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# Conceptualizing the Regulator-Buyer State in the European Union for the Exercise of Socially Responsible Public Procurement in Global Production Networks

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## Abstract

Labour rights violations and poor working conditions are rife in global production networks (GPNs). Until now research on labour governance in GPNs has been dominated by private measures. We ignite discussions on the role of the state in governing labour conditions in GPNs by focusing on a less well-known public governance instrument – socially responsible public procurement (SRPP). SRPP is the inclusion of social criteria on working conditions in public procurement contracts. Revised European Union (EU) directives on public procurement widened the space to exercise SRPP including for outsourced and offshored production. Understanding how states can exercise SRPP as a labour governance instrument requires a conceptualization of state powers. We present a conceptualization of the hybrid regulator-buyer state and show that an effective SRPP approach requires both strong regulator powers, differentiated as legislative, institutional, judicial and discursive, and buyer power which depend on purchasing volumes and supplier and market characteristics.

**Keywords:** public procurement; state power; labour governance; global production network; European Union

## Introduction

For many countries of the Global South integration into global production networks (GPNs) as host locations for outsourced manufacturing is a key development strategy (Coe and Yeung, 2015). However, GPNs contribute to poor working conditions and labour rights violations, such as low wages, deaths from building collapses, worker suicides, and forced labour (Barrientos *et al.*, 2011; Raj-Reichert, 2019; Yasmin, 2014). These outcomes are due to pressures supplier firms face in highly competitive GPNs to lower labour costs and production country governments face to either weaken or forego strengthening regulatory oversight over working conditions (Anner *et al.*, 2013). Research on labour governance in GPNs<sup>1</sup> has largely focused on private governance measures reflecting the smaller role attributed to governments in improving working conditions in globalized industries (Büthe and Mattli, 2011). In this paper, we reignite discussion of the state as a labour governance actor in GPNs by exploring a less well-known public governance instrument – socially responsible public procurement (SRPP). SRPP is the inclusion of social criteria or labour conditions, such as the International Labour Organization (ILO) Core Labour Standards (CLS), fair trade certifications,

<sup>1</sup>We also consider the cognate global value chains literature in our discussions.

or private codes of conducts,<sup>2</sup> in public procurement contracts which firms must comply with and which can be enforced down to outsourced and offshored suppliers in GPNs.

We focus on SRPP in the European Union (EU) for two reasons. First, from a regulatory perspective, revisions to the EU Directives on Public Procurement in 2014 widened the space to exercise SRPP across member states (Pircher, 2020). Second the EU, as the largest public procurer globally,<sup>3</sup> can exercise significant buyer power over firms that outsource production in GPNs. Many goods, such as food, computers, clothing, and medical instruments, purchased by public buyers are produced in outsourced and offshored locations of GPNs. For so-called ‘lead firms’ which organize GPNs and outsource production to supplier firms, including in locations in the Global South, public procurement contracts can be lucrative business due to their higher volumes, larger value, and longer contract durations in comparison to sales to the private market. Thus, the exercise of SRPP raises important questions on its potential to influence sourcing behaviours of lead firms for improved working conditions amongst outsourced and offshored suppliers including in the Global South.

Understanding how states can exercise SRPP as a labour governance instrument in GPNs requires a conceptualization of the instruments of state power which can bring about changes to lead and supplier firm decisions and behaviours which affect working conditions. In this paper, we present a conceptualization of the hybrid regulator-buyer state for the exercise of SRPP. It counters traditional understandings of state power through public procurement as solely buyer power (Cox, 2004; Martin-Ortega and O’Brien, 2019; McCrudden, 2007). We show that regulatory instruments of power are necessary and intertwined with the exercise of buyer power for SRPP. Our conceptual framework to understand the regulator-buyer state combines concepts from political science and public administration. Regulator power is based on the exercise of legislative, institutional, judicial and discursive instruments; and buyer power depends on purchasing volumes and supplier and market characteristics. Because public procurement is exercised at different scales of government, we examine the regulator-buyer state powers at national and sub-national levels by EU member states. We illustrate this with examples based on qualitative research in Germany and Sweden – two countries with different regulatory, administrative and public procurement systems that have a relatively strong engagement in SRPP – and quantitative analyses of procurement data from the EU Tenders Electronic Daily (TED) database.

