



Implementation of Sustainable Public Procurement in the Rail Transport in the Czech Republic and a Comparison with the Other Members of the Visegrad Group

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Abstract

This paper focuses on sustainable public procurement (SPP) and its role in public procurement of the members of the Visegrad Group (Hungarian, Poland, Slovakia, Czech Republic). Sustainable public procurement is a current trend in public purchasing around the world. The European Union's sustainable development policy, which respects the objectives of the 2030 Agenda, seeks to influence the public procurement policies of the members of the European Union. Every country, including the Visegrad Group countries, is trying to implement sustainable development criteria in its procurement process and to change legislation.

The aim of this paper is to compare the implementation of public procurement in the Czech Republic with other members of the Visegrad Group (Poland, Slovakia, Hungary) and analyse how the public procurement (tenders) respects the criteria of sustainable public procurement in the case of the selected public procurements (tenders) in rail transport. We analyse the public procurement process and investigate

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the possibility/appropriateness of using social responsibility criteria in the individual phases of the procurement process (award criteria).

The results show that there are different methods of implementing SPP in the V4 countries. There are significant differences between the regions. Based on the results of our research and analysis of the selected tenders, we concluded that the principle of social responsibility needs to be reflected in all steps, i.e. in the formulation of the subject of the public contract, the preparation of the contractual terms and the selection of evaluation criteria in their qualitative form.

Keywords:

Agenda 2030, socially responsible public procurement, sustainable public procurement

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1. Introduction

Public procurement is evolving in many countries across the EU. They are implementing European policies to be more competitive and transparent and to better control scarce public finances. The main guidelines for development are innovative public procurement and the use of qualitative criteria as indicators for evaluating tenders (best value, better value for money, etc.). This is also the case in the V4 countries, which have more or less succeeded in implementing Sustainable Public procurement (SPP) policies in their systems. In the case of the Czech Republic, the urgency of addressing sustainable public procurement has increased with the adoption of an amendment to the law that obliges all contracting authorities to include social responsibility criteria in virtually all purchases. An important issue worth exploring is certainly the voluntary versus enforceable nature of implementing sustainable public procurement, and this is also our research question.

This paper focuses on SPP in rail transport, where the question of how tenders are organised is topical due to the European Union seeking to ensure greater inclusion

of societal goals in the procurement process. These goals include, for example, environmental protection, social responsibility, combating climate change, and other social and environmental considerations (European Commission, online). A study on the implementation of SPP in rail transport tenders is essential because transport systems have “a wide range of negative effects on sustainability, for example, contributing to global warming” (air, water and soil pollution, noise, loss of biodiversity (Dahlgren and Ammenberg, 2021). The contracting authorities have a great deal of purchasing power, which may be enough to incentivise market players to come up with sustainable transport solutions (Nesterova et al. 2020).

The topic is necessary to study because public procurement accounts for 12% to 16% of GDP in the Visegrad Group countries, while public procurement in rail transport accounts for 0.52% of GDP in Poland and 0.95% GDP in Slovakia (own calculation based on Annual Reports of infrastructure managers).

The aim of this paper is to compare the implementation of SPP in the Czech Republic with other members of the Visegrad Group (Poland, Slovakia, Hungary) and to analyse how public procurements respect the criteria of SPP in the case of the selected public procurements in rail transport. We also analyse the public procurement process and investigate the possibility/appropriateness of using the criteria of social responsibility in the individual phases of the procurement process.

The added value of conducting this analysis is reflected in the development of a policy for socially responsible procurement in the railway sector by contributing to the implementation of public policies. The elaboration of the public procurement process in relation to socially responsible requirements and raising the issue of voluntariness/responsibility for the future direction of the research.

A fundamental change in SPP took place in the Czech Republic at the beginning of 2021. The obligation to use SPP for all tenders arose along with the new change in legislation. The legal framework governing SPP in the Czech Republic is based on and fully corresponds to European legislation as in the other EU Member States. It is represented by Act No. 134 from 2016 (Public Procurement Act). As of the beginning of 2021, contracting authorities must include some of the SPP criteria in their public procurement procedures.

The implementation of this concept seems to have brought many problems, especially in the practical implementation of public procurement. The Act requires sustainable criteria in all public procurement, and for all public procurement regardless of the procurement price. In practice, this is proving to be very problematic as contracting authorities were not sufficiently prepared for this major change.

In addition, the Ministry of Labour and Social Affairs of the Czech Republic stepped into the environment of regulation and guarantee of public procurement and enforced this change as a new stakeholder responsible for socially responsible public purchasing. A new platform for SPP has been created. There are many examples of

good practice in the guidelines and some courses and workshops are even organised by the Ministry. Unfortunately, there is no overarching national CAP strategy to guide the implementation of this fundamental change. This probably causes many problems in the implementation of public procurement in the Czech Republic, including the failure to meet the main objectives of the sustainable public procurement concept.

The aim of this paper is to contribute to research that compares SPP implementation within sectors or between countries (Brammer and Walker, 2011) and to build on studies analyzing SPP implementation instruments such as legislation (Thomson and Jackson, 2007) or (Kunzlik, 2003).

2. Theoretical and conceptual framework

In recent years, many public authorities have been focusing on green, socially responsible, and innovative public procurement due to a common European policy (Agenda 2030) and the requirements of a “sustainable development of society.”

The Sustainable Development Goals were adopted by the United Nations in 2015, and are now to be implemented through the 2030 Agenda, which is codified in the Strategy for Sustainable Development in Europe. The Strategy aims to “*promote public procurement practices that are sustainable, in accordance with national policies and priorities.*” (United Nations, 2015, Transforming our world). Goals and targets cover environmental economics and social issues (Gutiérrez-Goiria et al., 2021). Public policy, particularly public procurement, plays a key role in achieving these goals. SPP can be divided into two groups according to international experience.

