreement on Cooperation in the Field of Ecology and Environmental Protection, the Rio Declaration on Environment and Development, the Aarhus Convention, the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary. Watercourses and International Lakes, the Stockholm Declaration on the Human Environment.
- iii. **International law in the field of social protection.** Primarily, the following international conventions ought to be highlighted:
  - a. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999. (Convention No. 182);
  - b. Convention concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention 87);
  - c. Convention concerning Forced or Compulsory Labour, 1930 (№ 29);
  - d. Convention on the Abolition of Forced Labour, 1957 (№ 105);

- e. Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (№ 100);
  - f. Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (№ 111);
  - g. Convention concerning Minimum Age for Admission to Employment, 1973 (№ 138);
  - h. Convention concerning the application of the Right to Organise and Collective Bargaining, 1949 (№ 98);
  - i. Convention on the Rights of Persons with Disabilities.
- iv. **The EU law (regulations, directives, resolutions, recommendations and other instruments),** and the strategic documents of the EU and EU member states will be considered further in other sections below.

## 1. International agreements which may relate to SPP

Ukraine is actively involved in international relations and is a party to a significant number of international agreements, including those on economic, environmental and social issues.

The key agreements that may affect SPP include the following:

<p><b>The Charter of European Sustainable Cities and Towns Towards Sustainability (the Aalborg Charter)</b></p>	<p><b>The Charter was signed by several Ukrainian cities (Odessa, Sumy, Myrgorod, Nikopol, Mykolaiv, and Donetsk).</b></p> <p><b>The cities signatories of the Charter, declared their commitment to social justice, sustainable economies and environmental sustainability.</b></p>
<p><b>Treaties and conventions which relate to the environmental aspect of SPP</b></p>	
<p><b>The 1979 Geneva Convention on Long-range Transboundary Air Pollution</b></p>	<p>The Convention aims to promote international cooperation in the fight against air pollution, including long-range transboundary air pollution. Its fundamental principles include:</p> <ul style="list-style-type: none"> <li>a) The Contracting Parties are determined to protect man and his environment against air pollution and shall endeavour to limit and, as far as possible, gradually reduce and prevent air pollution including long-range transboundary air pollution;</li> <li>b) The Contracting Parties shall cooperate by means of exchanges of information, consultation, research and monitoring;</li> <li>c) Consultations shall be held, upon request, at an early stage between, on the one hand, Contracting Parties which are actually affected by or exposed to a significant risk of long-range transboundary air pollution and, on the other hand, Contracting Parties within which and subject to whose jurisdiction a significant contribution to long-range transboundary air pollution originates, or could originate, in connection with activities carried on or contemplated therein.</li> </ul>

<p><b>The Stockholm Convention on Persistent Organic Pollutants</b></p>	<p>The Convention aims to protect human health and the environment from persistent organic pollutants.</p> <p>The Convention defines the list of chemicals, the production and use of which should be eliminated, or restricted.</p>
<p><b>The UN Framework Convention on Climate Change and the Kyoto Protocol</b></p>	<p>The overarching objective of the Framework Convention and any related legal instruments is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a timeframe sufficient to allow ecosystems to adapt naturally to climate change, whereas food production is not threatened, and economic development can proceed in a sustainable fashion.</p> <p>The principles which guide the Parties in achieving the Convention’s objectives and implementation of its provisions:</p> <ol style="list-style-type: none"> <li>1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.</li> <li>2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.</li> <li>3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.</li> <li>4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate</li> </ol>

	<p>change.</p> <p>5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.</p>
<b>The Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention)</b>	The Convention obliges to perform environmental impact assessment (EIA) in the transboundary context, if the proposed activity may have a significant adverse transboundary impact (a list of such activities is provided in the Convention).
<b>The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal</b>	<p>The overarching objective of the Basel Convention is to protect human health and the environment against the adverse effects of hazardous wastes. Its scope of application covers a wide range of wastes defined as “hazardous wastes” based on their origin and/or composition and their characteristics, as well as two types of wastes defined as “other wastes” (household waste and incinerator ash).</p> <p>The provisions of the Convention centre around the following principal aims:</p> <ul style="list-style-type: none"> <li>(i) the reduction of hazardous waste generation and the promotion of environmentally sound management of hazardous wastes, wherever the place of disposal;</li> <li>(ii) the restriction of transboundary movements of hazardous wastes except where it is perceived to be in accordance with the principles of environmentally sound management; and</li> <li>(iii) A regulatory system applying to cases where transboundary movements are permissible.</li> </ul>
<b>The Convention on International Trade in Endangered Species of Wild Fauna and Flora, Endangered (CITES)</b>	The purpose of the Convention is to ensure that international trade in wild animals and plants does not create a threat to their survival; the treaty covers different degrees of protection for more than 33,000 species of animals and plants
<b>The Montreal Protocol on Substances that Deplete the Ozone Layer</b>	The Protocol envisages for each group of halogenated hydrocarbons a fixed period of time within which it shall be taken out of production and excluded from use.
<b>The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.</b>	The objective of the Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties. The Convention applies to banned or severely restricted chemicals and severely hazardous pesticide formulations.

<b>The Convention on Biological Diversity</b>	The objectives of the Convention are the conservation of biological diversity, the sustainable use of its components.
<b>The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (The Aarhus Convention)</b>	The purpose of the Convention is to support the protection of individuals' rights to a healthy environment for their well-being, provide access to information, and ensure public participation in decision-making and access to justice in environmental matters. The Convention obliges the Parties to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the framework of voluntary eco-labelling or eco-auditing (environmental impact assessment) schemes or by other means.
<b>The Convention on the Transboundary Effects of Industrial Accidents</b>	The Convention is intended to protect humans and the environment against industrial accidents. The Convention aims to prevent the occurrence of accidents or reduce their frequency and severity, as well as mitigate the effects thereof.
<b>The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter</b>	Convention shall take all practicable steps to prevent the pollution of the sea by the dumping of waste and other matter that is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.
<b>International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)</b>	<p>The Convention envisages measures for reducing and preventing pollution of the marine environment by oil and other substances, caused by ships in operation.</p> <p>Annexes to the Convention contain regulations covering the major sources of pollution from ships:</p> <ul style="list-style-type: none"> <li>I Prevention of pollution by oil</li> <li>II Control of pollution by noxious liquid substances</li> <li>III Prevention of pollution by harmful substances in packaged form</li> <li>IV Prevention of pollution by sewage from ships</li> <li>V Prevention of pollution by garbage from ships</li> </ul>
<b>The Antarctic Treaty and the Protocol on Environmental Protection to the Antarctic Treaty</b>	<p>The Treaty which introduced the principle of Antarctica to be used for peaceful purposes only, guarantees freedom of scientific research in the region, exchange of information on its findings and free access to it. The Treaty plays a key role in international efforts to combat global climate change, as scientific studies implemented in the framework thereof allowed to simulate the progress of climate change and its impact on the ecosystem of the region and the world.</p> <p>The Protocol on Environmental Protection to the Antarctic Treaty designates Antarctica as a 'natural reserve, devoted to peace and science', and sets out the basic principles applicable to human activities in Antarctica, and in Article 7 prohibits all activities relating to mineral resources in Antarctica, other than scientific research.</p>



## Agreements having effect on the social component of SPP

<p><b>The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999. (Convention No. 182)</b></p>	<p>The Convention undertakes to prohibit and eliminate the worst forms of child labour, including work, which, by its nature or the circumstances where it is carried out, is likely to harm the health, safety or morals of children.</p>
<p><b>The Convention concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention 87)</b></p>	<p>The Convention provides for the right of workers and employers to create trade unions of their choice (federation, confederation) without prior authorization, as well as the right to join trade unions on one condition – subordination to their statutes. Public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.</p>
<p><b>The Convention concerning Forced or Compulsory Labour, 1930 (№ 29)</b></p>	<p>The Convention undertakes to suppress the use of forced or compulsory labour in all its forms.</p>
<p><b>The Convention on the Abolition of Forced Labour, 1957 (№ 105)</b></p>	<p>The Convention undertakes to suppress forced or compulsory labour, and not to resort to any form of it.</p>
<p><b>The Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (№ 100)</b></p>	<p>The Convention undertakes to ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value, including and with respect to work performed under contracts with the state authorities.</p>
<p><b>The Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (№ 111)</b></p>	<p>The Convention undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.</p>
<p><b>The Convention concerning Minimum Age for Admission to Employment, 1973 (№ 138)</b></p>	<p>The Convention obliges the states Parties to pursue a national policy designed to ensure the effective abolition of child labour and gradual increase in the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons.</p> <p>The Convention defines the minimum age for admission to employment, and also determines the list of sectors of the economy where the provisions of the Convention shall apply, giving the country the right to independently determine such branches of economic activity and types of enterprises.</p>
<p><b>The Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949 (№ 98)</b></p>	<p>The Convention is one of the main normative legal acts at international level governing contractual regulation of labour relations. The Convention sets out the right to negotiate. Article 4 of the Convention stipulates that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations, on the one hand, and workers' organizations, on the other hand, with a view to the regulation of terms and conditions of</p>

	employment by means of collective agreements. The Convention does not apply to civil servants.
<b>Convention on the Rights of Persons with Disabilities</b>	The Convention obliges the states Parties to ensure and promote the full realization of all human rights and fundamental freedoms by all persons with disabilities without any discrimination on grounds of disability. To this end, all policies and programs should take into account the protection and promotion of human rights of persons with disabilities, and effective legislation should be adopted.

## 2. The EU-Ukraine Association Agreement

On 18.06.2013, the EU-Ukraine Association Agenda was signed with the view **to facilitate the preparation and implementation of the Association Agreement**, which provides for cooperation in various areas, including **harmonization of Ukraine’s legislation** in the sphere of public procurement with the acquis, **as well as the promotion of sustainable development and ‘green economy’ in Ukraine.**

*The EU-Ukraine Association Agreement* (the full text thereof was signed on 06.27.2014) shall significantly impact the implementation of SPP in Ukraine.