While our research occurred before Covid-19, we write this paper in the midst of the global pandemic whose responses by governments have increased the importance of discussions surrounding SRPP. An EU response to the Covid-19 crisis was the approval of the European Public Procurement Framework in April 2020 for a ‘flexible’ fast-track approach for public procurement foregoing requirements of transparency during times of urgency. Yet, risks of labour rights violations can be heightened when standards on working conditions (for example during the production of vital personal protective equipment) are neglected in return for faster delivery (EC, 2021). Indeed, during the early months of the Covid-19 pandemic, the Canadian, United Kingdom and United States governments

<sup>2</sup>SRPP as a public governance instrument can rely on private standards on working conditions which governments enforce with sanctions for non-compliance (see Fransen and Burgoon, 2017).

<sup>3</sup>At least 14 per cent of GDP is spent on public procurement in the EU ([https://ec.europa.eu/growth/single-market/public-procurement\\_en](https://ec.europa.eu/growth/single-market/public-procurement_en) (accessed 21.03.2021).

procured medical gloves from factories in Malaysia using forced labour (Pattison, 2021; Pattison *et al.*, 2020; Szeto *et al.*, 2021). Hence, a crisis context requires heightened attention to SRPP in order to avoid unintended consequences of rapid procurement policies on workers in GPNs.

The paper proceeds in Section I with a discussion of SRPP as a labour governance instrument in GPNs and the relevant revisions to the EU directives on public procurement in 2014. Section II presents information on the qualitative and quantitative research conducted for the paper. Section III presents our conceptual framework of the regulator-buyer state. It breaks down the different instruments of power of the regulator and buyer state factors and how they combine for a weak or strong approach for SRPP. Section IV discusses the exercise of the regulator-buyer state through SRPP at different scales of government and its potential impacts for GPNs. The final section concludes the paper.

## I. SRPP as a Labour Governance Instrument in GPNs

### *SRPP in GPNs*

A GPN is a network of global supplier firms coordinated by lead firms whose processes and outcomes are shaped by firm strategies and non-firm actors such as government institutions (regulations), trade unions (wage agreements), and civil society organizations (CSOs) (public campaigns) (Coe and Yeung, 2015). Labour rights violations and poor working conditions are common challenges in many GPN industries. Governance measures to improve the situation are dominated by private and voluntary self-governance, such as codes of conduct and audits, which often fail to systematically or sustainably improve working conditions (Lund-Thomsen and Lindgreen, 2014; Raj-Reichert, 2019). SRPP in the EU can be a unique public labour governance instrument for GPNs in three ways. First, it is based on market access conditions into a large collective public consumer market with strong institutional capacities for enforcement and with cross-border effects in third countries (Corvaglia and Li, 2018; Damro, 2012). Second, public procurement contracts can impact behaviours of firms when they are key revenue sources with more and longer demand stability compared to sales to private consumers (Martin-Ortega and O'Brien, 2019). Third, it can provide CSOs a different target consumer group for campaigns to improve working conditions in GPNs (see [www.electronicswatch.org](http://www.electronicswatch.org)).

Because the exercise of SRPP for goods produced in GPNs is a relatively recent phenomenon, there is limited research on it as a public governance instrument. Hughes *et al.* (2018) considered limits to SRPP based on the type of materials procured (for example intermediate products which are targeted less by public campaigns for ethical consumption) and the absence of reputational risk faced by public authorities, unlike brand firms, linked to the threat of consumer boycotts. It is argued that states face a different driver for social responsibility, namely public accountability. Hughes *et al.* (2018) is important for understanding SRPP for the context of GPNs, yet there are nuances to their findings. While intermediate products can be 'invisible' compared to final consumer products, CSO campaigns and the media have exposed labour rights violations in the production of intermediary goods such as bricks or stones, leading to social criteria in public procurement contracts in Austria, Belgium, and the Netherlands (Schinzel, 2010; interviews, 2019). The state is also not comparable to private firms because of their public

accountability to spend tax-payer money not only efficiently but also in ways which do not contribute to labour rights violations thereby upholding the norms of ‘public duty’ to, for example, protect human rights at home and abroad (Martin-Ortega and O’Brien, 2019). Public-facing government service organizations, such as universities, hospitals, and the police are indeed targeted by public campaigns over principles of social justice (Seidman, 2007). There are also expectations to uphold a ‘public sector ethos’ when working in government (Plant, 2018).

