

INDEX

acidification, 130 cases ADBHU, 34 ADBHU, 34 air quality, environmental indicator, Ålands Vindkraft, 59 130 Beentjes, 139 Billerud, 35 Air Transport Association of America Bundesdruckerei, 82, 83 (ATAA), 47 aircraft, and emissions trading, 47 Bundesländer, 90 airlines, and emissions trading, 47 Commission v. Estonia, 35, 46 Concordia Bus Finland v. Helsingin Ålands Vindkraft, 59 apparel industry, Chinese, 239 kaupunki and HKL-ATAA. See Air Transport Association of Bussiliikenne, 11, 43, 50, 56, 58, America 84, 104, 139, 203, 221 Austria, 86, 89 Danish Bottles, 34 award criteria, 84-7, 177-8 Essent Belgium, 35, 41, 59 EVN and Wienstrom, 58, 59-60, 84, Bangladesh, 225 104 Barroso Commission, 30 Evropaïki Dynamiki, 35, 44 Iberdrola, 35, 46 Beentjes, 139 Belgium, 41, 90 Industrie du Bois, 35, 41 Belize Labour Act, 96 Inn Valley, 34 Better Regulation agenda, 31 Lianakis, 58 Billerud, 35 Max Havelaar, 12, 35, 43, 59, 67, 84, 105-7, 109biodiversity, environmental indicator, Poland v. Commission, 45 130 Birds and Habitats Directives, 31 PreussenElektra, 34, 38, 39, 42, 59 Bot, Y., 38, 41 Ragn Sells, 35 breach of contract, 227-9 Rüffert, 82, 83 ŠKO-ENERGO, 35, 46–7 **Buildings Directive**, 116 Bundesdruckerei, 82, 83 Vent de Colère, 35, 42 Bundesländer, 90 Vindkraft, 35, 36, 37-8, 46 Buying Social Guide, European Vogel, 226 Walloon Waste, 34 Commission, 93 Wienstrom, 43 Caisse des dépôts et consignations, 42 Wiesbrock, 217 carbon footprint, 67 central framework agreements, 145-7 central purchasing bodies, 141, 144-5, carbon market, 45-7 Caring Dairy label, 99 147, 158



244 INDEX

Charter on Fundamental Rights, 233 lowest-price criterion, 86 Chicago Convention (1944), 47 perpetual clauses in, 216 CIEU. See Court of Justice of the in private sphere, 215-29 European Union collaboration, 224-7 Clean by Design Program, 239 enforcement, 227-9 Clean Vehicles Directive, 116, 126 regulatory content, 220-4 Climate and Energy Policy Framework, regulatory scope, 216–20 remedies, 227–9 Climate and Energy Strategy, 36 regulation and enforcement by, 210, climate change, 130, 187 215 collaboration, 224-7 durance of regulatory activity, collection and recycling costs, 163 213 - 14Commission on Corporate Social enforcement in cases of non-compliance, 214-15 Responsibility, 208 Commission v. Estonia, 35, 46 regulatory content, 212-13 company law, 21 regulatory scope, 210-12 regulation by, 208-10 public procurement and, 182-3, 201 - 3splitting into lots, 169-70 public procurement law and, 199, sustainable public procurement and, 203, 204–5, 234, 241 206-7 reforming, 186-98 corporate social responsibility (CSR), Concordia Bus Finland v. Helsingin 193 kaupunki and HKL-COSME programme, 164-5 Bussiliikenne, 11, 43, 50, 56, 58, Council of Europe, 6 84, 104, 139, 203, 221 Court of Justice of the European Union consumers, 164 (CJEU) contracting authorities, 18 Article 11 TFEU and, 11 award criteria, 177-8 Max Havelaar case, 12 contract execution and, 178 public procurement and, 242 Directive 2014/24/EU and, 32, 84, roles of, 32-47 149, 157 in carbon market, 45-7 identification information of main Emissions Trading Scheme, 45-7 contractor and, 151 grant of financial support, 42-3 obligations of, 92 green certificate schemes and, pre-commercial procurement and, 36 - 42178 - 9green public procurement, 43–5 SMEs and, 174-5 sustainability provisions, supply-chain transparency and, interpretation of, 21 217 CSR. See corporate social responsibility tenders and, 163 Danish Bottles, 34 third-party beneficiaries and, Directive 2004/17/EC (Utilities 219 contracts, 206-29. See also Directive), 17 subcontracting Directive 2004/18/EC (Procurement award criteria, 84-7 Directive), 17 adoption of, 12 as basis for regulation and enforcement, 229 Article 6(1), 103 best price-quality ratio, 84-7 Article 23(6), 103-6, 110, 111 breach of, 227-9 Article 26, 107