The Association Agreement between Ukraine and the EU is a massive agreements’ pact that **covers the main sectors of the economy.**

**The issue of public procurement is covered by Chapter 8 of the Agreement.** According to the Agreement, the parties recognize the contribution of a transparent, non-discriminatory, open and competitive tender process to sustainable economic development.

Under the Agreement, **Ukraine is required to successively approximate its legislation in the field of public procurement to the respective EU acquis**, including **the implementation of Directive 2004/18/EC** of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts; and **Directive 2004/17/EC** of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

In the Agreement, particular attention is paid to the **stability in trade relations** (Chapter 13, ‘Trade and Sustainable Development’).

According to the Agreement:

- The Parties confirmed their intention to **achieve the goal of sustainable development** and recognized the need to take into account the economic, social and environmental interests of the society, not only for the current period, but also for future generations;
- Although each Party retains the right to practice their own particular level of environmental protection and work in accordance with internationally recognized principles and agreements, the Parties proceed from the fact that such national levels of environmental protection and labour should be high enough. Ukraine undertook to approach its legislation and administrative practices to the relevant law and practices of the EU;
- The Parties reaffirmed **the need to ensure compliance with core international labour standards**, namely: freedom of association and the right to collective bargaining, elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and discrimination in employment and career choices;
- The Parties noted that **labour standards should not be used for protectionist trade purposes;**

- The Parties committed that their environmental policy will be based on the principles providing for the application of preventive measures, and priority compensation of the damage caused to the environment, and fining pollutants;
- The Parties undertook **to promote and encourage trade in environmentally friendly goods, services and technology** and foreign direct investment in their development, to promote the use of renewable energy and energy saving products, environmental labelling, etc.;
- The Parties undertook **to promote trade in legally harvested and sustainable forest products**, as well as fisheries' management based on the principles of sustainable development;
- The Parties undertook not to reduce the achieved level of environmental and labour protection for encouraging trade or investment.

### 3. The Treaty establishing the Energy Community

*(Signed on 25.10.2005, entered into force in Ukraine on 01.02.2011)*

One of the objectives of the Energy Community is **to provide legal and economic framework on energy products and materials in order to improve the environmental situation** in the sphere of energy products and related energy efficiency sphere, promote renewable energy sources, and define the conditions for energy trade in the single regulatory space.

The Agreement, when enacted, obliges the Parties to carry out the construction and operate new power plants **in accordance with the EU legal framework in the field of environment**, namely:

- Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of March 3, 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003;
- Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC;
- Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants;
- Chapter 4 (2) of the Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

The Agreement provides for the possibility of the Energy Community to implement measures aimed at stimulating development in the field of renewable energy and energy efficiency in terms of energy security, environmental protection, social cohesion and regional development.

Indirect impact on the SPP may be effected by the **EU-Ukraine Financing Agreement №ENPI/2012/023-677 of 18.12.2013** (entered into force for Ukraine 20.12.2013) under the program 'Continued support for the implementation of Ukraine's energy strategy', which aims to:

- Reduction of the environmental pollution related to the energy sector and in particular progress towards implementation of the Large Combustion Plant directive (2011/80);
- Improvement of oil products quality and introduction of a system for quality checks with a view of adoption of EURO-4 and EURO-5 standards;
- Improvement of energy security through set up of the system of oil and oil products stocks.

The agreement stated that the program will have a positive impact on environmental sustainability, because two of the three specific objectives (in implementation of the Directive on large heating systems and improvement of the quality of oil products) are based on the application of environmental and energy policies. Whereas the

program has a direct impact on good governance, human rights and gender equality, which is a positive prerequisite to solving sustainable development issues.

Liane Schalatek in her writing 'Democratizing Financing for Sustainable Development: Gender Equality is the Key' claims that sustainable development shall be the indicator for assessing democratization processes from 2015 onwards.

## CHAPTER 2. CONSTITUTIONAL & ADMINISTRATIVE LAW ON PUBLIC PROCUREMENT

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### 1. Constitutional norms regulating the economy and their implications in the field of public procurement

The Constitution of Ukraine is central to Ukrainian legislation and encompasses the basic principles of the national legal system.

The Constitution is the Fundamental Law of the State, has supreme legal force and regulates the most important civil relations, defining the principles of government organization, and thus securing the foundations of the constitutional system; guarantees the rights and freedoms of man and citizen, system; determines the organization and competence of the state authorities, state's territorial structure, and national symbols.

The formation of fiscal policy, as well as regulations protecting competition in business can also be viewed as public procurement-related constitutional economic norms.

According to Article 95 of the Constitution of Ukraine, **government spending on social needs, as well as the size and targeted allocation of these funds are determined solely by the Law on the State Budget of Ukraine**, developed and enforced by the Cabinet of Ministers of Ukraine (Article 116).

**Preparation and implementation of regional and district budgets is conducted by local state administrations** (Article 119).

**Local governments approve programs of socio-economic development and control their implementation**; they also approve local budgets and control their implementation (Article 143).

According to Article 42 of the Constitution of Ukraine, **the State shall ensure the protection of competition in business**, prevent the abuse of monopoly position in the market, and unlawful restriction of competition and unfair competition.

### 2. Constitutional provisions in the field of sustainable development, environment and social concerns

In the **field of sustainable development, environment and social issues** the Constitution of Ukrainian provides for:

- **Obligation of the state to ensure environmental safety and maintenance of ecological balance** in Ukraine (Article 16);
- **Equality of citizens' constitutional rights**; no privileges or restrictions shall be established based on any grounds, including on grounds of sex; women are given equal opportunities with men in employment and remuneration for it (Article 24);
- **The right to work**, which includes the opportunity to earn one's living by work which he/she freely chooses or accepts; forced labour is prohibited; everyone has the right to adequate, safe and healthy working

conditions, wages not less than stipulated by the law; the employment of women and minors in hazardous activities endangering their health is prohibited; the right to timely payment for work is protected by law (Article 43);

- The right to the **environment that is safe for human life and health**, and to compensation for violation of this right; everyone is guaranteed the right to free access to information on environmental conditions, the quality of food and household items, as well as the right to disseminate such information (Article 50).

- The obligation of each not to harm nature (Article 66).

- The **duty of the State to protect the rights of consumers**, to exercise control over the quality and safety of products and all kinds of services and activities (Article 42)

- **The use of the property may not be harmful to the rights, freedoms and dignity of citizens** and the interests of society, aggravate the ecological situation and the natural quality of the land (Article 41)

- The state **protection of all subjects of ownership and economic entities related to natural resources**, shall be combined with the need for the state to ensure social orientation of the economy (Article 13). In this case, social orientation of the economy means that there must be a traceable ratio of private and public interests in the process of reforming ecological relations, implementation of subjective rights on natural resources and other socio-economic rights guaranteed by the Constitution of Ukraine. Public authorities are required to predict the consequences of certain changes and consider the possible social consequences of the adoption of any law or regulation.

## CHAPTER 3. ADMINISTRATIVE AND REGULATORY CONDITIONS FOR THE IMPLEMENTATION OF SPP

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### 1. Overview of the financial and budgetary regulations

Financial and budget management is based on the provisions of the **Budget Code of Ukraine, the Law on the State Budget, the Decree of the Cabinet of Ministers of Ukraine of 28 February 2002 №228** 'On Approval of the Procedure for Preparation, Review, Approval and Implementation of the Basic Requirements for Budgeting in Public Institutions'.

In some cases, **the use of the state budget's funds must be confirmed by specific acts**. For example, the Procedure for the use of funds provided in the state budget for the implementation of measures aimed at reducing emissions (increase in absorption) of greenhouse gases was approved by the Decree of the Cabinet of Ministers of Ukraine of March 23, 2011 №348, Procedure for state financing of capital construction was approved by the Decree of the Cabinet of Ministers of Ukraine of 27 December 2001 №1764, and others.

**The budgetary and financial legislation contains no obstacles for the implementation of SPP.**

### 2. Description of the legal framework for public procurement, the main objectives, organization of public procurement, and respective legal remedies

The conditions, order and procedures for procurement of goods, works and services is determined exclusively by the Law of Ukraine 'On Public Procurement'. For certain activities, specific procurement procedures are envisaged, regulated by the Law of Ukraine 'On Peculiarities of Procurement in Specific Areas of Economic Activity'.

## Law of Ukraine on Public Procurement

**Thresholds triggering the application of the Law ‘On Public Procurement’ and requiring competitive bidding** include:

- **100 thousand hryvnias and above** – in the procurement of goods and services;
- **1 million hryvnias and above** – in the procurement of works.

**For procurement in the amounts not exceeding the thresholds, competitive bidding is not required.**

Tender boards formed by contracting authorities carry the responsibility for organization and conduct of competitive bidding.

**The Law of Ukraine ‘On Public Procurement’ defines the following procurement procedures:**

- open tender (public auction);
- two-stage bidding;
- request for quotation;
- pre-qualification of the participants;
- negotiated procedure (single tender/procurement on a single bidder basis).

According to the Ministry of Economic Development **most commonly used procedure among competitive procedures is open tender** (in 2013, open tenders totalled 44.95% out of the 53.7% of competitive procedures, 46.31% were purchases from one participant).

**The law provides for the implementation of procurement procedures by electronic means**, as well as the possibility of a competitive selection through auctions using electronic means.

The law also provides for the use of framework agreements.

