ENSURING THE SUSTAINABILITY OF PUBLIC PROCUREMENT THROUGH THE AVAILABILITY OF LEGAL REMEDIES TO REPRESENTATIVES OF CIVIL SOCIETY

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This paper argues for granting civil society access to procurement remedies, as a means to strengthen enforcement of sustainability requirements. By adopting a public interest lens, the author reevaluates the purpose and objectives of public procurement, with special emphasis on sustainability as one of its core values; this sets the background against which the watchdog role of civil society in public procurement is analyzed in comparative law and practice. The central part of the paper explores pathways and legal implications of vesting representatives of civil society with standing to seek procurement remedies. The final section of the paper synthesizes these findings, paving the way for the second part of the study.

Key words: public procurement; sustainability; civil society; remedies

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1. INTRODUCTION **

Imagine hosting a major international specialized exhibition, worth billions of Euros and requiring the construction of numerous supporting facilities (e.g. a new national sports stadium and railway infrastructure), based on a *lex specialis* that exempts the project from public procurement procedures and prior Environmental Impact Assessment (EIA).[1] Then picture the construction of luxurious residential and tourist facilities in an area of greatest biodiversity importance, based on a bilateral agreement that exempts the project from the public procurement regime.[2] Through bypassing mandatory competition and oversight requirements, this arrangement enables the project to be pursued in an untransparent manner and limits the possibility of economic operators to challenge decisions of contracting authorities and the legality of contract awards. Finally, visualize the award of a 35-year concession contract for the construction of an airport in a protected area, prior to securing compulsory environmental and construction permits, and facing criticism (and criminal investigations) for alleged favoritism and lack of competition.[3]

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1 Transparency Serbia, *No Public Procurement for EXPO 2027 Project*, https://www.transparentnost.org.rs/en/110-english/naslovna/12536-no-public-procurement-for-expo-2027-project (21 February 2026).

2 Tadić, M., *Montenegro-United Arab Emirates agreements: Transparency concerns and environmental risks*, Osservatorio Balcani e Caucaso Transeuropa, 21 August 2025, https://www.balcanicaucaso.org/en/cp_article/montenegro-united-arab-emirates-agreements-transparency-concerns-and-environmental-risks/#:~:text=The%20agreement%20allows%20UAE%20companies,to%20those%20from%20the%20UAE (21 February 2026).

3 Vukaj, E., *Vlora Airport under investigation by SPAK*, Citizens, 9 July 2025, https://citizens.al/en/2025/07/09/Vlora-airport-under-investigation-by-SPAK/ (21 February 2026); Peca, V., *Court Ping-Pong with the Vlora Airport File*, Shteg.org, 15 December 2025, https://shteg.org/en/court-ping-pong-with-the-vlora-airport-file/#:~:text=In%20early%20November%202025%2C%20the,the%20lawsuit%20was%20finally%20exhausted (21 February 2026).

The examples described are not hypothetical but have become standard practice in countries of the Western Balkans.[4] However, the practice of bypassing procurement procedures and underlying remedies mechanisms by relying on tactics such as 'salami-slicing' in infrastructure projects[5] or other normative and/or administrative means in order to fast-track lucrative and often politically relevant projects at the expense of stringent environmental and social standards occurs globally. Be it corruption and weak institutional infrastructure, the pursuance of strategic policy choices or yet other reasons, said practices corrode foundational procurement principles such as transparency, competition, integrity *etc.*, put into question the long-term sustainability and safety of the built infrastructure and frequently tamper with procurement remedy mechanisms. An illustrative example of the latter is the German Procurement Acceleration Act (Ger. *Vergabebeschleunigungsgesetz*) draft proposal that envisages the elimination of the automatic suspensive effect of immediate appeals submitted to the procurement chambers, and introducing exceptions to the ineffectiveness of illegal direct awards for reasons of 'compelling public interest' – under the pretext of "protect[ing] critical infrastructure and supply situations".[6]

The enforcement of public procurement rules predominantly rests upon the "supplier review" mechanism, which relies on the incentive of aggrieved economic operators to initiate control of the procurement procedures and contract awards. The aforementioned systemic anomalies weaken this mechanism, resulting in several scenarios that undermine the legality, integrity and long-term sustainability of public procurement. First, when the legal framework is

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4 OECD, *Public Administration in the Western Balkans 2024: Regional Overview of Assessments against the Principles of Public Administration*, SIGMA Monitoring Reports, OECD Publishing, Paris, 2025, p. 63.

5 This practice implies the artificial splitting of the project to avoid the application of procurement, environmental and other relevant rules. European Commission, *Public Procurement – Guidance for practitioners on the avoidance of the most common errors in projects funded by the European Structural and Investment Funds*, Publications Office of the European Union, Luxembourg, 2015, p. 25; Enríquez-de-Salamanca, Á., *Project splitting in environmental impact assessment*, Impact Assessment and Project Appraisal, *vol*. 34, no. 2, 2016, pp. 152 – 159.

6 Baker Tilly, *Procurement Acceleration Act: Key points of the draft bill*, 17 July 2025, https://www.bakertilly.de/en/post/procurement-acceleration-act-key-points-of-the-draft-bill (22 February 2026); Bird & Bird, *Draft of the Public Procurement Acceleration Act: New rules for national and international companies in Germany*, 23 September 2025, https://www.twobirds.com/en/insights/2025/germany/draft-of-the-public-procurement-acceleration-act-new-rules-for-national-and-international-companies#:~:text=3.,1%20GWB (22 February 2026).

carefully manipulated to reduce competition or circumvent procurement rules, existing oversight mechanisms are effectively weakened or completely abolished; second, even with procurement rules in place, when the procedure and the tender itself are designed to target a particular economic operator, there are often no competitors available to challenge the award; and third, unsuccessful economic operators are simply unable or lack interest to challenge detected illegalities. The consequences thereof are aggravated in legal systems corroded by corruption, in which institutions are apathetic and weak, failing to secure the protection of public interests. Who, then, will perform the task of sustainability watchdog in the face of increased environmental and societal risks inherent in infrastructure and similar projects? This is where the involvement of civil society becomes critical.

Civil society is widely recognized as a vital stakeholder in public procurement processes. International organizations and economic institutions frequently urge national legislators to design their public procurement systems that allow civil society actors access to: first, access relevant information[7], second: partake in substantial reforms of national procurement systems through public debates[8], and, third, alert competent authorities to corrupt practices and other forms of malfeasance or even directly challenge detected illegalities in administrative and/or judicial proceedings[9]. These multifaceted avenues of civil society participation ranging from public consultations to independent monitoring, enhance transparency and efficiency of public spending while ensuring the accountability of both public authorities and economic operators.

As will be shown later, their most utilized role is that of integrity watchdog.[10] This is understandable given that public procurement is a field particularly susceptible to corruption, conflict of interests and similar illegal practices.[11] In that capacity, civil society actors can alert competent authorities to such illicit

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7 Rec. II. (ii) of the OECD, *Recommendation of the Council on Public Procurement*, OECD/LEGAL/0411, 2015, p. 6.

8 *Ibid*., Rec. VI. (i), p. 8.

9 Todorović, B., *The Story of the Civil Supervisor: A Missed Opportunity to Strengthen Civil Control of Public Procurement in the Republic of Serbia*, in: Meškić, Z.; Kunda, I.; Popović, D. V.; Omerović, E. (eds.), *Balkan Yearbook of European and International Law 2020*, Springer, Cham, 2021, pp. 152 *ff*.

