

Call for evidence

Title of the evaluation: Public procurement directives- evaluation

Lead DG: DG GROW C.2

The European Institute for Gender Equality (EIGE), an EU Agency, welcomes Commission's initiative to evaluate the three legislative acts that regulate public procurement in the EU: Directives [2014/23/EU](#) (the Concessions Directive), [2014/24/EU](#) (the Public Procurement Directive) and [2014/25/EU](#) (the Utilities Directive).

Background

The European Institute for Gender Equality (EIGE) carried out research and developed evidence-based practical tools on Gender-responsive public procurement (GRPP) with the overall aim of contributing to a more gender-equal distribution of economic resources in the EU.

Introduction

Gender equality is a fundamental value of the EU, and promoting gender equality in all of its activities is one of the EU's tasks, required by the treatiesⁱ.

GRPP is procurement that promotes gender equality through the goods, services or works being purchased. This means that buyers and suppliers examine the impact of all contracted activities on women's and men's needs, interests and concerns, and design and deliver contracts in a way that reduces gender inequalities. It does not necessarily entail higher costs, but does require knowledge and capacityⁱⁱ.

GRPP can be carried out under the EU procurement directives (Directives 2014/24/EU, 2014/25/EU and 2014/23/EU) and under the financial regulation ([Regulation \(EU, Euratom\) 2024/2309](#)).

The three 2014 procurement directives aim to facilitate greater strategic use of procurement, including for the advancement of social objectives. When public authorities purchase supplies,



works and services from companies, they can and should design public procurement processes and practices in a way that promotes gender equality; this is what GRPP isⁱⁱⁱ. EIGE mapped GRPP-relevant legislation, policy initiatives, support structures, capacity-building programmes and guidelines, as well as public procurement procedures, at both EU and Member State levels. This comprehensive mapping was complemented with an assessment of the level of awareness and institutionalisation of gender mainstreaming in public procurement in the EU.

[EIGE's report Gender-responsive public procurement in the EU](#) presents key findings of the above together with a selection of case studies to provide evidence for action and policy guidance by showing that public procurement can be a powerful tool to contribute to a more gender-equal distribution of economic resources.

Key findings of EIGE's research

[EIGE's research](#) findings suggest that there are low rates of implementation of GRPP in most EU countries. This represents a missed opportunity to leverage public spending to pursue a fairer allocation of economic resources and improve living standards for both women and men.

To the extent that businesses owned and operated by women are under-represented in tender competitions and contract awards, public bodies are missing out on a large segment of the market that may offer value for money and innovation in public service delivery.

In terms of the EU legal framework, the lack of mandatory provisions, uncertainty regarding some existing rules, and the absence of monitoring and reporting requirements can be seen as factors contributing to low rates of GRPP.

More broadly, the absence of recognition and promotion of gender equality as a legitimate objective within public procurement policy at both EU and national levels means that many public bodies are unaware of the possibility of addressing gender inequalities through procurement, and have substantial lack of understanding of how this might be done in practice.

To address this, EIGE has published a [step-by step toolkit for implementing GRPP](#), which explores from a practical perspective the potential for GRPP under the EU rules, covering all phases of the procurement process from planning through to contract performance and review.