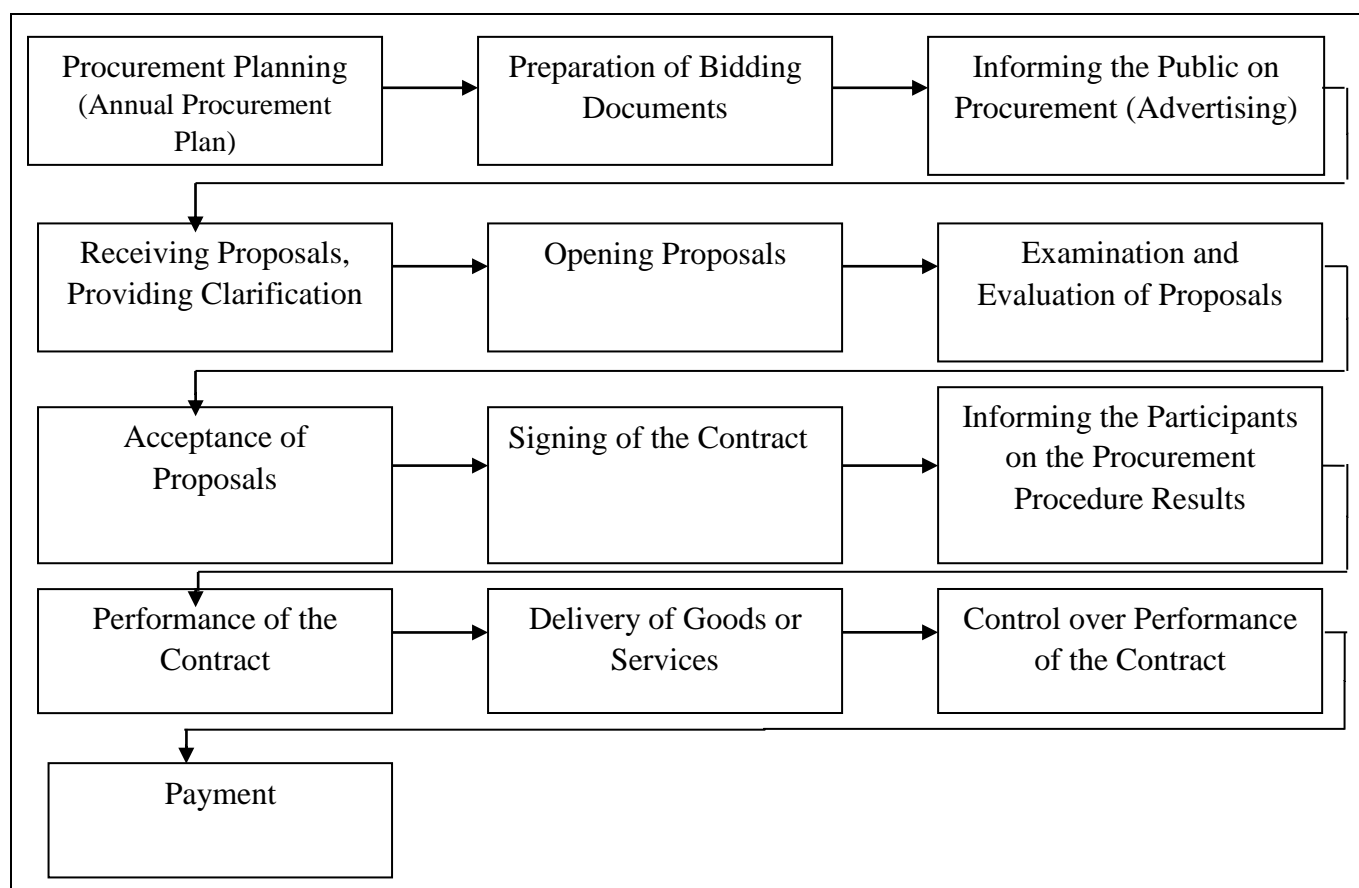
The law allows contracting authorities to deploy the following **qualification criteria**:

- Availability of equipment, and material and technical base;
- Availability of suitably qualified employees who have the necessary knowledge and experience;
- The presence of documented experience in similar contracts;
- Availability of financial resources (balance sheet, income statement, statement of cash flows, a certificate from the servicing bank on the absence (presence) of outstanding loans).

**Criteria for evaluation of bids:**

- Price – for goods, works and services, produced, performed or provided not under separately developed specifications/ToR (technical design), for which there is a permanent market;
- In the case of purchase having complex or specialized nature (in particular, consulting services, research, development or experiments, design and engineering works), – the price, along with other evaluation criteria, in particular such as: the quality of work and services; terms of payment; completion date; warranty service/maintenance; operating costs; technology transfer and qualification development of managerial, scientific and administrative staff, including the use of local resources, in particular means of production, labour and materials for the manufacture of goods, works, services offered by the participant.

### Organizational chart (steps) of public procurement procedures



The law provides for the following remedies:

- Complaints to the body of appeal (Antimonopoly Committee);
- Submission of complaints about the award of procurement contracts to the court.

### Law of Ukraine 'On Peculiarities of Procurement in Specific Areas of Economic Activity'

The Law of Ukraine 'On Peculiarities of Procurement in Specific Areas of Economic Activity' applies to entities being contracting authorities and operating in such areas, provided that the purchase is wholly or partly carried out at the expense of budget funds, and provided that the purchase price of the goods (products) or service(s) is equal to or greater than 100 thousand hryvnias, and works – equal to or greater than 1 000 000 hryvnias; or carried out at their own expense, provided that the purchase price of the goods (products) or service(s) is equal to or exceeds 1 000 000 hryvnias, and for works – 5 000 000 million hryvnias. The list of specific spheres of economic activity is as follows:

- Production, transportation and supply of thermal energy;
- Production, transmission, distribution, sale, supply of electricity and centralized dispatching (operational and technological) control over the unified energy system of Ukraine;
- Production, transportation and supply of drinking water;
- Maintenance of the central drainage;
- Provision of services on operation of railway infrastructure for public use;

- Maintenance of urban electric transport and operation of its facilities for the provision of transportation services;
- Provision of bus transportation services, and the services of ports and airports;
- Provision of air navigation services for aircrafts;
- Provision of postal services;
- Geological study (including research and industrial mining) oil and gas subsurface deposits of coal and other solid fuels;
- Maintenance and operation of telecommunication networks in the fixed public communication or the provision of public telecommunications services;
- Providing transportation, storage, processing and crude oil products;
- Support to the functioning of the electricity market, day-ahead market, balancing market, ancillary services market, as well as the provision of services to the system operator, settlement administrator, commercial accounting administrator, market operator, guaranteed buyer in accordance with the provisions of the Law of Ukraine 'On Operating Principles of Electricity Market in Ukraine';
- Providing ancillary services in the support services market and services equalizing the conditions for competition in accordance with the provisions of the Law of Ukraine 'On Operating Principles of Electricity Market in Ukraine'.

**Procurement practices in these areas also abide by the Law of Ukraine 'On Natural Monopolies', 'On Protection of Economic Competition', 'On Postal Service', 'On Peculiarities of the procurement of postal services, postage stamps and stamped envelopes for public funds', and Ordinance by the Antimonopoly Committee of Ukraine from 28.11.2012, №874-p 'On Approval of the Procedure for Establishment and Maintenance of a Consolidated List of Natural Monopolies'.**

**A contracting authority may purchase the following disregarding the procurement procedures stipulated by the Law of Ukraine 'On Public Procurement' and the Law of Ukraine 'On Peculiarities of Procurement in Specific Areas of Economic Activity':**

1. goods, works and services that are directly produced, performed, or provided solely for the activities in the above areas by:
  - a) their subsidiaries;
  - b) enterprises and business entities where the contracting authority holds 50 percent or more in the authorized capital;
  - c) enterprises, business entities that own 50 percent or more of the authorized capital of the contracting authority – at their own expense;
  - d) enterprises and institutions within a single manufacturing complex of railway transport; and business entities, where 100 percent of shares (stocks) belong to the state, the purpose of their activities being support of the transportation process;
2. fuel and energy resources for the production of electricity or heat energy; geological surveying of mineral deposits (including non-irradiated fuel elements (cartridges/ fuel pins) for nuclear reactors);
3. goods purchased for resale to third parties, provided that the contracting authority does not have a monopoly (dominant) position on the market of such products, and other business entities are free to sell on the same conditions as the contracting authority;
4. crude hydrocarbons for further processing and sales, and any services related and necessary therefore: processing, manufacturing, transportation, chartering, insurance, handling, freight, storage,



discharge/filling, quantity and quality inspection, customs and brokerage services, information and analytical services on market prices and stock quotes, financial services, exchanges, auctions, electronic trading systems;

5. goods, works and services wholly or partly paid from the budget, provided that the value of the subject of procurement of goods (products) or service(s) does not exceed 100 thousand hryvnias, and for works – 1 million hryvnias;
6. goods, works and services purchased at their own expense, provided that the value of the subject of procurement of goods (products) or service(s) does not exceed 1 million hryvnias, and for works – 5 million hryvnias;
7. goods, works and services, where special laws identify a single seller (supplier, contractor) of such goods, works and services;
8. goods, works and services, if the prices (tariffs) for them are approved by the state collective bodies or other authorities within their competence, or determined in the manner prescribed by the said authorities, in particular if such prices are determined at auctions;
9. goods, works and services under production sharing agreements concluded in accordance with the Law of Ukraine 'On Production Sharing Agreements'.
10. goods and services in the day-ahead market, balancing market, and support services market pursuant to the provisions of the Law of Ukraine 'On Operating Principles of Electricity Market in Ukraine';
11. electrical energy purchased and sold in respective market by a guaranteed buyer, market operator, system operator, the party responsible for the balance of the balancing group, the party responsible for the balance of the balancing group of producers under the green tariff;
12. services of system operator, settlement administrator, commercial accounting administrator, market operator, and guaranteed buyer in accordance with the provisions of the Law of Ukraine 'On Operating Principles of Electricity Market in Ukraine';
13. services on equalizing the conditions for competition in accordance with the provisions of the Law of Ukraine 'On Operating Principles of Electricity Market in Ukraine'.