10 Transparency International, *Integrity Pacts*, https://www.transparency.org/en/tool-integrity-pacts (23 February 2026); Todorović, *op. cit*. (fn. 9), pp. 155 – 156.

11 More on this topic, with focus on Serbian law: Todorović, B.; Ilić, N., *Pravno-ekonomska analiza korupcije u javnim nabavkama – slučaj Srbije u procesu evropskih integracija*, Pravo i privreda, *vol*. 56, no. 7-9, 2018, pp. 234 – 250.

conduct – a mechanism which has proven to deter malfeasance, improve transparency and competitiveness of public procurement procedures.[12] The benefits of external, independent monitoring of corrupt practices cannot be overstated; not only is corruption fatal – both in the most literal sense[13] and for the 'trust' in public institutions and administrative processes[14]– it also undermines or downright impedes the realization of important policy objectives, among which sustainability plays a pivotal role.[15] Yet, while indispensable, integrity measures alone are insufficient for ensuring the comprehensive implementation of sustainability standards in public procurement.

This strategic dimension is reflected in the way public procurement has evolved in the last few decades from a purely economic instrument for the acquisition of goods, services and works to a powerful tool in the hands of governments for promoting and achieving broader public policies, including environmental and social sustainability and the fight against climate change.[16] Contracting

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[12] Todorović, *op. cit.* (fn. 9), p. 153.

[13] A recent example thereof is the collapse of the renovated canopy of the railway station in Novi Sad (Serbia) that killed 16 people and left one permanently injured. The collapse sparked public alarm and raised serious questions about the legality of public works and the quality of infrastructure maintenance. This distrust was fueled by the government's refusal to release reconstruction documents and the conflicting statements made by officials. Furthermore, reports that the project was handed to a Chinese consortium without a public tender – based on an intergovernmental agreement – strengthened the belief that the tragedy was the result of widespread corruption in how public money is spent. Vlajković, M.; Todorović, B., *Mobilisation étudiante et pouvoir politique en Serbie : une démocratie sous tension*, Lettre de L'Est, no. 43, 2026, pp. 1 – 13; Transparency Serbia, *Published documents on the collapse of the canopy are incomplete*, https://www.transparentnost.org.rs/en/110-english/naslovna/12795-published-documents-on-the-collapse-of-the-canopy-are-incomplete (22 February 2026).

[14] Cravero, C., *Participation and Sustainability in Community-Based Procurement Between Law, Practice and Storytelling: "The Secrets of Night" Example from West Africa*, African Public Procurement Law Journal, *vol.* 10, no. 2, 2023, p. 45.

[15] *Ibid*.; Greco, A., *Clean contracting for sustainable development: A collective reform agenda to tackle corruption and bad governance in public procurement*, Transparency International, Berlin, 2025, pp. 4 – 6.

[16] Davies, N.; Sanchez-Graells, A., *Procurement as Infrastructure*, 16 June 2025, https://ssrn.com/abstract=5297077 (24 February 2026); Janssen, W., *Shifting Towards Mandatory Sustainability Requirements in EU Public Procurement Law: Context, Relevance and a Typology*, in: Janssen, W.; Caranta, R. (eds.), *Mandatory Sustainability Requirements in EU Public Procurement Law: Reflections on a Paradigm Shift*, Hart Publishing, Oxford, 2023, p. 4.

authorities are either guided by policy or mandated by law towards incorporating sustainability requirements in every stage of the procurement cycle – from planning to contract performance. In addition to preventing environmental harm, this approach uses public spending to drive market demand for green innovation and to streamline social and human rights within the labor market.

Nevertheless, sustainability requirements risk becoming a dead letter without oversight mechanisms that would ensure they are properly observed, implemented and protected. From the standpoint of this paper, a particularly compelling question is whether the aforementioned supplier-review mechanism that is essentially based on a purely economic logic, can effectively safeguard vital public interests such as those pertaining to sustainability. On the other hand, while non-governmental organizations (NGOs) and other civil society actors are considered better placed to challenge such procurement decisions and contract awards/modifications, their role in enforcing sustainable procurement is still underutilized – and underexplored.

By viewing sustainability through a public interest lens, this paper establishes the substantive case for expanding legal standing to civil society within the public procurement remedies framework. It builds on their international recognition as both an integrity watchdog in public procurement and a 'third-party enforcement' mechanism in environmental cases, most notably enabled by the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention).[17] This expansion is an essential step towards unlocking the full potential of public procurement as a strategic tool for contributing to environmentally sound and socially just societies.

Since this paper is envisaged as the first part of a two-pronged study, its aim is to set the conceptual groundwork for a second analysis focusing on the European Union (EU) procurement remedies framework. Consequently, its scope is intentionally broad and comparative, rather than limited to a single legal system. This objective is reflected in the following structure. Chapter 2 reassesses the purpose and objectives of public procurement through the prism of public interest, emphasizing sustainability as one of its core values. Against this theoretical background, Chapter 3 analyzes the various modes of civil society involvement in public procurement in comparative law and practice, across jurisdictions – both in Europe and beyond – that provide successful examples of their watchdog role in general and, more specifically, in the context of sus-

[17] Todorović, B., *Environmental Access to Justice in the Balkans Through the Lens of EU Enlargement: Between top-down and bottom-up Europeanisation*, in: Todorović, B.; Caranta, R. (eds.), *Europeanisation of Access to Justice in Environmental Matters: The Aarhus Convention in the Balkans*, Hart Publishing, Oxford, 2025, pp. 78 – 79.

tainability. The analysis in Chapter 4 explores pathways and legal implications of vesting representatives of civil society with standing to seek procurement remedies. Finally, Chapter 5 synthesizes these findings and concludes.

2. REDEFINING PUBLIC PROCUREMENT: SUSTAINABILITY THROUGH THE PUBLIC INTEREST LENS

The concept of public interest remains one of the most debated topics in legal theory.[18] Deeply rooted in political philosophy, it rests on the idea that there are certain values common to the entire society, which must therefore be protected to achieve the 'common good'.[19] Being elastic and hard to pin down, its content changes to adapt to the legal and political environment against which it is assessed, as well as the context and specific circumstances of each individual case – making the task of defining it daunting.[20] In the absence of a universal definition of the term, (trans)national legislators play an important role in designing its 'legal attire' so that it can enjoy legal protection. Whether it concerns public health, environmental protection or social justice – to name a few examples – 'statutory public interest' remains a legal standard that is prone to interpretation and takes concrete shape only once it is implemented in individual cases. This vests administrative bodies with a critical role, as they must successfully navigate the realization of the prescribed/proclaimed public interest, while safeguarding individual rights.[21]

Since public procurement involves the purchase of goods, services, and works by public authorities using state funds and given that citizens are the ultimate beneficiaries of these contracts, the entire process is fundamentally intertwined with the public interest. This inherent link reveals the potential

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[18] Todorović, B., *Vaganje između zaštite javnog interesa i prava na zaštitu podataka o ličnosti – Primena evropskih standarda u pravu Republike Srbije*, in: Vasić, R.; Čučković, B. (eds.), *Identity Transformation of Serbia: Collection of Papers from the Scientific Project 2017*, University of Belgrade Faculty of Law, Belgrade, 2018, p. 91.

[19] *Ibid*.

[20] *Ibid*., pp. 96 – 97. An interesting contemporary approach to clarifying the concept of public interest has been undertaken by Boot. He considers something to be in the public interest "if it increases the opportunities of the members of the public to pursue and realize the (permissible) ends they all share *qua* members of the public". On the other hand, this author coins the 'public' as "all the members of a particular political community". Boot, E., *The Public Interest: Clarifying a Legal Concept*, Ratio Juris, *vol*. 37, no. 2, 2024, pp. 110 – 129.

