PUBLIC FOOD PROCUREMENT AS A DEVELOPMENT TOOL: THE ROLE OF THE REGULATORY FRAMEWORK

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PUBLIC FOOD PROCUREMENT AS A DEVELOPMENT TOOL: THE ROLE OF THE REGULATORY FRAMEWORK

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1. INTRODUCTION

Although it is not a new phenomenon, there has been an increasing interest in the use of public procurement as an instrument to pursue development goals in recent decades. The weight of the public sector is important, and procurement for public institutions is therefore an important lever for change: public procurement alone represents on average 13% of the GDP in low, medium and high-income countries (World Bank, 2020).[1]

Within the emerging trend of using public procurement as a tool for development, food procurement occupies a prominent position. Food procurement represents a significant portion of public procurement and includes public school meal programmes, food provision and food-related services for cafeterias in civil service buildings, hospitals, prisons, universities, as well as social programmes such as in-kind transfers (the distribution of food aid to families in need) or social restaurants.

Examples of development policy objectives commonly pursued through public food procurement initiatives include the support and promotion of local agriculture production, the support of vulnerable producer groups (in particular smallholder farmers, but also women and small and medium food enterprises and indigenous peoples); and the promotion of agriculture production practices that ensure environmental sustainability as well as biodiversity. They increasingly include also nutrition and health outcomes. (Morgan and Sonnino, 2008; De Schutter, 2014; Global Panel, 2015; Fitch and Santo, 2016; Swensson and Tartanac, 2020).

[1] According to data from 190 countries, although there is no relevant difference on the percentage of Public Procurement on the GDP among low, medium and high income groups, there are significant ones within income groups. For instance, such percentage can range from 6 to 28% in middle-income countries and from 5 to 26% on low-income ones (Bosio and Djankov, 2020; World Bank, 2020).

This increased attention to public food procurement and its linkages with development can be observed through the significant number of food procurement policies and programmes adopted in various countries in the last two decades.

In Brazil the National School Feeding Programme (Programa Nacional de Alimentação Escolar - PNAE) covers approximately 41 million children attending the public primary and secondary school systems, with important positive impacts both on the nutrition of children (and thus on their learning abilities) and, since 2009, on rural development and small-scale farmers' incomes, among others (Sidaner et al. 2012, Swensson, 2015; Schneider et al, 2016; FNDE website. See also chapters 9, 10, 11, 13, 14 and 25 of the book). In Ethiopia, a pilot Home-Grown School Feeding programme, launched in 2012, was feeding approximately 139 000 students in 238 schools by 2018 (see chapter 35 for an analysis of the Ethiopian experience). The food is procured from local smallholder farmers through Cooperative Unions at a localised level (Swensson 2019). Since 2015, a similar programme has been implemented as an emergency measure in response to the impact of severe drought conditions on schooling, benefiting about 1.8 million children (Swensson 2019). In India, the Public Distribution System (PDS) has traditionally served to keep food prices low, by establishing a network of government warehouses and food retail outlets ensuring access to major staple food grains at subsidized prices. The scheme, which in the past was not targeted, has since 1997 transformed into the TPDS (Targeted PDS) which established Fair Price Shops for the distribution of food grains at subsidized rates to households below the poverty line (BPL), covering about 160 million families. Since 2013 the TPDS has expanded and diversified its food basket including coarse cereals and underutilized species, increasing its potential to improve the nutrition of the population, as well as in the resilience, income generation and empowerment of smallholder farmers. (see chapter 29). Many other examples could be provided (see section V and other chapters of the book), and this chapter provides a sample set of illustrations.

While from a policy perspective it seems widely recognized practice to incorporate the pursuit of sustainable development in public procurement practices, the law seems to be still lagging behind in fully embracing this perspective. In addition, despite the importance of the law and of regulatory design in implementing these policies, its role is still often overlooked in the food procurement and rural development debates (Brooks et al, 2014; Swensson, 2018; 2019).

This chapter aims at addressing this issue and analyzes the role of regulatory design in supporting the incorporation of public-policy considerations relating to development in public food procurement practices. It builds on the understanding that, from a regulatory perspective, the relevant question is not *if* public procurement law should allow for the deliberate pursuit of development in relation to food, but rather *how* public procurement law should do so; i.e. what should the most appropriate regulatory design be to achieve this aim.

This chapter is organized in three main sections. Section one analyzes key international public procurement regulatory frameworks and their evolution towards the recognition and promotion of public procurement as a development tool and the various instruments available. Section two focuses on the food sector and on three country experiences (Brazil, United States of America and France) to explore the various regulatory instruments adopted for incorporating development objectives into specific food procurement initiatives. Section three provides a discussion on the reach of these instruments and reflections on further possible regulatory pathways for achieving maximum developmental outcomes through food procurement schemes.

2. PUBLIC PROCUREMENT AS DEVELOPMENT TOOL

2.1. The (re-)emergence of public procurement as a tool for development

One of the leading scholars on the linkages between public procurement law and social policy, McCrudden (2004, p. 258), has argued that since "modern procurement systems evolved alongside the development of the welfare State, ... it is hardly surprising that the former was used in part to underpin the goals of the latter". Indeed, there is a long history of public procurement being used to promote a range of domestic development objectives (MacCrudden, 2007). However, since the 1960s the growth of a free trade ideology has increasingly shifted the focus of procurement systems away from domestic objectives to embrace non-discrimination between suppliers as their primary animating feature (Morlino, 2019). At an international level, interest in and harmonization of public procurement laws over the last four decades have thus focused largely on opening up global procurement markets in support of free trade.

More recently, however, governments have increasingly understood the role they may play by using the power of the public purse to achieve sustainable development outcomes, including those of improved nutrition and rural development. Sustainable public procurement was identified as a key area of work for the 10-Year Framework of Programs (10YFP) on sustainable consumption and production mandated by the Johannesburg Plan of Action adopted at the 2002 World Summit on Sustainable Development (UNDESA, 2008). In 2011, the United Nations Secretary-General recalled that procurement can 'harness the power of the supply chain to improve people's lives', and emphasized that the enormous purchasing power of international organizations – the UN bought USD 14.5 billion worth of goods and services in 2010 – can exert a positive influence on economic systems to the benefit of people (UNOPS, 2011). The UN 2030 Agenda for Sustainable Development and the sustainable development goals (SDGs) explicitly recognize the link between public procurement and sustainable development in SDG 12.7. In its General Comment No. 24, the Committee on Economic, Social and Cultural Rights also highlights the potential of public procurement to encourage business enterprises to ensure that they contribute to the fulfilment of human rights and, in particular, that they act with due diligence to ensure compliance with human rights in supply chains (E/C.12/GC/24, 2017).