The use of the institute of public procurement appears to be a suitable tool for applying social responsibility principles across all areas of the public sector and also across public organisations, as pointed out by Gutiérrez-Goiria et al., 2021).⁶

Many studies suggest that public procurement (accounting for more than 14 % of EU GDP) is an appropriate and even potentially successful tool to achieve these sustainable objectives (Faracik, 2018) in three ways or a combination of them: as green public procurement, social public procurement (McCrudden, 2004) and innovative public procurement (Caranta and Gomes, 2021). Sustainable Public Procurement

6 When used strategically, public procurement can contribute to the 2030 Agenda for Sustainable Development by supporting a more resource-efficient economy, stimulating innovation, supporting small and medium-sized enterprises (SMEs) and promoting social values. In recent years, citizen expectations have increased with calls for greater accountability in government purchasing decisions, increasing the need to consider broader outcomes and multi-dimensional risks, including in global supply chains. As large purchasers, governments have the power to set standards that can move markets towards more responsible business conduct (RBC) and level the playing field for suppliers striving to implement RBC standards. (OECD, 2021)

(SPP) is thus a process by which public authorities seek to achieve an appropriate balance between the three pillars of sustainable development - economic, social, and environmental - when procuring goods, services, or works at all stages of the project. (European Commission, Green and Sustainable Public Procurement).

Social and societal criteria (called responsible criteria in the Czech Republic) aim to promote access to tenders for small and medium-sized enterprises, the fulfilment of social goals, the care of employees, the employment of people with disabilities and the long-term unemployed people after serving a prison sentence.) are implemented into European countries according to 2014/24/EU of the European Parliament and of the Council of February 26, 2014 on public procurement.⁷

Meeting sustainable criteria means buying innovative products, works and services to achieve the best value for public money and environmental and societal benefits (2014/24/EU). This is called Green Public Procurement (GPP).⁸ Whereas GPP aims solely at reducing the environmental impact, social or socially responsible public procurement is about promoting employment opportunities, decent work, social inclusion, accessibility, design for all, ethical trade and seeks to achieve wider compliance with social standards.

SPP thus encompasses both green and social procurement (Faracik, 2018). In the case of public procurement, many terms or definitions are used with global, environmental, social, and other aspects. The Czech Republic uses "Socially Responsible Public Procurement" (SRPP) (Socially Responsible Public Procurement, online). The concept of SRPP was defined in 2011 by the European Commission and this definition has also

7 "Measures aimed at protecting the health of employees involved in the production process, giving priority to the social integration of disadvantaged persons or members of vulnerable groups among those entrusted with the performance of a contract, or training in the skills needed for a given contract may also be the subject of award criteria or contract performance conditions, provided that they relate to the works, goods or services to be provided under the contract. Such criteria or conditions may relate, inter alia, to the employment of long-term jobseekers, the implementation of training measures for the unemployed or young people in the course of the performance of the contract to be awarded. In the technical specifications, contracting authorities may provide such social requirements which directly characterise the product or service in question, such as accessibility for disabled persons or a design for all users."

8 Article 11 of the Treaty for the Functioning of the EU requires that "environmental protection requirements must be integrated into the definition and implementation of Union's policies and activities, in particular with a view to promoting sustainable development." The Public Procurement Directive clarifies how contracting authorities can contribute to protecting the environment and promoting sustainable development, whilst ensuring that they can obtain the best value for money for their contracts" (EU online, 2014/24/EU). GPP is part of SPP. GPP is "public procurement for a better environment" as "a process by which public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured" (European Commission, online). GPP is a voluntary instrument, which means that Member States and public authorities can determine the extent to which they implement it (European Commission, online).

been used, for example, in Spanish legislation (Bernal and San-Jose, 2019).

There are comparative studies across the world, we can mention the studies of EU countries (Andrecka, (2017), Džupka et al. (2020), European Commission, (2020)), etc. and studies of sustainable public procurement in many segments (cleaning and facility management, healthcare, food/catering services, social services, information and communication technology, etc (European Commission, 2020 (2))).

Also, in the Czech Republic and undoubtedly in other V4 countries we can find a number of studies on the implementation of selected segments of sustainable public procurement. In selected countries (V4) a current study (Nemec et al., 2021) summarises the transition to sustainable public procurement. The subject of the analysis are tenders implemented in the following countries in the period before the new law came into force in the Czech Republic.

The studies highlight findings of more or less successful implementation of selected sustainable public procurement criteria. Very interesting results in relation to innovative public procurement are provided by the study of Alhola et al. (2017), which deals with approaches to effective market dialogue in the context of Innovative Public Procurement.

Plaček et al. (2021) focus their research on green public procurement in the Czech Republic. Their research concludes that found that the decision-making of Czech public procurers is influenced by the trade-off between good governance and compliance with administrative regulations, which turn out to be mutually contradictory objectives and affect the use of GPP. However, they also point out that there is a clear motivation to implement the concept, but there is a concern about mismanagement of implementation. Green public procurement in Hungary is also addressed in the research of Tátrai (2013); in the Hungarian context, ecological criteria are prioritised over social criteria.

Yu et al. (2020) analysed what influences the adoption of green procurement criteria in public procurement. Their findings suggest that *framework agreements, the medical products sector, the health and social services sector, and the business services sector are negatively correlated with whether a contract is green. On the other hand, the contract value, Government Procurement Agreement (GPA) coverage, joint procurement, competitive dialogue, negotiation with competition (with a call for competition), restricted procedure, transport equipment sector, and food sector may be positively correlated with green contracts, or these factors increase the possibility that a contract will be green.* This shows that transport is a sector where there would be no barriers to implementing sustainable public procurement. Another study (Alhola et al. 2017) confirms transport in general as a suitable area also for the implementation of innovative public procurement. We work with this hypothesis and evaluate the award criteria of tenders of public transport entities.