### *2014 Revision of the EU Directives on Public Procurement*

The 2014 revisions to the EU Public Contracts Directive 2014/24/EU and the Utilities Directive 2014/25/EU required EU member states to revise national procurement laws including the inclusion of social, labour and sustainability criteria more comprehensively in procurement contracts.<sup>4</sup> The transposition of the EU Directives into national law is applicable to procurement amounts above a certain threshold value across member states.<sup>5</sup> As a minimum requirement Art. 18 (2) of Directive 2014/24/EU obliges governments to ensure contractors ‘comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X’. Annex X includes the eight ILO CLS<sup>6</sup> which are important for decent working conditions in outsourced and offshored locations of GPNs. There are a variety of social criteria that can be considered, some are more relevant for GPNs, such as the ILO CLS, fair trade standards or promotion of gender equality, while others apply more to internal market employment contexts, such as youth employment, employment opportunities for those with disabilities, and improving diversity (EC, 2021). It must be noted that the EU directive is also situated vis-à-vis the rules of the World Trade Organization’s Government Procurement Agreement (GPA) to which the EU is a signatory. The GPA, while not making reference to social or labour considerations, does not prevent signatory states from applying social criteria as part of technical specifications or criteria in the awarding phase. The GPA only obliges EU member states to not discriminate against bidders from non-EU countries which are part of the GPA (Semple, 2017).

The 2014 revisions also expanded the possibilities of using other criteria for awarding a procurement tender. While going beyond ‘lowest price’ as an award criterion was possible before, the 2014 revisions further strengthened the principle of ‘most economically advantageous tender’ (MEAT) as a method of assessment for awarding a tender. Namely, Article 67 (2) allow for performance-based criteria in line with sustainability objectives. It states that award criteria ‘may include the best price-quality ratio, which shall be assessed

<sup>4</sup>The EU Directives also highlight areas where they are not applicable, particularly defence and security related procurement contracts which are governed by a separate directive (2009/81/EU).

<sup>5</sup>Threshold values depend particularly on the contract type and contracting authority. In 2021 they were €5,350,000 for ‘works’ contracts and ranged between €139,000 and €1,000,000 for ‘services’ and ‘supply’ contracts. See [https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds\\_en](https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en) (accessed 23 April 2021).

<sup>6</sup>The eight ILO CLS are: freedom of association and the right to organize (Convention No. 87), right to organize and collective bargaining (Convention No. 98), suppression of forced labour (Convention No. 29); abolition of forced labour (Convention No. 105); abolition of child labour and a minimum age for employment (Convention No. 138); prohibition and elimination of the worst forms of child labour (Convention No. 182); equal remuneration of basic or minimum wage across genders (Convention No. 100); eliminating discrimination in employment and occupation (Convention No. 111).

on the basis of criteria, including qualitative, environmental and/or social aspects linked to the subject-matter of the public contract’.

In cases of subcontracting, Art. 71 (1) calls on ‘competent national authorities’ to ensure tenderers’ subcontractors observe social, labor or environmental laws set out in Art. 18 (2). This also applies to subcontractors in offshore locations outside the EU (Corvaglia and Li, 2018). Contracting authorities can require contract holders to provide proof of compliance of international labour standards by subcontractors (EC, 2021). The European Commission (EC) through communications on the implementation of the directives advised public buyers *before* a tender to identify potential risks by mapping out production locations, stating ‘labour obligations should be required and thoroughly checked throughout the global supply chains, including at the level of sub-contractors’ (EC, 2019, pp. 21, 24). The directives also allow for more transparency on the use of subcontractors. Art. 18 (2) allows contracting authorities to ask tenderers to reveal the share of the contract they intend to subcontract and any proposed subcontractors at the time of tendering. For works and service contracts, contractors are required to provide names, contact details and legal representatives of subcontractors.

The directives allow member states to include social criteria in the three phases of procurement: bidding, awarding, and post-award. Because these options are voluntary (see Table 1) each member state can have a different composition and strength of social responsibility within their public procurement legislation and practices. One of the strongest conditions at the tendering phase is the exclusion of firms that have violated a specified list of labour laws, for example child labour and human trafficking, from bidding for a period of time (Semple, 2017). This can allow for a temporary de-facto ‘blacklist’ of firms in the public procurement market. During the award phase contracting authorities can use a life-cycle costing approach to include specific social criteria or require firms to have or obtain certificates or labels or equivalents. A critical stage for ensuring proper working conditions in GPNs is in the post-award phase of monitoring compliance of social criteria. If all options in Table 1 are applied, a member state can exercise a stronger comprehensive SRPP approach. The challenges and opportunities for doing so depend on the specific configurations of instruments of regulator-buyer power by a member state which is discussed in section four.