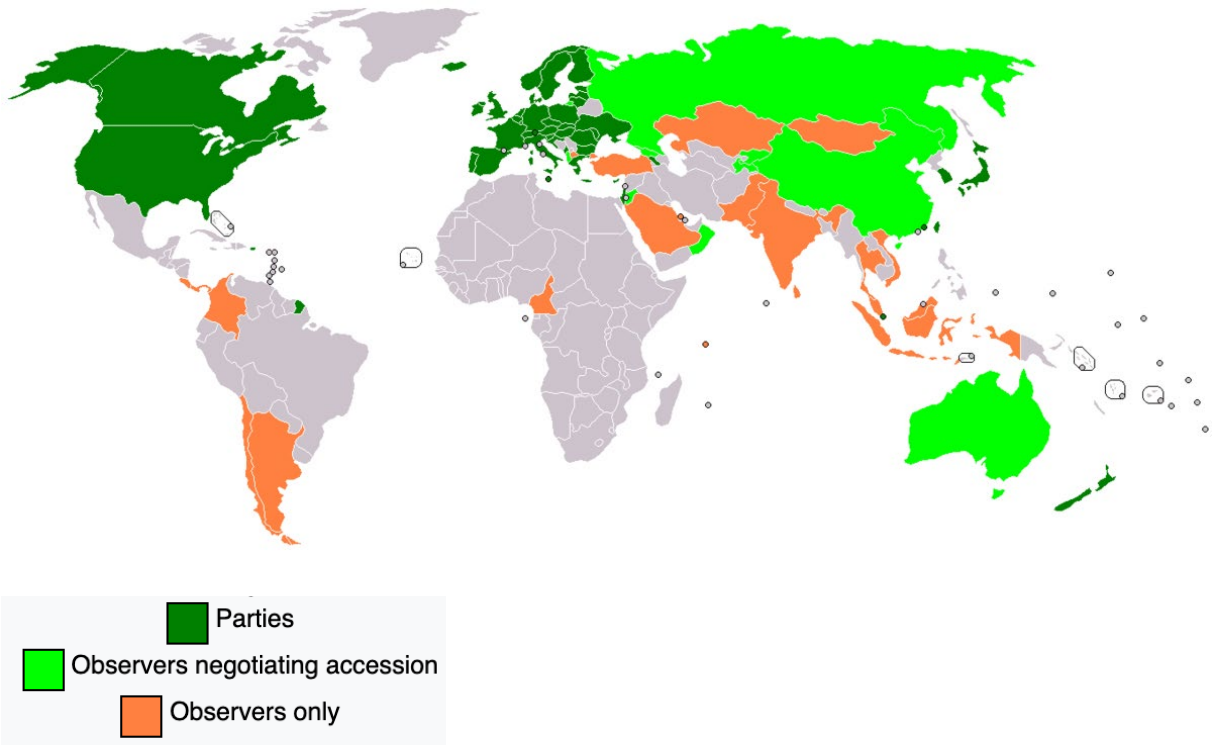
This renewed interest in the use of public procurement for sustainable development has led in turn to increased attention being paid to the linkage between public procurement regulation and development (Stoffel *et al*., 2019; Quinot, 2018). The earlier frameworks were premised on the need to ensure non-discrimination between suppliers and to avoid any distortions of competition. Second-generation public procurement frameworks are now designed in order to promote the use of public procurement for sustainable development.

2.2. Evolution within the WTO

Within the World Trade Organization (WTO) framework, the area of public procurement is regulated by the Government Procurement Agreement (GPA), which aims to impose certain restrictions on the public procurement policies of the parties, ostensibly in order to avoid discriminatory practices and distortions of competition as regards public contracts that are above the minimum threshold negotiated by each Party (the GPA does not apply to purchases by private entities). The GPA is a plurilateral agreement: it applies not to all WTO Members, but only to the Members that have joined it, representing today the EU Member States and 18 other jurisdictions (see fig. 1).[2]

[2] The country parties to the current GPA are the 27 member States of the European Union, Armenia, Australia, Canada, Hong Kong (under the jurisdiction of China), Iceland, Israel, Japan, Korea, Liechtenstein, Moldova,

Fig. 1. Parties to the WTO's Government Procurement Agreement. **Source:** https://en.wikipedia.org/wiki/Agreement_on_Government_Procurement (consulted on 31.1.2020).



Although the disciplines imposed under the WTO framework are routinely invoked by governments to refuse to consider using the tool of purchasing to improve development outcomes, the GPA in fact allows important flexibilities that should facilitate this. This is particularly true since 2014, when the revision process of the GPA was finalized, since one of the objectives of this reform was precisely to improve the agreement's compatibility with the requirement of sustainable development.

The GPA now allows the inclusion of considerations that are not purely economic in public tenders to which the GPA applies.[3] Article? X of the revised GPA text allows procuring entities to lay down "technical specifications", including process and production methods (PPMs), as long as they do not create unnecessary obstacles to international trade. This provision does not make any distinction between product-related and non-product related specifications related to PPMs: in other words, specifications in public tenders need not focus exclusively on the *physical characteristics* of the goods or services concerned, but may include a reference to *how* (under which conditions) they were produced. Thus for instance, the Parties to the GPA may introduce clauses referring to labor rights or environmental standards in their public procurement schemes -- indeed, the revised text contains an important new provision (Art. X.6) which explicitly allows public authorities to adopt technical specifications to promote the conservation of natural resources or the protection of the environment. Though Art. X.6 does not specifically mention any other “secondary” policy objective, the wording leaves no doubt as to other such objectives, including the protection of labour rights or, for instance,

Montenegro, the Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Ukraine, the United Kingdom and the United States. In addition, Albania, China, Georgia, Jordan, Kazakhstan, the Kyrgyz Republic, North Macedonia, Oman, the Russian Federation and Tajikistan are in the process of acceding to the agreement. Most recently, Brazil also declared its intention to the join the GPA.

[3] Specific thresholds have been negotiated by each party and range between 130,000 SDR (Special Drawing Rights) and 15 million SDR (between approximately 202,800 USD and 23.4 million USD at the exchange rate at the time of writing).

the need to increase marketing opportunities for small-scale farmers, could also be taken into account. This is not to say that WTO Members bound by the GPA may do anything they please in this regard. Article X.2(b) of the revised GPA provides that technical specifications shall, where appropriate, be based on international standards, and that such standards must also be specified in terms of performance rather than design or descriptive characteristics. In addition, they may not specify particular brand names, producers or suppliers, except where there is no other intelligible way of describing the procurement requirements and words such as “or equivalent” are inserted appropriately in the tender.

There is one important limitation, however, to the inclusion of non-economic considerations in public procurement schemes. Whatever specifications they introduce in their public tenders, the Parties to the GPA may not discriminate between potential suppliers from countries that are Parties to the Agreement. The Parties commit to "accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to: (a) domestic goods, services and suppliers [national treatment principle]; and (b) goods, services and suppliers of any other Party [most-favored nation principle]" (Article IV.1 of the revised GPA). In addition, Art. VIII.1 of the revised GPA states, with respect to the qualification of suppliers, that: "A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement".[4]

Furthermore, although the GPA allows for the adoption of a preference scheme (price-preference), it limits its adoption to specific circumstances. The possibility of giving preferential treatment for national products is allowed only as an exceptional and transitional measure to be adopted exclusively by developing countries “based on their development needs, and with the agreement of the Parties” when accessing the agreement. (Art. V.3.a).

These provisions aim to avoid the procuring entity granting certain potential suppliers preferential treatment on grounds that would be arbitrary or that may result in discrimination. They should not be seen, however, as prohibiting the use of purchasing programs to contribute to poverty-reduction objectives, for instance by giving priority in the choice of suppliers to small-scale farmers or to farmers who rely on agroecological techniques, or a combination of both. Instead, contracting authorities may define as an essential requirement the ability to supply products that respect certain social criteria (Spennemann, 2001). They can also include ethical requirements in the condition of the contract, for instance requiring compliance with labor rights or certain environmental conditions for the duration of the contract (McCrudden, 2007; Arrowsmith, 2003; Hoekman and Mavroidis, 1997).

More specifically, nothing in the text of Art. VIII(b) GPA (1994) and Art. VIII.1 of the revised GPA seems to prohibit governments from pursuing social policies through their procurement schemes, especially if we read the notions of a supplier's "capability" (in the 1994 version) or "legal and technical capacity" (in the revised text) in the light of the current practice of governments. Indeed, Art. VIII.4 of the revised GPA deliberately opts for a non-limitative list of the grounds for exclusion of certain tenderers ("grounds such as..."), which suggests that governments may choose to define any other reasons why certain suppliers may be disqualified. The key requirement is that any exclusion criteria be defined transparently, in order to avoid any arbitrariness or discrimination in the choice of suppliers. Finally, with respect to the award criteria, Art. XV.5 of the revised GPA specifies that procurers may decide to

[4] This condition was included in broader terms in the original version of the GPA: Art. VIII(b) GPA 1994 stated that "any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question" (for a comparison of the 1994 and 2014 versions of the GPA, see Reich 2009).

award the contract either to the “most advantageous” tender, or to the tender with the lowest price, "where price is the sole criterion". Non-economic considerations thus may legitimately play a role in the selection. The procuring entity may consider the value of the tender to be influenced by social and ethical concerns, and the term “most advantageous” must be construed to allow the inclusion of award criteria of a non-economic nature.