The railway sector is systematically addressed in the research of many authors

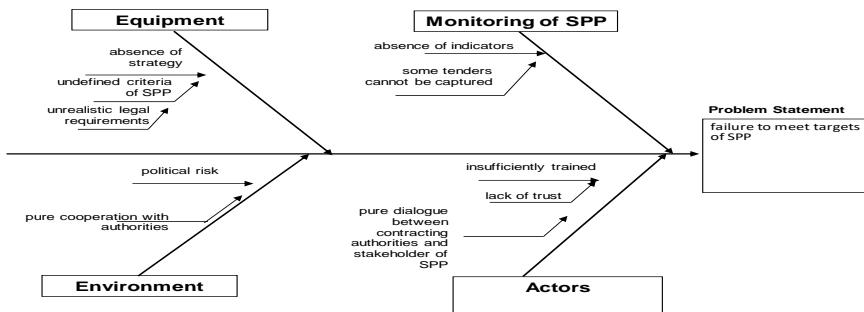
and institutions in the Czech Republic (e.g., Tomeš et al. (2014), Kvizda, (2016)), but only a few studies are focused on tendering in the rail transport sector in particular sustainable public procurement. For example, Tomeš et al. (2014) analysed competitive tendering in the Czech Republic, which raised many problems. Sustainable public procurement is undoubtedly very topical and the case could contribute to research in this field.

There are studies that investigate the success of different tools to implement sustainable public procurement policies and their diffusion within public procurement. According to economic theories, successful implementation requires steps that consist of the formulation of policies through strategies, plans, and concept papers, the setting up of legislative and economic instruments, and the relationship between actors and institutions working in the field. The available studies focus on the analysis of some of these instruments in relation to sustainable public procurement. For example, a study of the Polish experience (Faracik, 2018), which analysed the legislative framework in terms of barriers in the approach to sustainable public procurement, suggests the need to focus specifically on the relationship between policymakers and implementers of measures, i.e., public procurers in the sense of setting bottom-up accountability. The study further suggests that *a legislative environment that does not create barriers to the implementation of sustainable public procurement and a corresponding (national) action plan, i.e., a government-led policy strategy outlining strategic orientation and concrete measure to advance the implementation of sustainability provisions in public procurement, are not sufficient in themselves.*

The risks that may arise in the SPP implementation process and that can lead to implementation failure (implementation deficit, Leenders, and Peters (1987)) are summarised by means of a fishbone diagram. These factors are subsequently analysed in the case of the V4 as criteria for successful SPP implementation in these countries.

Figure 1:

Risks in the process of SPP implementation



Source: Authors

The analysis of the implementation deficit is necessary for the subsequent analysis of the application of the SPP concept in the selected area, i.e., railways. This is based on the analysis of selected public procurement contracts and complements research focusing on the implementation of SPP, as most case studies tend to focus on the experience in individual countries as a whole.

3. Objective, methods, and data

Methodologically, the paper is based on a combination of qualitative and quantitative approaches. We analysed the strategic documents, legislation, and guidelines of the European Union and individual governments, as well as stakeholder documents. Structured interviews with representatives of the railway company were also conducted to complement and check the output of the analysis in the first part and to verify how successful SPP is in practice and identify the pros and cons of implementation. In addition, a qualitative method was used to verify how many tenders in the rail sector respect the SPP criteria. The quantitative method was used to evaluate award criteria of tenders from the TED database, including basic information on public tenders.

Structured interviews were focused on the possibilities of using SPP. They were conducted with a representative of the national railway company (incumbent) in the Czech and Slovak Republics. Unfortunately, the interview with the representatives of the Hungarian and Polish incumbents could not be conducted as they did not respond to the request.

- (1) The interviews aimed at describing specific experiences with SPP in different countries with different legislative environments. The interview lasted one hour and the questions were divided into three parts:
- (2) Perception of the concept of social responsibility by the contracting authority (how it is set up and what added value it can bring).
- (3) Impact of the use of SPP criteria on the public procurement process and the change in purchasing Strategy, including the effect on the bid price and the change in the structure of suppliers, including their readiness.

Implementation environment, methodological support and discussion of legislation.

Table 1 shows the structure of the expert interviews and Table 2 provides an overview of the expert interviews:

Table 1:
Structure of the expert interviews

Duration	60-90 minutes
Form	In person/online
Questions	Open questions with discussion
Recording	Only notes

Source: Authors

Table 2:
Overview of the expert interviews

Date	Institution/company	Position
29.1.2020	ARRIVA vlaky (Czech railway company)	CEO
10.6.2020	Czech Railways (Czech railway incumbent)	Employee of General Directorate; he is a member of the team that is responsible for tendering
25.6.2021	Slovak Railways (Slovak railway incumbent)	Members from Procurement and Logistics Section
7.9. 2021	Czech Railways (Czech railway incumbent)	Members from Procurement and Logistics Section

Source: Authors

Finally, one of the authors works as a consultant for public authorities (and stakeholders) in public procurement and has prepared an extensive amount of public procurement. He has participated in numerous dialogues with contracting authorities and other experts in this field. His experience with sustainable public procurement is also presented in the paper.

The aim of this paper is to compare the implementation of public procurement in the Czech Republic with other members of the Visegrad Group and evaluate how

public procurement respects the SPP criteria in the case of the selected public procurement in rail transport.

The research questions were set to meet the objective. They were divided into two groups: the first group deals with the general conditions for the implementation of sustainable public procurement; the second focuses on specific experiences with the adoption of SPP.

1. General conditions for the implementation of SPP
 - a. Is the Czech implementation of sustainable public procurement compatible with the experience of the Visegrad Group?
 - b. What do the Visegrad Four countries have in common and what are the differences in the implementation of sustainable public procurement?
 - c. Is there an SPP strategy in the following countries?
 - d. What obligations does the law impose?
 - e. Who are the SPP stakeholders?
 - f. How is the SPP process of implementation and monitoring process carried out in these countries?
 - g. Specific experience with the adoption of SPP
 - h. How many tenders in V4 respect the SPP criteria as part of the award criteria in the railway industry?
 - i. What are the pros and cons of the Czech SPP implementation situation?
 - j. Are there any risks that could cause a failed sustainable public procurement?
 - k. Can the principle of social responsibility be focused on a specific stage of the procurement process?

We also verify the hypothesis: *“SPP policy in the Visegrad Group is similar with no significant differences.”*

We focused on the implementation of SPP in all the monitored countries. The success of the implementation of SPP was investigated in the chosen sections:

- Policy networks and Actors

Policy documents – means legislative (Public Procurement Act) and strategic (SPP Strategy of SPP, methods, and guidelines, etc.). These documents should include vision, strategy, concept, policy, plan and programme, research and declaratory (advocacy) articles, OECD studies and think-tanks (Vesely, 2005).