[21] Todorović, *op. cit*. (fn. 17), pp. 94 – 95.

of public procurement to act as an important strategic instrument for achieving broader societal goals.[22] What is more, as Sanchez-Graells stresses, "[t]he general consensus that public interest considerations must drive procurement decision-making seems stronger than ever."[23] Indeed, the current geopolitical turmoil shifted the focus from economic efficiency toward security of supply and strategic autonomy, whereas climate change brought to the fore environmental concerns. Thus, major external factors solidified the acknowledgement that public procurement cannot be viewed solely through the *economic lens*, but instead as an important strategic instrument for pursuing various policy goals, among which *sustainable growth* – the pursuit of economic growth and progress which is not at the expense of future generations – is considered one of the most notable changes in the evolution of public procurement in the past few decades.[24]

It is worth noting, however, that the recognition of "the instrumental role of public procurement in pursuing public policies, including social policies" is not a novel phenomenon; on the contrary.[25] Using government contracting for addressing unemployment or enhancing workers' rights was the prevailing practice, especially in the aftermath of the First World War.[26] This instrumental use, which even took the form of protectionist measures to boost national economies and safeguard certain industrial sectors from foreign competition, remained commonplace up until the 1970s, when the global focus shifted towards economic efficiency and cutting expenditures.[27]

This brief historical overview reveals what is known in the literature as 'linkages': the use of public procurement in pursuing "broader political objectives".[28] In other words, while the *function* of public procurement in serving the

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[22] Turudić, M., *Pravo javne nabave*, II. izmijenjeno i dopunjeno izdanje, Narodne novine, Zagreb, 2025, pp. 9 – 11.

[23] Sanchez-Graells, A., *The Procurement Act 2023's kaleidoscopic view of the public interest*, Legal Studies, *vol.* 45, no. 2, 2025, p. 172.

[24] Piga, G.; Schooner, S. L., *Transformational Procurement – The Past and Future of Global and Local Public Purchasing – Views from the Expert Community on What Public Money Did and Will Still Need to Buy*, Government Contractor, *vol.* 64, no. 34, 2022, p. 4.

[25] Caranta, R., *Towards socially responsible public procurement*, ERA Forum, *vol.* 23, 2022, p. 150.

[26] *Ibid.*, p. 151.

[27] Caranta, R., *Sustainability Takes Centre Stage in Public Procurement*, Ruch Prawniczy, Ekonomiczny i Socjologiczny, *vol.* 85, no. 1, 2023, p. 42.

[28] Cravero, C., *Socially Responsible Public Procurement and Set-Asides: A Comparative Analysis of the US, Canada and the EU*, Arctic Review on Law and Politics, *vol.* 8, 2017, p. 177.

public interest remains constant, the *substantive content* of that interest evolves alongside historical, socio-political, and economic circumstances.

Although there is no "authoritative definition of the concept", sustainable public procurement is most commonly understood to encompass both environmental (*green procurement*) and social concerns (*socially responsible procurement*).[29] More specifically, it refers to practices that are concerned with "reducing the environmental impact", as well as promoting "acceptable working conditions […] social justice and […] human rights".[30] Thus, public procurement rules are not limited to streamlining *how* to buy, but also *what* to buy and *whom not* to buy from.[31]

The inclusion of sustainable public procurement within the *United Nations 2030 Agenda for Sustainable Development* (Goal 12.7) signals a decisive global shift toward more environmentally and socially responsible public expenditure.[32] However, the most ambitious legal and policy framework for sustainability beyond national borders is arguably that of the EU. As highlighted by Caranta: "[…] when one considers the characterisation of the EU as a 'social market economy', sustainability must be a component of all policies, rules, public contracts included".[33] This especially holds true concerning the environmental leg of sustainability, which has a firm 'constitutional' backing. Namely, Article 11 of the Treaty on the Functioning of the European Union (TFEU) stipulates the duty to integrate environmental protection requirements into the EU's 'policies and activities', with a view to achieving the overarching goal of sustainable development. That the integration principle pervades public procurement has been clarified by the

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[29] Sjåfjell, B.; Wiesbrock, A., *Why should public procurement be about sustainability?*, in: Sjåfjell, B.; Wiesbrock, A. (eds.), *Sustainable Public Procurement Under EU Law: New Perspectives on the State as Stakeholder*, Cambridge University Press, Cambridge, 2015, p. 2.

[30] Cravero, *op. cit.* (fn. 28), p. 177.

[31] Janssen, W., *The coherence of public procurement legislation in the European Union. A Study for the EU Commission into the external coherence between the public procurement directives and other legislative instruments regulating public procurement*, Publications Office of the European Union, Luxembourg, 2025, p. 10.

[32] See: UNEP, *Sustainable consumption and production policies*, https://www.unep.org/explore-topics/resource-efficiency/what-we-do/sustainable-consumption-and-production-policies (24 February 2026).

[33] Caranta, R., *Coherence in the EU Public Procurement Directives: A Study into the Internal Coherence between the Objectives, the Principles and Provisions in the EU Public Procurement and Concessions Directives*, Research Report for the EU Commission, Publications Office of the European Union, Luxembourg, 2025, p. 26.

Court of Justice of the EU (CJEU) in the seminal *Concordia Bus* ruling.[34] What is more, the CJEU elevates sustainability, *i.e.* the obligation of economic operators to comply with environmental, social, and labor law during the performance of a public contract, to a 'cardinal value'[35] of EU public procurement law, thereby clearly indicating that "[…] sustainability […] is not just a means, it is an end the regulation and the practice of procurement should attain".[36]

The EU's legal framework for procurement sustainability comprises the 2014 Public Procurement Directives and, more specifically, Article 18(2) of Directive 2014/24/EU, which states that

> Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.

These directives codify the CJEU's case law on, among other things, sustainable public procurement, and pave the way for contracting authorities to embed sustainability requirements in all stages of the procurement cycle. Firstly, they may be designed as part of eligibility criteria for participants in the tendering process. Second, they could be integrated into the subject-matter and/or technical specifications of the contract. Thirdly, environmental and social sustainability criteria may be assessed in the contract award phase and, finally, they can be observed in the contract performance/implementation phase.[37]

Other than this vast leeway for sustainable procurement practices, several pieces of sectoral legislation further pave the way for voluntary and – increasingly – mandatory sustainability requirements.[38] Examples of the latter include

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34 CJEU, Case C-513/99, *Concordia Bus Finland* (2002), para. 57; Calliess, C., *The European Green Deal and Its "Constitutional" Implications: Need for a "Greening of the Treaties"?*, in: Reese, M.; Schaller, R.; Markus, T.; Faßbender, K. (eds.), *Legal Implementation and Impacts of the European Green Deal*, EELF 2023, Springer, Cham, 2026, p. 10.

