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Challenges and Barriers of the Integrated Public Purchase Policy

ZBYSŁAW DOBROWOLSKI¹ (*Corresponding author*), WALDEMAR SŁUGOCKI²,
SIMONA ANDREEA APOSTU³, and ARKADIUSZ BABCZUK⁴

¹ Institute of Public Affairs, Jagiellonian University, ul. Prof. S. Łojasiewicza 4, 30-348 Kraków, Poland, e-mail: zbyslaw.dobrowolski@uj.edu.pl; Orcid ID: <https://orcid.org/0000-0003-1438-3324>; Institute of Economic and Financial Expertise, Pl. Wolności 3, 91-415 Łódź, Poland, e-mail: zbyslaw.dobrowolski@ieef.lodz.pl; Orcid ID: <https://orcid.org/0000-0003-1438-3324>

² Institute of Economics and Finance, University of Zielona Góra, ul. Podgórna 50, 65-246, Zielona Góra, Poland; e-mail: w.slugocki@wez.uz.zgora.pl

³ Department of Statistics and Econometrics, Bucharest University of Economic Studies, 010552 Bucharest, Romania; Institute of National Economy, 050771 Bucharest, Romania, e-mail: simona.apostu@csie.ase.ro

⁴ Institute of Economic and Financial Expertise, Pl. Wolności 3, 91-415 Łódź, Poland, e-mail: Arkadiusz.babczuk@ieef.lodz.pl

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ABSTRACT

This study analyses what factors influence public purchase policy implementation in Poland. The Polish case was chosen due to the specificity of the public procurement market in this country and the lack of comprehensive studies in opposition to other European Western countries. Based on qualitative research, which includes in-depth interviews with key informants, the study confirms the results of research conducted in other countries showing public purchase policy gaps that may hinder their implementation. It was found that promoting sustainable public procurement through education is a significant concern in Poland. Additionally, auditors should be familiar with sustainable and innovative procurement practices to avoid situations in which they negatively assess public procurement, which was realised correctly. The findings serve to develop academic knowledge in public policy and are helpful for practitioners.

INTRODUCTION

Transitioning towards a sustainable economy includes the legal transformation of the business environment, in which sustainable public procurement (SPP) plays a key role (e.g., Amann et al., 2014; Testa et al., 2016). The study focuses on Poland because of three main reasons. First, due to the implementation of the 2022 new Public Purchase Policy (PPP) in Poland and the scale of the public procurement (for example, the value of the public procurement market in 2020 in the conditions of the Covid-19 pandemic

amounted to 57 billion EURO) (UZP, 2021). Second, due to little research on PPP as an example of sustainable public procurement in comparison to research on such policies in other European Western countries; Third, due to the dispersion of contracting authorities, which may create problems with properly implementing PPP (around 66,000 entities in the public finance sector are obligated to apply the Act on Public Procurement in Poland. It means that Poland has more such institutional units than, for example, Great Britain and Germany together) (UZP, 2021).

Therefore, the research question is the following: RQ 1. What factors influence the implementation of the PPP? This article uses the following methods: 1) Quantitative analysis based on existing data; 2) Qualitative analysis, including unstructured interviews. The article begins with the literature review and research methodology. Next, the discussion and conclusions supplement the research results. In addition, the paper presents the research limitations and avenues for future studies.

1. LITERATURE REVIEW

This section elaborates on related literature on sustainable public procurement. Afterward, the constraints of sustainable public procurement are discussed.

1.1 Sustainable Public Procurement

Sustainable public procurement is a term that broadly occurs in academic literature. This concept links with a variety of related terms, including green supply (Bowen et al., 2011), green purchasing or green purchasing strategies (Chen, 2005), green purchasing and supply policies (Green and Morton, 1998), environmental purchasing (Carter et al., 2000; Zsidisin and Siferd, 2001), environmental supply chain management, green supply chains (Rao and Holt, 2005), green value chains (Handfield et al., 1997), green supply chain management (Zhu et al., 2005), and environmental supplier performance (Humphreys et al., 2003). Researchers define Green Public Procurement (GPP), part of sustainable public procurement, as public procurement considering natural environment requirements, e.g. (Aldenius and Khan, 2017). This broad definition fits the 2030 Agenda for Sustainable Development (United Nations, 2015).