Data was collected from the Supplement to the Official Journal of the EU - TED (tenders electronic daily). Individual contracts were selected according to the contracting authority (railway companies in the Visegrad countries):

Table 3:
Overview of railway companies

Country	The largest provider (contracting entity)
Czech Republic	České dráhy, a.s.
Hungary	MÁV (Magyar Államvasutak)
Poland	PKP Polskie Linie Kolejowe S.A.
Slovakia	Železničná spoločnosť Slovensko, a. s.

Source: Authors

The reference period is from 2015 to 2021, with an emphasis on 2021 when a legislative change occurred in the Czech Republic.

The award criteria were critical for evaluating chosen tenders. It was assumed that the SPP criteria would prove to be an additional criterion for the selection of tenders as one of the quality criteria. This assumption has the following limitations: the SPP criteria may already appear in the subject of the contract or as a contractual condition. Monitoring tenders on the basis of the chosen criteria cannot perceive this.

The analysed tenders were chosen according to CPV, where we assumed the possibility of using SPP criteria (analysis is based on 2,402 observations):

- Cleaning services – 90910000-9
- Promotional services 79342200-5
- Advertising and marketing services 79340000-9
- Catering services 55520000-1
- Railway and tramway locomotives and rolling stock and associated parts 34600000-3

4. Results

4.1. Implementation of sustainable public procurement – legislation, Strategy, actors of the policy

According to the OECD (2021), all countries have a framework to promote environmental objectives in public procurement, 70% have a framework for human rights,

41% have a framework for gender and 48% for minority issues.

SPP is the trend of public procurement under European rules in the Visegrad Group countries (Visegrad Group, online). The Visegrad Group countries cooperate on common policies in some areas of the public sector and share experiences and discuss problems.

The members of the Visegrad Group (the Czech Republic, Slovakia, Poland, and Hungary) have implemented the SPP Strategy and principles into their policies and legislation. The scope of public procurement is comparable to the following countries, as shown in Table 4.

Table 4:
Scope of public procurement in the selected countries

	% Total general government expenditures			Public procurement as a share of GDP		
	2007	2019	2020	2007	2019	2020
Hungary	26.8	34.6	31.4	13.4	15.8	16.2
Czech Republic	35.3	32.3	30.5	14.3	13.4	14.5
Poland	28.7	28.3	25.2	12.3	11.8	12.3
Slovakia	35.0	33.6	31.2	12.7	14.3	15.0
OECD-EU	28.9	29.4	27.9	13.1	13.7	14.9

Source: OECD National Accounts Statistics (database) at Government at a Glance 2021 (OECD 2021).

Firstly, we verified the hypothesis: *The SPP policy in the Visegrad Group is similar with no significant differences*. To verify the hypothesis, SPP implementation was analysed in the Visegrad Group countries in four sections:

- a. The SPP equipment consists of analysis strategies, policy documents, guidelines and laws.
- b. The SPP environment – we analysed the cooperation between the main SPP authorities in the countries and the relationship with the autonomous authorities and of course the possible SPP stakeholders in these countries.
- c. SPP monitoring

- d. People – contracting authorities – we analysed the knowledge of these authorities and the relationship, cooperation (responsiveness of the state authorities) and discussion with the state guarantors of SPP. The interviews and authors' experiences complete the publicly available information (websites of ministries, autonomous institutions, conferences, etc.).

Table 5 presents the results of the policy documents, strategies and planning programmes and the conceptions of sustainable public procurement in the countries studied.

Table 5:
Factors of SPP implementation in the Visegrad Group countries

	The Czech Republic	Hungary		Poland	Slovakia
Special SPP Strategy	No	National Strategy no	Regional Strategy exists	Yes	No
Obligation under the law	Yes, 100% since 2021	No, but the contracting authorities have to consider using it in the preparation phase.		No, but the contracting authorities have to consider using it in the preparation phase.	Yes. A minimum of 6% of tenders of each contracting authority has to fulfill SPP (since 2020).
Main SPP Authority	No	Yes		Yes	Yes
Good practice	Yes	Yes		Yes	Yes
Guidelines	Yes	Yes		Yes	Yes
Cooperation with autonomous authority	No, only in dialogue, not in the methodical phase	Yes		Yes	Yes
Monitoring	No	No		Yes	No

Source: authors

Poland seems to be the leading country for exemplary implementation of SPP. This country stands out above the rest in each of the following factors of excellence in

SPP performance. Each of these criteria is described in detail below.

Ad a) Equipment of SPP in V4

Strategy

As we can see, only Poland and some regions in Hungary have an SPP strategy (in Hungary, there are significant differences between regions). For example, Budapest has a strategy called: “*Green sustainable, innovation and responsible public procurement strategy*” (Global Lead City Network, online) and is a member of PROCURA+ (European Sustainable Procurement Network) (Procura, online). Budapest is also one of the cities of the Global Lead City Network on Sustainable Procurement (GLCN). In 2016, it became a new member of this platform and set Sustainable Procurement Targets. The main objective is that 100% of procurement processes should include sustainability and green aspects by 2020. In addition, by 2020, at least 30% of the evaluation criteria in the procurement processes would be determined by sustainability principles. The implementation of SPP appears to be highly decentralised in Hungary. Regions play a key role in the implementation process. “The target for a 100% sustainable procurement process means that every procurement will contain or be driven by at least one issue, item, contractual commitment in the framework of sustainability.” (Global Lead City Network, online).

Warsaw is also part of the GLCN network but with less ambitious objectives than Budapest. It has 130 electric buses in operation since 2020.

The SPP target is set by law for all tenders for all tender authorities in the Czech Republic. This seems to be a very ambitious, perhaps unrealistic target. On the other hand, the Czech Republic has no environmental policy strategy or sustainable procurement process strategy; there are only guidelines, methodology, and good practices. No city in the Czech Republic is a member of the GLCN network.

In Slovakia, no city is a member of the GLCN either. Slovakia has a Strategy of Environmental Policy of the Slovak Republic until 2030, but no strategy for SPP. There is only a concept for the development of public procurement from 2015.