### 3. Roles and responsibilities in the legal administration of public procurement

**The authorized body** implementing the state policy in the sphere of public procurement is **the Ministry of Economic Development and Trade of Ukraine** [www.me.gov.ua](http://www.me.gov.ua). Performing the functions specified, the Ministry of Economic Development: develops and approves the regulations and documents required for the implementation of the Law of Ukraine 'On Public Procurement'; monitors the procurement; summarizes the procurement practices, including international ones; take measures to ensure effective and efficient use of budgetary funds, and maximum savings in government procurement; develops exemplary training program for the organization and implementation of procurement; et al.

**The appeals body** is **the Antimonopoly Committee of Ukraine** – an independent body for adjudication of complaints, as well as the body controlling the observance of competition laws by the participants of procurement procedures and contracting authorities [www.amc.gov.ua](http://www.amc.gov.ua).

Control functions in the field of public procurement are also performed by:

- **the State Fiscal Service** (a state financial control body) [www.dkrs.gov.ua](http://www.dkrs.gov.ua),
- **the Court of Auditors** (an organ of parliamentary control over the use of the state budget funds) [www.ac-rada.gov.ua](http://www.ac-rada.gov.ua),

- **the State Treasury** (operational control of the payments from the state and local budgets in accordance with the procurement contracts) [www.treasury.gov.ua](http://www.treasury.gov.ua).

The division of powers among the participants in the process of legislation development and amendment:

- The Supreme Council of Ukraine (Verkhovna Rada) makes the laws.
- The right of legislative initiative in the Supreme Council belongs to the President of Ukraine, Members of Parliament (deputies) of Ukraine and the Cabinet of Ministers of Ukraine.

In case of the introduction of a draft law by the Cabinet of Ministers of Ukraine:

- the central executive authority responsible for the scope of the law prepares proposals (draft law);
- the draft law is coordinated with (approved by) all relevant authorities;
- the draft law is submitted for consideration to the Cabinet of Ministers of Ukraine;
- the draft law is reviewed and agreed by the Cabinet of Ministers of Ukraine;
- the draft law is submitted to the Supreme Council of Ukraine for adoption.

The same procedure, except paragraph 5, applies to acts of the Cabinet of Ministers of Ukraine. After consideration and consideration of the Cabinet, the draft is approved.

#### 4. Comparative analysis of the legal systems in developed and developing countries that are implementing sustainable (green) public procurement

In 1995, Austria, Denmark, Finland, Germany, Netherlands, Sweden and the UK declared their commitment to actively use the principles of environmentally sound procurement (environmentally responsible purchasing). They have developed and introduced a system of state order based on purchases of products and services that minimize the negative impact on the environment. In 2002, the OECD countries adopted the 'Recommendation of the Council on Improving the Environmental Performance of Public Procurement'. Several years later, the EU Member States consolidated a number of initiatives developing these recommendations at the legislative level.

##### Legislative aspect of sustainable procurement implementation

In developed countries, the use of environmental criteria has long been a requirement of the laws governing public procurement.

##### *In the European Union*

In 2004, the Council and the European Parliament adopted two directives aimed at clarifying, simplifying and modernizing the existing European legislation on public procurement.

- [Directive 2004/18/EC](#) covers public works contracts, public supply contracts and public service contracts.
- [Directive 2004/17/EC](#) covers the procurement procedures of entities operating in the water, energy, transport and postal services' sectors.

In contrast with the earlier EU Directives governing procurement, **the 2004 Directives contain specific reference to the possibility of including environmental considerations in the contract award process**. The preamble to Directive 2004/18/EC identifies the objective of clarifying how contracting authorities "...may contribute to the

protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts.”

Pursuant to the Directive’s provisions, member states, when conducting public procurement, are permitted the following:

- to include environmental requirements in technical specifications for goods and services (Article 23(3)b);
- to use eco-labelling (Article 23(6));
- to set social and environmental conditions for the performance of contracts (Article 26);
- to request that economic operators demonstrate their compliance with environmental obligations (Article 27);
- to request that economic operators demonstrate their ability to perform a contract in accordance with environmental management criteria (Articles 48(2)f and 50); and
- to apply the award criteria based on environmental characteristics (Article 53).

To date, the formal requirements for the implementation of sustainable criteria have been legislatively implemented in three areas:

- office computer equipment (Regulation №106/2008),
- motor vehicles (Directive 2009/33/EC)
- construction (Directive № 2010/31/EU).

These requirements are reflected in domestic legislation of each member state of the European Union.

### *Sustainable procurement criteria*

In addition, the European Commission has published on its official website the criteria to be used in sustainable procurement in 21 domains: Office and Photocopier Paper, Household Cleaning Products and Services, Office IT equipment, Construction, Transportation, Furniture, Electricity, Food and Catering Services, Textiles, Horticultural Products and Services, Insulation Material, Hardwood Flooring, Wall Panels, Thermal Power Plants (TPP), Road Construction and Signs, Street Lighting and Traffic Lights, Water Supply and Sewage Disposal, Household Lighting, Toilets and Urinals, Plumbing, Photographic Equipment, Electrical and Electronic Equipment used in the sector of healthcare. These criteria are based on the most stringent requirements in terms of energy or other resources, supplies, staff, opportunities for recycling and other issues. However, they are advisory in nature, as a set of best practices for use in the selection.

Even the countries with high levels of corruption and lobbyist industry groups, such as Russia, are beginning to introduce such concepts as ‘environmental characteristics’ and ‘life-cycle costs’ into public procurement.

In 2014, a new public procurement law comes into force: the Federal Law №44 ‘On Contracting System in the Procurement of Goods, Works and Services for Government and Municipal Needs’, according to which it is recommended to take into account the environmental characteristics of the procurement object (Federal №44, Art. 32, part 1) and the life-cycle cost criteria (FL №44, Art. 32, part 3) in procurement within the public sector.

## The SPP approach

The basic concept of SPP involves the use of **clear, confirmed, justified and ambitious environmental criteria** for products and services that are based on an approach that takes into account the life cycle of products, and scientific validity.

Each EU country is developing a legislative framework for green procurement and the criteria for its implementation, taking into account environmental and economic requirements to the product.

The criteria used by member states should be similar, in order not to contribute to the distortion of the single market, or reduce competition in the EU area. Common SPP criteria are a significant advantage for companies with the scope of business activities extending to more than one country, as well as for small businesses (whose participation in and awareness of a variety of procurement procedures are limited).

SPP criteria rely on the evidence base, the existing ecolabel criteria (special stamp awarded by the EU to the producers whose products are far superior to similar products from other manufacturers in environmental quality) and on the information collected from business representatives, the public and the participating countries. Evidence base uses available scientific information and data, and assumes an approach that takes into account the life cycle of products, and is based on the consensus reached in the discussion of problematic issues with the parties concerned.

The **SPP approach** offers two types of criteria for each sector:

- The main criteria that are suitable for use by any agency engaged in procurement, on the territory of the participating countries, and take into account key influences on the environment;
- Complex criteria for those who intend to purchase the best environmental products available on the market. They may require additional verification or stand out due to little increase in cost compared to peers of the same functionality.

Compared with the European system, the guidelines of the **Rules of the Agency for Nature Conservation EPA in the United States** is as follows:

- a. *Environment + Price + Performance indicators = Environmentally preferred (stable) purchases* Environmental factors should be part of the normal procurement practices that are consistent with such traditional factors as product safety, cost, production performance and availability.
- b. *Prevention of Pollution* Attention to environmental preferability should begin in the early stages of the procurement process and be devoted to the ethics of the need to prevent contamination, which is intended to eliminate or reduce the potential risks to human health and the environment.
- c. *Lifecycle Projection/Characteristic Components* An environmentally preferable product or service is a characteristic component function of the life cycle projection.
- d. *Comparison of Environmental Impact* Determination of environmental preferability should include a comparison of the effects on the environment. Agencies should consider: reversibility and geographical prevalence of these factors, the degree of differences in competing products and services, as well as the overarching importance of protecting human health.
- e. *Information on Environmental Indicators* Comprehensive, accurate and relevant information about the environmental performance of products and services is essential to the definition of environmental preference.

A typical example for the newly-accessed EU countries having received concrete positive results in SPP implementation (Cyprus, Slovenia, Hungary, Lithuania) is the Lithuanian Law on Public Procurement. The Law is a

direct result of the EU Directive 2004/17/EC, Directive 2004/18/EC). It does not provide a definition of SPP, nevertheless, it opens up possibilities to consider environmental issues in the procurement process.

Paragraph 3 of Article 24 of the Law is of the greatest importance as it sets forth the obligation for contracting authorities – in the cases and in accordance with the procedure defined by the Government or an institution authorized by it – to specify the requirements for and/or the criteria of energy consumption efficiency and environmental protection. It implies that public procurers have an obligation to take certain measures in terms of protection of the environment – it coerces rather than enables. However, the implementation of the aforementioned obligation is dependent upon Resolution of the Government No. 1133 of 21 July 2010 on ‘Declaring the Resolution of the Government No. 804 of 8 August 2008 on the Approval of Implementation of the National Green Procurement Programme and Other Amending Resolutions Invalid’ (‘Resolution No. 1133’), which makes this obligation binding only upon the Central government. For local governments – it is advisory.

Other essential legal documents include the Ordinance of the Minister of Environment No. D1-508 of 28 June 2011 (‘Ordinance No. D1-508’) which identifies product groups and approves product-specific and ready-to-use core and comprehensive environmental criteria (it currently covers 3 product groups). It also lays down the rules guiding the application of environmental criteria applicable to all contracting authorities when implementing SPP. Similarly important is Ordinance of the Minister of Transport and Communications No. 3-100 of 21 February 2011 to the extent that it covers environmental criteria for specific product groups, namely motor transport.

