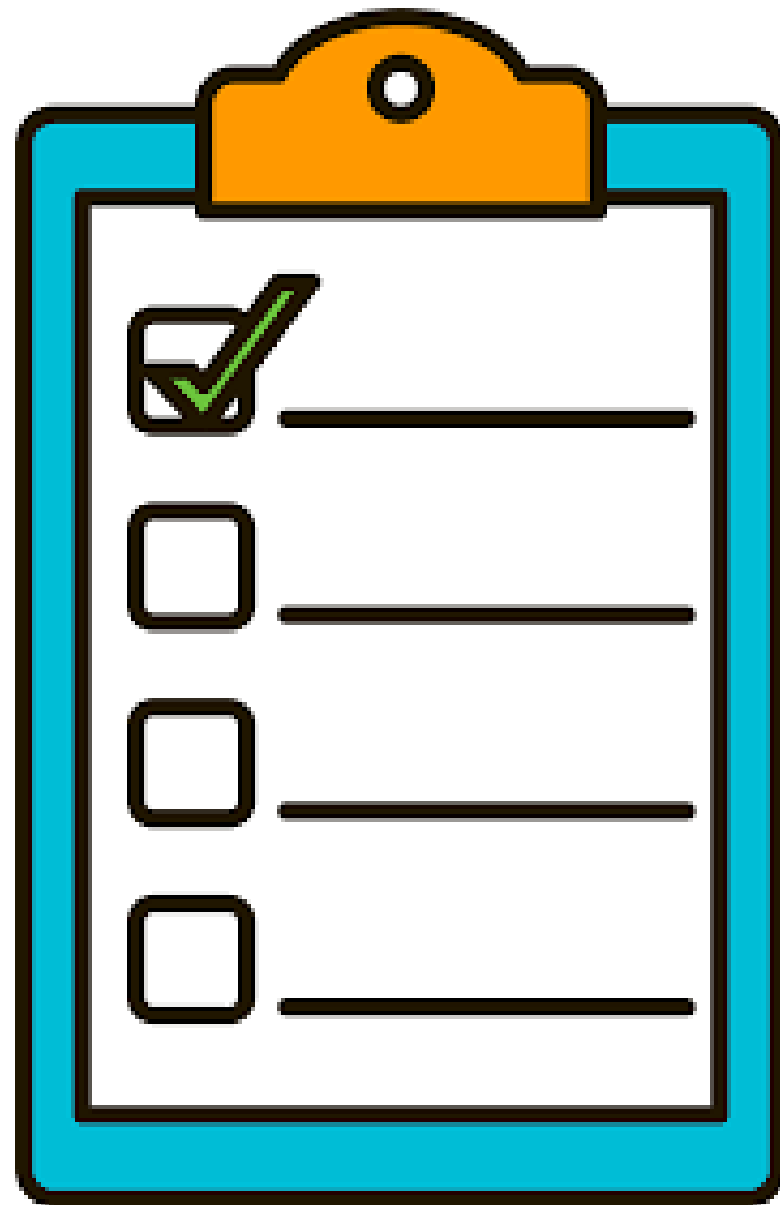




The landscape of GPP in the EU

Roberto Caranta



Part 1: It was 2014

Part 2: Green deal and ...