Legislation

All countries respect European law. Slovakia and the Czech Republic have a legal obligation to use SPP. The difference is: 6% of tenders in the case of Slovakia and 100% in the Czech Republic (if this is not possible in the Czech Republic, public authorities have to justify why it was not possible to reasonably use the SPP criteria).

Contracting authorities in Poland and Hungary have to consider the use of sustainable criteria in the preparation phase when analysing the contracting authority’s needs. The use of sustainable criteria is optional, but the contracting authorities should consider the possibility of employing environmental, social, or innovative aspects of

procurement in the case of Poland. Detailed rules under the law in each of the following countries are provided in Appendix 1.

Ad B) SPP Environment

4.2. Actors of sustainable procurement policy and their role in the process of sustainable public procurement

Table 6:

The main authorities responsible for sustainable public procurement in the compared countries

Countries	The body responsible for legislation	Support and guidelines for contracting authorities	The body responsible for monitoring	The autonomous institution in the field of public procurement
Hungary	The Procurement Management Office (PMO)	PMO	PMO	Public Procurement Authority (KM)
Poland	Public procurement office (PPO), Ministry of Development, Labour and Technology	PPO	PPO	PPO. The president is appointed by the Minister responsible for the economy
Slovakia	Office for Public Procurement (UVO)	UVO	Office for Public Procurement (UVO)	Office for Public Procurement (UVO)
Czech Republic	The Ministry for Local Development	Especially the individual ministries Ministry of Labour and Social Affairs in the case of social and innovative public procurement Ministry of the Environment in the case of green public procurement	The Ministry for Local Development	Office for the Protection and Competition (ÚOHS)

Source: Authors according to OECD and the websites of the compared countries, TPP (online), Urząd Zamówień Publicznych (online), Úrad pre verejné obstarávanie (online), results from the in-depth review, European Commission, 2020, Krajowy Plan Działania w zakresie zrównoważonych zamówień publicznych na lata 2017-2020 (National Action Plan for sustainable public procurement for the years 2017 – 2020, The Ministry of Labour and Social Affairs, Ministry of the Environment of the Czech Republic. Office for Protection and Competition.

The table presents the main body in the compared countries responsible for setting the conditions for SPP. In the Czech Republic we see a different situation compared to other countries. In the Czech Republic, two ministries play a primary role in the sustainable public procurement process. They cooperate with the authority responsible for legislation (Ministry of Regional Development CZ) and the Office for Protection and Competition (ÚOHS).

In the rest of countries, there is an institution responsible for legislation or an autonomous institution that plays a primary role in the process.

The situation is similar in Poland. On the Authority's website we can find a section on Sustainable public procurement, which contains a subset of "green orders", Social Procurement of Public Customers, "Procurement for Innovation", and BIM – modelling of building data. A very clear system with reference to the relevant legislation. Very conceptually designed.

Ad C) SPP Monitoring

Monitoring

SPP Monitoring: The Global Review offers some indicators to monitor the extent of SPP. For example, it used the percentage of total public procurement. (United Nations Environment Programme, 2013) This indicator was used for the evaluation of monitoring SPP in the countries compared.

SPP data is only available for Poland. In 2020, 1,544 contracts were awarded that included environmental and innovative aspects. Their value amounted to PLN 12.3 billion (excluding VAT). The share of GPP or innovative public procurement in the total number of public contracts awarded was 1% and 7% of the total value of public contracts awarded. In 2020, 28,283 contracts were awarded, including social aspects, with a value of approximately PLN 72.3 billion (excluding VAT). The share of SRPP in the total number of public contracts awarded was 21% and the percentage of the total value was 40% (Skowron, 2021).

Ad D) Contracting authorities

Good practice and guidelines

In the Czech Republic, the Ministry of Labour and Social Affairs has published guidelines, methodology, and good practice of SPP (SOVZ, online). GPP is the responsibility of the Ministry of the Environment.

Hungary is cited by the EU as a country with good experience with SPP. The Public Procurement Authority set up a Sustainability Working Group to further strengthen green, social and innovative aspects. (KH, online)

Methodology and guidelines for SPP are available on the pages of the Slovak Office for Public Procurement (Úrad pre verejné obstarávanie, online). As part of the Public Procurement Office's Long-Term Strategy, the concept of working groups on selected public procurement issues – GPP, social aspects, and innovation in public procurement – has been developed. The working groups were composed of the Authority's staff drawing on their expertise, experience, and information, cooperating with other experts from external backgrounds. (Úrad pre verejné obstarávanie, online).

The Polish Public Procurement Office (PPO) has a wide range of activities: it provides training and organises conferences. Its website has a number of publications and information materials available. The PPO has a policy-making and coordinating role in the whole public procurement system.

Some of the interview questions dealt with the relationship between state authorities and contracting authorities: In your opinion, is it clear how to implement this concept? I am referring to the elements of social responsibility. The answers were: "More or less. If they are not sure, they will consult. However, there is no more precise methodological support..."

Another question was: Do you have central support, or is it up to the contracting authorities? The answer: *"They can ask; they don't have any specific methodology..."* The lack of cooperation with central authorities and a certain unpreparedness of the contracting authorities is also evident from the answer, which shows a lack of understanding of the concept of socially responsible procurement. *"Rail transport is an environmentally friendly option in itself. Nothing has changed significantly since the acquisition of the amendment. There has been an increase in the administrative burden. Most contracting authorities did so in the past. Social aspects are everywhere; all three requirements (environmental, social, innovative) cannot be applied at once."*

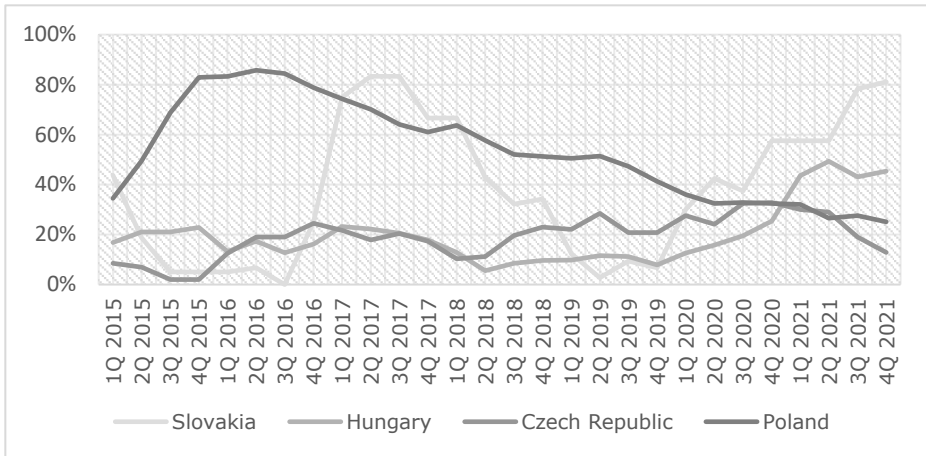
4.3. Implementation of sustainable criteria – analysis of the selected tenders