INDEX 245

Article 48(2)(f), 107 contracting authorities and, 32, 84, award of contracts in, 85 contracting authorities and, 217 framework agreements and, 138-41 eco-labels and, 43 horizontal clause, 19-20 environmental protection and, labelling provision in, 19 labels and, 108-11 establishment of, 140 life-cycle costing and, 126-8 Recital 29, 103 link to the subject matter (LtSM) social requirements in, 79, 82 requirement, 61-6 Directive 2012/27/EU, 102 Preamble, 93 Directive 2014/23/EU (Concessions Recital 2 of Preamble, 95 Recital 41, 154 Directive), 114, 160 Directive 2014/24/EU (Public Recital 47, 162 Procurement Directive), 18, 89, Recital 52, 171 114, 160 Recital 83, 172 aims of, 76-7 Recital 91, 114, 154 Article 2(1), 108 Recital 96, 128 Recital 97, 61-2 Article 18(1), 111 Article 18(2), 78-82, 87-8, 151-2, Recital 105, 151 SMEs and, 160 155, 157, 194-6, 197, 201 Article 22, 171 subcontracting and, 149, 152-3 Article 33, 142 supply chains and, 218 sustainability policy and, 221 Article 42(1), 221 Article 43, 108-9 Directive 2014/25/EU (Utilities Article 43(1), 109–10, 221 Directive), 114, 160 Article 43(2), 110–11 Directive 89/665/EC, 214 Article 45(1), 221 Dusseldorp, 34 Article 46(1), 169 Article 46(2), 169 EAP. See Environmental Action Article 57, 87, 154, 155, 157 Programme Article 57(1), 156 eco-labels, 32, 43, 100, 101-8, 165 Article 58, 157 Eco-Management and Audit Scheme Article 58(1), 221 (EMAS), 107, 109, 177 Article 58(3), 172 economic development, 9 Article 59, 157 EEA. See European Economic Area Article 62(2), 109, 177 EEN. See Enterprise Europe Network Article 63, 157 EFTA Surveillance Authority (ESA), 83 Article 67, 61–2, 177 EKO label, 43 Article 67(1), 128 ELCC. See environmental life-cycle Article 67(2), 221 costing Article 67(3), 111 electricity certificates, 37-8 electronic procurement, 170-2 Article 68, 116, 128, 131–2, 163, EMAS. See Eco-Management and 177 Article 70, 221 Audit Scheme Article 71(1), 87, 217–18 emissions trading, 26 Article 71(2), 217 Emissions Trading Scheme (ETS), 45–7 Article 71(3), 170 EMS. See environmental management Article 71(5), 150, 151, 217–18 systems end-of-life costs, 163 Article 71(6), 87, 217–18



246

Cambridge University Press 978-1-107-12964-1 - Sustainable Public Procurement Under Eu Law: New Perspectives on the State as Stakeholder Edited by Beate Sjåfjell and Anja Wiesbrock Index More information