There is, however, one potential restriction imposed by the GPA for the WTO Members who have entered into this Agreement. It concerns the possibility of imposing a condition related to local sourcing. Indeed, reference to the domicile of the supplier (or, in the case of a food purchasing programme, to where the food is grown or processed) may be seen as indirectly discriminatory against foreign suppliers. In order to circumvent that prohibition, many local public authorities will be tempted to rely on public tenders for amounts that fall below the threshold beyond which the GPA will apply.

Where a programme is too large and thus above the threshold, it can be broken down into smaller volumes in order to favor offers of smaller producers, and allow them to submit a proposal only for one product or for a small volume. This, for instance, is what the French Ministry of Agriculture recommends, in a practical guide addressed to local public authorities in order to encourage them to favor local and high-quality procurement for organisations such as schools, hospitals, or administrations (MAAF, 2014) (See section 3 below)

For the specific case of food procurement it is interesting to note that some countries have expressly excluded from the coverage of the agreement the procurement of agricultural goods for human feeding programmes. This is the case, for instance, of the USA, Canada and the member States of the European Union (EU). The USA General Notes annexed to the GPA stablishes that “This Agreement does not cover procurement of any agricultural good made in furtherance of an agricultural support programme of a human feeding programme”. (USA Appendix I, Annex 1, Notes to Annex 1, pag 2). A Similar provision is also provided for the EU member states (Appendix 1; Annex 7, General Notes). This exception, for instance, allowed the adoption by the USA of a specific geographic preference for the purchase of locally grown or locally raised agricultural products for the Child Nutrition Programmes funded by the government (See section 3).

2.3. The European Union regulatory framework

Just as the revision of the WTO's Government Procurement Agreement has enlarged the flexibilities allowed to public entities seeking to use public purchasing as a tool to achieve sustainable development, the European Union regulatory framework has gradually increased the possibilities for public authorities to include non-economic considerations in public tenders. References to the imposition of environmental and social conditions were initially included already in two directives concerning public procurement adopted in 2004[5]: article 26 of Directive 2004/18/EC, for instance, stipulated that "the conditions governing the performance of a contract may, in particular, concern social and environmental considerations". This was seen as a welcome clarification at the time, since the inclusion of such considerations in public procurement has led to case-law of the European Court of Justice that left a number of questions of interpretation unanswered (Arrowsmith and Kunzlik, 2009).

[5] Directive 2004/18/EC of the European Parliament and the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134/114) (see article 53(1)(a)); and Directive 2004/17/EC of the European Parliament and the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134/1) (see article 55(1)(a)).

The 2004 directives remained unclear, however, as to whether the national authorities could include non-economic conditions other than those related to social or environmental considerations either as criteria for the qualification of tenderers, or as criteria for the award of contracts. The debate was relaunched in 2008, both because of a communication of the European Commission listing a number of recommendations as to how the public procurement framework could be interpreted to encourage "green purchasing" (European Commission, 2008), and especially because of the controversy that followed the issuance, by the Dutch province of Groningen, of a public tender for the supply and management of automatic coffee machines referring to fair trade labels.

The tender issued by Groningen stipulated, *inter alia*, that the coffee had to be produced by smallholders, who would be paid a minimum price, alongside a premium price for social development. Indeed, it referred explicitly to products bearing the EKO and Max Havelaar labels (specifically, the tender stated as part of the conditions imposed on potential suppliers that: "The province of North Holland uses the Max Havelaar and EKO labels for coffee and tea consumption"); moreover, it required from the tenderers that they comply with the "criteria of sustainability of purchases and socially responsible business", *inter alia* by demonstrating that they contribute to improving the sustainability of the coffee market and to environmentally, socially and economically responsible coffee production. Douwe Egberts, a mainstream coffee roaster, protested that these requirements effectively excluded them from the tender, because their coffee, though certified by the UTZ label, did not fulfil all the stipulated conditions. The case finally reached the Court of Justice of the European Union, which took the view in a judgment of 10 May 2012 (Case C-368/10, *European Commission v Kingdom of the Netherlands*, judgment of 10 May 2012 (EU:C:2012:284)) that, by requiring that certain products to be supplied bear a specific eco-label, the Dutch authorities has established a technical specification incompatible with Art. 23(6) of Directive 2004/18. Indeed, that provision sets out strict conditions for the use of eco-labels, including the condition that, where reference is made to a particular eco-label, this should be accompanied by a description of the technical specifications associated with that label, in order to allow all tenderers to prove that they comply with such specifications without having to acquire the said label. At the same time however, the Court did accept that “the conditions governing the performance of a contract may, in particular, refer to social considerations", and that "to require that the tea and coffee to be supplied must come from small-scale producers in developing countries, subject to trading conditions favourable to them, falls within those considerations" (para. 76). Since moreover, Art. 53(1)(a) of Directive 2004/18 states that when the award is made to the tender most economically advantageous from the point of view of the contracting authority, "various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion" can be taken into account, social considerations may be part of the criteria on which the award decision is made: "there is no requirement that an award criterion relates to an intrinsic characteristic of a product, that is to say something which forms part of the material substance thereof" (paras. 89-91).

The new general EU Directive on public procurement (2014/24/EU)[6] does not merely confirm this case-law; it was in part specifically designed to allow greater use of public procurement in supporting other policy objectives of the Europe 2020 agenda.[7] Indeed, with a strong support from civil society groups (ClientEarth, 2011, 2012a and 2012b), the new instrument was adopted with the explicit aim to allow greater use of public procurements in the support of a set of “common societal goals such as protection of the environment, higher resource and energy efficiency, combating climate change,

[6] Directive 2014/24/EU of the European Parliament and the Council, of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L. 94 of 28.3.2014, p. 65).

[7] See in particular Recital 2.

promoting innovation, employment and social inclusion and ensuring the best possible conditions for the provision of high quality social services" (European Commission, 2011: 2). It does so in two ways.

First, Directive 2014/24/EU contains measures aimed at facilitating the access of small-and-medium size enterprises to public procurements – such as the possibility for public authorities to divide up large contracts into lots of a size more manageable by such suppliers. While recognizing the trend towards purchasers encouraging economies of scale and aggregation of demand to lower prices and reduce transaction costs, the directive warns on the negative effects of such practices for small and medium-size suppliers and encourages public procurers to divide large contracts into smaller lots, so that contracts can better correspond to the capacities of small-scale enterprises..

Second, the new directive widens the range of criteria that may be included both in defining the object of the procurement and in awarding the contract. Public authorities are specifically authorized to adopt a life-cycle approach to the product, service or work object of the procurement, and include a wider range of factors (including social and environmental) in the assessment of the most "economically advantageous" tender (Directive 2014/24/EU, Art. 42 and 68). It is especially noteworthy that "characteristics may (…) refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives" (Directive 2014/24/EU, Art. 42(1), sub. 2). The notion of "life-cycle" refers to the steps "from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation" (Directive 2014/24/EU, Art. 2(1)). The same variety of criteria may also be used to assess the tenders and award the contracts (id., Art. 67-69).

The reference to existing eco-labels may be a convenient means to ensure that economic operators comply with certain technical specifications. Indeed, Art. 43 of the new instrument specifically allows for the use of such eco-labels (as did Art. 23(6) of Directive 2004/18/EC), while clarifying the conditions under which such references can be made in the technical specifications attached to the call for tenders. Directive 2014/24/EU thus includes the requirement that the label requirements "are based on objectively verifiable and non-discriminatory criteria"; moreover, the public authorities "requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements", and where the supplier cannot acquire the label in time for reasons that are not attributable to him, the contracting authorities must "accept other appropriate means of proof, which may include a technical dossier from the manufacturer, provided that the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority". In effect, this draws the lessons from the *Douwe Egberts/Max Havelaar* judgment of 2012.