Indeed, the goals of SRPP to improve working conditions in GPNs could contend with the more traditional aims of public procurement to address economic considerations such as support for local firms and innovation as well as social considerations such as unemployment and working conditions domestically (McCrudden, 2007). For the wider EU policy context, public procurement is associated with two key goals. The first is continuing economic harmonization for a single public procurement market across member states, since the early 1990s, as part of the ‘single market’. The second is achieving Europe 2020 goals and using public procurement to achieve wider social aims including the protection of working conditions (Handler, 2015). We recognize that the exercise of SRPP in the EU occurs amidst these two potentially competing goals which play out through contestation across different actors and discourses, for example social democratic political parties in support of a ‘European Social Market Economy’ versus the more widespread support for a neoliberal ‘single market’ (Claassen *et al.*, 2019). Our discussion however is not to decipher which of these political economic contexts is more dominant and thereby their implications for pursuing SRPP. Rather, we present a conceptualization

Table 1: Social criteria in the three phases of public procurement and their implications for public procurement authorities implementing the criteria (G), awarded or bidding firms as recipients (F), and third-party actors such as CSOs (C) which pressure and assist governments on SRPP

<i>Criteria</i>	<i>Implication</i>
<i>Bidding process</i>	
Exclude firms found by conviction of child labour and other forms of human trafficking from bidding. (Art. 57(1)(a))	(G): Can temporarily exclude firms from bidding and create a de-facto blacklist. Such a list can be created by public authorities or other actors such as campaigning organizations.
Exclude firms demonstrated by the contracting authority to be in violation of labour laws from bidding. (Art. 57(4)(a))	(F and C): This can pose an additional reputational risk to firms of becoming targets of public or civil society campaigns.
Exclude firms demonstrated by the contracting authority of grave professional misconduct, which renders its integrity questionable. (Art. 57 (4)(c))	
Exclude firms that propose abnormally low price that can be shown to be due to violations of labour (and environmental) laws. (Art. 18 (2) (Art. 69 (3))	(G): Can temporarily exclude firms from bidding and create a de-facto blacklist of firms that have violated labour law obligations including the ILO CLS, European and national laws (including third countries). (G, C and F): Such a list can be created by public authorities or other actors such as campaigning organizations. This can pose an additional reputational risk to firms of becoming targets of public or civil society campaigns.
Contracting authorities can include technical specifications and performance conditions on social, the environment or labour (linked to the subject matter of the contract). (Art. 70)	(G and F): Bidding firms may have to prove in advance their ability to meet social objectives. This could favour firms with compliance programmes in place or create an incentive to develop them.
The use of social labels as proof of fulfilling the social characteristics. (Art. 43 of Directive 2014/24/EU)	(G, F and C): Labels' criteria must be objectively-verifiable, non-discriminatory and linked to the subject matter of the contract, and can be used as technical specifications. Implies the availability of labels and their robustness (verifiability and credibility). Public and private labels (by industry and CSOs) are equally permissible.
<i>Award criteria</i>	
Most economically advantageous tender (MEAT) award criteria. (Art. 67 (2))	(G): Based on the life-cycle costing approach; quality-price ratio assessments which include social criteria. Implies valuation of social criteria.
The use of social labels as proof of fulfilling the social characteristics. (Art. 43 of Directive 2014/24/EU)	(G, F and C): Used as contract performance criteria. Labels' criteria must be objectively-verifiable, non-discriminatory and linked to the subject matter of the contract. Implies the availability of labels and their robustness (verifiability and credibility). Public and private labels (by industry and CSOs) are equally permissible.