Researchers (e.g. Aldenius and Khan, 2017; Lundberg and Marklund, 2018; De Giacomo et al., 2019; Adjei-Bamfo et al., 2023; Rejeb et al., 2023) highlight the linkage between SPP and social outcomes. SPP fits three pillars of sustainable development - economic, social and environmental (European Commission. Green and Sustainable Public Procurement).

1.2 The Constraints of Sustainable Public Procurement

The EU identified several barriers to the take-up of SPP by the EU Member States (Bouwer et al., 2011). One of them is the need for more public officials' support. UE argues that senior officials within the European public sector need an awareness of how vital the SPP is for sustainable and innovative development or that their awareness is not made explicit to their purchasing staff. Another issue comes from the belief that SPP is more expensive than "traditional" purchases, where the price plays a key role. Therefore there is a need to change behaviour within purchasing departments of public organisations (European Commission. Barriers to the take-up of GPP). One may also identify a need for more legal expertise in applying environmental criteria as a critical SPP constraint. Purchasers within public authorities may not know how to define an "*environmentally and socially preferable*" product or service and how to include appropriate criteria in the tendering process. It includes but is not limited to the ability to accurately assess and verify information submitted by tenderers from the environmental criteria and simultaneously comply with the procurement law sources (Tagliapietra et al., 2019).

Another SPP limitation comes from a lack of practical tools and information. One-fourth of the surveyed people in the European Commission survey pointed out a lack of practical tools and information. In addition, the SPP approach requires implementation and integration into management systems within

organisations. The concept of a joint procurement by several organisations should therefore be considered. The staff is responsible for public procurement and needs knowledge and skills in the legal and technical aspects of SPP implementation. They must be familiar with the concept of life-cycle costing and end-users on the sustainable use of products (Tagliapietra et al., 2019; European Commission. Barriers to the take-up of GPP).

The identified by the European Commission problems with SPP implementation are similar to those pointed out by researchers, e.g. (Testa et al., 2012; Igarashi et al., 2013). Z. Dobrowolski and T. Szejner (2019) identify the need for a culture of integrity as limiting innovations in conjunction with SPP. Innovative solutions require an innovation ecosystem based on trust and applying the rule of law. Corruption discourages investors from investing in innovative solutions, as bribes and fraud distort reliable public choice.

2. DATA AND METHODOLOGIES

We chose a qualitative research approach to study the Public Purchase Policy (PPP), including in-depth interviews with key informants who were invited and attended the conference organised by the Ministry of Development and Technology responsible for implementing PPP in Poland. We analysed the European laws and regulations to determine whether PPP fits these laws and regulations. The literature review used the screening methodology and content analysis (Harwood and Garry, 2003; Snyder, 2019) to identify crucial concepts related to GPP, sustainable public procurement and innovations.

The article aimed to gather more in-depth knowledge on PPP constraints. Therefore, the purposeful and convenient sampling and in-depth interviews with experts who participated in a conference held by the Polish Ministry of Development and Technology on June 30 2022. The sample is purposive but gives insight into crucial informants' perspectives. It allows a clear view of the nature and complexity of PPP, which needs to be more adequately recognised. One of the authors of this article participated in this conference as a moderator and conducted the interviews. The non-standardised and unstructured interviews helped to understand the responders' behaviour without imposing any ex-ante category that might limit the field of research (Fontana and Frey, 1994). The characteristic of the sample took into account the unique experience of key informants in the area of PPP. The interviewed eight people were practitioners and scientists, and they represented procurers and contractors. Four selected respondents from the public sector are responsible for operationalising the policy during different phases of the procurement process. More specifically, the types of interviewed people are as follows: a) researcher of local government activity from HEI (R1); b) researcher of public procurement law from HEI (R2); c) director of Karkonoski National Park experienced in GPP as procurer (R3); d) director of Environmental Protection and Water Management Fund experienced in GPP (R4); e) representative of Lukasiewicz Research Centre (R6); f) Deputy Chief Head of the Public Finance Discipline Committee (R6); Two representatives of companies (R7) and (R8), experienced with public procurement.