INDEX

energy labels, 101, 165 sustainable development and, 7-8 energy resources, environmental as sustainable market economy, 92-4 indicator, 130 values of, 6 Energy Star Regulation, 116 European Union Charter of Enterprise Europe Network (EEN), 165 Fundamental Rights (EUCFR), **Environmental Action Programme** Article 37, 24 (EAP), 26, 32, 115 European Working Group on Ethical environmental costs, 130 Public Procurement, 97 environmental labels, 64 eutrophication, 130 environmental life-cycle costing EVN and Wienstrom, 58, 59-60, 84, 104 Evropaïki Dynamiki, 35, 44 (ELCC), 130 environmental management systems externalities, 123 (EMS), 177 ESA. See EFTA Surveillance Authority fair trade criteria, 59, 67-8 Finland, 37 ESPD. See European Single Procurement Document first-party labels, 101 Essent Belgium, 35, 41, 59 fish resources, environmental ETS. See Emissions Trading Scheme indicator, 130 EU Ecolabel Scheme, 165 forest resources, environmental EU Treaty Law indicator, 130 Article 11 TFEU and, 8 Forest Stewardship Council (FSC), 100 sustainable development and, 7–8 framework agreements, 142 Europe 2020, 28, 62, 65, 93, 115, 140, capacity of, 144-7 162, 182 central, 145-7 European Code of Best Practices, 169 control under, 147-58 **European Commission** over parent company, 153-8 Buying Social Guide, 93 over supply chain, 148-53 Green Action Plan for SMEs, 165 definition of, 142 Monti report, 17 description of, 142-4 socially responsible procurement Directive 2014/24/EU and, 138-41 example of, 142-3 policy, 93 sustainable public procurement multi-provider, 143 opportunities and challenges in, policy, 208 Eco-label, 103 144-58 European Economic Area (EEA), 83 subcontractors and, 148-53 European Economic Community, 6 sustainable public procurement European Environment Agency (EEA), under, 138–59 29, 44 types of, 143 European Platform for LCA, 121 France, 90 **European Single Procurement** green electricity in, 42 Document (ESPD), 171 freshwater, environmental indicator, European Union 130

> Germany, 90 GPP. See green public procurement Green Action Plan for SMEs, 165 green certificate schemes, 36–42 Green Network, 35, 41

FSC. See Forest Stewardship Council

legal status of sustainability in, 5–16 Procurement Directives, 53–6

Programme, 14-15, 26-7

public expenditure in, 1 Seventh Environment Action

as social model, 92-4

aims of, 6



> INDEX 247

Green Paper, 62-3 green public procurement (GPP), 32, 43-5, 161, 164, 166-8, 187, HEC-EcoVadis, 164 Horizon 2020 Programme, 164 horizontal clause, 19-20, 31, 78-84 Iberdrola, 35, 46 ICAO. See International Civil Aviation Organization ILO Convention 94, 83, 84 industrial pollution, 166 Industrie du Bois, 35, 41 Inn Valley, 34 International Civil Aviation Organization (ICAO), 47 International Organization for Standardization (ISO), 118 International Reference Life Cycle Data, 121 International Reference Life Cycle Data System (ICLD) Handbook, 131 ISO. See International Organization for Standardization Juncker Commission, 30, 31 key performance indicators (KPIs), 191, 193 KLM, 99 Kokott, J., 107, 111 labels, 64, 99 Directive 2014/24/EU and, 108-11 eco-labels, 32, 43, 100, 101-8, 165 first-party, 101 laws, 101-8 self-declared, 101 LCA. See life-cycle assessment LCC. See life-cycle costing LCIA. See life-cycle impact assessment

life-cycle impact assessment (LCIA), Life Cycle Initiative, 121 life-cycle costing (LCC), 19, 122-5 advantages of, 116-17 Article 68 of 2014 Directive and, 32 award criteria, 128-9 challenges, 134-5 diligent economic operator and, 132 in Directive 2014/24/EU, 126-8 economic, 123, 130 environmental, 130 EU procurement modernisation and, 114-17 in EU public procurement, 126-35 future of, 133-5 vs. life-cycle assessment, 125-33 methodologies, 129-33 overview, 116-17 problems in, 135 social/green public procurement and, 236, 238 success of, 134 for sustainable public procurement, 114-37, 196-7 in tenders, 163 tools for, 131 link to the subject matter (LtSM) requirement, 20, 50-74 under 2014 Directives, 61-6 EU Procurement Directives and, interpretation of, 58-61 loose interpretation of, 66-73 additionality and verification in, consumption and market regulation, 72–3 problems in, 70–3 origin of, 56-8 proportionality analysis and, 240 strict interpretation of, 66–70 carbon footprint calculation, 67 exclusion stage, 68-70 fair trade criteria, 67-8 renewable energy generation, sustainable public procurement and, 51 - 3

life-cycle assessment (LCA), 119-22

vs. life-cycle costing (LCC), 125–33

Lianakis, 58

life cycle, 118-19

social, 120, 127

advantages of, 193-4



248 INDEX

Lisbon strategy, 115 long-term collaboration, 224–7 lowest-price criterion, 86, 96 LtSM. *See* link to the subject matter

maintenance costs, 163
mandatory social clause, 240
Marrakech Process of 2003, 13
Max Havelaar, 12, 35, 43, 59, 67, 84, 105–7, 109
MEAT. See most economically advantageous tender
Millennium Development Goals, 2
minimum wage requirement, 82
Monti report, 17
most economically advantageous tender (MEAT), 85, 128