In this part, we answer the research question: *How many tenders in the railway sector in the following countries respect the SPP criteria in any part of the process?*

One of the prerequisites for the concept of SPP is to achieve better value for money, for example by taking into account lifetime costs of the project and qualitative

criteria in the process of evaluating bids. We use this assumption to examine how countries use SPP. From the TED database, we selected tenders of national carriers which meet the specified criteria – matching the CPV. We chose the CPV code based on international experience and interview responses.

Figure 2:
Share of tenders with qualitative criteria



Source: own processing based on <http://ted.europa.eu>

SPP can only be used in tenders with qualitative criteria. The situation varies from country to country. The best situation is in Slovakia, where 80% of tenders use qualitative criteria. On the other hand, the situation is worst in the Czech Republic, where less than 20% of tenders use qualitative criteria.

The table below shows an example of public contracts captured in TED, with an emphasis on the capture of social responsibility criteria in the award criteria section. This step was taken in order to assess whether the obligation in the legislation in the Czech Republic has fundamentally changed the trend in the selection of evaluation criteria. By 2021, all contracts in the Czech Republic must be implemented on the basis of social responsibility criteria. If the subject matter of the procurement does not allow it, contracting authorities must justify why the use of SPP was not possible. The aim was to assess how this obligation was reflected in the partial part of the procurement, i.e., the award criteria. The tender documents of the contracts listed in the table were analysed. Contracts from other V4 countries were also monitored, although there was

no such fundamental change in legislation in these countries. Nevertheless, we considered it important to monitor these contracts in order to maintain continuity.

The selected tenders provide a valuable insight to assess the situation with SPP:

Table 7:
Selected tenders for assessing the situation with SPP

Document number	Country	CPV	Criteria	Tender Procedure	Expected value
134593-2021	Czech Republic	34600000	Price 85%, delivery date 15%	Negotiated procedure	Not specified
65348-2021	Czech Republic	90910000	Price 65% and quality criteria 35 % ⁹	Open procedure	Not specified
585706-2021	Hungary	34622200	Price 95%	Open procedure	Not specified
566141-2018	Hungary	34632000	Price 90% quality criteria 10%	Negotiated procedure	Not specified
392546-2021	Poland	90910000	Price 70% quality criteria 30%	Open procedure	Not specified
184666-2021	Poland	79340000	Price 60%, Time of delivery 25%, increase leaflet circulation 15%	Open procedure	Not specified
158415-2021	Poland	79340000	Price 60 % Date of deliv- ery 25% Increase leaflet circulation 15%	Open procedure	Not specified
147752-2021	Poland	34600000	Price 90% war- ranty 10 %	Open procedure	Not specified
101048-2021	Poland	34600000	Price 90%, warranty 10%	Open procedure	Not specified

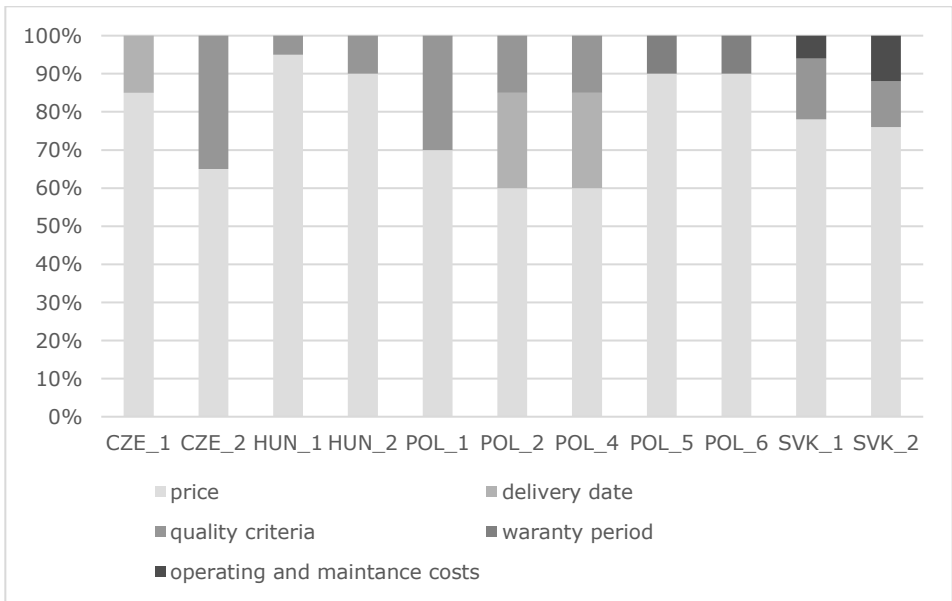
⁹ Deadline for starting work on emergencies outside the schedule 25% and Proposed removal time of external graffiti - 10 m² - 10%

51111-2021	Slovakia	34600000	Price 78% Operating and Maintenance costs 6% Technical parameters 16%	Open procedure	76,955,000 EUR
51112-2021	Slovakia	34600000	Price 76%, operating and Maintenance costs 12%, technical parameters 12%	Open procedure	67,250,000 EUR

Source: Author according to <https://ted.europa.eu//TED/search/searchResult.do>

In Figure 3 there is an overview of public procurement used in the paper:

Figure 3:
Overview of public procurement used in the paper



Source: Author according to <https://ted.europa.eu//TED/search/searchResult.do>

The main criterion for selecting a supplier is still price. In some cases, it is supplemented by qualitative criteria, representing delivery time, technical parameters of

the delivered goods, or warranty period. In Slovakia, life cycle costs, which include operating and maintenance costs, were included in the evaluation criteria. This criterion aims to capture value for money, which is also discussed in the literature in relation to the attributes of socially responsible procurement. The criteria presented here are close to the most established principles of socially responsible procurement. No other criteria fulfilling the characteristics of environmental, social, or innovative public procurement were recorded in the award criteria.