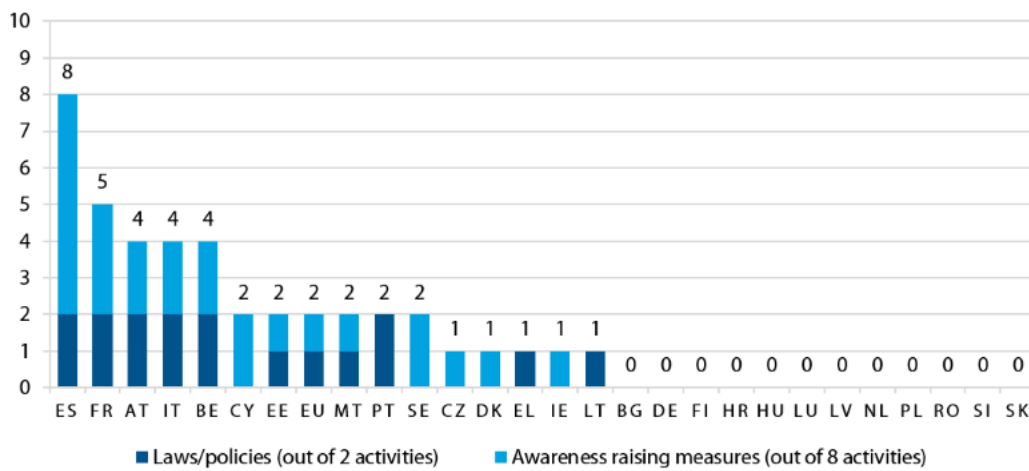
Conclusions of EIGE's research

The main conclusion is that public procurement and gender equality are generally seen and treated as two distinct issues with no links between the two at both EU and national levels.

GRPP is very rarely applied in the EU. Some Member States, mainly Belgium and Spain, followed by Germany, France and Austria, are more advanced in promoting and implementing GRPP than the EU as a whole.

Figure 1 below presents the GRPP ‘scores’ of Member States and of the EU. Each point represents a type of GRPP activity that has been identified at the EU or national level, based on EIGE’s 10 indicators. For instance, a score of 8 indicates that 8 out of the 10 activities outlined in EIGE’s indicators were identified at the EU level, or in a given Member State.

Figure 1: GRPP scores assigned to the EU and Member States (out of 10).



Source: [EIGE’s 2022 data collection on Gender-responsive Public Procurement](#).

There is no correlation between the best-performing countries in EIGE’s Gender Equality Index and the use of GRPP, with the exception of Spain.

The main challenges for the promotion and implementation of GRPP are the low level of knowledge and awareness of how public procurement can contribute to gender equality, and the lack of political will and capacity to implement GRPP. The lack of recognition of gender equality as a legitimate objective of the EU framework for public procurement has definitely contributed to this.

The EU framework for public procurement allows for GRPP, as it falls within the remit of social responsive public procurement (SRPP). Awareness and the strategic use of GRPP to advance gender equality remains extremely low in Member States that are advanced in the use of SPRP (except Spain), showing that gender equality aspects have been very much neglected in the context of SRPP. In the most advanced Member States in terms of the understanding and use of GRPP, the involvement of gender equality bodies has been the driving force for change.

The findings and conclusions presented suggest that six preconditions or enabling factors have the potential to deliver the best application of GRPP in the EU^{iv}:

1. a legal framework that cross-references gender equality and public procurement;
2. public procurement strategies that cover GRPP or include gender equality as an objective;
3. gender equality action plans or strategies that mention public procurement / GRPP as a tool to promote gender equality;
4. capacity-building programmes, support structures and guidelines that promote GRPP;
5. regular collaboration between gender equality bodies or departments and public procurement offices;
6. effective monitoring and reporting systems on the use of GRPP.

Key evidence-based recommendations for the future reform of the EU procurement directives

Building on the research findings and enabling conditions for GRPP, EIGE set out recommendation and specific actions that can be taken by EU institutions, national, regional and local governments, and individual contracting authorities to boost and effectively implement GRPP under the existing legal framework (see EIGE, 2022b, EIGE, 2022c):

Recommendations for policymakers at EU, national and sub-national levels:

1. Identify gender equality as an essential objective of procurement in procurement policies and strategies.
2. Recognise public procurement as a relevant tool for implementing gender equality policies and strategies, including gender mainstreaming and gender budgeting.
3. Establish dialogue and interdepartmental work between the departments or agencies responsible for procurement and gender equality bodies, such as inter-service GRPP working groups that meet for coordination, information exchange and mutual support.
4. Set up support structures to provide advice, disseminate good practices and build the capacity of contracting authorities, procurement staff and suppliers.
5. Provide guidance and set targets for the implementation of GRPP, including in the EU Resilience and Recovery Facility (RRF) and Cohesion Policy Funds, with appropriate reporting and collection of data.