Comparison Table ‘EU - Ukraine: SPP in Procurement Legislation and the Criteria Used’

EU	Ukraine
<b>SPP in procurement legislation</b>	
<p><b>Directive 2004/17/EC</b></p> <ul style="list-style-type: none"> <li>- <b>the inclusion of environmental requirements in technical specifications (Article 23(3)b);</b></li> <li>- <b>the use of eco-labels (Article 23(6));</b></li> <li>- <b>setting social and environmental conditions for the performance of contracts (Article 26);</b></li> <li>- <b>requiring economic operators to demonstrate they have met their environmental obligations (Article 27);</b></li> <li>- <b>requiring economic operators to demonstrate they can perform a contract in accordance with environmental management measures (Articles 48(2)f and 50);</b></li> <li>- <b>applying award criteria based on environmental characteristics (Article 53).</b></li> </ul>	<p>Law on Public Procurement:</p> <ul style="list-style-type: none"> <li>- no permission to use environmental requirements in technical specifications;</li> <li>- no requirements to use eco-labels;</li> <li>- no social and environmental conditions for the performance of contracts;</li> <li>- no requirements to the contractors on demonstrating environmental obligations;</li> <li>- no requirements to the contractors on demonstrating their ability to perform a contract in accordance with environmental management measures;</li> <li>- award criteria based on price.</li> </ul>

## SPP criteria used

### EU GPP Criteria for Office IT equipment

1. All products shall meet the latest **ENERGY STAR standards** for energy performance, available at [www.eu-energystar.org](http://www.eu-energystar.org).

**Verification:** Products holding a relevant Type 1 ecolabel fulfilling the listed criteria will be deemed to comply. Other appropriate means of proof will also be accepted, such as a technical dossier of the manufacturer or a test report from a recognized body (e.g. body accredited to issue test reports according to standard ISO 17025) demonstrating that the criteria are met.

2. *PCs* shall be designed so that:

- The memory is readily accessible and can be changed or upgraded.
- The hard disk (or parts that perform functions of hard disk), and if available the CD drive and/or DVD drive, can be changed.

**Verification:** Products holding a relevant Type 1 ecolabel fulfilling the listed criteria will be deemed to comply. Other appropriate means of proof will also be accepted.

3. *Notebooks* shall be designed so that the memory is easily accessible and can be changed or upgraded.

**Verification:** Products holding a relevant Type 1 ecolabel fulfilling the listed criteria will be deemed to comply. Other appropriate proofs may also be accepted for demonstrating compliance.

4. *The background lighting of LCD monitors* shall not contain more than 3.5 mg of mercury on average per lamp.

**Verification:** All products carrying the EU Ecolabel will be deemed to comply. Other type I Ecolabels fulfilling the above criteria can also be accepted. Other appropriate proofs may also be accepted for demonstrating compliance.

Note that after 31st December 2011 this issue will be regulated through Regulation 2011/65/EU (3.a)

5. *The 'Declared A-weighted Sound Power Level'* (re 1 pW) of PCs or notebooks, according to paragraph 3.2.5 of ISO 9296, measured in accordance with ISO 7779 (or equivalent standards), shall not exceed:

*For PCs:*

- 4.0 B (A) in the idle operating mode (equivalent to 40 dB (A)).
- 4.5 B (A) when accessing a hard-disk drive (equivalent to 45 dB (A)).

**Verification:** All products carrying the EU Ecolabel will be deemed to comply. Other type I Ecolabels fulfilling the above criteria can also be accepted. Other appropriate proofs may also be accepted for demonstrating compliance.

*For notebooks:*

- 3.5 B(A) in the idle operating mode (equivalent to 35 dB(A)).
- 4.0 B(A) when accessing a hard-disk drive (equivalent to 40 dB(A)).

**Verification:** Products holding a relevant Type 1 ecolabel fulfilling the listed

Purchase of computer equipment for the Administrative Services Centre in Odessa:

*The PC* (system unit) must be provided by the manufacturer having own production, and certified according to ISO 9001, ISO 14001.

*Personal computer*

Power consumption: equal to or lower than 10W in normal operation, no more than 2 watts in power saving mode.

*Monitor*

Power consumption: equal to or lower than 18 watts in operation, no more than 0.5 W in power saving mode.

*Printer*

Timing for the first page after power-saving mode: no more than 8 sec.

Maximum power consumption: equal to or lower than 600 W

Power consumption in stand-by regime: equal to or lower than 8 W.

Power consumption in power-saving mode: equal to or lower than 7 W.

*Multifunctional Device*

Maximum power consumption: equal to or lower than 600 W.

Power consumption in stand-by regime: equal to or lower than 11 W.

Power consumption in power-saving mode: equal to or lower than 10 W.

High-performance MFD

Maximum power consumption: equal to or lower than 800 W.

Power consumption in stand-by regime: equal to or lower than

<p>criteria will be deemed to comply. Other appropriate proofs may also be accepted for demonstrating compliance.</p> <p>6. <i>User instructions and/or training courses</i> for IT support on green management of IT products shall be supplied.</p> <p><b>Verification:</b> A copy of the instruction manual shall be supplied to the authority. These User Instructions shall then be pre-loaded onto the computer (or in the case of a monitor, supplied with the driver software) for the user to read; plus this manual shall be available for access on the manufacturer’s website. Issues covered could include, for example, use of the energy-saving functions. Alternatively, a simple training course (interactive, in line with the nature of equipment), information toolbox shall be provided.</p> <p>7. <i>Packaging</i></p> <p>Where cardboard boxes are used, they shall be made of at least 50% of recycled material. Where plastic bags or sheets are used for the final packaging, they shall be made of at least 50% recycled material or they shall be biodegradable or compostable, in agreement with the definitions provided by the EN 13432.</p> <p><b>Assessment and verification:</b> Products holding a relevant type I ecolabel fulfilling the listed criteria will be deemed to comply. Alternatively, a declaration of compliance with this criterion for the product packaging should be supplied. Only primary packaging, as defined in Directive 94/62/EC, is subject to the criterion.</p> <p>8. <i>Energy management functions</i> shall be present on the hardware itself (for all products)</p> <p><b>Verification:</b> Products shall be accompanied by a clear description of the existence, placement and operation requirements of energy management function on hardware.</p> <p>9. The tenderer shall guarantee the <i>availability of spare parts</i> for at least 3 years from the time that production ceases.</p> <p><b>Verification:</b> Products holding a relevant Type 1 ecolabel fulfilling the listed criteria will be deemed to comply. Other appropriate proofs may also be accepted for demonstrating compliance.</p>	<p>19 W.</p> <p>Power consumption in power-saving mode: equal to or lower than 4.5 W.</p> <p>Property Relations Office of the Odessa Regional Council</p> <p>Purchase of computers:</p> <p>System unit configuration: Certification: ENERGY STAR 5.0</p> <p>Monitor configuration: environmental standard not lower than TCO 5.0</p> <p>Public Joint Stock Company ‘DonbasEnergO’</p>
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Countries	Legal Framework
<b>EU</b>	<p><b>The EU law</b></p> <p>The European Union is founded on the rule of law. The principles of EU law are recorded in the founding treaties and the resolutions of the European Court of Justice.</p> <p>The objectives set out in the EU treaties are implemented by several types of legal acts – regulations, directives, recommendations, and resolutions. A distinctive feature of EU law - the supremacy and direct effect on the territory of all member countries</p> <p><b>The core EU legislation in the field of SPP includes:</b></p> <ul style="list-style-type: none"> <li>- EU Sustainable Development Strategy;</li> <li>- Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply</li> </ul>

	<p>contracts and public service contracts</p> <p>- Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of institutions operating in the water, energy, transport and postal sectors.</p> <p>The guidelines are based on judicial precedent, in particular, the resolution on the criteria to enter into contracts, which explains the opportunities for contracting agencies to meet public needs, including the needs of social and environmental protection, provided that the criteria are related to the subject of the agreement, are not contrary to the freedom of selecting contractors, and are clearly defined and consistent with the fundamental principles.</p> <p>The Directive provides an opportunity to public contracting authorities eager to highlight the environmental requirements for the technical specifications of a specific contract, to specify certain characteristics in terms of the environment, such as the environmental impact of the production method, and/or special effects of groups of goods or services on the environment.</p> <p>The contract conditions may, in particular, cover social and environmental protection.</p>
<b>USA</b>	<p>The legal system of the United States based on the Anglo-Saxon legal system.</p> <p>The foundation that underlies the legal system of the USA, encompasses three major political and legal principles: separation of powers into three independent branches, federalism and judicial constitutional review.</p> <p>Since 1976, a SPP program is being implemented.</p>
<b>Japan</b>	<p>Mixed (Confucianism, elements Romano-Germanic and common law).</p> <p>Basic policies for the promotion of comprehensive and planned purchases of materials, components, products and services with low environmental impact ('environmental goods') are defined by the Core Policy for the Development of Sustainable (Green) Procurement. Implementation of sustainable (green) procurement is regulated by the development of the procurement system of environmental goods and services by the government and other entities (known as the Law on the Promotion of Sustainable (Green) Procurement), the purpose which is to create the necessary conditions for:</p> <ul style="list-style-type: none"> <li>- encouraging public and independent administrative institutions, and other local governments to purchase environmental products;</li> <li>- providing information on environmental goods;</li> <li>- promoting growth in demand for environmental goods;</li> <li>- the creation of a society that endorses sustainable development with a lower impact on the environment;</li> <li>- contributing to a healthy and cultural life for the citizens of today and the future</li> </ul>
<b>Mauritius</b>	<p>Mixed (French and English common law). The country continues to apply the Napoleonic Civil Code, Code of Civil Procedure, Criminal Code and Commercial Code, with local variations.</p> <p>Public procurement is regulated by the Public Procurement Act (2006)</p>
<b>Columbia</b>	<p>Romano-Germanic, Latin American group</p> <p>SPP principles in Colombia are incorporated in the National Development Plan for 2010 - 2014</p>



## 5. Description of the current environmental standards in Ukraine, as well as others relating to the SPP: additional legislation, objectives, main characteristics, key points, including the findings on the national understanding of sustainability

**There are no clearly defined criteria for sustainable/green procurement in Ukraine** despite the large list of laws and programs taking into account the binding factors that contribute to environmental protection, health and safety measures, and energy efficiency requirements.