To fulfil the requirement of methodological rigour, one needs to consider the subject-matter expert's subjectivism and personal engagement. It is possible in qualitative research to balance the deep knowledge of crucial informants with their engagement (Van Manen, 2016). It allows us to understand the processes in which contractors and procurers participate. One of the authors manually analysed all interview notes for patterns and alignment with the concepts from the theoretical framework. The study's rigour is based on open questions and a comparison of the answer of respondents. In addition, the respondents' answers were compared to the findings resulting from literature studies. The literature study, interviews, and analysis of PPP documentation allowed us to use the methodological triangulation concept. We also use researcher triangulation, which resulted from including researchers from different countries and research centres in the study (Denzin, 2009; Flick, 2017).

3. EMPIRICAL FINDINGS

3.1 PPP Challenges and Weaknesses

Table 3 The Act of September 11, 2019. Public procurement law (Journal of Laws of 2021, item 1129) entered force on January 1, 2021. This Act complies with EU law and specifies: a) entities obliged to apply the provisions of the Act; b) the scope of exclusions from the application of the provisions of the Act; c) procurement rules; d) stages of preparation and conduct of the contract award procedure; e) procurement procedures and specific procurement instruments and procedures; f) requirements for public procurement contracts and framework contracts; g) authorities competent in matters of procurement; h) legal protection measures; i) out-of-court settlement of disputes related to the implementation of public procurement contracts; j) procurement control and financial penalties (PZP, 2019).

The Polish Government noticed the weaknesses of the current public procurement practice resulting from the dispersion of awarding entities, a small number of bids submitted in public procurement and the low innovation of bids. Therefore the Government developed the Polish Purchase Policy (PPP), which was implemented by Resolution No. 6 of the Council of Ministers on January 11, 2022 (MRiT, 2022).

Analysis of PPP shows the Government assumes that optimising public procurement is supposed to contribute to achieving one of the following specific objectives: a) maximising the functional requirements of ordered products while minimising costs in the product life cycle; b) improving the efficiency of the purchasing process through its digitisation, incentives for innovative solutions and cost evaluation in the product life cycle; c) implementation of the State's social goals, including the creation of high-quality jobs and changes in the model of development policy through the integration of purchasing a policy with economic goals. The PPP is addressed to public institutions. Each ordering party awarding public contracts whose annual value in 2017 exceeded PLN 100 million net (approximately EUR 25 million) will be required to prepare a purchasing policy for their organisation, which will contribute to implementing the State's purchasing policy (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRiT, 2022).

The PPP assumes an increase in the importance of non-price criteria, which requires a change in the systemic approach to awarding public contracts, particularly regarding preparing procedures and evaluating offers. It means directing public procurement towards innovative, green procurement and the widespread application of quality standards. The Government assumes that it will enable the use of public procurement as a tool to stimulate innovation and thus facilitate the economic and technological transformation of the State. However, the use of non-price criteria is not an end in itself. It should only be a tool to achieve the horizontal and medium-term goals, which are as follows: 1) Increasing the quality of the ordered supplies, services and construction work; 2) catalysing the demand for innovation from the public sector and at the same time an inspiration for sustainable public procurement (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRiT, 2022).

The implementation of green procurement requires actions throughout the procurement process, starting with the preparation of the procedure. Much of the responsibility falls on awarding entities. They must adequately prepare for the procurement process. It means they should set priorities, key features and characteristics of the product, service or construction work (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRiT, 2022).

The PPP assumes a simplification of the structure of the contracting authority system because, with a significant dispersion of awarding entities, it is impossible to coordinate purchases and obtain the assumed results fully. The Government indicates that around 66,000 entities in the public finance sector are obliged to apply the Act on Public Procurement in Poland. It means that Poland has the most institutional units in the General Government sector (more institutional units than, for example, Great Britain and Germany together). These entities must apply the provisions of the Public Procurement Law. The Government points out the necessity of reducing the number of contracting authorities (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRiT, 2022). It should be noted, however, that one needs to determine the responsibility and authority for purchases and ensure the coordination of purchasing activities on an unprecedented scale. The Government points out that fewer awarding entities would reduce the diagnosed problem of awarding contracts below the amounts obliging awarding entities to apply the provisions of the

Public Procurement Act (Resolution No. 6 of the Council of Ministers on January 11, 2022). It should be noted that large purchases may lead to stocks, and awarding entities should be prepared for such a situation (MRIT, 2022).