The Directive also recognizes the possibility to reserve certain procurement opportunities to specific categories of suppliers (i.e. reservation schemes) as an instrument to support the access of vulnerable supplier groups to public contracts (Art. 20). This tool is based on the recognition that certain types of suppliers are not able to participate under normal conditions of competition (Recital 36). Nevertheless, the Directive limits its use to sheltered workshops and other social businesses whose main aim is to support the social and professional integration of disabled and disadvantaged person (i.e. unemployed, members of disadvantaged minorities or otherwise socially marginalised groups).

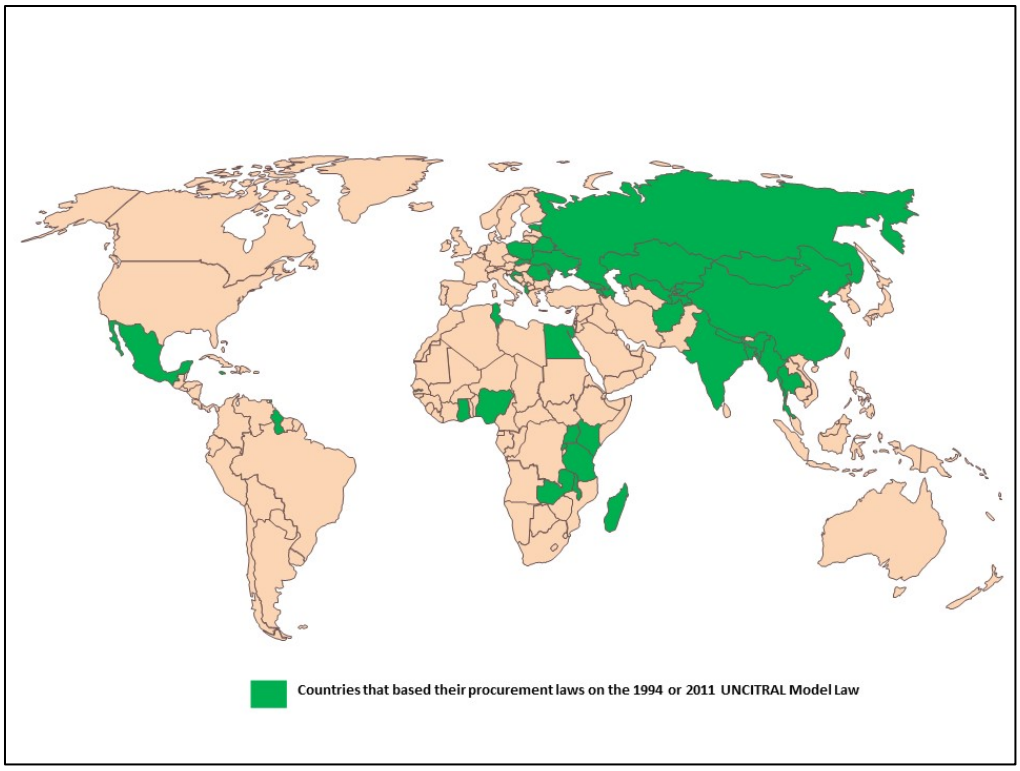
The EU Member States and sub-national authorities are now explicitly encouraged to use public procurement to achieve the Sustainable Development Goals, in particular by prioritizing products and services that minimize the use of resources and are the most efficient (European Commission, 2017).

Good practices in the area, particularly as regards food purchasing, are now increasingly well known, providing a source of inspiration for public authorities across Europe (Soldi, 2018). The developments in the European Union thus provide a remarkable illustration of the shift that has taken place during the past decade. The EU has moved from an approach to public procurement legislation that chiefly aims to prohibit any distortion of competition, to one that sees public procurement as a tool to encourage sustainable development. Improving marketing opportunities of smaller enterprises, including small-scale farmers, is part of that shift; the insertion of environmental requirements either in the technical specifications attached to the call for tenders, or as part of the performance requirements or awardance criteria, is another component.

2.4. Evolution within the UNCITRAL Model Law

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement is, alongside the WTO GPA, the main international instrument of public procurement regulation. Given the overarching mandate of UNCITRAL to "further the progressive harmonization and unification of the law of international trade" thereby "removing legal obstacles to the flow of international trade" (UN, 1966: 99), the Model Law sits squarely within the free-trade paradigm of public procurement that has emerged internationally since the 1960s.

The aim of the Model Law is thus, like that of the WTO GPA, to facilitate international trade by removing discrimination against foreign suppliers and harmonizing procurement practice (Nicholas, 2017). Unlike the WTO GPA, the Model Law is not an instrument that prescribes procurement rules at the international level. It merely aims to provide a template procurement law for countries to adopt into domestic law. The original Model Law dealing with public procurement was adopted in 1993, replaced by an extended version in 1994 and a fully revised version in 2011. The Model Law has been quite influential, especially, and again in contrast to the WTO GPA, in the developing world. UNCITRAL records that the 1994 Model Law formed the basis of domestic procurement statutes in 30 countries and the 2011 Model Law in 25 countries. Experience has also shown that due to inter-country legal transplant (i.e. the "borrowing" or moving of a rule of law from one country to another), the influence of the Model Law is even more extensive (Caborn & Arrowsmith, 2013). The vast majority of these are developing countries, including many from Africa.



While the Model Law is explicitly aimed at facilitating international trade and thus places primary emphasis on open competition and value for money, it is not hostile to the use of public procurement for other policy goals, such as development. In the Guide to Enactment that accompanies the Model Law, UNCITRAL states that it "recognizes … that procurement policymaking and implementation are not undertaken in isolation … [and] the Model Law enables the pursuit and implementation of other government policies and objectives through the procurement system" (UNCITRAL, 2012, p. 4). In this respect, the 2011 revised Model Law represents an important development compared to the 1994 Model Law. The revised law introduced the concept of "socio-economic policies", which is defined as "environmental, social, economic and other policies of this State authorized or required by the procurement regulations or other provisions of law of this State to be taken into account by the procuring entity in the procurement proceedings." The 2011 Model Law also introduced a new general provision on evaluation criteria, Art. 11. This provision allows contracting authorities to take any criteria into account in evaluating tenders as long as such criteria are authorised by law (Art. 11(3)), i.e. including socio-economic policies (Nicholas, 2012). Criteria other than price, cost and supplier competence, do not have to relate to the subject matter of the procurement (Art. 11(1)). Art. 11(3)(b) also explicitly allows for any form of preferences in evaluating bids. The 2011 Model Law allows for single-source procurement if such method is necessary to implement a particular socio-economic policy and no other supplier can fulfil that policy (Art. 30(5)(e)).

The Guide to Enactment warns that while the Model Law provides for socio-economic policies to be pursued via public procurement, the restrictions that such practices may place on competition within the procurement system may bring negative consequences. As a result, the Guide recommends that restrictions placed on open competition to promote socio-economic policies should be viewed as transitory measures and must not lead to protectionism (UNCITRAL, 2012). Despite the increased acceptance of a range of (social) policy objectives in public procurement, the UNCITRAL Model Law thus continues to view the use of public procurement in pursuit of socio-economic policies as "an exceptional measure" (UNCITRAL, 2012, p. 6).