Implementation of SPP can contribute to the orientation of state policy on:

- ensuring environmental protection;
- a more environmental friendly production;
- development of environmental innovation;
- creation of incentives for economic operators that implement an environmental management system, the principles of corporate social responsibility, environmental audits, manufacturing certification of production and product quality in accordance with international environmental standards, improve the environmental performance of products in accordance with the international environmental standards;
- creation of a competitive, socially oriented economy market and promotion the improvement of living standards and welfare of the population;
- priority of energy efficiency requirements in the implementation of economic, administrative or other activities related to mining, recycling, transportation, storage, production and use of fuel and energy resources.

*(the Water, Forestry, Land Codes of Ukraine, Natural Resources Code, The Strategy of the State Environmental Policy until 2020, Transport Strategy of Ukraine for the period until 2020, National Program for the Reform and Development of Housing and Communal Services in the period of 2009-2014, Legislation of Ukraine 'On the Protection of the Natural Environment of Ukraine', 'Fundamental Principles of Legislation of Ukraine for Public Health Service', 'On Energy Efficiency', The National Security Strategy of Ukraine (Decree of the President of Ukraine dated from June 8, 2012 № 389/2012), State Program for Development of Domestic Production (Resolution of the Cabinet of Ministers of Ukraine September 12, 2011 № 1130).*

Implementation of environmentally reasoned (green) procurement (development and submission to the Cabinet of Ministers of Ukraine of the draft law on amendments to the Law of Ukraine 'On Public Procurement') was included into the National Action Plan on Environmental Protection for the period 2011 – 2015 and approved by the Cabinet of Ministers of Ukraine on May 25, 2011 №577-p, but has not been complied with regarding terms – June-December 2011.

The state obliges manufacturers to enter into circulation only products which complies with safety requirements set by legislation and in case of their absence in national legislation provides harmonization with European and international standards (the Law of Ukraine 'On General Safety of Inedible Products').

The Law of Ukraine 'On Protection of Consumers' Rights' establishes the right of consumers to use products of adequate quality and safety (goods, services) for their life, health, environment and do not cause damage to their property.

## Norms of legislation, which to some extent can be used for SPP:

- a. for **food products** such norms are defined in laws of Ukraine:
- 'On the Basic Principles (strategy) of State Environmental Policy of Ukraine for the period until 2020',
  - 'On Child Food',
  - State Program of Domestic Production Development (Resolution of the Cabinet of Ministers of Ukraine dated from September 12, 2011 № 1130),
  - State Targeted Social Program on Development of Baby Food Production for 2012-2016,
  - Procedure of children's catering in educational and health institutions approved by the Ministry of Health of Ukraine and the Ministry of Education and Science of Ukraine on June 1, 2005 № 242/329,
  - Procedure of using of funds provided in the state budget for the development of animal husbandry approved by the Cabinet of Ministers of Ukraine dated from March 18, 2009 № 282.

For example, the Law of Ukraine 'On Child Food' for the purpose of state regulation of production and turnover of baby food is guaranteeing production of baby food in conditions that meet the established sanitary measures for food safety and technical regulations, safety and environmental protection.

State incentives for production of baby food is performed by placing state orders among domestic manufacturers of baby food; placing state orders for the raw material production of baby food.

According to the Procedure of children's catering in educational and health institutions a list of suppliers of food and food raw materials is determined by the decisions of the tender committees (commissions) in consultation with the territorial agency of the State Sanitary and Epidemiological Service. When making decisions by the tender committee (commission) the advantage is given to direct suppliers and suppliers with the lowest number of intermediaries.

- b. **transport norms:** Laws of Ukraine 'On Basic Principles (Strategies) of State Environmental Policy of Ukraine for the Period till 2020' (creation of economic conditions for the development of infrastructure, environmentally safety forms of transport, in particular in public transport), Law of Ukraine 'On Environmental Protection of Ukraine', Transport Strategy, Law of Ukraine 'On Transport' (transport companies are obliged to ensure the protection of the environment from harmful impacts of transport); Law of Ukraine 'On Road Transport' (State Regulation and Control in the sphere of road transport aimed at the rational use of energy and financial resources, protection of the environment from the harmful effects of road transport. One of the prerequisites of the competition for the carriage of passengers is reasonable fleet structure of buses running on the route of public usage, public passenger capacity, class, technical and environmental performance determined by the executive authorities and local self-government; Decree of the Ministry of Infrastructure of Ukraine dated from November 26, 2012 № 710 'On Approval of the requirements for the design and verification of the technical conditions of a wheeled vehicle, methods of such examination' (establishes the factors and characteristics of the negative impact on the environment);
- c. **building norms** - Laws of Ukraine 'On Environmental Protection of Ukraine', "On Principles of Urban Planning", 'On Regulation of Urban Development';
- d. **household chemicals and detergents norms:** *Technical Regulations on Detergents, approved by the Cabinet of Ministers of Ukraine dated from August 20, 2008 № 717* (one of the main requirements of the detergent, the use of which can harm the environment and health of the consumer is the ability of the primary and complete biodegradability of surfactants what it consists of);
- e. **works and services:** Law of Ukraine 'On Environmental Protection of Ukraine' (fundamental, scientific, research and experimental-design activities to the requirements of environmental protection and the rational use of natural resources and environmental safety must be taken into account), Resolution of

the Cabinet of Ministers of Ukraine dated from June 15, 2006 № 833 'On Approval of the Procedure of the Trading Activity and Trading Service Rules in the Consumer Market' (establishes general requirements for economic operators in wholesale and retail trade. Retail facilities must be equipped in accordance with the requirements of legal acts on protection of labour, health and environment, fire safety, health protection regulations);

- f. **power engineering norms:** *The Law of Ukraine 'On Basic Principles (strategies) of State Environmental Policy of Ukraine for the Period till 2020' (increasing the volume of renewable and alternative energy sources use), 'On Electric Power Industry', 'On Energy Saving', 'On Alternative Sources of Energy', National program of reforming and development of housing and communal services for the period of 2009-2014, State Target Economic Program of energy efficiency and development of the sphere of energy production from renewable energy sources and alternative fuels for 2010-2015, State Program for the development of domestic production.*
- g. **Social norms** are set mainly in the Code of Laws of Ukraine on labour and a number of other legal acts (Law of Ukraine 'On Salaries', Law of Ukraine 'On Collective Agreements and Conventions', Law of Ukraine 'On Employment', Law of Ukraine 'On Trade Unions, their Rights and Guarantees', Law of Ukraine 'On social Protection of Disabled Persons in Ukraine' and others).

At this time, the draft Labour Code of Ukraine developed and submitted to the Supreme Council of Ukraine. It will replace the existing Labour Code of Ukraine and a significant part of specific acts. The draft Code is aimed at adapting the labour legislation of Ukraine to the European Social Charter and acts of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the conventions and recommendations of the International Labour Organization regarding non-discrimination in employment, the prohibition of forced labour, the definition of fundamental rights of employee and employer.

## 6. Clearly defined criteria for sustainable/green procurement, which have so far been developed or are in the process of development, as stipulated in the national legislation

The Law of Ukraine 'On Public Procurement' does not recommend and oblige but **allows the contracting authority to include documentation of environmental requirements**. It is determined that technical and qualitative characteristics of the object of the procurement must include measures to protect the environment (in case of open tendering, preliminary qualification).

Unfortunately, the process of **external control over the inclusion of environmental requirements** in the solicitation documents in public procurement **is not carried out and legally defined**.

Also there are examples of the mandatory inclusion of qualification requirements for bidders which regards existence of ISO certification and financed by international financial institutions in Ukraine.

**Bidding documents** posted on the official web site for public procurement [www.tender.me.gov.ua](http://www.tender.me.gov.ua). **They do not include recommendations regarding SPP criteria. The decision to include environmental criteria depends on the level of awareness of the chairmen**, members of the Tender Committee or units responsible for the preparation of tender documents.

However, **there are exact preconditions for amending the legislation of Ukraine concerning the inclusion of environmental requirements during the realization by the contracting authority** (state authorities, state-owned company). Thus, development of clearly defined criteria for sustainable procurement is one of the priorities.

The Constitution of Ukraine proclaims the man, his life and health, honour and dignity, inviolability and security as the highest social value (Art. 3). **The basic Law also establishes a number of fundamental rights, among**

**which there are environmental rights:** the right for a safe environment for life and health; the right to redress for violation of this right; right of free access to information, the quality of food and household items, as well as the right for its distribution (Art. 50).

**Currently the environmental rights of citizens are fixed in Art. 9 of the Law of Ukraine ‘On Protection of the Natural Environment’**, in accordance with paragraph “a” guaranteeing to every citizen of Ukraine the right to have secure environment for their life and health, as well as a number of other legal acts. Besides the basic (fundamental) environmental law accordingly to provisions of the civil law belongs to individual non-property rights, that ensure natural being of the individual and is fixed in Art. 293 of the Civil Code at the legislative level as the right to have secure environment for his life and health.

**Moreover the ecological functions of the state are fixed in the Art. 16, 50, 85, 92, 106, 110 and others of the Constitution of Ukraine** and are aimed to ensure the protection of nature and sustainable use of natural resources. Activity in the sphere of the environmental protection is one of the environmental functions of Ukraine. It is a part of global and national security and presents protection of the environment from the point of view of its ecological balance.

**Environmental protection is performed by using appropriate measures of state influence:** introduction of science-based standards for environmental management and environmental protection; monitoring environmental conditions; reduction of anthropogenic pressure, elimination of the consequences of the harmful influence of human activities on the environment; commissioning environmentally safety technologies, taking measures to reduce the consequences of the Chernobyl disaster; prevention of uncontrolled import of environmentally hazardous technologies, substances and materials to Ukraine.