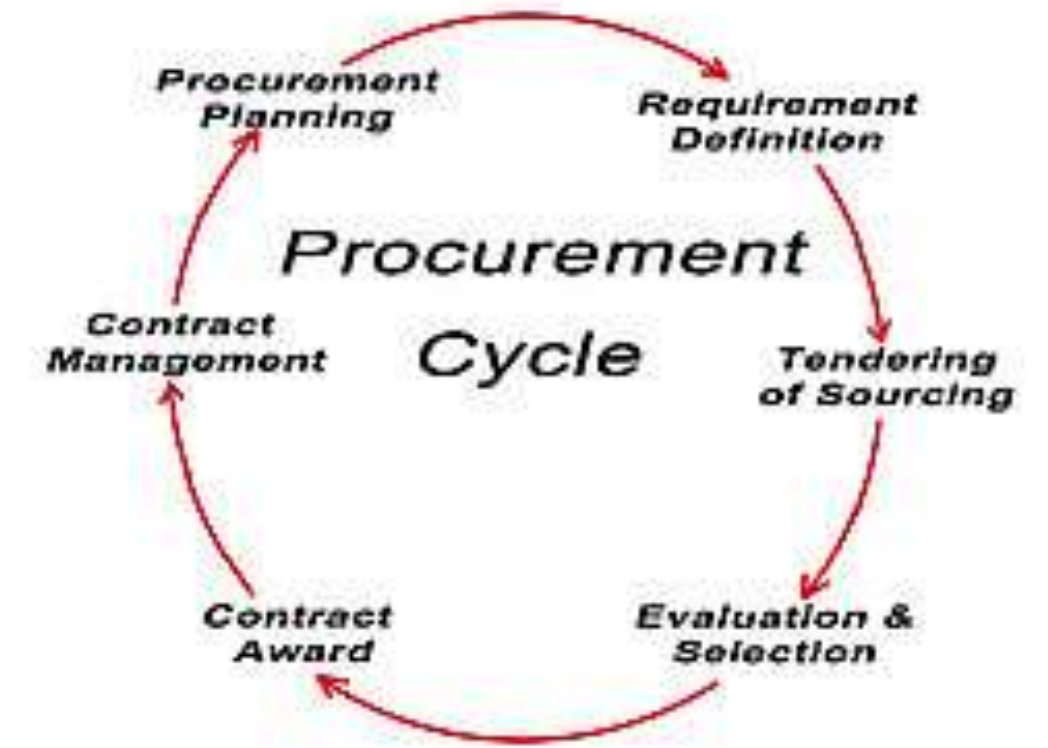
Part 3: Momentous Change

Part 4: Mandatory SPP

It was 2014

EU Law Focus(ed) On How to Buy

- Market opening instruments
- Coverage
- Tech specs/contract performance clauses
- Selection of the contractor/exclusion criteria
- Award procedures



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2014/Directives

- A general principle
- Exclusions/labels
- Contract design/tech specs/CPC
- Award: LCC and abnormally low

L2SM and life cycle

empowering SPP (with hinderances) rather than mandating SPP



A general principle

Article 18(2). MSs 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.



LCC

Parts or all of the costs over the life cycle of a product, service or works costs, such as:

- costs relating to acquisition
- costs of use, such as consumption of energy and other resources
- maintenance costs
- end of life costs, such as collection and recycling costs
- costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their **monetary value can be determined and verified**; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs

GPP Criteria

- Core criteria: designed to allow for easy application of GPP, focusing on the key area(s) of environmental performance of a product and aimed at keeping administrative costs for companies to a minimum.
- Comprehensive criteria: take into account more aspects or higher levels of environmental performance, for use by authorities that want to go further in supporting environmental and innovation goals.

https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm



Existing Guidance



Green deal and ...

EUROPEAN GREEN DEAL

Climate change and environmental degradation are an existential threat to Europe and the world.

To overcome these challenges, the European Green Deal will transform the EU into a modern, resource-efficient and competitive economy, ensuring:

- no net emissions of greenhouse gases by 2050
- economic growth decoupled from resource use
- no person and no place left behind



<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588580774040&uri=CELEX%3A52019DC0640>

PP & EUROPEAN GREEN DEAL

- 2017 Circular procurement

https://ec.europa.eu/environment/gpp/circular_procurement_en.htm

- The Green Deal: “Public authorities, including the EU institutions, should lead by example and ensure their procurement is green”.
- The European Green Deal Investment Plan “The Commission will propose minimum mandatory green criteria or targets for public procurements in sectoral initiatives, EU funding or product-specific legislation”.

https://ec.europa.eu/commission/presscorner/detail/en/fs_20_48





Member State experiences

EU developments follow some of the Member States that have implemented mandatory requirements for public procurement.