2.5. African regional regulatory frameworks

The UNCITRAL Model Law has influenced development of procurement law in many African countries (Caborn & Arrowsmith, 2013). Not surprisingly, African regional regulatory frameworks on public procurement have also been heavily influenced by the Model Law. The most comprehensive of these is the public procurement regulations of the Common Market for Eastern and Southern Africa (COMESA). Starting in 2001, the 21-member trade bloc, the largest in Africa, embarked on a major project of reforming public procurement within the bloc with the twin objectives of facilitating trade between members and improving governance in member states (Karangizi, 2005). In 2003, COMESA adopted a directive on public procurement containing "the principles and essential components of national legal frameworks" for the procurement systems of member states (COMESA, 2003). This was followed in 2009 by a set of public procurement regulations constituting a regional procurement framework in terms of which regional competitive bidding must be done (COMESA, 2009).

The 2003 directive paid very little attention to the incorporation of socio-economic policy objectives in public procurement, but also did not bar it. The directive contained provisions dealing with preferences to domestic suppliers and small and medium enterprises. It provided that open tendering should be considered the paradigm procurement method and that restricted forms of procurement, including for purposes of socio-economic policy considerations, should be limited to exceptional circumstances. The 2009 regulations are completely silent on the use of procurement as a tool for development.

2.6. A question of regulatory design

Questions are often raised about the desirability of using public procurement to pursue public policy objectives (Quinot, 2013; Schooner & Yukins, 2009). The argument is typically that such use of procurement, referred to as horizontal policy objectives, leads to protectionism in that it invariably restricts competition and is thus to be avoided. However, it also seems axiomatic that public procurement is never free of public-policy considerations. After all, public procurement is never an end in itself, but always a means to achieve delivery of a public-policy objective. At a most fundamental level, public procurement thus always stands in service of public policy. But even at one step removed from this inherent public-policy objective, policy seems to loom large in procurement. The quarter from which criticism of horizontal policy in procurement most often emanates, viz. the free-trade agenda, itself illustrates this point. The argument against horizontal policies in public procurement in favour of open competition is not a policy-neutral argument. It is an argument in support of a particular economic policy, viz. that of free trade and market integration. The international hegemony of this particular policy position has dominated public procurement regulation paradigms over the last four decades. As a result, the pursuit of other policy agendas, such as social development, has been portrayed as suspect and to be dealt with as exceptions in international public procurement regulatory regimes.

At an international policy level, the last few years have, however, seen a shift in the hegemony of free trade. There are now powerful counter-narratives that place the focus on development, especially sustainable development. From a policy perspective at least, it seems less objectionable to incorporate the pursuit of sustainable development, in particular in relation to its environmental and social policy dimensions, in public procurement practices. However, the law seems to be lagging behind in fully embracing this perspective.

The relevant question from a regulatory perspective should thus not be whether public-policy considerations relating to development should be incorporated in public procurement, but rather what

the most appropriate regulatory design should be for such practices. Arguably, some regulatory approaches or instruments will be better suited for particular developmental objectives than others (Quinot, 2018). It is accordingly worthwhile to explore a particular area of linkage between public procurement and development, such as public procurement of food, in order to analyse the most appropriate regulatory design for achieving maximum developmental outcomes in that sector. In short, the appropriate question is thus not *if* public procurement law should allow for the deliberate pursuit of development in relation to food, but rather *how* public procurement law should do so.

3. THE CASE OF FOOD PROCUREMENT

3.1. Food procurement and its potential to contribute to sustainable development

Within the emerging trend of using public procurement as a tool for development, food procurement occupies a prominent position. In the last two decades, there has been an increasing recognition at policy level of the potential that public food procurement (PFP) initiatives have to pursue development outcomes. The many country experiences provided in this book are a testimony to that.

This potential is based on possible choices around (i) what food to purchase (such as local, fresh, diversified and nutritious); (ii) from which type of production practices (e.g. from agricultural production that ensure environmental sustainability as well as biodiversity); and, in particular, (iii) from whom to purchase (e.g. from local and/or smallholder food producers) (De Schutter, 2014; Swensson and Tartanac, 2020).

Considering the extent of public sector demand and how these choices are made it is widely recognized that PFP holds considerable potential to influence both food consumption and food production patterns and to deliver multiple social, economic, environmental, and nutritional and healthy benefits for a multiplicity of beneficiaries, including food producers, food consumers and the community (Morgan and Sonnino, 2008; Foodlinks, 2013; Fitch and Santo, 2016; Swensson and Tartanac, 2020).

Despite this increasing recognition, from a policy perspective, of food initiatives as a powerful instrument to link public procurement and development, the role of the regulatory design in their implementation is still often overlooked in the food procurement debate (Brooks et al, 2014; Stefani et al., 2017; Swensson, 2018).

Decisions such as whom to purchase from, what type of food to purchase and from what type of production will depend on policy maker choices. However, the implementation of these choices will depend on an enabling public procurement regulatory framework. As stated by Quinot (2013), although the law does not play a significant role in decisions to use public procurement for social, economic or environmental policy purposes, it plays a significant role in the way these policies are implemented, in other words, in designing the mechanisms used to implement those policies.

Indeed, many country studies show how the regulatory frameworks may act as a significant barrier to the use of food procurement for development, especially in regard to the choices around “from whom to buy” (e.g. from local and smallholder food producers) (See box n.1).

Box n.1: Country studies

In Latin America a FAO study on school feeding and the possibilities of direct purchasing from family farmers concluded that in the eight countries analysed (Bolivia, Colombia, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay and Peru), the complexity of procurement procedures and the requirements of public procurement law "impose serious obstacles for small-scale producers and their organisations" and "greatly hinder" their access to public food markets (FAO, 2013).

For the African continent, too, a FAO publication on "Leveraging institutional food procurement for linking small farmers to markets" (Kelly and Swensson, 2017) offers similar findings. The key challenges identified as hindering smallholder farmers' access to institutional food markets include the complexity and cumbersomeness of the standard open tender procedure; disproportionate and costly participation requirements; over-emphasis on price and other non-smallholder-friendly awarding criteria; and long payment periods. These challenges were similarly observed by the SNV project on Procurement Governance for Home-Grown School Feeding (PG-HGSF), which was implemented in Mali, Kenya and Ghana. According to the findings of this project, public procurement regulations and practices that did not factor in the situation of the region's smallholder farmers constituted one of the main reasons why those countries were not fully successful in sourcing produce obtained from local smallholders within their school feeding programmes (Brooks et al. 2014). Similar conclusions were presented also for Mozambique (Swensson and Klug 2017) and, more recently, for Ethiopia in a study developed with the aim to inform the alignment of public procurement rules and practices to support the government-led Home Grown School Feeding initiatives (Swensson, 2019).

Source: Adapted from Swensson, 2018

Recognizing (i) the potential of linking public food procurement to development and the multiple policy benefits it can reach, and (ii) the barriers that standard public procurement rules can impose against its implementation, various countries have adopted different mechanisms and strategies to align public procurement rules and practices to development policy objectives according to the country context and programme objectives. Examples of this include Brazil, the USA and France.

These countries provide examples of different legal instruments and regulatory approaches that can be adopted. They provide elements for an analysis of the most appropriate regulatory design for supporting policy implementation and achieving maximum developmental outcomes in that sector.

3.2. Public food procurement and regulatory design: Country examples

A comparative analysis of the regulatory instruments utilised in selected countries that have implemented developmental food procurement initiatives shows that different approaches can be adopted. On the one hand there are systems that have designed specific instruments for the purpose of food procurement. These are based mainly on reservation and preferential procurement schemes that allow procuring entities to reserve contractual opportunities or to adapt the selection process and related rules to give a competitive advantage to target suppliers (Watermeyer, 2004).

Brazil and the USA provide good examples of the development of specific regulatory instruments to support the incorporation of developmental objectives into specific public food procurement initiatives. They target specific categories of suppliers (i.e. local and/or smallholder farmers and rural enterprise) and focus mainly on overcoming competition challenges that these type of (vulnerable) suppliers generally face in accessing public market opportunities.