Recommendations for contracting authorities:

6. Carry out risk assessments for public contracts prior to tendering to include an analysis of gender issues in the workforce, such as equal pay, gender discrimination throughout the supply chain, sectoral and occupational segregation, or violence and harassment at work. Introduce contractual requirements for the contractor to monitor/report on the implementation of GRPP conditions and set consequences for failure to meet the targets. Include breaches of the obligations of Article 18(2) (mandatory social clause) as grounds for the termination of contracts.

Additional recommendations for policymakers at EU level aimed at the future reform of the EU legal framework on public procurement, and therefore of specific interest for this evaluation:

- Amend the EU procurement directives to include explicit reference to Article 8 of the TFEU, specifying that gender equality is an essential objective of procurement procedures.
- Ensure gender equality is explicitly referred to as an essential principle of procurement procedures, which economic operators must comply with in the performance of public contracts.
- Ensure that gender equality is explicitly referred to as one of the matters that may be addressed in award criteria and contract performance clauses. Compliance with obligations relating to gender equality, such as equal pay and employment legislation, to be explicitly referred to in Article 18(2) (the mandatory social clause) of Directive 2014/24/EU.
- Reconsider the use of Directive 96/71/EC as a 'ceiling' for the employment terms that may be enforced in public contracts, in the light of reforms to that directive and the benefits of applying living wages and other non-legislative initiatives in public contracts.
- Allow contracting authorities and/or Member States to justify exceptions to the requirement for a link to the subject matter when important social objectives, such as gender equality, cannot be effectively addressed through measures that are strictly limited to the goods, services or works being purchased.
- Include references to [Directive 2023/970 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms](#), and any future EU legislation on due diligence in the procurement directives, to ensure that contracting authorities are aware of the gender equality obligations that apply in the context of contract award and performance.

Final observations

The EU Agency for Gender Equality, EIGE,

- ✓ reiterates its interest in this evaluation as it is an opportunity to:
 - leverage public spending to pursue a fairer allocation of economic resources and improve living standards for both women and men, in all their diversity
 - broaden and diversify the pool of bidders

- improve the lives of women and men in developing countries that may lack legislation and enforcement on gender equality
 - help to ensure a 'just transition' to a greener economy, which avoids replicating or exacerbating gender inequalities, by applying GRPP in the same tenders that include environmental measures
 - boost sustainable growth because if more women join the labour force, they can make a larger contribution to the economy, while boosting their earnings and reducing the gender pay gap. Increasing women's participation in the workforce and closing the pay gap between women and men will have a positive impact on economic growth in the EU. It could mean up to six million more jobs by 2050 and a GDP increase of 5.5 % or €1 490 billion by 2050^v
- ✓ invites that its research findings, data, practical guidance and recommendations are taken into account and reiterates its readiness to support a gender-responsive review of the EU procurement directives to ensure that the EU lives up to its commitment to gender equality, and achieving a Union of Equality.

References

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EIGE (n.d.), 'Economic benefits of gender equality in the European Union' (<https://eige.europa.eu/newsroom/economic-benefits-gender-equality>)

ⁱ Articles 2 and 3(3) of the founding Treaty on European Union (see the Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13, Articles 21 and 23 of the Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391, and Article 8 of the Treaty on the Functioning of the European Union (TFEU) (see the Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47) call for equality between women and men. Article 8 of the TFEU, for example, explicitly requires the EU to eliminate inequalities and promote equality between women and men through all its activities (i.e. ensure gender mainstreaming).

ⁱⁱ EIGE, 2021.

ⁱⁱⁱ EIGE, 2021, EIGE, 2022a, EIGE, 2022b.

^{iv} See also EIGE, 2022a, *Step-by-step toolkit for implementing gender-responsive public procurement in the EU* (<https://eige.europa.eu/publications-resources/publications/gender-responsive-public-procurement-step-step-toolkit>)

^v EIGE, 2017 & EIGE (n.d.), 'Economic benefits of gender equality in the European Union' (<https://eige.europa.eu/newsroom/economic-benefits-gender-equality>)