For instance:

The Netherlands: a general open norm to ‘create as much societal value as possible + sustainability targets

Italy: specific criteria for 36 sectors

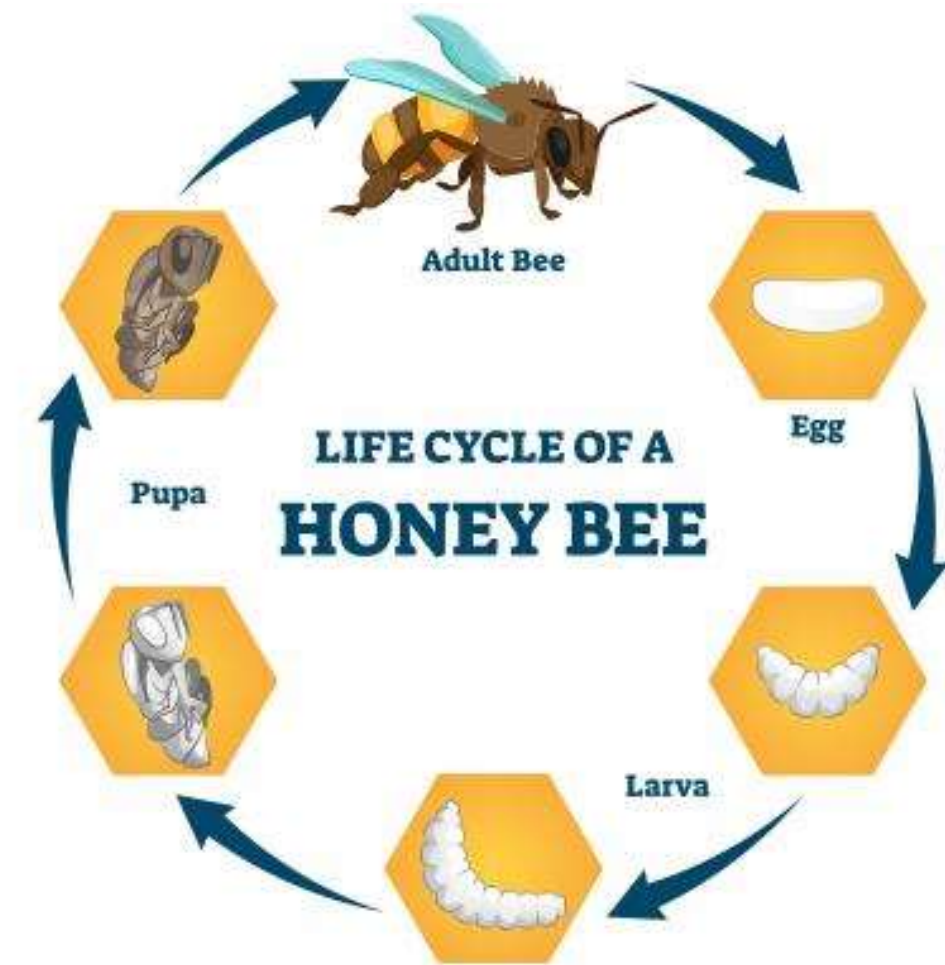
Spain: obligation to include quality in MEAT criteria



Momentous Change

It is about **WHAT** to buy!

- ❖ Moving away from lowest price
- ❖ Focus on life-cycle
- ❖ Nudging markets
- ❖ Limiting MSs/CAs discretion





How is it done?

- Policy docs
- Reform proposals
- Legislation
- Implementing measures
(Comm or MSs)



**Stepping up Europe's 2030
climate ambition Investing in a
climate-neutral future for the
benefit of our people -**

COM(2020) 562 final

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0562>



establishing **minimum mandatory green public procurement criteria and targets** in relation to renewable energy may also be needed

A Renovation Wave for Europe – greening our buildings, creating jobs, improving lives

COM(2020) 662 final

- by June 2022, the Commission will look into the possibility to develop green public procurement criteria for public buildings such as office buildings and schools related to life-cycle and climate resilience and based on Level(s)



Approaches

- Exclusions: info?
- Targets: controls!
- SPP criteria: takes time!
- Any alternative?