Natural Resources Group, 239
Netherlands, 90
best price—quality ratio rule in, 86
tenders in, 90
new environmentalism, 25–6
non-compliance, enforcement in cases
of, 214–15
Norway
non-economic criteria in
procurement, 87
rules on pay and working
conditions, 83

OECD. See Organisation for Economic
Co-operation and Development
Open Skies Agreement, 47
organic agriculture, 59
Organisation for Economic
Co-operation and Development
(OECD)
environmental indicators, 130
Guidelines for Multinational
Enterprises, 190
innovation in public procurement
in, 162

parent companies, framework agreements and, 153–8 PCP. *See* pre-commercial procurement perpetual clauses, 216 planetary boundaries, 14-15, 187-9, 192, 200 Poland v. Commission, 45 polluter pays principle, 123 pollution, 166, 177, 211 Potočnik, J., 25-6 precautionary principle, 90 pre-commercial procurement (PCP), 178 - 9PreussenElektra, 34, 38, 39, 42, 59 prices abnormally low, 202-3 best price-quality ratio, 84-7 lowest-price criterion, 86 private sphere, contracts in, 215-29 collaboration, 224-7 enforcement strategies, 227-9 regulatory content, 220-4 regulatory scope, 216-20 remedies, 227-9 Procurement Directives (2014), 1 Procurement Remedies Directive, 215, 219 public contracting SMEs and, 174, 175-6 socioeconomic objectives and, 94-5 public procurement, 1-5 company law and, 201-3 innovation and, 161-6 international company law and, 182 - 3as policy strategic instrument, 2 reform of, 16-22 socially responsible. See socially responsible public procurement sustainability and, 1-22, 161-6, 230 - 42economic premises for, 231–5 enforcement, 239-42 implementation, 239-42 potential for, 230-1 social and green public procurement, 235-9 sustainable companies and, 191-2 public procurement law, 1 company law and, 199, 203, 204-5,

234, 241

eco-labels and, 102



INDEX 249

in Europe 2020 strategy, 182 legal requirements, 199 limitations of, 231 planetary boundaries and, 200 reforming, 6, 16–22 remedies for non-compliance, 215 simplicity and flexibility of, 76–7 Public Sector Directive. *See* Directive 2014/24/EU (Public Procurement Directive)

Ragn Sells, 35
recycling costs, 163
Regulation (EC) No 66/2010, 102
Regulation (EC) No 106/2008, 102, 103
Regulation (EU) No 174/2013, 103
Regulatory Fitness and Performance
Programme (REFIT), 31
RES Directive, 36–7
Article 3(3), 38
Article 15, 38
support schemes, 38
Rio+20, 2

Rüffert, 82, 83 SBA. See Small Business Act SBS. See Small Business Standards SDS. See Sustainable Development Strategy self-declared labels, 101 Seventh Environment Action Programme (EAP), 26-7, 29, 32 shareholder primacy, 186, 194 ŠKO-ENERGO, 35, 46-7 S-LCA. See social life-cycle assessment Small Business Act (SBA), 164 Small Business Standards (SBS), 165 small- and medium-sized enterprises (SMEs), 19, 160-81 barriers to public procurement, 174 - 5Directive 2014/24/EU and, 160 economic performance of, 173-9 electronic procurement by, 170-2 Green Action Plan for SMEs, 165 green public procurement and, 166 - 8