Table 1: (Continued)

<i>Criteria</i>	<i>Implication</i>
<i>Bidding process</i>	
Investigate and reject abnormally low-priced tenders. (Art. 69 (3))	(G and F): Contracting authority can request an explanation for an abnormally low pricing and reject based on non-compliance of labour law obligations, which are the ILO CLS, European and national laws (including third countries).
<i>Post-award/compliance during the contract</i>	
States must ensure suppliers comply with a set of labour laws including the ILO CLS. (Art. 18 (2))	(G and C): Requires monitoring compliance in global supply chains. It requires institutional competencies and resources for doing so, or the ability to outsource monitoring to a third-party organization.
The use of social labels as proof of fulfilling the social characteristics. (Art. 43)	(C and F): Labels' criteria must be objectively-verifiable, non-discriminatory and linked to the subject matter of the contract. Used as contract performance criteria. Implies the availability of labels and their robustness (verifiability and credibility). Public and private labels (by industry and CSOs) are equally permissible.
“Competent national authorities” are to take “appropriate action” to ensure tenderers’ subcontractors observe social, labour or environmental laws. (Art. 71 (1))	(G): Applies to suppliers in global supply chains. Requires having in place adequate measures to monitor and ensure compliance.
States may through national law “provide[s] for a mechanism of joint liability between subcontractors and the main contractor, the Member State concerned shall ensure that the relevant rules are applied in compliance with the conditions set out in Article 18(2).” (Art. 71 (6))	(G): Applies to suppliers in global supply chains. Requires revisions to national laws that allow for this measure to be implemented and institutional competencies in place to do so.
Contracts can be terminated when a supplier has at the time of the contract award been convicted of child labour and other forms of human trafficking (Art. 73(b))	(G): Requires violations being discovered or reported on, and criminal conviction.

*Source:* Authors' elaboration based on Directive 2014/24/EU; Semple, 2017.

of the regulator-buyer state and the particular instruments of power which are important for the exercise and practice of SRPP for the context of GPNs.

## II. Methods

We have developed our conceptual framework of the regulator-buyer state for SRPP based on understanding how different instruments of state power are exercised across a variety of government structures and procurement arrangements in the EU. This conceptualization is largely based on fieldwork research in different EU member states and with the European Commission as well as secondary literature. We have focused on Germany and Sweden, two varying member states in terms of governance structures and size but who share the commonality of being relative frontrunners of SRPP.



Germany and Sweden are relatively more advanced in their engagement in SRPP in the EU. For example, regions and cities in Germany and Sweden (including the regions and cities in which interviews were conducted) have included social considerations in the public procurement of goods, such as clothing and electronics, which are largely made in GPNs (Evermann, 2014; Göthberg, 2019; Schinzel 2010). Yet, each member state differs by its procurement budgets; government structures; administrative, legal, and bureaucratic cultures; and political processes (Göthberg, 2019; Müngersdorff and Stoffel, 2020). Germany has the largest public procurement market within the EU. It has a federal state system where legislative and budget allocations for public procurement are heavily decentralized with an estimated 30,000 procurement entities across the central government, 16 states, and over 11,000 municipal authorities. The country has a strong tradition of local self-management reflected also in its procurement activity – over 75 per cent of public procurement in Germany occurs at the sub-national levels and over 50 per cent of that by municipalities (Müngersdorff and Stoffel, 2020).

Sweden has a large public procurement budget (around 19 per cent of GDP) and around 3,700 contracting authorities (Olsson and Öjehag-Pettersson, 2020). Sweden is a unitary state with a highly decentralized public procurement structure with 21 regions and 290 municipalities who are autonomous in their procurement spending (CEMR, 2021).

Our discussion in the paper is also informed by thirty semi-structured interviews with officials (Directors and Sustainability officers) from public procurement authorities and CSOs engaged in SRPP at the central, regional, and city/municipality levels in Germany (Bonn, Bremen, Berlin and Dortmund in January 2020) and Sweden (Stockholm and Uppsala in December 2019). Twenty interviews in Brussels in 2019 were conducted with EC officials (Heads or Deputy Heads of Unit and Policy Officers) across three Directorate General (DG) offices responsible for and engaged in SRPP, two European sub-national governmental organizations, one CSO actively engaged in promoting SRPP, two trade unions, and two industry groups. Interview questions aimed to understand different factors which constitute the different instruments of power of the regulator-buyer state discussed in the following section and how they influence SRPP practices. All respondents were knowledgeable about SRPP and the engagement of EU member states in this regard.