Mandatory SPP

**WHAT TO BUY!!!
(AND WHOM NOT TO BUY FROM)**

- **Regulation (EU) 2023/1115** on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation
 - **Art. 25(2)(d)** temporary exclusion for a maximum period of 12 months from public procurement processes and from access to public funding, including tendering procedures, grants and concessions
 - Commission to manage data base of final judgments
 - Self-cleaning arguably possible



Clean Vehicles

- **NEW** Directive 2019/11/61 on clean vehicles
- Minimum MS specific targets
- reporting and review clause
- MSs have to meet at least half of the procurement target for clean buses through the procurement of zero-emission buses





EED

Directive (EU) 2023/1791 on energy efficiency and amending Regulation (EU) 2023/955 (recast)

- art. 5 - public bodies to achieve an annual energy consumption reduction of 1.9%
- Art. 6 - 3% of public buildings renovated each year to achieve nZEB
- Art. 7 CA/Es purchase only products, services buildings and works with **high energy-efficiency performance** in accordance with the requirements in Annex IV, unless it is not technically feasible



RED III

- **Directive (EU) 2023/2413 - promotion of energy from renewable sources**
- reforms Art. 15(2) Dir. **2018/2001** “2. MSs shall clearly define any technical specifications which are to be met by renewable energy equipment and systems in order to benefit from support schemes and to be eligible under public procurement. ”
- new Art. 15a(4) MSs ensure that public buildings at national, regional and local level fulfil an **exemplary role** as regards the share of renewable energy used e.g. by providing for the roofs of public or mixed private-public buildings to be used by third parties for installations that produce energy from renewable sources



Construction Products Regulation

Commission will be empowered to establish mandatory minimum environmental sustainability requirements through delegated acts for public procurement of construction products, to incentivise supply of and demand for environmentally sustainable products.

Applying to every contract that contains construction products, including contracts for construction works.

MSs may deviate from the environmental requirements where applying them would result in low market offer for the required construction product, where there would be no suitable tenders and in cases where they result in disproportionate costs causing the MS to spend more than **10%** in comparison to the scenario where no requirements would apply.





EPBD & the public sector

- 3% renovation rate (EED)
- Earlier date for zero emissions buildings (2028)
- Stronger and earlier pre-cabling obligations for e-cars
(MSs shall ensure pre-cabling for at least one in two parking spaces by 1 January 2033)



NZIA

- ★ incentivising the purchase of net-zero technology products
- ★ environmental sustainability contribution will be a mandatory minimum requirement
- ★ resilience contribution will be applied if there is a third-country dependence of more than 50% for a specific strategic net-zero technology (or for its components) (only be considered if the Commission has first assessed the level of dependence of each technology from a particular third country)
- ★ If the application of the resilience and sustainability contribution results in a disproportionate cost difference (30%) or if no suitable tenders or requests have been submitted, contracting authorities may decide to not apply these criteria