limited internationalisation of, 173 participation in public procurement, 168-73, 175-6 procurement opportunities, 174 public contracting and, 174, 175-6 subdivision of contracts, 169-70 sustainable public procurement and, 160-81, 238 award stage, 177-8 contract execution, 178 pre-commercial procurement clauses, 178–9 pre-procurement phase, 176-7 procurement procedure, 178 tendering phase, 177 social clauses, 77, 78-91 best price-quality ratio and, 84-7 discretion and, 89-91 effect of, 97 horizontal clause, 78-84 subcontracting and, 87 social labels, 64, 100 social life cycle assessment (S-LCA), 120, 127 social welfare, 9 socially responsible investing (SRI), 187 socially responsible public procurement, 75-98 consequences of discretion in, 89-91 contract award criteria and, 84-7 horizontal clause and, 78-84 mandatory approach in, 91-8 competitive tendering, 95-8 EU as social model, 92–4 public contracting, 94-5 simplification in, 95–8 socioeconomic objectives, 95–8 transparency, 95-8 promoting, 75-7 Public Procurement Directives and, 76 - 7social clauses, 78-91 subcontracting and, 87-9 Society of Environmental Toxicology and Chemistry, 121 Spain, electricity laws in, 46 SRI. See socially responsible investing

industrial pollution and, 166



250

Cambridge University Press 978-1-107-12964-1 - Sustainable Public Procurement Under Eu Law: New Perspectives on the State as Stakeholder Edited by Beate Sjåfjell and Anja Wiesbrock Index More information

INDEX

Sustainable Development Strategy subcontracting, 87-9 Directive 2014/24/EU and, 149, (SDS), 28, 29, 115 152 - 3sustainable public procurement, 2-4, liability in, 217-18 192, 230-42. See also public supply chains control and, 148-53 procurement transparency, 217 contractual dimension of, 206-7 definition of, 75 supply chains, 218 control of, 88, 93, 141, 144, 148-53, as driver for sustainable companies, 155, 158 182 - 205diversification of, 180 economic premises for, 231-5 framework agreements and, 148-53 enforcement, 239-42 framework agreements, 138-59 life-cycle approach and, 238 implementation, 239-42 regulation of, 4, 15, 20, 211, 216–18, innovation and, 161-6 2.2.4 of SMEs, 168 labels as enablers of, 99 subcontractors, 203 life-cycle costing for, 114-17 transparency, 96, 166 link to the subject matter (LtSM) sustainability requirement, 51-3 legal status of, 5-16 Monti report, 17 potential for, 230-1 reform of, 16-22 public procurement and, 1-22, as regulation by contract, 208-10 230 - 42role of SMEs in, 160-81 economic premises for, 231-5 social and green public enforcement, 239-42 procurement, 235-9 sustainable value, 189 implementation, 239-42 Sweden, 90 social and green public procurement, 235-9 green electricity certificates in, sustainability clause, 220-1 37 - 8sustainable business plan, 189, 190-1 Swedish Environmental Management sustainable companies Council (SEMCO), 131 company law reform for, 184-92 Switzerland, 41 possibilities and barriers for, 185-6 public procurement and, 191-2 technical specifications, 60-1 sustainable public procurement as tendering, 95-8 driver for, 182-205 TEU. See Treaty on European Union Sustainable Companies Project, TFEU. See Treaty on the Functioning of 184-92, 198-201 the European Union sustainable development third-party beneficiaries, 218–19 environmental integration, transparency, 95-8 13 - 14in subcontracting, 217 EU Treaty Law and, 7-8 of supply chains, 96, 166 Treaty on European Union (TEU) objectives of, 3 Article 2, 10 public procurement and, 75-6 Article 3(3), 23, 25 requirements for, 3 Sustainable Development Goals, 2, Article 3(5), 10 Treaty on the Functioning of the Sustainable Development Indicators, European Union (TFEU) Article 3(2), 41



INDEX 251

United Nations Office for Project

Article 3(3), 233 Article 7, 10 Article 9, 10 Article 11, 8–12, 16, 23–4, 25, 32, 131, 154, 199–200 Article 34, 35, 37, 38, 39 Article 56, 82 Article 107(1), 42 Article 191(2), 47

UN Sustainable Development Goals, 2 United Nations Environment Programme, 2, 75 Services, 236

Vella, K., 30

Vent de Colère, 35, 42

Vindkraft, 35, 36, 37–8, 46

Walloon Waste, 34
waste generation, environmental
indicator, 130
Wienstrom, 43
Wiesbrock, 217

Vogel, 226