The Government plans to improve SMEs' access to the public procurement market. The Government states that the sector of small and medium-sized enterprises is the foundation of the Polish economy, generating approximately 50% of the GDP. For this reason, the development of this sector significantly contributes to economic growth, improvement of the economic condition and creation of new jobs. Further, the Government points out that for this reason, the appropriate procurement policy of the State is to create appropriate institutional conditions that will limit the barriers to the development of the SME sector by facilitating their access to public procurement (Resolution No. 6 of the Council of Ministers on January 11, 2022) The Government assumes a multifaceted implementation of this policy. Firstly, the creation of a regional SME Support Centre in order to raise the knowledge of SMEs about the public procurement market. The Government states that SMEs often do not have the capital to pre-finance the contract and must wait for payment after the entire realisation contract. The Government assumes the possibility of dividing the contract performance into parts and payment of partial amounts corresponding to the scope of tasks performed and introducing the possibility of granting advance payments to public contractors. Besides, the Government postulates that SMEs' representatives can influence the public procurement requirements. It can be realised by influencing the Specification of Essential Terms of the Contract due to the specific knowledge possessed by entities from the SME sector (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRIT, 2022). Such solutions, however, pose threats. Examples include but are not limited to: the insolvency of SMEs to which advance payments were made, failure to complete the assumed works, and capturing procurement (shaping the specification of essential terms of the contract in such a way that it is beneficial for a particular contracting authority. Another threat comes from ethnocentric attitudes and supplier preferences, not because they are the best but because they represent the SME sector or come from a particular region. This situation distorts the correct public choice (Dobrowolski, 2017).

The Government assumes increasing the participation of SMEs in the supply chain by informing about planned contracts and argues that thanks to information about planned contracts, SMEs will be able to develop an appropriate strategy for participation in procedures. A clear message on this matter will allow SMEs to properly prepare themselves in organisational and functional terms (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRIT, 2022). This solution proposed by the Government creates a risk of information imbalance, providing information to selected entities faster or providing complete information.

The Government also notices the problem of joint and liability of contractors. The Government states that contractors applying for the contract award are jointly and severally liable to the contracting authority. It is a significant limitation in developing participation entities from the SME sector in the public procurement market. One can remove these barriers by lifting the joint liability of contractors joining a tender carried out under the procedure innovation partnership. Another solution proposed by the Government is the analysis of the "in-house" procurement market and the possible increase in SME access to current internal orders (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRIT, 2022). However, one may question whether joint and contractor liability reduction influences the contracting authorities' rights. Innovation requires a compliance culture where contractors' liability plays a significant role (Dobrowolski and Szejner, 2019).

A good solution that does not raise any objections is the planned introduction of a new solution that provides written feedback for contractors whose offer has not been selected in a given procedure. Such a solution, used for years in the public procurement procedure, should be directed towards SMEs being better prepared to participate in subsequent procedures by identifying and eliminating the mistakes made in earlier participation in public procurement. This solution increases the compliance of the innovative ecosystem.

The Government rightly notes that public procurement is mainly affected by the risk of corruption and points out that at the EU level, corruption amounts to around € 120 billion per year. The Government also cites the OECD results that around 10-30% of investments in publicly funded construction projects are at risk of corruption, which may cause a loss of about 20-30% of the value of projects (Resolution No. 6 of

the Council of Ministers on January 11, 2022; MRiT, 2022). The risk of corruption in public procurement is common and goes beyond national borders. It results from the awarding of public procurement: a) persons representing the contracting authority usually bear little financial responsibility for the award of the contract; b) there is a great temptation among bidders to avoid a fair public choice and obtain undue benefits by using bribes (Dobrowolski, 2017). Generally, Government's solutions are correct. However, more is needed to appeal to the contracting staff's conscience and contractors' honesty. Limiting corruption is a long-term and multifaceted process, and the solutions proposed by the Government, although appropriate, fit the environment characterised by high compliance. One can notice a problem because Poland, like most EU Member States, struggles with a high corruption risk (Transparency International, 2022). The solutions proposed by the Government, such as compliance with ethical principles by the parties to the contract, penalising corruption, and social control, require institutional balance (in the understanding of the New Institutional Economy). When corruption is widespread, it is necessary to develop mechanisms of continuous verification of awarded contracts, the principle of multiple eyes, ensuring equal access of bidders to information provided by awarding entities, and monitoring the procurement process, including e-procurement.