35 C-395/18 *Tim SpA v Consip SpA* (30 January 2020), para. 38.

36 Caranta, *op. cit.* (fn. 33), p. 51.

37 Sjåfjell, Wiesbrock, *op. cit.* (fn. 29), p. 18.

38 Janssen, *op. cit.* (fn. 31), pp. 15 *ff.*

the Ecodesign Regulation[39] or the Energy Efficiency Directive[40], that stipulate "minimum mandatory 'green' public procurement requirements" thereby effectively limiting the discretion of contracting authorities.[41] Lastly, a plethora of policy documents, considered instruments of soft-law, also form part of the EU's sustainable public procurement landscape, setting standards and targets in this domain.[42]

Despite the abundance and stringency of this legislative activity, scholarly literature points out that "[t]he weak enforceability of sustainability obligations sits uncomfortably together with the indication that sustainability corresponds to a cardinal value in the framework of the 2014 directives".[43] When drafted as a general policy objective or national target instead of precise obligations forming part of technical specifications and/or award criteria, they cannot form the basis of a legal claim *per se*.[44] Coupled with the "unavailability of effective means of judicial challenge or administrative oversight" (see 4.3 *infra*)[45], this exposes an enforcement gap that dilutes the actual impact of sustainability requirements. That is why public procurement scholars advocate expanding the scope of the EU directives regulating public procurement remedies to explicitly cover obligations pertaining to environmental and social sustainability, as stipulated in sectoral legislation.[46]

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39 Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC, OJ L, 2024/1781, 28.6.2024.

40 Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast) (Text with EEA relevance), OJ L 231, 20.9.2023, pp. 1 – 111.

41 Janssen, *op. cit.* (fn. 31), pp. 58 – 59 and 74 – 84.

42 *Ibid*.

43 Caranta, *op. cit.* (fn. 33), p. 81.

44 Caranta, R., *Opening the doors to civil society litigation in public contracts*, REALaw blog, 1 November 2022, https://realaw.blog/2022/11/01/opening-the-doors-to-civil-society-litigation-in-public-contracts-by-r-caranta/ (29 January 2026); Lichère, F.; Sulpice, O., *Mandatory Requirements in Public Procurement Law: The Role of Remedies, Courts and Public Interest Litigation*, in: Caranta, R.; Janssen, W. (eds.), *Mandatory Sustainability Requirements in EU Public Procurement Law: Reflections on a Paradigm Shift*, Hart, Oxford, 2023, pp. 238 – 239.

45 Sanchez-Graells, *op. cit.* (fn. 23), p. 172.

46 See: Toca, A., *Making the Case for the Extended Scope of Remedies in the Context of Fragmentation of EU Public Procurement Law*, European Procurement & Public Private Partnership Law Review, *vol*. 21, no. 1, 2026, pp. 6 – 17.

Even beyond the EU, national experiences suggest that social objectives – such as those relating to unemployment, gender equality, labor rights etc. – "remain less systematically embedded in procurement-specific policy frameworks".[47] This often leaves almost unlimited discretionary power in the hands of contracting authorities, which further complicates the pursuit of public procurement objectives and compromises legal certainty.[48] In this context, the OECD Report on the implementation of *OECD Recommendation on Public Procurement* further suggests that:

> [c]ivic monitoring in public procurement, through public participation in the oversight, monitoring, and evaluation of procurement decisions and policies, can serve as a social accountability tool allowing citizens to directly participate in making public authorities accountable for their decisions or actions. At the same time, citizen oversight of public procurement spending and individual procurement processes can promote efficiency and improve both access to and quality of public services.[49]

Moreover, the marginalization of social concerns creates a compelling case for greater citizen involvement, since "local knowledge and local know-how are used to better shape and implement procurement contracts".[50] The role of civil society in public procurement generally, and in the enforcement of sustainability objectives specifically, is explored in the following section.

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47 European Commission, Directorate-General for Environment, *Making Public Procurement Work for Green, Digital, and Social Goals*, Green Forum, 17 December 2025, https://green-forum.ec.europa.eu/news/making-public-procurement-work-green-digital-and-social-goals-2025-12-17_en (24 February 2026).

48 Sanchez-Graells opines that "despite this proliferation of sources and objectives, and due to the unavailability of effective means of judicial challenge or administrative oversight, contracting authorities retain almost unlimited discretion to shape the public interest and 'what it looks like' in relation to the award of each public contract." Sanchez-Graells, *op. cit.* (fn. 23), p. 175; Todorović, *op. cit.* (fn. 17), pp. 95 – 97.

49 OECD, *Implementing the OECD Recommendation on Public Procurement in OECD and Partner Countries*, OECD Public Governance Reviews, OECD Publishing, Paris, 2025, p. 31.

50 Cravero, *op. cit.* (fn. 14), p. 58.

3. A COMPARATIVE ANALYSIS OF CIVIC OVERSIGHT IN PUBLIC PROCUREMENT

'Civil society' is a fluid concept defined differently across disciplines and contexts. This paper adopts a broad understanding of the term to encompass both institutionalized organizations (such as NGOs) and informal collectives – ranging from grassroots movements to local community groups and citizens' initiatives[51] – to enable a comprehensive analysis of the different modalities of civil society involvement in public procurement oversight. This broad interpretation is, however, narrowed-down by a focus on public interest; it encompasses civil society actors whose primary objectives are non-commercial and non-profit, but are instead "pursuing – or purportedly pursuing – general interests".[52]

Cravero situates civil society among 'external stakeholders' in public procurement, since their role in public procurement has traditionally been reduced to "passive and silent recipients of goods, works and services which they have not had the chance to agree upon".[53] Nevertheless, this role evolved significantly; today, civil society is widely acknowledged as a vital stakeholder in public procurement processes.

It is suggested in the literature that civil society involvement in public procurement cannot be generalized as it takes many different forms – both as participation in the procurement process itself and as independent oversight. The diversity of national modalities ranges from *ad hoc* arrangements to institutionalized solutions that could be either voluntary or (what is less frequently the case) mandatory, and spans across all sectors and/or procurement stages or is restricted by financial thresholds or sectors.[54]

Despite the different approaches, the most prevalent role for civil society in public procurement is still that of an independent integrity watchdog, as evidenced by comparative experiences. A widely successful and widespread model is the use of *Integrity Pacts* (IPs), an anticorruption tool developed by the orga-

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[51] This approach relies on the broad understanding of civil society the author employed in her previous works, including Todorović, *op. cit.* (fn. 17), pp. 78 – 79; Todorović, B., *A Comparative Analysis of Environmental Activism in Albania, Romania and Serbia: Lessons in Civil Society Enforcement of Administrative Law*, Juridical Tribune – Review of Comparative and International Law, *vol.* 15, no. 1, 2025, p. 112; Todorović, *op. cit.* (fn. 9), p. 150.

[52] Caranta, R., *Civil society organizations and administrative law*, Hamline Law Review, *vol.* 36, no. 1, 2013, p. 48.

[53] Cravero, *op. cit.* (fn. 14), p. 43.

[54] *Ibid*., pp. 44 – 49.

nization Transparency International. IPs are contractual arrangements entered into between the contracting authority, the supplier(s) and the individual or CSO tasked with overseeing the integrity of the procurement process and the abidance by professional standards and best practices.[55] A prominent comparative example is the Mexican *testigo social* (social witness). Registered with the Secretariat of Anti-Corruption and Good Government (priorly the Ministry of Public Administration), social witnesses are accredited representatives of civil society – individuals or NGOs – appointed to monitor procurements exceeding prescribed financial thresholds, upon the initiative of contracting authorities conducting a particular procurement project. Once appointed, social witnesses become an integral component of the procurement cycle, wielding both oversight and consultative powers. Their most important task, however, is drafting a comprehensive report on the observed stages of the procurement process – from tendering up until contract conclusion – pinpointing any irregularities.[56] Since their report is made publicly available, this national model has had an important preventive role in fighting corruption in public procurement and yielded positive results including "'disciplining' contracting authorities, improving competition, enhancing transparency, and promoting the efficiency of [public procurement] procedures".[57]

While they lack formal legal standing for availing of procurement remedies, social witnesses have the duty to report any irregularities to competent audit authorities. Moreover, their mandatory oversight is envisaged also in procurements in the petroleum industry, which is exempt from the general public procurement regulation and subject to special rules that, in exceptional circumstances, allow the direct award of contracts.[58] This is particularly interesting from the perspective of Serbian law (and similar legislation in the Western Balkan region), where it has become standard practice to circumvent procurement regulation by passing special laws or concluding bilateral agreements for high-scale infrastructure projects. In this way, institutional civil monitoring becomes a critical mechanism in situations that otherwise bypass general rules on public procurement and the underlying remedies system.

