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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	ST 5444/4/22 REV 4
Subject:	Draft Council Conclusions on the Development of Sustainable Public Procurement - Approval

1. On 19 January 2022, the Presidency submitted draft Council Conclusions on the Development of Sustainable Public Procurement¹.
2. The draft Conclusions were discussed at three meetings of the Working Party on Competitiveness and Growth (Public Procurement), held on 26 January, 4 March, and 11 May 2022. In a written consultation on 11 – 13 May 2022, the members of the Working Party endorsed the text.
3. In view of the above, the Permanent Representatives Committee is invited to:
 - recommend that the Council approve the Council Conclusions on the Development of Sustainable Public Procurement, as set out in document ST 5444/4/22 REV4, which is also in the Annex to this Note.

¹ ST 5444/22.

Draft Council Conclusions on the Development of Sustainable Public Procurement

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING the conclusions of the Council of the European Union on the Single Market ⁽²⁾, in which the Council underlines the important role of public procurement in achieving the twin green and digital transitions;

RECALLING the European Council conclusions of 21 July 2020 stating that the plan for European recovery will need massive investment, in particular with the aim of bringing about a sustainable and resilient recovery, while supporting the European Union's green and digital priorities;

EMPHASISING that common effort is necessary not only to support the businesses that are most affected by the health crisis but also to make public investments that foster convergence, resilience, sustainability, innovation and European independence in strategic sectors;

EMPHASISING the crucial role that public procurement can play in the proper implementation of the sustainable development goals and in the incorporation of these goals to serve the public interest;

RECALLING the Council conclusions of 17 December 2020 on 'Making the recovery circular and green' ⁽³⁾, in which the Council expressed its support for the guidance proposed in the Commission communication 'A new Circular Economy Action Plan for a cleaner and more competitive Europe' ⁽⁴⁾ on green public procurement;

2 ST 10698/20: 'A deepened Single Market for a strong recovery and a competitive, sustainable Europe'.

3 ST 13852/20.

4 ST 6766/20 + ADD 1: Communication from the Commission COM (2020) 98 final.

RECALLING the conclusions of the Council of the European Union on public investment through public procurement ⁽⁵⁾, in which the Council supports ambitious environmental considerations in procurement, for example through the introduction of criteria or targets, and taxation as it contributes to sustainability;

RECALLING the Commission Work Programme for 2019 entitled ‘Delivering what we promised and preparing for the future’ ⁽⁶⁾;

RECALLING the Commission communications ‘A clean planet for all’ ⁽⁷⁾ and ‘The European Green Deal’ ⁽⁸⁾;

CALLING ATTENTION TO the binding targets adopted at EU level for significant reductions in greenhouse gas emissions by 2030 and climate neutrality by 2050, as recently reaffirmed in all the Commission proposals contained in the ‘Fit for 55’ package;

CALLS on the Commission and the Member States to work in close partnership with the European Parliament, the regional and local authorities, the Economic and Social Committee, and the Committee of the Regions when pursuing these common objectives and, to that end, to work, in particular, towards:

Introducing Sustainable Development Considerations in Public Procurement

1. EMPHASISES the concept of sustainable development as a way to achieve economic and social development and environmental protection while respecting human rights;

5 ST 13352/20: ‘Public Investment through Public Procurement: Sustainable Recovery and Reboosting of a Resilient EU Economy’.

6 Communication from the Commission COM (2018) 800 final.

7 Communication from the Commission COM (2018) 773 final.

8 ST 15051/19 + ADD 1: Communication from the Commission COM (2019) 640 final.

2. CONSIDERS that public buyers should be able to use their resources strategically in order to support as well as possible the transition to a green, innovative, circular, and socially responsible economy, in particular by investing in sustainable infrastructure, sustainable and/or circular economy products, and by using processes and technologies that are themselves ambitious with regard to the sustainable development goals pursued, while seeking the best possible value for money, and promoting wide competition in public procurement procedures;
3. CALLS on the Commission to consider, in line with its commitment in the Sustainable Europe Investment Plan ⁽⁹⁾ and in the Circular Economy Action Plan, in the context of future legislative proposals, including those which amend existing EU legislation relating to the various sectors of activity, the possibility of introducing sustainable development considerations into public procurement procedures for sectoral goods or services; UNDERLINES that, depending on the sector, these considerations may range from sustainable development goals, professional abilities or technical specifications related to sustainable development in contracts, to sustainability criteria, in particular for the execution or the awarding of contracts; STRESSES the importance of allowing public buyers to determine the most appropriate way to include such considerations in their procedures; TAKES NOTE of the work already undertaken by the EU institutions and the Member States in this regard, and UNDERLINES the need to accelerate and intensify it;
4. URGES the Commission and the Member States to work together to map, in relation to public procurement, the sectors relevant in terms of their sensitivity to sustainable development considerations and to assess their maturity, taking into account, for example, the ability of economic operators to address these new considerations;

9 ST 5269/20: Communication from the Commission COM (2020) 21 final.

5. HIGHLIGHTS the work completed, in progress and on the way at Member State level to establish the priority nature of certain sectors; EMPHASISES the need to coordinate this work at EU level;
6. STRESSES the importance of the role that the Commission's expert groups can play in this regard by involving and inviting the various stakeholders in order to determine whether or not the various sectors identified are to be prioritised; CONSIDERS that the Council should also be involved in this work;
7. STRESSES the importance of defining a general methodology enabling these bodies to determine whether or not each sector of activity should be deemed as a priority through an in-depth analysis of its maturity;
8. CONSIDERS that a coherent work will make it possible to identify both the sectoral EU texts which may be amended in the years ahead and the extent of the amendments that need to be made with regards to their provisions on public procurement in order to help achieve the environmental and climate objectives set at EU level;
9. BELIEVES that it is necessary to achieve these objectives in accordance with the 2030 and 2050 deadlines, referred to above, and STRESSES the importance of a gradual and harmonised approach; CONSIDERS therefore that the texts covering all sectors identified as priority sectors should be revised by 2030 at the latest; CONSIDERS it necessary, moreover, to amend the texts relating to the remaining sectors by 2050 at the latest, which is the reference year set for achieving EU climate neutrality;

10. DEEMS it essential that this work be integrated within a comprehensive approach;
CONSIDERS, as far as appropriate and feasible, that the Commission and the Member States should therefore consider a general framework, intended to introduce the taking into account of sustainable and resilient development considerations into public procurement, irrespective of the sector concerned;
 11. STRESSES the importance, when taking measures, of not imposing an excessive administrative burden on public buyers, and especially on sub-central purchasing bodies;
 12. CALLS ON the Commission and the Member States to begin all this work without delay.
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