On the other hand, are systems that have relied on more general, existing instruments for purposes of food procurement. France provides an example of this approach.

3.2.1. Designing specific instrument for food procurement: The case of Brazil and United States of America

- **Brazil**

The revision of the Brazilian School Feeding Programme (PNAE) in 2009 by Law n. 11.947/2009 represents a milestone in the use of food procurement as an instrument to achieve development objectives (See chapters 9, 10, 11, 13, 14, 15, 16 and 25 for additional analysis of the PNAE experience in Brazil). This law is aligned with the general public procurement legislation (Law 8666/1993) that recognizes among the objectives of the public procurement system the promotion of "sustainable national development" (Art. 3). Regarding the international frameworks mentioned above, Brazil is neither a signatory of the WTO GPA agreement,[8] nor has it adopted the UNCITRAL Model Law as basis for its procurement law.

The 2009 Law provides specific instruments for the implementation of the policy objective of using school food procurement as a tool to reach multiple social, economic, and environmental policy goals, through the procurement of food from local, family-farming food producers (See also chapters 15 and 16 on the formulation process and implementation challenges of the 2009 Law). One of the legal instruments provided for is a reservation scheme.

Reservation schemes allow governments to reserve certain procurement opportunities to specific categories of suppliers who satisfy certain prescribed criteria linked to the designated policy objective (Watermeyer, 2004). While, according to standard public procurement rules, any qualified supplier is eligible to tender for a given contract, this mechanism creates an exception. It allows only the target beneficiaries of the horizontal policies to participate in the selection process and, therefore, to be eligible for the award of the contract. In the case of Brazil, the Law not only allows, but prescribes that procuring entities must reserve at least 30 per cent of the federal budget allocated for the purchase of food for school feeding for contracts with family farmers and family rural entrepreneurs. The target beneficiaries are defined by a federal law (Law n. 11.326/2006), which provides clear eligibility criteria for the reservation scheme.

Other regulatory instruments, such as alternative evaluation criteria that acknowledge the social, economic as well as the environmental quality of the food products offered, accompany the reservation scheme (Swensson, 2018). These criteria allow the prioritization in the selection process (among the target beneficiaries) of local products and producers; specific vulnerable producer groups (i.e. the land reform settlers and members of traditional communities); organic and agroecological production and producer groups. They serve, therefore, to broaden the developmental objectives that public institutions can reach through public procurement, but in a manner that is highly tailored to the context of food procurement. This approach creates a distinct relationship between the specific policy objectives implemented by means of qualification and award criteria respectively that is customized to the context of food procurement. The Law also allows for a simplified procurement method (i.e. the 'public call' [*chamada pública]*) aimed at facilitating the access of family farmers and family rural entrepreneurs to public market opportunities (See chapter 15).

[8] In May 2020 Brazil submitted an application for accession to the WTO GPA.

- **United States of America (USA)**

Another example of regulatory instruments for the implementation of development objectives through food procurement comes from the USA (See also chapter 19 on the USA experience).

Although geographic preference is not allowed in the general US public procurement system, in 2008, the regulation governing school food programmes created an exception to allow entities receiving funds through the Child Nutrition Programs (CNP) to apply an optional geographic preference when procuring unprocessed locally grown or locally raised agricultural products, with the objective of supporting local agriculture production (Law 110-246/2008 – 'Farm Bill' – and Code of Federal Regulations). As mentioned above, although the USA is a signatory of the WTO GPA agreement, it chose to be exempt from the agreement the procurement of agricultural products made in furtherance of an agricultural support programme of a human feeding programme.

Preferencing is the legal mechanism that allows governments to give a competitive advantage to a defined category of suppliers within a fully competitive procurement process (Watermeyer, 2004). In contrast to reservation schemes, the selection process is open to any interested supplier, who may compete with the targeted beneficiaries for the contract opportunities. Nevertheless, preferential treatment will be given to those suppliers who satisfy prescribed criteria (e.g. qualify as local, SMEs, or smallholder farmers) or who undertake specific goals in performance of the contract (e.g. caterers who commit to buy from local smallholder farmers) linked to the policy objective that government is targeting. As mentioned above, preference is among the instruments recognized by UNCITRAL, but not among those recognized by the WTO GPA. Distinct from Brazil, the policy objectives to be reached in the USA case are linked more directly with the locality of the production, instead of the characteristics of the producers.

Through the preference mechanism, school food authorities in the USA are allowed to apply an exception to the traditional principle of equal treatment of suppliers and may open up the competition to give a defined advantage to products that meet the eligibility criteria defined as 'local'.

Although still competing with other non-preferred suppliers, local producers will enjoy better chances of being awarded the contract. This instrument allows, in particular, to overcome challenges linked to the lowest price criteria (Swensson, 2018; De Schutter, 2014). It allows the selection of suppliers who comply with the eligibility criteria linked to the policy objective it is aimed to reach, but – within the limit of the preference – does not offer the lowest price.

One of the key characteristics of the US system is that the regulation gives the procuring entities the power and discretion to create its own definition of 'local' and its eligibility criteria, including geographic as well as other criteria (USDA, 2015). This may allow procuring entities of school food initiatives to tailor procurement and the preferencing scheme according to broader social, economic and/or environmental goals they aim to reach (see Swensson, 2018).

3.2.2. Building on existing regulatory instruments: The case of France

An alternative regulatory approach is to use existing, general instruments that - although not designed for the specific context of food procurement and its related target suppliers – can support the implementation of development policy objectives through public food procurement. France is an example of this approach (See also chapter 23 on the French experience).

In France the objective of linking public food procurement to development is expressly recognized at policy level in the French National Food Plan (2004) linked to a broader National Plan for sustainable procurement (2015- 2020). Nevertheless, food procurement is not accompanied by specific legal instruments (such as reservations or preferencing schemes) designed specifically for supporting the implementation of these policies and related programmes. Instead, other general legal instruments are used to support their implementation.

In France, in alignment with the EU Directives, the Public Procurement Code expressly recognizes the link between public procurement and development, including its social, economic and environmental dimensions (Art. L. 2111-1; L2111-2; 211-; Art. R2152-7; Art. L 211-3 introduced by Ordinance No. 2018-1074 of 26 November 2018). In 2014 the Ministry of Food and Agriculture issued national guidelines on "Promoting local and quality supply in public catering" [*Favoriser l'approvisionnement local et de qualité en restauration collective*]. The guidelines provide advice to public procuring entities on how to use public food procurement as an instrument to promote socio, economic and/or environmental development policy goals (MAAF, 2014). It provides specific instructions on how to use existing legal instruments, which, although not designed for food procurement, could be used properly to achieve such policy aims.

Legal instruments proposed include (i) Division of contracts into smaller and specific lots in order to allow smaller farmers with limited capacity to effectively participate (contract lotting); (ii) the rationalization of participation requirements; (iii) the use of alternative procurement methods for amounts under specific thresholds (in particular those that allow for negotiation with potential suppliers); and, (iv) the use of multiple evaluation criteria. Aligned with EU Directive Art. R2152-7 of the French Code, recognizes the possibility of using social, economic and environmental evaluation criteria. These include, as described in the Code, criteria linked to fair remuneration for producers, environmental protection, professional integration of vulnerable groups, biodiversity, animal welfare, as well as the development of direct supply of agriculture products. This instrument, as suggested by the guidelines, gives a range of possibilities for procuring entities to implement the link between food procurement and various horizontal policy objectives.

In addition, Art. L2112-2 allows procuring entities to take into account social, economic and environmental considerations when specifying the conditions of execution of the contract. This may allow, according to the guidelines, "to favour certain modes of supply", linked to the proximity of production, as well as to environmental outcomes (MAAF, 2014). Nevertheless, these requirements cannot lead to any discrimination and must be linked to the subject matter of the contract. In the case of France, the legislation does not allow any geographic discrimination, as allowed in the specific case of school food procurement in the USA for example.