5. Discussion and concluding remarks with public policy recommendations

We found examples of successful SPP in the countries studied. These are examples of good practices which could inspire other contracting authorities in these countries. However, public procurement policy differs and some of them are more successful than others. Three key factors can be identified: different legislation (voluntary vs. mandatory), the (non-)existence of a SPP Strategy, the roles of actors and their cooperation, and the control and monitoring of SPP. Monitoring tools are mentioned as one of the six main possible strategies to incorporate social considerations into public tenders (Bernal and San-Jose, 2019).

In a somewhat positive sense, the experience with the Polish public procurement system stands out. The Polish experience is characterised by a clearly defined strategy for socially responsible public procurement and the crucial role of an autonomous central body that develops oversight methodologies and shares good practices. The criteria are defined, which in turn facilitates the monitoring of socially SPP. The Polish and Slovak carriers also excel in tender evaluation. They use more criteria besides qualitative, not only the lowest price. These contracting authorities have exclusively used open procedures for the awarding of public contracts. This experience points to more sophisticated purchasing strategies in line with new European challenges and trends. Poland also belongs to the group of countries where socially sustainable public purchasing is voluntary. In particular, the use of such criteria is enforced by Polish contracting authorities before the actual implementation of the procurement procedure, together with the assessment of the different options for securing the need, including in-house. It allows for a strategic approach to public procurement, rather than addressing the need for ad hoc measures. Moreover, it appears that the obligation itself solves nothing.

As demonstrated by the case of the Czech Republic, where the legislation foresees the use of social responsibility criteria for all public procurements, except those where the involvement of social responsibility is not possible. However, this must be properly argued by the contracting authority. After all, in the Czech Republic we can see this transformation of society and its behaviour in private organisations. This experience

could inspire the public sector. Some of the public institutions are part of the Association of Social Responsibility (online). In the Czech Republic there is no primary SPP strategy accepted by the stakeholders. There are no indicators for the success of the SPP criteria. This would not be because the criteria are not clearly defined.

For this reason, they will not be controlled by the public procurement authority. It is not clear how the Czech Republic will assess the success of the SPP. The obligation to state the SPP criteria applies to all tenders. For small-scale contracts, there may be a problem of how to capture and therefore control compliance with the principle - they do not enter the database of the public procurement information system and not all of them are registered in the register of contracts.

Slovakia and Hungary are somewhere between the Polish and Czech SPP policies. In the case of Hungary, there is a strategy similar to the Polish one, but with differences between regions. The law is set up in a similar fashion to that in Poland. The bid evaluation strategies differ. Price is only an evaluation criterion in the selected tenders. However, we cannot formulate this in general terms.

SPP is mandatory in Slovakia and the Czech Republic. However, the differences are in the share of SPP tenders. In Slovakia, only 6 % of tenders are SPP tenders. The key implementer and guarantor of SPP is an autonomous organisation as in Poland and Hungary.

We analysed individual tenders implemented by public contracting authorities operating in the rail transport sector. We selected the tenders based on CPV codes or those characteristics for which the use of social responsibility criteria could be expected based on the literature and the results of the interviews. It is clear that tenders will not meet criteria from all three areas (social, environmental, and innovative) as suggested by the literature (McCrudden, (2004), Caranta and Gomes, (2021)). According to the results of the analysis carried out (in the award criteria section), we could conclude that in the period under review, with a few exceptions, the social responsibility criteria were not applied. We arrive at a similar conclusion to the results of the research (Plaček et al. 2021), namely that the lowest price is the criterion for the selection of the tender and thus takes precedence over other criteria, in their case ecological criteria. The excessive use of the lowest price criterion can be problematic in terms of its impact on the quality and non-transparent procurer-supplier relations, as Grega et al. (2019) point out.

There are two ways to explain this. Contracting authorities primarily use price instead of the quality criteria in the evaluation version. Also, the conclusions of the study (Ochrana and Hrnčířová, 2015) confirm that the lowest price is strongly preferred by Czech contracting authorities. And it cannot be expected that this would be different in the case of SPP. Or these may have been captured in other parts of the tender documentation, such as the specification of the subject matter of the contract, the qualification and technical prerequisites and, above all, the contractual conditions.

An analysis of these parts could not be carried out in detail due to the limitations of the available source. This would certainly merit further investigation. Thus, it cannot be clearly established that, in the case of contracts where the presence of evaluation SPPs was not recorded in the award criteria, these criteria were not part of the terms of reference and the contract.

In conclusion, therefore, it can only be stated that the SPP criteria are unlikely to be used as a criterion for the evaluation of tenders, except for criteria that aim to achieve value for money and qualitative parameters. However, even these are used only sporadically in the case of rail sector contracts. It would be interesting to compare this with other areas of public service provision.

It is probably to be expected, as confirmed by the interview results, that if contracting authorities include social criteria, this step must necessarily be reflected in all parts of the process and it is not possible to clearly identify a specific point in the procurement process where SPP criteria can be clearly applied. This confirms the assumption that the procuring entity's behaviour in terms of fulfilling social responsibility will accompany it throughout the procurement process from the planning stage onwards and points to a change of mindset or a change of Strategy in the procuring entity's behaviour in terms of meeting needs through procurement. In our view, greater involvement of SPP in public procurement will not be resolved by a review of contract terms or award criteria. Also, the example of the Czech Republic has shown that an obligation set in legislation does not automatically lead to a broader or 100% use (this is confirmed by a member of the interview "*The obligation strictly stipulated by law or through quotas leads nowhere. It does not seem to be the right solution to turn sustainable public purchasing from 0 to 100% as in the case of the Czech Republic...*").