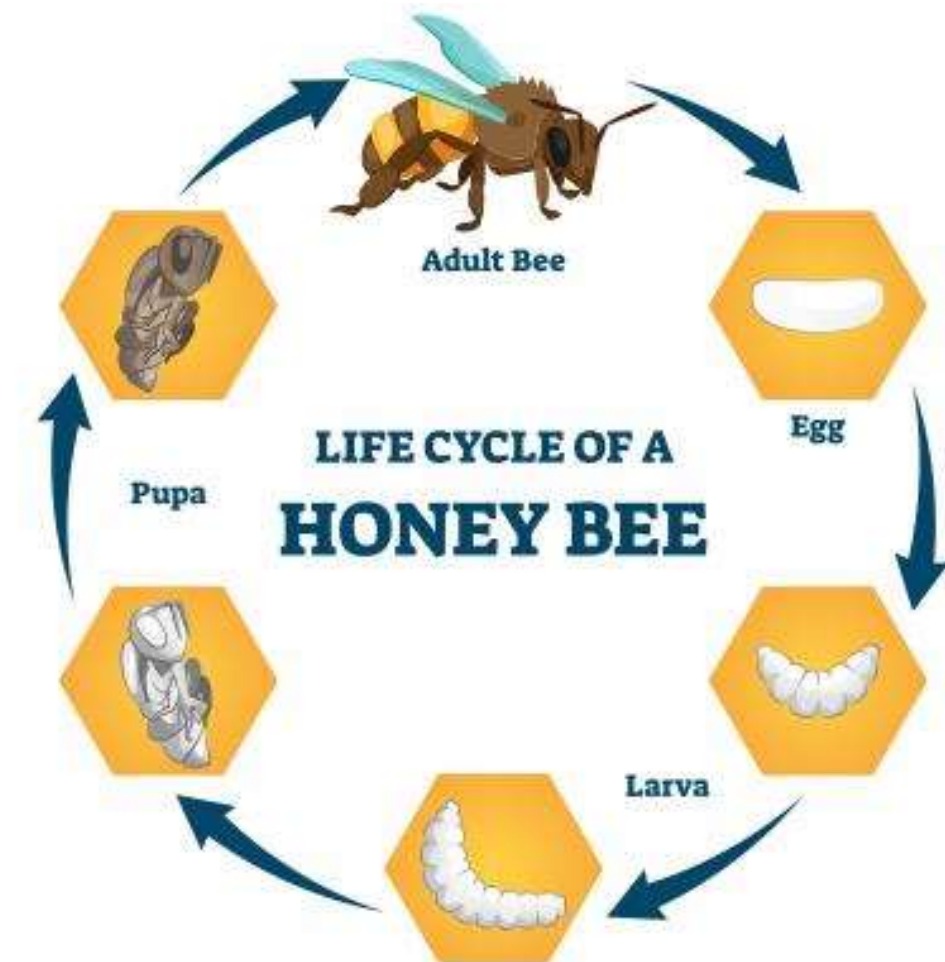
Marginally relevant to PP (and still in the pipeline)

- ❖ The proposal for a new Ecodesign for Sustainable Products Regulation, published on 30 March 2022, is the cornerstone of the Commission's approach to more environmentally sustainable and circular products. The proposal builds on the existing Ecodesign Directive, which currently only covers energy-related products (and Commission's work is going on).
- ❖ https://ec.europa.eu/environment/publications/proposal-ecodesign-sustainable-products-regulation_en
- ❖ proposal for a directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) (COM(2023)0166)

https://www.europarl.europa.eu/doceo/document/A-9-2024-0056_EN.pdf

It is about **WHAT** to buy!

- ❖ Moving away from lowest price
- ❖ Focus on life-cycle
- ❖ Nudging markets
- ❖ Limiting MSs/CAs discretion



REFORM THE 2014 directives

- ❖ Kill the L2SM (and Rec 97)
- ❖ Rethink exclusions
- ❖ Include/Link to specific provisions





The CSDDD

➤ Member States shall ensure that contracting authorities and entities may **exclude** economic operators for non-compliance, may require compliance with the national rules implementing the Directive as **contract performance conditions** for those economic operators bound by it. Similarly, compliance with those rules by economic operators not bound by them may be valorised as an **award criterion**





Civil society procurement litigation?