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[55] Todorović, *op. cit.* (fn. 9), pp. 155 – 156; Cravero, *op. cit.* (fn. 14), p. 46.

[56] More on the Mexican social witness: Todorović, *op. cit.* (fn. 9), pp. 152 – 153; Knežević Bojović, A., *Građanski nadzornik – Testigo Social – u Meksiku i drugi mehanizmi građanske kontrole javnih nabavki u Latinskoj Americi*, in: Bjeletić, M. (ed.), *Građanska kontrola javnih nabavki*, Toplički centar za demokratiju i ljudska prava, Institut za uporedno pravo, Prokuplje, 2013, pp. 41 – 56.

[57] Todorović, *op. cit.* (fn. 9), p. 173.

[58] Knežević Bojović, *op. cit.* (fn. 56), pp. 52 – 54.

The *veedurías ciudadanas* of several Latin American countries are yet another example, which entails a broad mechanism of civil oversight for public administration and general public spending, encompassing the field of public procurement.[59]

A further significant comparative model of direct civil control is found in the Philippines. It mandates contracting authorities to formally invite two representatives of the civil sector – one from 'duly recognized private groups' and other from an NGO – with expertise in particular sectors in which the procurements are conducted, to observe public procurements regardless of their value. Similarly to the role of social witnesses in Mexico, civil observers in the Philippines are tasked with drafting a report on their findings.[60]

Beyond the described models where civil society plays the role of integrity watchdog, their contribution to the sustainability of public procurement is still underutilized. Nevertheless, there is a growing recognition that "non-state actors" – including civil society – have "a central role in achieving sustainable development", even in the procurement context.[61] For instance, one of the ten principles for integrity of public procurement devised by the Organization for Economic Co-operation and Development (OECD) is the *empowerment of CSOs, media and the wider public to scrutinize public procurement* – not only by ensuring procurement processes are transparent, but also by "involving representatives from civil society organisations and the wider public in monitoring high-value or complex procurements that entail significant risks of mismanagement and corruption".[62] Such high-scale infrastructure projects involving procurements with "serious environmental and social implications, including sustainable public procurement" are considered a particularly important avenue for civil society involvement.[63]

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[59] *Ibid*.; Cruz-Rubio, C. N., *Citizen participation and public procurement in Latin America: Case Studies*, ILDA Report, Hivos/IIED Food Lab Bolivia, 2020, pp. 47 – 54.

[60] Todorović, *op. cit.* (fn. 9), pp. 153 – 154; Rabrenović, A., *Učešće civilnog sektora u nadgledanju javnih nabavki u zemljama Azije*, in: Bjeletić, M. (ed.), *Građanska kontrola javnih nabavki*, Toplički centar za demokratiju i ljudska prava, Institut za uporedno pravo, Prokuplje, 2013, pp. 13 – 22.

[61] Cassota, S., *The Development of Environmental Law within a Changing Environmental Governance Context: Towards a New Paradigm Shift in the Anthropocene Era*, Yearbook of International Environmental Law, *vol*. 30, no. 1, 2019, pp. 58 – 59.

[62] OECD, *Principles for Integrity in Public Procurement*, OECD Publishing, Paris, 2009, p. 46.

[63] Rathi, D., *Do Civil Society Organizations Have a Role in Promoting Sustainable and Gender-Responsive Public Procurement?*, Sapiens Working Paper, August 2024, p. 4,

Illustrative of that trend are community-based procurement (CBP) initiatives, often used for small-scale infrastructure projects in disadvantaged communities. They imply the involvement of local communities in various stages of the procurement process: from planning to contract implementation. The idea behind CBP is to enable communities that will be directly affected by procurement contracts to have their say in *whether* and, if so, *how* certain projects will be designed and implemented while also being mindful of the local context. It has been highlighted in literature that such initiatives contribute to sustainable procurement by, *inter alia*, promoting employment opportunities among "under-represented" and "marginalized groups", as well as relying on local products, which "has the potential to contribute to the reduction of the carbon footprint, energy costs and delivery time".[64] Moreover, this 'inclusive' approach helps generate more trust between local communities and public authorities, "which is particularly important for long-term viability".[65]

An equally interesting national model is that of public debate from the Italian Public contract Code that requires competent authorities to organize a public debate prior to the realization of infrastructure projects above a specified financial threshold and even below the threshold for projects that "affect cultural or natural sites or parks or other protected areas".[66] The debate should give the opportunity to "citizens, associations, and institutions" to have their voice heard and their "observations and proposals" taken into account early enough in the process, so that they can "affect the policy outcome".[67]

While experts caution that neither of these models are devoid of limitations and risks – rendering the assessment of their positive effects highly context-dependent[68] – they expose the increased environmental and social risks associated with complex procurements and the need to involve 'external stakeholders' in the process of devising and/or implementing such projects. In addition to acquiring legitimacy for expenditure of substantial public funds, these practices also demonstrate the recognition that sustainability – especially in the long term – requires the involvement of the civil society sector.

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https://sapiensnetwork.eu/wp-content/uploads/2024/08/Dibya_Working-paper_SAPIENS.pdf (24 February 2026).

64 Cravero, *op. cit.* (fn. 14), p. 59.

65 *Ibid.*, p. 52.

66 Della Cananea, G., *Exit or Voice? Débat Public Goes to Italy*, European Public Law, *vol.* 25, no. 2, 2019, p. 165.

67 *Ibid.*, p. 166.

68 Cravero, *op. cit.* (fn. 14), p. 51.

4. CIVIL SOCIETY STANDING IN PUBLIC PROCUREMENT REVIEW PROCEDURES: OPEN QUESTIONS AND LEGAL IMPLICATIONS

The previous section provided a comparative insight into the various modalities of civil society involvement in public procurement procedures. It revealed that independent monitoring is by far the most widespread function performed by civil society actors, as well as their invaluable contribution to sustainability, especially regarding major infrastructure projects. Nevertheless, the analysis also unearthed a systemic weakness of those different forms of civic scrutiny in public procurement: they ultimately depend on the responsiveness of public authorities. This dependence leaves civil society vulnerable both to *contracting authorities* – who dictate whether and under what circumstances to inform them of and/or formally invite them to oversee individual phases of forthcoming procurement projects (when such involvement is not mandated by law) – and to public enforcement bodies tasked with instigating legal procedures following reports of possible malfeasance.

These weaknesses are aggravated in legal systems characterized by institutional apathy and recurring practices of legal maneuvering around the legal framework, rendering civil society's role purely declarative. To bridge this enforcement gap and ensure sustainability requirements are deeply embedded in procurement procedures, public authorities must be legally compelled to take civil society actions seriously. This accountability could be achieved by vesting civil society actors with *locus standi* in public procurement review procedures. Access to procurement remedies would effectively prevent contract award in case of major environmental and/or social concerns – illegalities that by themselves would not always provide sufficient incentives for aggrieved bidders to seek review, or that would remain entirely unchallenged in single bid procurement scenarios.