In other countries (except Slovakia) there is no legal requirement for the amount or proportion of contracts that should meet sustainability criteria. Likewise, the European Commission leaves the use of SPP within the competence of the Member States. There are areas of the public sector in which contracting entities operate and where the use of SPP may be more problematic than in others (e.g., social services). For this reason, we see the use of sustainable criteria in all public procurement, including small purchases, as highly problematic.

We therefore agree with the research findings of Brown and Osborne (2005) who pointed out that it is certainly not only about the purchasing Strategy of these public organisations, but also about changing their behaviour. The goals of sustainable responsible purchasing must inevitably be translated into the goals and values of the organisation as a whole. Changes within the organisation are required. Conversely, the focus for success can be seen in greater cooperation between the different actors, i.e. the contracting authorities and inspection bodies. In order to monitor the implementation of the SPP, it is advisable to complement the policy with a clearly defined strategy, including the setting of indicators to achieve the objectives contained in such a

concept. Poland seems to be the furthest along in this respect, while the other countries have their reserves, as can be seen in the results section.

This study contributes to the scientific literature by identifying six possible strategies for incorporating social considerations into public tenders, namely: objectifying procedures, generating monitoring tools, developing informational and training events for decision-makers, incorporating awareness-raising initiatives, creating transparency systems, and including information and communication technologies (ICTs).

However, this paper has a limitation: we have only analysed selected public procurement without analysing in detail the tender documentation of these tenders and we have only conducted several structured interviews. In addition, our paper focuses on four countries. Therefore, the results are only limited in their generalisability.

The following research project may address the role of the suppliers. The questions remain whether suppliers are prepared for the changes related to SPP and how they can meet the SPP requirements. Tátrai (2013), in relation to the emphasis on the role of suppliers in the sustainable procurement process, also questions their motivation to apply creative elements in their bids in a situation of over-regulation and legal obligations. This is further elaborated on in the study by Alhola et al. (2017). Among other things, the findings confirm the need for further research to understand the impact of sustainable procurement strategies, including market dialogue, on the success of contracting authorities in procuring innovation.

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Appendix 1

Table 8:

Mandatory use of sustainable criteria in public procurement in the Visegrad Group

Countries	Act	Obligation by law	Article in the Act
Hungary	Act CXLI of 2015 on Public Procurement	Yes, in the preparation phase	<p>Par. 132 — contractual obligations — soc. Criteria, Par. 29/1 preparation, 198/1/b.10 – authorisation to issue a decree (decree not found)</p> <p>Part 28 of the Act.</p> <p>The contracting authority shall ensure thorough preparation of the procurement procedure, as regards the subject-matter and the estimated value of the public contract. The procurement documents made available by the contracting authority shall ensure that economic operators are given an opportunity in the procedure to make an offer which is technically suitable, physically executable and economically rational. Contracting authorities shall, even during the preparation of the procurement procedure, seek to ensure conditions necessary for high quality performance, protection of the environment – in light of the subject-matter of the public contract - and consideration of sustainability concerns, as well as prevention of amendments to the subject-matter of the public contract. The contracting authority can also use the method of value assessment.</p>
Poland	<p>The Public Procurement Law of September 11 2019 (Journal of Laws item 2019 as amended)</p> <p>New Act on public procurement (2021)</p>	Yes, in the preparation phase.	<p>Polish contracting entities must process an analysis of the contracting authority's needs (for contracts whose value is equal to or greater than the European Union thresholds) (see National law - Public Procurement Office (uzp.gov.pl)). This means that for over-the-line public procurement, they must explore options for social, environmental and innovative solutions (in accordance with the concept of sustainable public procurement).</p> <p>The Act of September 11 2019 - Public Procurement Law (Journal of Laws of 2019, item 2019, as amended) directly refers to social issues in the provisions on the strategic approach to public procurement (Article 21 on the State Procurement Policy) and in the procedural provisions regarding</p>

			the preparation, award and implementation of a public contract (Article 17 on the principle of efficiency, Article 83 on the analysis of needs and requirements and individual articles of the Act on instruments enabling social considerations to be taken into account in the public procurement procedure and at the stage of public procurement) (PPO, online).
Czech Republic	ACT No. 134/2016 Coll. on Public Procurement	Yes, 100% since 2021	Contracting authorities are obliged to comply with the principles laid down by law in the procedure. In drawing up specifications, evaluating tenders and selecting a supplier, the contracting authority shall, in so far as the nature and purpose of the contract so permit, observe the principles of socially responsible procurement, environmentally responsible procurement and innovation within the meaning of the law. The contracting authority shall duly justify its action. This obligation is part of the principles of the law and all contracting entities are obliged to comply with it for all contracts, including small-scale contracts.
Slovakia	Act No. 25/2006 Z. z. on public procurement	Yes. Contracting authorities are obligated to use a minimum of 6% of the social criteria in tenders (since 2020).	The legal obligation to apply the social aspect does not apply to all entities announcing public procurement. It applies only to a public contracting authority and contracting authorities. In the calendar year in which it has launched or implemented at least ten public contracts other than low-value contracts, the contracting authority is obliged to use the social aspect in the description of the subject-matter of the contract as a special condition for the performance of the contract or as a criterion for at least 6% of these contracts. evaluation of tenders. This obligation does not apply to so-called subsidised persons (persons pursuant to Section 8 of the Public Procurement Act) who may act as purchasers of goods, services or works. The Public Procurement Act precisely defines the possibility of including a contract in a percentage share in the form of setting the conditions that must be met: 1. The public procurement is in the form of a reserved contract or a contract, framework agreement or concession contract is amended during its duration without a new procurement, if the change consists in extending their duration or increasing their value and the original contract, framework agreement or concession contract was concluded as a result of a public procurement; 2. The contracting authority / entity must carry out a public procurement, 10 3. Public procurement with a social aspect shall be counted only once, regardless of whether it

			was started in one calendar year and completed in another calendar year. The social aspect is also related to certain statutory provisions in the Public Procurement Act (Office for Public procurement, Slovakia, 2021).
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Source: Public procurement authority Hungary (online), National law – Public Procurement Office Poland (online), Office for Public Procurement Slovakia (2021), Národný projekt Zvyšovanie efektívnosti v oblasti verejného obstarávania na Slovensku (online), Úrad pre verejné obstarávanie (online)