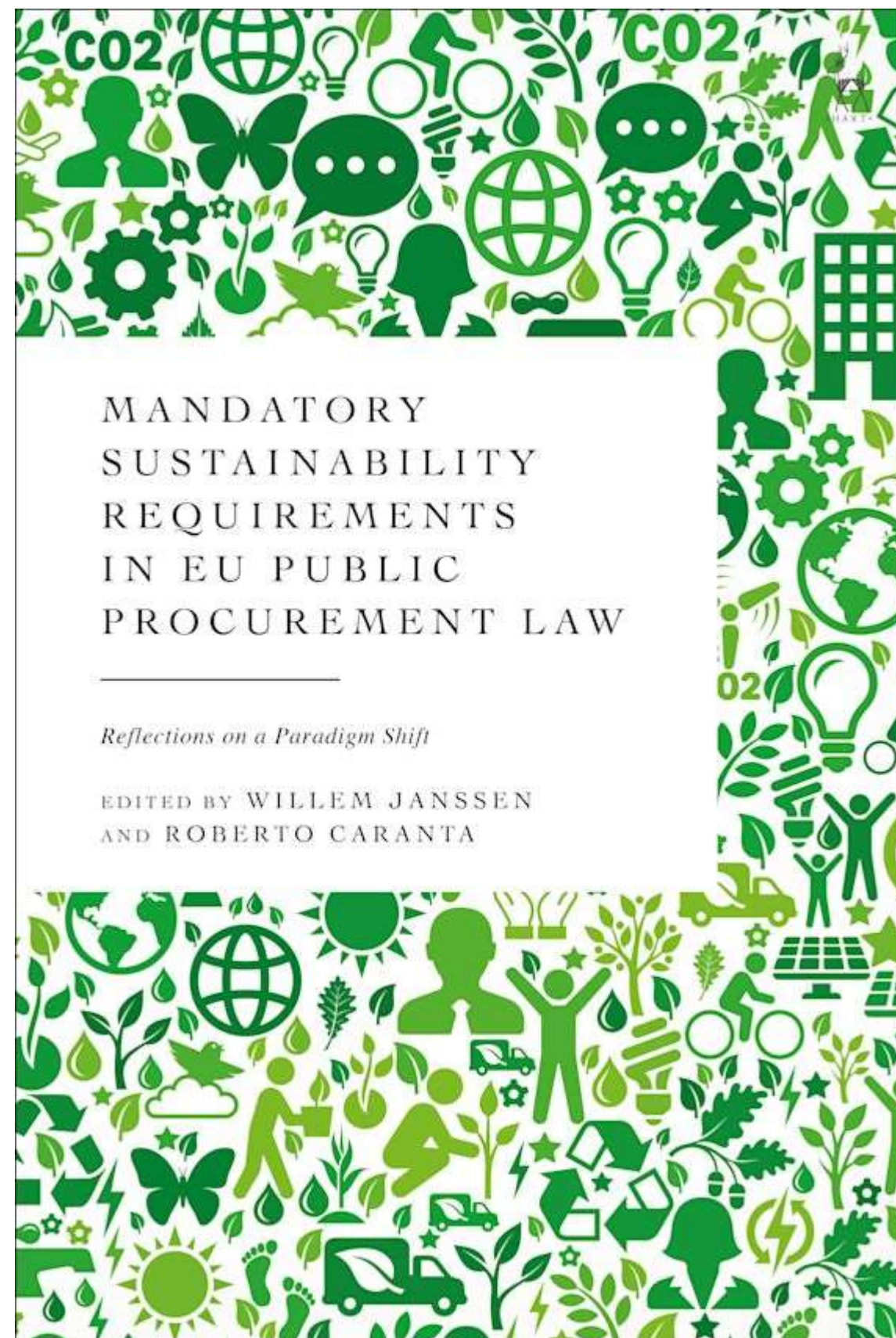
- Integrity
- CSR
- Green Deal
- Art. 83 and Rec. 82 Directive 2014/24/EU
- Art. 9 Aarhus Convention

<https://realaw.blog/2022/11/01/opening-the-doors-to-civil-society-litigation-in-public-contracts-by-r-caranta/>

Remedies

- **Civil society litigation comes to public procurement**





THANK YOU