Besides, **state support and methods of domestic producers` stimulation are fixed in the Law of Ukraine ‘On Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period till 2020’ and aimed at reducing the negative impact on the environment.** National Action Plan for Environmental Protection of Ukraine for the period till 2015 ensures implementation of the main provisions of the Law and provides specific measures for the development of sustainable procurement in the public sector (including the amendments to the Law of Ukraine ‘On Public Procurement’), defines responsibility for the implementation and funding sources.

Some examples of using factors SPP in the bidding documents

<p><b>Building</b></p>	<p><i>Procurement of works on the construction of library:</i></p> <p>The necessity to provide information on the ecological cleanliness of materials that will be used for construction is included to the requirements for bidders to confirm compliance with of quality, technical and other characteristics of the subject of procurement.</p> <p><i>National Juridical University named after Yaroslav Mudryi</i></p>
	<p><i>Procurement of works on the capital repairs of the bridge over the river:</i></p> <p>Requirements to carry out activities on protection of the environment are included into the technical specifications, namely:</p> <ul style="list-style-type: none"> <li>- prevention of oil and other chemicals pills in the soil, asphalt pavement</li> </ul> <p>Exhaust emissions must not exceed the permissible limits while motor transport exploitation;</p> <ul style="list-style-type: none"> <li>- avoiding wastes to rage in unauthorized places;</li> <li>- economical use of water;</li> <li>-compensation the damage that may be caused in case of contamination or other adverse effects</li> </ul>

	<p>on the environment.</p> <p><i>Directorate for Municipal Improvement and Housing Policy of Kryvyi Rig Mayor's Office, Dnipropetrovsk Region</i></p>
<b>Computers and office equipment</b>	<p><i>Procurement of computers:</i></p> <p>The documentary confirmation of compliance with the requirements of the goods, technical, qualitative and quantitative characteristics must be given in the form of an explanatory note and must be confirmed by the following documents:</p> <ul style="list-style-type: none"> <li>- a copy of the currently in force of the disclosure certificate manufacturer quality system ISO 14001: 2004</li> </ul> <p><i>Khmelnytsky Executive Committee of the City Council Khmelnytsky region;</i></p>
	<p><i>Procurement of laptops and educational computer systems for educational institutions of Khmelnytsky region:</i></p> <p>The documentary confirmation of compliance with the requirements of the goods, technical, qualitative and quantitative characteristics should be given in the form of an explanatory note and must be confirmed by the following documents:</p> <ul style="list-style-type: none"> <li>- a copy of the currently in force of the disclosure certificate manufacturer quality system ISO 14001: 2004 of production type HKK (M)</li> </ul> <p><i>Public institution 'Center of Organizational and Economic Support of Educational Institutions' of Khmelnytsky Regional Council</i></p>
	<p><i>Procurement of TVs for schools of Khmelnytsky Region:</i></p> <p>Participant should be taken measures to protect the environment</p> <p><i>Public institution 'Center of Organizational and Economic Support of Educational Institutions' of Khmelnytsky Regional Council</i></p>
	<p><i>Procurement of computers:</i></p> <p>The configuration of the computer case: Certification ENERGY STAR 5.0</p> <p>Configuration of the monitor: environmental standard not lower than TCO 5.0</p> <p><i>Public Joint Stock Company 'DonbasEnergo'</i></p>
	<p><i>Procurement of equipment for automated passenger servicing system of railway local transport with assembly and commissioning operations:</i></p> <p>Object of procurement (production, container, packaging, transportation, services, works, etc.) should not harm to the environment and provide measures for protection of the environment.</p> <p><i>State Territorial Trade Association "South-Western Railway"</i></p>
	<p><i>Procurement of computer equipment for the center of administrative services in Odessa city:</i></p> <p>Computer (computer case) must be the product of the original manufacturer, which has its own</p>

	<p>production, certified according to ISO 9001, ISO 14001.</p> <p><i>personal computer:</i></p> <p>Power consumption – maximum 10W in normal operation, not more than 2 watts in power saving mode.</p> <p><i>Monitor:</i></p> <p>Power consumption – maximum 18 watts in operation, not more than 0.5 W in power saving mode.</p> <p><i>Printer:</i></p> <p>Time of first page going out in the power-saving mode - maximum 8 pages</p> <p>Maximum power consumption – maximum 600 W</p> <p>Power consumption in readiness – maximum 8 W</p> <p>Power consumption in power-saving mode – maximum 7 W</p> <p>multifunction device</p> <p>Maximum power consumption – maximum 600 W</p> <p>Power consumption in ready – maximum 11 W</p> <p>Power consumption in power-saving mode – maximum 10 W</p> <p>High-performance MFP</p> <p>Maximum power consumption – maximum 800 W</p> <p>Power consumption in readiness – maximum 19 W</p> <p>Power consumption in power-saving mode maximum 4.5 W</p> <p><i>Multifunctional device:</i></p> <p>Maximum power consumption – maximum 600 W</p> <p>Power consumption in ready – maximum 11 W</p> <p>Power consumption in power-saving mode – maximum 10 W</p> <p>High-performance MFD</p> <p>Maximum power consumption – maximum 800 W</p> <p>Power consumption in readiness – maximum 19 W</p> <p>Power consumption in power-saving mode – maximum 4.5 W</p> <p><i>Office of Regional Council on Property Relations of Odessa city</i></p>
<b>Copy paper</b>	<p><i>Procurement of office paper A4 format:</i></p> <p>Production processes are certified according to ISO 9001, ISO 14001, OHSAS 18001 standards.</p> <p>Paper is certified according to FSC MixedCredit standards.</p> <p><i>City Council of Kharkiv</i></p>
<b>Textile</b>	<p><i>Procurement of textile products ready for a household (sheets, blankets, draperies, curtains, tablecloths, towels):</i></p>

	<p>Object of procurement (production, container, packaging, transportation, services, works, etc.) should not harm to the environment and provide measures for protection of the environment.</p> <p><i>Kharkiv Institute of Banking of the University of Banking of the National Bank of Ukraine</i></p>
	<p><i>Procurement of textile products, ready for a household (pillow cases, sheets, blankets, wool blend) and working clothes for men (suits (jackets and pants) and for field works):</i></p> <p>Measures to protect the environment provided by the legislation of Ukraine and/or international law for this type of procurement must be provided in the course of competitive activities relating to the performance of duties to supply to the contracting authority specified in the bidding documents subject of procurement.</p> <p><i>State Institution "Institute of Special Communication and Informational Protection of National Technical University of Ukraine" Kyiv Polytechnic Institute"</i></p>
	<p><i>Procurement of workwear (cold proof mittens):</i></p> <p>Object of procurement (production, packaging, transportation, etc.) must not harm the environment and provide measures to protect the environment</p> <p><i>State Territorial Trade Association "South-Western Railway"</i></p>
	<p><i>Procurement of workwear (winter coats):</i></p> <p>In the technical part participant must provide a copy of the certificate of Oeko-TexStandard 100 on the textile.</p> <p>Wholly owned subsidiary "Ukravtogaz" of the National Joint Stock Company "Naftogaz of Ukraine"</p>
<p><b>Office furniture</b></p>	<p><i>Procurement of furniture:</i></p> <p>Documents confirming compliance with the bidder's technical, qualitative, quantitative and other requirements for the object of procurement, established by the contracting authority must be provided by participants of the procurement procedure as part of bidding proposals:</p> <ul style="list-style-type: none"> <li>- Information in free form about material from which the furniture is made of including environmental cleanliness;</li> <li>- Information in free form about taken measures to protect the environment.</li> </ul> <p><i>Kharkiv Institute of Banking of the University of Banking of the National Bank of Ukraine</i></p> <p><i>Procurement of furniture:</i></p> <p>The contracting authorities must take measures to protect the environment</p> <p><i>Public institution "Center of organizational-economic support of educational institutions"</i></p> <p><i>Procurement of furniture:</i></p> <p>Chairs, stools with the technical specifications and relevant national standards made from eco and non-hazardous materials that meet the requirements, which are described separately for each product as it is specified below</p> <p><i>Lviv Institute of Banking of the University of Banking of the National Bank of Ukraine</i></p>

## CHAPTER 4. REVIEW

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### a) Opportunities offered by the current legislation on sustainable procurement practices/compatibility with the SPP practice

The Law of Ukraine 'On Public Procurement' **allows the contracting authority to include into the documentation environmental requirements**, namely technical, qualitative characteristics of the object of procurement must provide measures to protect the environment (in case of open tendering, pre-qualification).

It is also foreseen that **the bidding documents must include reference to the standard features, requirements, symbols and terminology associated with the goods, works or services to be purchased** in accordance with the existing international or national standards, rules and regulations.

As it is seen in the above examples of introduction of SPP factors, some contracting authorities are using this opportunity to demand from participants **that they comply with ISO 14001, OHSAS 18001 standards** and others.

#### **Stability in various categories and stages of public procurement (technical specifications, conditions of the tender, the selection criteria, award criteria, the conditions for the execution of contracts, etc.) regarding the implementation of SPP in accordance with the legal framework at the local level**

At the local level, as well as at the national level, procurement is conducted exclusively in accordance with the Law of Ukraine 'On Public Procurement'.

Some local governments have environmental policies, sustainable development and the sustainable energy development strategies (63 cities of Ukraine are signatories of the Covenant of Mayors - leading initiatives of the European Union, bringing together local, regional and national authorities in realization their responsibilities to reduce CO2 emissions minimum at 20% by 2020 by investing in the development of "green economy" and by improving environmental policies).

For example, the Program for Sustainable Energy Development of Ivano-Frankivsk city for the period up to 2020, approved by the City Council dated February 6, 2014, the Program for Sustainable Energy Development of Lviv city for the period up to 2020, Municipal Program of Sustainable Development of Rivne city for 2013 – 2017, Concept of Sustainable Development of Uzhgorod city and others.