The French case provides an example of some regulatory attention, albeit still general and limited, to the choice of procurement method to be adopted and the definition of the needs taking into account developmental objectives (Art. L2111-3 and L2111-1/L3111-1 of the Code). The tailored use of these general instruments in respect of public food procurement is furthermore officially steered by means of the national guidelines.

4. CONCLUDING REMARKS

The last decade has seen a notable shift in the way that procurement law deals with questions of development, especially sustainable development, as part of the public procurement process. This is particularly evident from an international perspective. International public procurement law regimes

have opened up opportunities to incorporate developmental objectives into procurement practices in important ways. In doing so, the hold of an international hegemony of free-trade perspectives that has dominated international procurement law since the 1960s, has given way to a broader policy agenda, focusing on sustainable development.

This shift is important for the use of food procurement as a developmental tool. While, at a policy level, the importance of food procurement in developmental efforts is widely recognized, case studies have shown that regulatory frameworks may act as a significant barrier to the optimal use of food procurement for development. These studies suggest that one cannot think of developmental public food procurement initiatives without thinking about their regulatory aspects.

Country studies have shown a range of different regulatory approaches to the procurement of food, both within and outside of international procurement law frameworks. One category of country approaches is to develop specific regulatory tools for public food procurement, while the alternative is to rely on generic procurement mechanisms within existing procurement rules to pursue developmental objectives via public food procurement. These are not necessarily mutually exclusive categories and they may complement each other in important ways within a particular system. It seems evident that the modalities of a particular system's public food and/or agriculture support programmes will be a significant factor in designing an appropriate and optimal regulatory regime for the procurement of food within that system.

Despite these important shifts in regulatory approaches and the promising examples of how procurement law regimes can facilitate public food procurement initiatives, it seems that procurement law in general is still not optimally leveraging the insights at a policy level of the potential of food procurement for development. That is, it is not clear that these regulatory instruments exploit the full potential based on the policy choices around (i) what food to purchase (such as local, fresh, diversified and nutritious); (ii) from which type of production practices (e.g. from agricultural production that ensures environmental sustainability as well as biodiversity); and, in particular, (iii) from whom to purchase (e.g. from local and/or smallholder food producers) (De Schutter, 2014; Tartanac *et al.,* 2019) as noted above.

If one applies the framework of three perspectives on linking public procurement with development put forward by Quinot (2018) to this context, it seems that current practices in pursuing such a link in the case of food procurement are largely focused on a mid-stream perspective. That is, a perspective that focuses on the incorporation of developmental objectives within the public procurement process itself. The potential of linkages in the food-procurement context illustrated at policy level, however, seems to call also for an upstream perspective on regulatory design. That is the perspective that focuses on the design of the procurement process itself and how such design can further developmental objectives (Quinot, 2018).

At a policy level, it seems that the most important potential contribution of food procurement to development does not necessarily lie in the actual acquisition of food, although that is an important dimension, but at an earlier stage of policy choices. This is effectively illustrated by the common prejudice that seeking to implement sustainable food - by sourcing from small-scale farmers relying on agroecological methods of production - will meet with resistance from the end users, in particular because of the cost implications entailed. However, it is not necessarily true that sustainably purchased food will be more costly. Instead, as noted by Rossella Soldi (2018: 30):

> "Cost of more 'sustainable' meals may be contained by reducing the consumption of meat (for example, through the reduction of meat portions); increasing the use of seasonal vegetables and fruits; reducing food waste (for example, by reusing leftovers); reducing the use of finished

or semi-finished products; using recipes that imply the use of the whole foodstuff (for example, vegetable peels). Use of seasonal menus makes it possible to request seasonal and fresh food, which is more likely to be sourced nearby. Variety of menus allows for a wider range of products to be considered in a product group, thus reducing the volumes needed for each product. Smaller volumes are more likely to be supplied by small suppliers".

These examples illustrate how policy choices made in setting up a public food initiative can deliver superior developmental outcomes.

The key questions in these examples are not around reservation or preferencing schemes for small-scale farmers for example, but around choices pertaining to the formulation of the needs to be procured or even whether procurement is necessary (e.g. in the case of reusing leftovers). From a regulatory perspective, important questions are thus not only about regulatory instruments in approaching the market, but also about the very nature of procurement in pursuit of a particular outcome. Thus, paying more attention to demand management from a regulatory perspective may yield important dividends in supporting developmental efforts via public food procurement. This also emphasizes the need to view the regulatory regime in conjunction with other dimensions of the system that are equally important in realizing the developmental efforts. These include the need for training of procuring entities, suppliers such as small-scale farmers and farmer organisations to understand the opportunities presented by public food procurement initiatives.

From an international trade perspective, it may be thought that the increased emphasis on localized procurement, implied by the policy choices that can optimize public food procurement as a developmental tool, may be to the detriment of the very small-scale farmers that these policies are aimed at supporting. This is premised on the view that allowing procuring entities to geographically limit food procurement in order to strengthen urban-rural linkages and thus re-establish local food systems may deny small-scale farmers, especially from the Global South, access to global supply chains and hence market opportunities. As a result, international procurement rules typically ban (or at least severely restrict) the favouring of local food suppliers in public food procurement. However, from a policy perspective, this argument does not hold. Small-scale farmers in fact are precisely those that stand to benefit the most from the development of local and regional markets, whereas it is the larger players, the best equipped to achieve economies of scale and to supply large volumes of commodities, that gain the most from the development of global supply chains. Moreover, even when small-scale farmers do gain access to global supply chains, they do so through large transnational agrifood companies who themselves supply global retailers. The bargaining position of small producers in such supply chains is weak, however, not least due to the fact that the procurement shed of these dominant actors has now become global. Continuing to support the development of global supply chains at the expense of local and regional markets is therefore not the strategy best suited to improve the situation of small-scale farmers.

To conclude, there can be little doubt that public food procurement is potentially a very significant tool in support of transformational development. The case for such use of public procurement at a policy level is well-established and borne out by case studies from across the globe. However, procurement law seems to be still playing catch-up in providing regulatory models that can optimally facilitate public food procurement initiatives for development. There are some promising country examples of how procurement law can support these initiatives and at an international level there is notable momentum to shift procurement regulation toward a broader policy agenda, but more work remains to be done to develop regulatory regimes that can fully serve as a facilitator rather than a barrier to these developmental objectives.

BIBLIOGRAPHY

Arrowsmith, S. 2003. Transparency in government procurement: the objectives of regulation and the boundaries of the World Trade Organization. *Journal of World Trade,* 37(2):283-303.

Arrowsmith, S. and Kunzlik, P. (eds). 2009. *Social and Environmental Policies in EC Procurement Law: New Directives and New Directions* (Cambridge, Cambridge University Press)

Bosio, E. & Djankov, S. 2020. How large is public procurement? *World Bank Blogs,* 5 February 2020. (available at https://blogs.worldbank.org/developmenttalk/how-large-public-procurement)

Brooks, J., Commandeur, D. & Vera, E. 2014. *Inclusive procurement and transparency: Connecting smallholder farmers to school feeding*. Bethesda, SNV.

Caborn, E. & Arrowsmith, S. 2013. Procurement methods in public procurement systems of Africa. In G. Quinot & S. Arrowsmith, eds. *Public procurement regulation in Africa,* pp 261-307. Cambridge, UK, Cambridge University Press.

ClientEarth. 2011. *Identifying Opportunities for Sustainable Public Procurement. Briefing No. 2: Horizontal Objectives in Public Procurement,* October, 16 pages.

ClientEarth. 2012a. *The EU's commitment to sustainable development. Time to progress from Green Public Procurement to Sustainable Public Procurement?*, February, 7 pages.

ClientEarth. 2012b. *Providing an enabling legal framework for sustainable public procurement, Key points for the revised Directive*, November, 4 pages.