One may state that planned by the Government, the procurement platform for the public sector is a good solution from the point of view of ensuring transparency. The planned platform is a comprehensive e-procurement tool covering the entire procurement cycle, including the publication of tender notices, communication with suppliers, collection of bids, opening bids and awarding contracts or control and system electronic payment. Ultimately, the purchasing platform will cover not only tenders carried out under the Public Procurement Law but also purchases in the public sector not covered by the provisions of the Public Procurement Law. The functionality of the electronic procurement platform will also be used by specialised organisations, which will identify potential bid rigging or other activities restricting competition in public tenders. The Government plans to use artificial intelligence algorithms to analyse specific variables related to conducted tenders and then indicate which tender participant should win according to the tender formula (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRiT, 2022).

Artificial intelligence will be a solution supporting the selection by tender committees and not replacing them. Such a purchasing platform will facilitate access to information for bidders. Using Business Intelligence tools in the public procurement system will facilitate the creation of contracts by ordering parties through the possibility of modelling previous similar tenders (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRiT, 2022). It is worth noting the risk of using e-procurement. The risk of Big Data usage results from the impact of various factors on the electronic system, including the deliberate destabilisation of the system by the services of foreign, hostile countries.

In the state purchasing program, the Polish Government refers to innovation. It uses the definition of innovation included in Directive 2014/24 / EU and art. 7 pts 6 of the Public Procurement Act. The Government draws attention to two models of innovative purchases: a) purchase of the process of developing innovative solutions (e.g. research and development services) with partial results (prototype); b) purchase of innovative results developed by third parties (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRiT, 2022). According to the recommendations of the European Commission, one can distinguish innovative solutions according to their nature. Innovations that evolve the solutions available can be defined as incremental innovations. New solutions that enter the market disrupt the functioning of the old system by creating new entities, flows and values that constitute radical innovations. In exceptional cases, the innovation may even lead to the need to carry out structural or organisational changes. Then one can define transformational innovations (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRiT, 2022).

Each contracting authority, planning its orders, should know its abilities, competencies and organisational potential, carry out its purchases with an adequate character (incremental innovations, radical innovations or transformational innovations), and the model of fulfilling purchasing needs. Moreover, the more qualified nature of the innovation should no doubt be considered in industries for which the public procurement market is the foundation of operation (e.g. rail and road infrastructure, medical sector). In other words, the Government points to the need to stimulate demand for innovation by the public sector in a relatively low purchasing power of customers in the domestic market (Resolution No. 6 of the Council of Ministers on January 11, 2022; MRiT, 2022).

The interviewed people (R1, R2, R3, R4, R5, R6, R7, R8) were asked what, in their opinion, are the main obstacles to the implementation of PPP in Poland. All of them underlined the necessity of training procurers. For example, R2 said, "Training should include expertise in applying environmental criteria and ensure that procurers will know how to include appropriate criteria in the tendering process." Another issue raised by experts involved the motivation of procurers. R1 said, "*Working in the public sector requires ongoing professional development. It is a good motivator*". R6 agreed with this sentence but underlined, "There is a need to reformat a view on public officers who participate in awarding contracts by individual organisations. Their wages should be higher than now. The public employees' wages are below their knowledge and experience. Meanwhile, we need engaged professionals." Other interviewed people agreed with this statement. Another limitation of PPP indicated by the respondents was the limited experience of public procurement participants. R7 said, "*many awarding entities and the lack of contractors' and procurers' experience in GPP and SPP appears to hinder PPP implementation*." R8 agreed with this statement. Two interviewed company representatives (R7) and (R8) also stated that, from their perspective, committed practitioners helping others could make a difference in PPP policy implementation, more so than written GPP and SPP e-guides. They emphasised that PPP allows businesses and the State to implement innovative solutions. However, public officials need to understand what innovative public procurement means. They did not provide innovative products or services so far because the lowest price was the most important in public procurement.

The next question concerned the method of formulating the contracting authority's expectations. All respondents pointed to the need to precisely define the contracting authority's requirements in environmental protection and indicate them in public procurement, in which the contract price is not the only selection criterion. The clear expectations helped contractors properly verify bids and choose the best offer. For example, R3 said, "*I organised green public procurement in Karkonowski National Park. From my perspective, the most important was to properly determine, accurately assess and verify information submitted by tenderers from the environmental criteria*".