Nikolaev city has approved Environmental Policy, which aims to develop the strategic directions of ecological city development that will achieve sustainable development while solving environmental problems will create new job positions and provide a healthy environment, reduce the incidence of environmental factors, will allow to reach a qualitatively new standards of living and will be taken into account while socio-economic development planning of Nikolayev city in XXI century

For city authorities of Nikolaev city adoption and implementation of environmental policy means:

- A commitment to continual environmental improvement and to prevent contamination;
- Taken responsibilities under environmental legislation, legal acts and international obligations, which the executive committee of the City Council is responsible for;
- The integration of sustainable development into policies of local authorities;
- raising of awareness and education level of citizens;
- Consultation with citizens and involving them into the process of urban planning;
- Partnership with the community;
- Evaluation, monitoring and reporting on sustainability progress.



Environmental policy is mandatory for the executive bodies of Nikolaev City Council in accordance with the responsibility of heads of departments and independent divisions of Nikolaev executive committee for the implementation of the scheme of environmental management and audit scheme EMAS, approved by the City Mayor in 2004. All ongoing, long-term and strategic plans, projects on socio-economic development should be directed to the Office of Environmental Protection and Improvement of the Department of Housing of Nikolaev City Council and to the Legal Department of Nikolaev City Council to be checked on compliance with the environmental policy and local action plan and assess of the impact on the environment.

Procurement of environmentally safe products and services is one of the main strategic directions of the ecological development of the city.

**The Charter of European Cities and Towns Towards Sustainability (Aalborg Charter) was signed by some cities of Ukraine** (Odessa, Sumy, Myrgorod, Nikopol, Mykolayiv, Donetsk). The cities that have signed the Charter stated their commitment to social justice, sustainable economies and environmental sustainability. Development of partnerships and joint will with European countries will contribute to the implementation of SPP at the local level as it can be seen from the example of Mykolaiv city.

## b) Urgency of schemes on eco-labelling in accordance with the legal requirements or more ambitious standards

Scheme on **product eco-labelling is used in Ukraine since 2003, in accordance with State Standard ISO 14024: 2002**, Environmental labels and declarations, Eco-labelling of I type, Principles and Methods (ISO 14024: 1998, IDT). Standard ISO 14024: 1998 determines the environmental labelling program of I type as a voluntary, third-party and multi-objective program providing issuing licenses for using of environmental labels (eco-label), attesting to the environmental preference of any product (goods or services) within a defined peer group based on the consideration of its life cycle.

**Certification authority body “Living Planet”** administers environmental labelling program of type I in Ukraine ([www.ecolabel.org.ua](http://www.ecolabel.org.ua)), which is a member of the Global network of environmental labelling (Global Ecolabelling Network, GEN), an International non-profit association, which now comprises 27 programs, environmental labelling of type I, operating in 60 countries in accordance with ISO 14024: 1998.

Certification authority body “Living Planet” is accredited under the International Coordination of Certification Systems of Environmental Labelling



Picture 1. Ukrainian logo for eco-labelling

GEN (Global Ecolabelling Network's Internationally Coordinated Ecolabelling System GENICES) provides the mutual recognition of certification results among its members, contributing to a reduction in trade barriers and world trade.

**The introduction of environmental labelling of products and food is one of the objectives of the Strategy of State Environmental Policy of Ukraine for the period up to 2020** (the Law of Ukraine ‘On Basic Principles (strategies) on State Environmental Policy of Ukraine for the period till 2020’ dated from December 21, 2010).

The Technical Regulations on Environmental Labelling establishes the requirements for the assignment and voluntary use of eco-labelling was approved by the Cabinet of Ministers of Ukraine in 2011 and is mandatory for use since 2014. It regulates the procedure of the development and revision of environmental criteria.

Regulation also obliges developers of environmental criteria to develop guidance on using environmental criteria in the preparation of tender documentation for public procurement of products of the corresponding category.

Technical regulations on environmental labelling adopted for the first time the notion “green products” – products, the improvement in environmental performance of which has been established based on the results of conformity assessment procedures.

### c) Main challenges/barriers arising from national legislation

The main obstacles of the implementation of SPP, taking into consideration the legislation and the results of a survey among contracting authorities, include the following:

- The limitations of the bid evaluation criteria (the main criteria is the price);
- Lack of information and knowledge about the SPP including sectorial criteria developed by EU;
- Lack of interest and commitment of users of the procurement system.

In addition, there are risks associated with the **possible lack of political will** (like any reform) and specific of the current situation in Ukraine (military conflict, economic recession).

### d) Key challenges and amendments which need to be taken into account in the current legislation

It is necessary to consider such issues in the current legislation in order to implement the concept of sustainable procurement in accordance with national/international best practices:

- In spite of the possibility to include environmental requirements to the object of procurement, proposals are evaluated only in terms of “price”
- Particular attention should be paid to the social aspects as it is not regulated in public procurement.

## CHAPTER 5. RECOMMENDATIONS AND SUGGESTIONS

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### 1. Necessary steps for the amendment and modification of the current legislation in order to integrate SPP

The steps which it is necessary to integrate into the national SPP legislation appear as follows:

- a. Amendments to the Law of Ukraine ‘On Public Procurement’ concerning:
  - consolidation of the principle of sustainable public procurement (the definition of terminology, including into Art. 3 the principle “sustainability”);
  - Expansion of:
    - i. qualification requirements (add the requirements of the necessary environmental qualifications, availability of administrative competence; confirmation of the fulfilment of obligations to pay social security contributions ( i. 2 Art. 16);
    - ii. the mandatory requirements for the subject procurement (to supplement the environmental characteristics to the object of procurement);

- iii. evaluation criteria (to include environmental characteristics to the object of procurement (Article. 28)).

To make amendments into the law it must be approved by the concerned authorities, considered in the Cabinet of Ministers of Ukraine and introduced in the Supreme Council of Ukraine.

- b. Development of methodological material on SPP application (Methodical recommendations and explanations for the SPP, including the criteria for the types of products).
- c. Training and information (inclusion SPP in the education program on public procurement, creation of information portal on SPP).

Integration of SPP will also be facilitated by the inclusion in the State and local (regional) program of socio-economic development.

## 2. Development of criteria for sustainable procurement to be included in the standard bidding documents

**The following methods** should be used to develop conditions and criteria for sustainable procurement:

- Taking into account economic, environmental and social factors;
- Taking into account technical specifications when evaluating suppliers product compliance (environmental characteristics, established on the basis of state standards, national standards or standards of eco-labelling programs, energy efficiency, pollution prevention).

**The implementation of green procurement policy strategic planning** is needed and must include:

- Identification of priority areas;
- Organization of relevant training activities;
- Monitoring and evaluation of environmental information.

Also, there is a **need to improve the legal framework** in terms of amendments to the Law of Ukraine 'On Public Procurement' to ensure the development of sustainable procurement in the public sector (at least with the introduction of the concepts of environmental characteristics of the object of procurement and criteria of life-cycle cost).

In order to avoid lobbying in the process of public green procurement **clear and unique criteria for sustainable procurement must be developed.**

However, the development of criteria requires specific knowledge in various branches of technology, manufacturing and services. Therefore there is a **need for creation of inter-ministerial working group or group of experts on various sectors** of the economy and the environment, which could develop/review recommendations on green procurement.

Regarding the phasing of the procurement process and place of SPP criteria in it the best stage is **preparation of tender documents, technical specifications and calculation of the cost.** That is what must provide a reflection of the conditions of the tender and qualification requirements for tenderers during the contract award and further in the provisions of contracts with suppliers. Control over the reflection of the requirements and criteria of the tender documents in the texts of treaties and their implementation is also an important element of procurement stages.

**Creation of a database of products that meet EU environmental requirements is necessary** to begin successful implementation of green procurement. The EU Eco-label is known in the market as a transparent, non-

discriminatory system, which could be used, both by small and large businesses to help assess the impact of products on the environment.

However, the most important factor that can contribute to the successful implementation of green procurement is **the availability of the necessary political will and support of the Government and the President of Ukraine.**

Signing the economic part of the Association Agreement between Ukraine and the EU on June 27, 2014 in Brussels is a great incentive and a platform for further successful activities in Ukraine to implement the USO system with the support of partners from EU member states and international organizations that have experience in this sphere.

Thus, the priorities for facilitating the implementation of SPP in Ukraine are:

- a. Amendments to the Law of Ukraine 'On Public Procurement';
- b. Development of guidelines and explanations of the SPP, including the national criteria (or adaptation of EU criteria);
- c. Organization and conducting of training on SPP.
- d. Development of database of environmental criteria in the framework of Ukrainian environmental labelling program;
- e. Creating information base of products that meet EU environmental requirements;

## CONCLUSION: HOW CAN THE LEGAL FRAMEWORK IN UKRAINE SUPPORT SPP IMPLEMENTATION?

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The assessment of the Ukrainian legal framework shows that Ukraine has **a suitable legislation to support the implementation of SPP, though it requires some amendments**, particularly with regard to the key Ukrainian law on public procurement entitled 'On Public Procurement'.

When procuring, contracting authorities currently have the opportunity to include in the tender documents the environmental and social requirements for the product or services to be procured (as seen from the above examples, some contracting authorities already use such opportunities). In most cases, environmental criteria are included more often than social.

**The main barrier, however, for implementation of SPP is the lack of inclusion of environmental criteria when evaluating proposals.** It can be noted that even when procures include environmental and social requirements in the tender documents, the evaluation of proposals is carried out by assessing primarily the "price" criteria.

To ensure SPP implementation in Ukraine, some changes in the main law on public procurement, 'On Public Procurement', are needed (see details in paragraph 5.1.)

In addition, **SPP implementation requires the organization of trainings and increased information and awareness among relevant officials.** It may be noted that officials responsible for public procurement have an insufficient academic background.

As a result, training sessions on public procurement are carried out in order to prevent violations of procurement rules and ensure they are sensitized and have an increased capacity to carry out procurement processes in accordance with the law. The training topics are organized in line with the structure of the procurement law. They target in particular members of tendering committees that are set up by the contracting authorities and composed of officials who joined on a voluntary basis.