COMESA. 2003. COMESA public procurement reform project. *Official Gazette of the Common Market for Eastern and Southern Africa*, 8(5): 5-6. (available at https://www3.nd.edu/~ggoertz/rei/reidevon.dtBase2/Files.noindex/pdf/3/061_15th%20Council%20of%20Ministers.pdf).

COMESA. 2009. COMESA Public Procurement Regulations. *Official Gazette of the Common Market for Eastern and Southern Africa,* 15(3): 2-35.

De Schutter, O. 2014. *The power of procurement: public purchasing in the service of realizing the right to food*. Geneva, UN Human Rights Council.

De Schutter, O. 2015. "Institutional food purchasing as a tool for food system reform." In *Advancing health and well-being in food systems: Strategic opportunities for funders* edited by Global Alliance for the future of food. Toronto, Global Alliance for the Future of Food.

European Commission. 2008. Public procurement for a better environment. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2008) 400 final.

European Commission. 2011. Proposal for a Directive of the European Parliament and of the Council on public procurement, COM(2011) 896 final.

European Commission. 2017. Public Procurement for a Circular Economy. Good practice and guidance. Prepared by ICLEI - Local Governments for Sustainability.

Fitch, C. and Santo, R. 2016. *Instituting change: An overview of institutional food procurement and recommendations for improvement.* Baltimore, Johns Hopkins Center for a Livable Future.

Foodlinks. 2013. *Revaluing public sector food procurement in Europe: An action plan for sustainability*. (available at https://ruralsociologywageningen.files.wordpress.com/2013/07/foodlinks-report_low.pdf).

Hoekman, B. M., & Mavroidis, P. C. 1997. *Law and Policy in Public Purchasing: The WTO Agreement on Public Procurement*. University of Michigan Press.

Karangizi, S. 2005. The COMESA public procurement reform initiative. *Public Procurement Law Review,* 14: NA51-NA61.

Kelly, S. & Swensson, L. F. J. 2017. *Leveraging institutional food procurement for linking small farmers to markets: Findings from WFP's Purchase for Progress initiative and Brazil's food procurement programmes*. Rome, Food and Agriculture Organization of the United Nations. (http://www.fao.org/3/a-i7636e.pdf).

MAAF. 2014. *Guide pratique : Favoriser une restauration collective de proximité et de qualité*. Paris: Ministère de L'Agriculture et de l'Alimentation.

McCrudden, C. 2004. Using public procurement to achieve social outcomes. *Natural Resources Forum,* 28: 257-267.

McCrudden, C. 2007. *Buying social justice.* Oxford, UK, Oxford University Press.

Morgan, K., and Sonnino, R. 2008. *The school food revolution: Public food and the challenge of sustainable development*. London – Washington, DC, Earthscan.

Morlino, E. 2019. *Procurement by international organizations.* Cambridge, UK, Cambridge University Press.

Nicholas, C. 2017. UNCITRAL and the internationalization of government procurement regulation. In A. Georgopoulos, B. Hoekman & P.C. Mavroidis, eds. *The internationalization of government procurement regulation,* pp 86-110. Oxford, UK, Oxford University Press.

Nicholas, C. 2012. The UNCITRAL Model Law on Public Procurement. *Public Procurement Law Review,* 3: NA111-123.

OECD. 2019. *Government at a Glance 2019*, OECD Publishing, Paris.

Quinot, G. 2018. Public procurement law in Africa within a developmental framework. In S. Williams-Elegbe & G. Quinot, eds. *Public procurement regulation for 21st Century Africa,* pp. 15-30. Cape Town, Juta.

Quinot, G. 2013. Promotion of social policy through public procurement in Africa. In G. Quinot & S. Arrowsmith, eds. *Public procurement regulation in Africa,* pp 370-403. Cambridge, UK, Cambridge University Press.

Reich, A. 2009. The New Text of the Agreement on Government Procurement: An Analysis and Assessment, *Journal of International Economic Law* , 12 (4): 989-1022.

Schneider, S., Thies, V.F., Grisa, C., Belik, W. 2016. Potential of public purchases as markets for family farming: An analysis of Brazilian school feeding program between 2011 and 2014. *Advances in Food Security and Sustainability,* 1, 69-95.

Schooner, S.L. & Yukins, C.R. 2009. Public procurement: focus on people, value for money and systemic integrity, not protectionism. In R. Baldwin & S. Evenett, eds. *The collapse of global trade, murky protectionism, and the crisis: recommendations for the G20,* pp. 87-92. London, Center for Economic Policy Research.

Sidaner, E., Balaban, D., Burlandy, L., 2012. The Brazilian school feeding programme: an example of an integrated programme in support of food and nutrition security. Publ. Health Nutr. 16 (6), 989–994.

Soldi, R. 2018. *Sustainable public procurement of food*. Study prepared by Progress Consulting Srl for the Committee of the Regions.

Spennemann, C. 2001. The WTO Agreement on Government Procurement: a Means of Furtherance of Human Rights? *Zeitschrift für Eureoparechtliche Studien,* 4(1):43-95.

Stefani, G., Tiberti, M., Lombardi, G.V., Cel, L., Scchi, G. 2017. Public food procurement: A systematic literature review. Int. J. Food System Dynamics 8 (4): 270-28.

Stoffel, T., Cravero, C., La Chimia, A. & Quinot, G. 2019. Multidimensionality of sustainable public procurement (SPP) – exploring concepts and effects in sub-Saharan Africa and Europe. *Sustainability,* 22(11): 1-23.

Swensson, F. J. 2015. Institutional procurement of food from smallholder farmers: The case of Brazil. FAO, Rome. (available at http://www.fao.org/3/a-bc569e.pdf)

Swensson, L. F. J. 2018. Aligning policy and legal frameworks for supporting smallholder farming through public food procurement: The case of home-grown school feeding programmes. *Working Paper* No. 177. Rome, Food and Agriculture Organization of the United Nations, and Brasilia, International Policy Centre for Inclusive Growth. (http://www.fao.org/3/ca2060en/CA2060EN.pdf)

Swensson, L. F. J. 2019*. Aligning public procuremente rules and practices to support the implementation of home-grown school feeding (HGSF) initiatives: The case of Ethiopia*. FAO, Rome. (available at http://www.fao.org/3/CA3614EN/ca3614en.pdf).

Swensson L. F. J. and Tartanac, F. 2020. Public food procurement for sustainable diets and food systems: The role of the regulatory framework*. Global Food Security, 25.*

Tartanac, F., Swensson, L. F. J., Galante, A. P. & Hunter, D. 2019. Institutional food procurement for promoting sustainable diets, in Burlingame, B. & Dernini, S. (eds), Sustainable diets: The transdisciplinary imperative. Wallingford, CABI.

UN. 1966. Establishment of the United Nations Commission on International Trade Law. United Nations General Assembly resolution 2205(XXI) of 17 December 1966. (available at https://undocs.org/en/A/RES/2205(XXI).

UNCITRAL. 2012. Guide to Enactment of the UNCITRAL Model Law on Public Procurement. (available at https://uncitral.un.org/en/texts/procurement/modellaw/public_procurement/guide).

UNDESA. 2008. Public Procurement as a tool for promoting more sustainable consumption and production patterns, Sustainable Development Innovation Briefs, Issue 5.

UNOPS. 2011. Procurement and the Millennium Development Goals, Supplement to the 2010 Annual Statistical Report on United Nations Procurement, New York.

Watermeyer, R. B. 2004. "Facilitating sustainable development through public and donor regimes: Tools and techniques." *Public Procurement Law Review*, 1: 30–55.

World Bank. 2020. Global Public Procurement Data. (available at https://www.globalpublicprocurementdata.org/gppd/

Website:
FNDE Website: https://www.fnde.gov.br/index.php/programas/pnae/pnae-consultas/pnae-dados-fisicos-e-financeiros-do-pnae