This section explores the main challenges of civil society as sustainability watchdogs in public procurement, by focusing on three critical dimensions: 1) *delineating* more closely which categories of actors can be covered by the elusive term 'civil society,' while establishing essential guarantors for their representativeness, technical expertise, and independence; 2) *identifying* the phase of the procurement process where they can most effectively prevent/react to the circumvention of sustainability requirements and 3) *positioning* civil society enforcement among the public and private enforcement mechanisms of procurement review.

4.1 Who Exactly is Watching?

It was mentioned earlier that the concept of civil society is somewhat elusive, making any attempt at a universal definition almost impossible. This becomes particularly problematic regarding their involvement in public procurement processes, especially in the context of legal standing in procurement review procedures. Because the concept encompasses such a diverse category of actors (individual citizens, NGOs, business associations and trade unions, local communities, taxpayers etc.), the multitude of different interests at stake are not necessarily aligned with the broader (public) interest of ensuring sustainability in public procurement; in fact, they may even be conflicted. For instance, taxpayers may be expected to prioritize cost-effectiveness over environmental/social sustainability requirements. Consequently, any legislative changes aimed at introducing direct civil control in procurement processes, must be preceded by identifying individual and/or collective interests that drive particular stakeholders to challenge decisions of contracting authorities and/or procurement contracts. It should also be borne in mind that "a one-size-fits-all approach may lead to evident risks in terms of time waste and ossification of procedures".[69] Consequently, scholarly literature suggests that objectives such as sustainability may be more easily accomplished by introducing parameters against which "some major groups expressing interests in relation to a specific project/procurement" will be selected and enabled to partake in procurement processes.[70]

A closely related aspect is the representativeness of civil society, as a guarantor of their legitimacy within a particular group. As Cravero warns, "[i]f they are insufficiently representative, their participation in both policy formulation and policy delivering risks to be meaningless or, worst, to produce a distortive effect as to the reality they are likely to represent."[71] One particularly important thing to consider is whether informal groups/collectives can be regarded as representing general interests and how representativeness in this context is established.[72]

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[69] Cravero, C., *Rethinking the Role of Civil Society in Public Procurement*, European Procurement & Public Private Partnership Law Review, *vol.* 14, no. 1, 2019, p. 42.

[70] *Ibid*.

[71] *Ibid*., p. 33.

[72] This question has been an important theme in landmark CJEU judgments, such as the *Djurgården-Lilla Värtans* (Case C-263/08 Djurgården-Lilla Värtans Miljskyddsförening v Stockholms kommun genom dess marknämnd ECLI:EU:C:2009:631) where it found that a national rule requiring environmental associations to have at least 2000 members as a prerequisite for standing is too restrictive and not in line with EU law. Moreover, in *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* (the "Slovak Brown Bear Case"),

Tackling this question is paramount to establishing standing in administrative and/or judicial review procedures. It is to be expected that NGOs active in the field of environmental protection or social justice might be 'better candidates' for legal standing than, for instance, local community groups.

Moreover, assurances of their independence and impartiality are paramount to performing the task of (sustainable) procurement watchdog. This independence is required on all fronts: from contracting authorities whose act(ion)s are monitored, economic operators involved in the bidding process, but also from any political influence. Factors to consider include legally prescribed criteria for their appointment and/or inadequacy for monitoring (a particular) procurement(s); conflict of interest clearances; setting up adequate accountability mechanisms; internal organization, and – perhaps the most sensitive question – whether and how they are financed for their work.[73]

Lastly, the complexity of procurement processes at their various stages requires sufficient knowledge and expertise. In addition to understanding how public procurement functions (which in itself is an endeavor), having at least basic knowledge of the intricacies of a particular legal system (and its administrative and/or judicial procedures) and the sector in which the procurement in question is conducted, is vital.[74] What is more, unlike in their role of integrity watchdogs where they need to be capable of recognizing the 'red flags of corruption' and other forms of malfeasance that affect the probity of public spending, monitoring the adherence to sustainability requirements entails "a variety of considerations of a different nature (from global green issues to local social matters) which usually requires a knowledge-based approach and actual involvement in the decision making process".[75]

Case C-240/09, the Court held that "it is […] for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the rights conferred by EU law, in order to enable an *environmental protection organisation* […] to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law", para. 52. More on the CJEU case-law concerning standing considering Article 9(3) of the Aarhus Convention, see: Eliantonio, M.; Richelle, J., *Article 9 of the Aarhus Convention, its Transposition in the EU and its Interpretation by the Aarhus Convention Compliance Committee and the Court of Justice of the European Union In Search of an 'EU Effect'?*, in: Todorović, B.; Caranta, R. (eds.), *Europeanisation of Access to Justice in Environmental Matters: The Aarhus Convention in the Balkans*, Hart Publishing, Oxford, 2025, pp. 23 – 31.

73 Cravero, *op. cit.* (fn. 69), p. 33.

74 Todorović, *op. cit.* (fn. 9), pp. 150 – 152.

75 Cravero, *op. cit.* (fn. 69), p. 35.

4.2 What Phase of the Procurement Cycle Should be under Direct Civil Oversight?

Cravero differentiates between the involvement of civil society in public procurement *policymaking* versus its involvement in procurement *processes*. For the latter, she identified two distinct, yet interrelated factors: the *purpose* of civil society involvement and the *phase* of the procurement cycle in which they are involved.[76] Whereas transparency and integrity of public procurement have historically been the prevalent objectives of civil society oversight, Cravero notes that sustainability is "still considered a secondary objective".[77] While this traditional orientation towards transparency and curbing corruption in public procurement is reflected in numerous national and international policy instruments and even legislative solutions that recognize some form of institutional civil society involvement, recent scholarship increasingly explores the role of civil society actors in attaining ambitious sustainability objectives, especially within the EU internal market. This shift is also propelled by, on the one hand, a global trend of decline in trust towards democratic institutions against the backdrop of geopolitical tensions, social inequalities and the devastating effects of climate change[78], and increased bottom-up environmental activism (including some pioneering environmental litigation cases), on the other.[79]

As for the phase of the procurement cycle in which the full potential of civil society oversight would come to the fore, I consider the pre-procurement or planning stage to be crucial. Decisions made at this stage (e.g. whether to initiate public procurement at all; what to buy and how to allocate available financial resources) create a ripple effect throughout the subsequent stages. Going back to the Introduction of this paper, the watchful eye of civil society at this early stage would help at least expose, if not fully abolish the negative trend in certain countries of bypassing procurement legislation (and oversight) for projects that carry significant environmental and social risks. This aligns with recent scholarship arguing that to accommodate the multitude of objectives the instrument of public

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[76] *Ibid*., p. 33.

[77] *Ibid*.

[78] OECD, *Survey on Drivers of Trust in Public Institutions – 2024 Results: Building Trust in a Complex Policy Environment*, OECD Publishing, Paris, 2024.