Eight interviewed people underlined that public organisations must cooperate in the case of public procurement. They can cooperatively exchange best practices. The respondents perceived the organisation's cooperation as going beyond the contracting authorities. Such cooperation should include contracting officers and those who then evaluate them. R6 commenting on this cooperation, pointed out the case of auditors and said, "*Auditors should understand the assumptions of PPP. Otherwise, they will evaluate procurers mainly from the point of legality. Meanwhile, innovation or broader sustainable procurement requires multifaceted auditing criteria*." The other seven interviewed people confirmed such a view.

This study confirmed the results of other research conducted in other countries. Sustainable public procurement generates numerous challenges for public authorities, even if the legislative framework is very well organised, through the transposition of specific European directives into national legislation (Siminică et al., 2020). Officials' fear of being accused of irregularities can be a brake in the implementation of the sustainable public procurement (Manta et al., 2022). It is therefore essential not only the existence of the specific legal framework but also the promotion of sustainable development education at various levels of competence so that decision-makers from different sectors understand the complexity of the phenomenon, its multiple forms of manifestation and the financial reflection of non-financial performances (Bryngemark et al., 2023).

CONCLUSION

Sustainable development requires concerted efforts on the part of private companies and public authorities, and the existence of a legal and institutional framework is necessary. Research on sustainable public procurement continues, as evidenced by published studies. However, there was a lack of studies about sustainable public procurement as an integrated public purchase policy (PPP). The research fills this research gap.

The analysis of PPP allows one to formulate the following generalisations. The principles of the PPP align with the European Commission's public procurement strategy determined in 2017. The transposition

of European directives into national legislation at the level of EU Member States is a beneficial fact that can generate an exchange of best practices between countries. The PPP aims to implement sustainable public procurement to rationalise public expenditure. The Polish public procurement system aims to promote the competition on the contractors' part and optimise the public by changing the spontaneous purchasing model, in which the cost of coordinating the public procurement system is high. In such a system, the systemic lack of incentives for creating purchasing groups and cooperation on the part of the awarding entities limits the achievement of economies of scale and reduces public sector savings. In the new model, a coherent, binding directional document outlines the most critical essential objectives and principles of the purchasing policy. The Polish public procurement system can create high-quality demand in the domestic economy by implementing a structured and coordinated procurement policy.

The implementation of the PPP by public entities means resignation from the perception of public procurement solely in terms of formalised procedures, the observance of which is the leading and most important goal of the contracting authority. The Government perceives the PPP as an instrument of increasing innovation in the national economy and contributing to achieving sustainable development goals, i.e., social, environmental and health. In other words, the PPP introduces solutions enabling omitting the traditional style of procurement in which quick and cheap purchases was a goal. Instead, the purchasing goal should maximise functional requirements while minimising costs in the life cycle, considering the requirements of sustainable development and innovation.

The reported postulate of professionalisation of public auditors needs to be emphasised. Auditors must be familiar with the essence of sustainable and innovative public procurement. Because any revealed irregularities, including public ethnocentric practices, will reduce public trust in PPP, the Government must simultaneously ensure that any public policy follows the principles of accountability, transparency and integrity.

The Polish State Purchase Policy entered into force in February 2022, and it is too early to assess its effects. However, it was different from our goal. We focused on PPP constraint identification and their analysis. The focus of the study on the Polish case generates the limits of this study. In addition, the number of responders provides a limitation of the study. The eight key subject-matter experts who participated in the conference organised by the Ministry of Development and Technology responsible for implementing PPP in Poland may not represent the Polish public procurement market. Therefore, future research should expand the number of interviewed experts and analyse cases of implemented PPP in different public entities and firms to enrich the results of this study. Future studies should focus on different procurers and include those belonging to the government branch, municipalities and local governments with regional functions. Another exciting perspective for further research would be to look into the PPP realisation from the firms' perspectives. Future studies may also compare the national legislation and State Purchase Policy with the foreign legal and organisational framework. It may enable a better understanding of state purchase policies' establishment and evolution. Such knowledge enables limiting mistakes and misconduct in the sustainable policy.

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