[79] Todorović, *op. cit.* (fn. 17); Caranta, R.; Todorović, B., *A Comparative Perspective on Environmental Access to Justice in the Balkans: The Role of Europeanisation and the Rising Importance of Rights*, in: Todorović, B.; Caranta, R. (eds.), *Europeanisation of Access to Justice in Environmental Matters: The Aarhus Convention in the Balkans*, Hart Publishing, Oxford, 2025, pp. 249 – 250.

procurement is expected to attain, we must reconceptualize our understanding of procurement by expanding it to cover preparatory works. Such a 'functional' approach would foster "a potentially broader coverage of 'procurement-focused' mandatory requirements targeted at the public sector, whether they relate to sustainability, social, access, resilience, or any other considerations".[80]

4.3 Civil Society Litigation: Between Private and Public Enforcement of Public Procurement?

As Scholten and Stähler advance, enforcement (of law) is the process of bringing legal measures into "actual effect".[81] Viewed as an 'essential phase' of the policy cycle, enforcement ensures a regulation "attains its purposes". [82] Since these 'purposes' or regulatory objectives vary significantly across fields, Scholten and Stähler note that "different enforcement mechanisms are in place for different sectors".[83] Consequently, various actors may be entrusted with enforcing the law in a particular legal field. These include different public authorities, but also private actors – both individuals and their organizations.[84] According to the type of actors in charge of enforcement of law, and by extension, the type of interests they pursue in the process thereof, literature distinguishes between public and private enforcement mechanisms. Whereas public enforcement is conducted by public officials/authorities in the pursuit of public interests, private enforcement is "ensured by individuals or their organizations primarily by acting as private parties before courts and other conflict resolution fora".[85]

The 'supplier review mechanism' in which public procurement is anchored, is a private enforcement model wherein aggrieved bidders challenge decisions of contracting authorities and/or contract awards deemed in breach of public procurement rules. This model balances the compensation of economic operators (and their underlying private/economic interests) with the overarching public

[80] Sanchez-Graells, A., *Expanding the Scope of EU Public Procurement Law – Realigning the Procurement Directive with Its Internal Market Logic while Improving Its Fit with Strategic Procurement?*, 11 April 2025, https://ssrn.com/abstract=5213497, p. 10 (24 February 2026).

[81] Scholten, M.; Stähler, L., *Introduction to Research Handbook on the Enforcement of EU Law*, in: Scholten, M. (ed.), *Research Handbook on the Enforcement of EU Law*, Edward Elgar, Cheltenham, Northampton, 2023, p. 3.

[82] *Ibid*.

[83] *Ibid*., p. 2.

[84] *Ibid*.

[85] Todorović, *op. cit*. (fn. 51), p. 113.

interest to ensure compliance with public procurement rules and the sound and efficient use of public funds.

Alongside this dominant model, both national and EU law provide for public enforcement of public procurement rules. Within national frameworks, this takes the form of standing in procurement review procedures for designated public authorities; examples include the central state administration body responsible for public procurement policy within the Ministry of Economy and the competent State Attorney's office in Croatia[86], a number of statutorily empowered authorities in Hungary – including the Hungarian Competition Authority, the Commissioner for Fundamental Rights or the competent prosecution[87] – or the Public Procurement Office, the State Audit Institution and the competent Public Attorney in Serbian public procurement law.[88]

At the EU level, the European Commission assumes the role of the 'Guardian of the Treaties' (Article 17 TEU), employing two main instruments of public enforcement. The first is the general infringement procedure (Arts. 258–260 TFEU), while the second is the specialized *corrective mechanism* under Article 3 of Directive 89/665/EEC.[89] The latter empowers the European Commission to react prior to contract conclusion, if it "considers that a serious infringement of Union law in the field of public procurement has been committed during a contract award procedure". Caranta and Fričová point out a "fundamental difference" between national review procedures and the "grounds of an infringement procedure".[90] Whereas the former is concerned with the protection of individual interests of

[86] Art. 401, para. 2 of the Croatian Public Procurement Act, Narodne novine [Official Gazette], nos. 120/16 and 114/22; Turudić, *op. cit*. (fn. 22), p. 178.

[87] Article 152 of the Hungarian Public Procurement Act, no CXLIII of 2015, https://english.kozbeszerzes.hu/procurement-rules/act-cxliii-of-2015-on-public-procurement/; Caranta, R.; Fričová, V., *EU Procurement and Concessions Law*, in: Scholten, M. (ed.), *Research Handbook on EU Law Enforcement*, Edward Elgar, Cheltenham, Northampton, 2023, pp. 425 – 426.

[88] Art. 211, para. 2 of the Serbian Public Procurement Act, Službeni glasnik RS [Official Gazette of the Republic of Serbia], nos. 91/2019 and 92/2023.

[89] Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, OJ L 395, 30.12.1989, pp. 33 – 35; Todorović, B., *Article 90: Transposition and Transitional Measures* in: Caranta, R.; Sanchez-Graells, A. (eds.), *Commentary to Directive 2014/24/EU*, Edward Elgar, Cheltenham, Northampton, 2021, p. 906; Todorović, B., *Article 92: Review*, in: Caranta, R.; Sanchez-Graells, A. (eds.), *Commentary to Directive 2014/24/EU*, Edward Elgar, Cheltenham, Northampton, 2021, p. 917.

[90] Caranta, Fričová, *op. cit*. (fn. 87), p. 419.

aggrieved bidders (economic operators), the latter is more grounded in the public interest and "focuses on the most serious and systemic breaches".[91] However, the Commission itself has acknowledged the mechanism's limitations, especially "gather(ing) convincing evidence of a 'clear and manifest breach' quickly before contract signature".[92] These weaknesses have undermined its practical effectiveness, resulting in the mechanism being rarely activated since the 1990s.[93]

Against the backdrop of these (trans)national experiences, as well as the awareness of the inherent weaknesses of both private and public enforcement mechanisms, scholars are increasingly advocating for expanded standing in public procurement review procedures to include civil society.

Empirical data suggests that economic operators are often reluctant to instigate review procedures for several reasons, among which a "lack of confidence in the success of the complaints" and "fear of retaliation by the awarding authority" are the most common.[94] Furthermore, when the probability of winning the contract following a potentially new tender is low – especially when weighed against the underlying costs of legal action – economic operators may be dissuaded from instigating review procedures.[95] While understandable, this effectively leaves breaches of public procurement rules 'under the radar' and unchallenged. The pursuit of sustainability goals further exposes the limitations of the current enforcement framework.[96] As Caranta and Janssen argue

> [e]nlisting public procurement in the fight against climate change and in the pursuit of other relevant societal goals means that litigation cannot be confined to economic operators protecting their merely economic interests […].[97]

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[91] *Ibid*.

[92] European Commission, Commission Staff Working Document – Annex to the Proposal for a Directive of the European Parliament and of the Council Amending Council Directives 89/665/EEC and 92/13/EEC with Regard to Improving the Effectiveness of Review Procedures Concerning the Award of Public Contracts – Impact Assessment Report – Remedies in the Field of Public Procurement, SEC(2006) 557, 2006, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52006SC0557, para. 4.4.1 (line 2).

[93] Caranta, Fričová, *op. cit.* (fn. 87), p. 420.

[94] Weatherill, S., *EU Law on Public Procurement: Internal Market Law Made Better*, in: Bogojević, S.; Groussot, X.; Hettne, J. (eds.), *Discretion in EU Public Procurement Law*, Hart Publishing, Oxford, 2019, p. 48.

[95] Caranta, Fričová, *op. cit.* (fn. 87), p. 425.

[96] *Ibid*., p. 424.

[97] Caranta, R.; Janssen, W., *Collective Reflections on the Future of Mandatory Sustainable Public Procurement*, in: Caranta, R.; Janssen, W. (eds.), *Mandatory Sustainability*

While some economic operators might be willing to challenge procurement decisions/contract awards that are not in compliance with mandatory sustainability criteria[98] – especially in EU Member States that provide for more stringent consequences thereof such as "contract termination or ineffectiveness"[99] – they are far more likely to do quite the opposite: challenging sustainability requirements as being "too demanding" and "discriminatory", thus effectively placing some competitors in an unfavorable position.[100] What is more, Caranta and Janssen advance that economic operators "lack both the information and even more so incentives to mount challenges against contract changes which might or might not lead to retendering" and which are incompliant with mandatory sustainability requirements.[101]

Occupying the space between the two above-described enforcement avenues, civil society oversight has the potential to fill this enforcement gap. An illustrative example was the *civil supervisor* that used to be part of the Serbian legal framework from 2013 until 2019. Civil supervisors were representatives of the civil society – individuals or organizations – that were appointed to monitor public procurements whose estimated value exceeded 1 billion Serbian dinars (today, the equivalent of 8.5 million Euros). These were acclaimed experts in public procurement and/or the fight against corruption and conflict of interests, whose impartiality and independence were beyond doubt and whose main task was to closely observe each phase in the procurement process for which they were appointed (from initiation to contract conclusion or termination of the procedure) and produce a report that they later presented before the competent parliamentary committee. Beyond their role as an integrity watchdog, civil supervisors were vested with the competence to initiate public interest review procedures, alongside the State Audit Institution and the State Attorney, thereby complementing their oversight function. This proved to be a critical practical mechanism, particularly in instances where these public authorities failed to act despite serious indications of malfeasance.[102]

Several EU Member States have also developed hybrid enforcement models allowing individuals and organizations (including civil society) to signal poten-

Requirements in EU Public Procurement Law: Reflections on a Paradigm Shift, Hart, Oxford, 2023, p. 267.

98 Lichère, Sulpice, *op. cit.* (fn. 44), pp. 235 – 254.

99 Caranta, Janssen, *op. cit.* (fn. 97), p. 266.

100 Lichère, Sulpice, *op. cit.* (fn. 44), p. 242.

101 Caranta, Janssen, *op. cit.* (fn. 97), p. 267.

102 More on the legal framework and practical experiences with the institute of civil supervisor in Serbian law: Todorović, *op. cit.* (fn. 9), pp. 155 – 156.

tial breaches of procurement rules. Examples include Denmark, where specific industry associations and trade unions have standing in public procurement review procedures, and the Czech Republic where – even if they lack legal standing in review procedures – "any natural or legal person" can act as an informant, alerting the review body to potential breaches of public procurement rules, thereby enabling it to launch review proceedings *ex officio*.[103]

In a similar vein, the global surge in climate litigation instigated by environmental NGOs, as well as the proliferation of grassroots environmental activism, effectively demonstrates that members of the civil society (such as NGOs, grassroots, associations, citizens' movements) might be better placed – and therefore more motivated – to challenge contract awards that do not comply with mandatory sustainability criteria and even litigate "procurement practices and trends […] as contracting authorities collectively come short of national or other targets".[104] In that way, civil society solidifies its role as indirect "guardians of public interests".[105]

The importance of civil society actors in the environmental domain has also been recognized at the transnational level. Consequently, the European Commission has highlighted the critical function of civil society as a "compliance watchdog" in advancing the European Green Deal and non-state actors, particularly environmental NGOs, are recognized as playing a "central role in achieving sustainable development".[106] This status is further grounded in Article 9(2) of the Aarhus Convention, which grants this diverse category of stakeholders robust procedural rights and safeguards. In contrast, this socially responsible procurement lacks a comparable procedural framework.[107] Given that environmental and social components are inherently intertwined – especially in complex and long-term infrastructure projects – expanding these procedural safeguards to the social dimension of public procurement is essential. This is echoed by scholarship advocating for standing for *environmental* and *social* NGOs – to "challenge procurement decisions not meeting sustainability mandatory criteria or abusing the discretion to choose (more) sustainable solutions".[108]

[103] Caranta, Fričová, *op. cit.* (fn. 87), pp. 425 – 426.

[104] Caranta, Janssen, *op. cit.* (fn. 97), p. 267.

[105] Todorović, *op. cit.* (fn. 51), p. 109.

[106] *Ibid*., p. 114.

[107] Caranta, *op. cit.* (fn. 44).

[108] Caranta, Fričová, *op. cit.* (fn. 87), p. 424.

5. CONCLUDING REMARKS

The main premise of this paper is that enabling civil society access to public procurement remedies has the potential to contribute to a more comprehensive and effective enforcement of sustainability standards in public procurement.

While procurement literature recognizes the value of civil society in monitoring the development of selection and award criteria, as well as their execution based on sustainability requirements[109], the most compelling potential avenue for direct civil control from the standpoint of this paper concerns the possibility of litigating procurement disputes. Recognizing that private challenges alone may not fully safeguard the public interest, legislators both nationally and internationally have provided for various public enforcement models that either broaden standing in procurement review procedures and/or provide for *ex officio* oversight possibilities. These mechanisms are designed to protect the integrity of the procurement system from systemic breaches that suppliers might overlook or be discouraged from challenging. Yet, experiences in the implementation of these oversight models indicate a serious enforcement gap that dilutes the stringent sustainability requirements, especially with respect to socially responsible procurement.

Being motivated by broader societal objectives rather than profit, civil society enforcement combines the 'best of both worlds', thereby exerting significant potential *not to replace*, but instead

complement the two traditional enforcement models. By viewing sustainable public procurement through the public interest lens, the paper argues that granting standing to civil society would provide a mechanism to incorporate these often-overlooked criteria into legal challenges, ensuring enhanced accountability. It forces public authorities to consider broader societal impacts.

This builds on the author's previous research, which found that "civil society serves as a bridge between the individual and the State, the private and the public sectors, as well as the national and transnational spheres."[110] In essence, vesting civil society with standing in procurement review procedures – particularly with regard to environmental and social objectives – enables not only the enforcement of these standards, but also serves "an important educational role and help spread awareness of the importance of active citizen involvement for the proper functioning of the legal and political systems – especially those

[109] Rathi, *op. cit.* (fn. 63), p. 5.

[110] Todorović, *op. cit.* (fn. 51), pp. 134 – 135.

grappling with the erosion of the rule of law and human rights."[111] Moreover, diversifying enforcement mechanisms is particularly invaluable in national contexts in which the awareness of the importance of integrating environmental and social considerations in public procurement remains at an early stage "both among the citizens and public authorities".[112]

Establishing the substantive case for expanding *locus standi* to civil society within the public procurement remedies framework was conducted by shedding light on three critical dimensions: 1) *delineating* specific categories of civil society actors, through the prism of their diverse interests, as well as essential guarantors for their representativeness, technical expertise, and independence; 2) *identifying* the optimal phase of the procurement process for their involvement and 3) *positioning* the civil society enforcement model within the broader procurement review landscape. This establishes the foundational ground that effectively paves the way for a forthcoming second study focusing more closely on the procedural aspect to granting standing to civil society within the EU public procurement review framework.

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Sažetak

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OSIGURANJE ODRŽIVOSTI JAVNE NABAVE OMOGUĆAVANJEM PRAVNE ZAŠTITE PREDSTAVNICIMA CIVILNOGA DRUŠTVA

Ovaj rad zagovara omogućavanje pristupa pravnoj zaštiti u javnoj nabavi predstavnicima civilnoga društva, i to kao sredstvo jačanja provedbe zahtjeva održivosti. Polazeći od perspektive javnoga interesa, autorica preispituje svrhu i ciljeve javne nabave, s posebnim naglaskom na održivosti kao jednoj od njezinih temeljnih vrijednosti; time se postavlja okvir unutar kojega se, u poredbenom pravu i praksi, analizira nadzorna uloga civilnoga društva u javnoj nabavi. Središnji dio rada istražuje načine i pravne implikacije priznavanja aktivne legitimacije predstavnicima civilnoga društva za traženje pravne zaštite u postupcima javne nabave. U završnom dijelu rada sintetiziraju se ti nalazi, čime se otvara put drugom dijelu istraživanja.

Ključne riječi: javna nabava; održivost; civilno društvo; pravna zaštita

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