We use data from the EU TED database ([ted.europa.eu](http://ted.europa.eu)) to illustrate buyer power at different levels of government. TED includes information on a sub-set of EU wide tenders which are above certain thresholds announced by public buyers. Although this represents only 15–20 per cent of total public procurement in the EU it is the most comprehensive data source for comparing procurement activity across EU member states. The database also allows for disaggregated analysis of procurement transactions based on types of public buyers, contractual arrangements, policy areas, and products purchased.

### **III. Conceptualizing the Regulator-Buyer State in the EU for SRPP in GPNs**

Partly due to its greater focus of analysis on firms (Coe and Yeung, 2015), research on GPNs has considered less the role of states in their articulations and governance. The few contributions on the state and GPNs include Horner's (2017) classification of differing roles of the state in GPNs as facilitator, producer, regulator, and buyer. The state is a 'facilitator' through policies to promote and enable firms to participate in GPNs; a 'producer' through state-owned enterprises or partial stakes in firms; a 'regulator' by

'limiting and restricting economic activity within its boundaries' (Horner, 2017, p. 7) to support business, consumers, and workers; and a 'buyer' through public procurement of goods and services. We build on this classification but argue that assessing combined roles of the state is important for understanding of how their functions can bring about change in GPNs. Hence, to understand the state as a labour governance actor in GPNs through SRPP, we combine the 'regulator' and 'facilitator' roles for a broader understanding of the 'regulator state'. This conforms to readings in political science which conceptualize regulatory activities as rulemaking, monitoring and enforcement which limit, foster or expand market activity (Hood *et al.*, 2001). The 'regulator state' (through SRPP) could either restrict or promote economic activity of firms and make their market access to the public consumer market more stringent or favourable. As a 'buyer state' governments can favour firms able to meet social criteria and discriminate against those who cannot. For the exercise of SRPP the hybrid regulator-buyer state can interweave market access conditions and purchasing power to govern working conditions in GPNs.

When it comes to the EU political science discussions on the state consider multi-level or multi-scalar governance. Majone (1997) set out that since the 1970s European governments, due to increasing global competition and deepening EU integration, reduced their roles as interventionist states to increasingly engage in regulatory functions of rule-making. This shift from interventionist to regulatory states was furthered by the Single European Act of 1986 which introduced a number of European rules in economic and social policy areas such as the environment, health and safety, and consumer protection.

One way the EC develops European rules are through directives. EU directives are broad regulatory frameworks which are transposed into national laws and implemented by member states (Eckert, 2011). A directive sets out minimum requirements which must be included in national laws but leaves the 'choice of form and means' of implementing them to member states (Cardwell, 2011, p. 537). This can raise frictions on how the EU regulator state as a multi-level polity functions because while there are goals of EU wide rules for the internal market, it is up to individual member states' regulatory institutions and national and local politics to realize them.

The EU multi-level governance system also devolves regulator power to sub-national levels, which is enshrined in the principle of subsidiarity, which gives regions and municipalities a degree of autonomy over national governments in implementing directives. Thus, there is a multi-scalar complex of regulator instruments of power at the national and sub-national levels of government for implementing directives.

In the following two sections, we discuss the various components of state power which make up the hybrid regulator-buyer state individually to show that each is important for implementing and meeting objectives of SRPP. First, we present the elements of regulator power and discuss their relevance through empirical examples from Germany and Sweden. In the subsequent section we do the same for the different elements of buyer power.

### *The Regulator State: Combining Instruments of Power for SRPP*

The regulator state at national and sub-national levels of government can change behaviours of a variety of actors (Hood *et al.*, 2001). In the case of SRPP, we are interested in

how the regulator state affects firms, including in outsourced and offshored locations in GPNs, by including and enforcing social criteria in public procurement contracts which includes the threat or application of sanctions, fines, or contract terminations for non-compliance. The regulator state can also influence actions of CSOs engaged in investigating working conditions in GPNs. Regulator state practices can also be self-disciplining, influencing decision-making behaviours of employees in procurement authorities to consider the importance (or not) of SRPP. Any of these are shaped by different instruments of power of the regulator state which, based on our research, include (1) legislative, (2) institutional, (3) judicial, and (4) discursive.

### *Legislative*

Understanding the regulator state implementation of SRPP across the EU begins with a member state's transpositions of the EU directives into national legislation. Hence, the first step in assessing the regulator power of a member state for SRPP are national procurement laws and their implications for SRPP implementation at the (sub)-national levels. Power exercised through the strategic use of laws and regulations is multi-faceted. Most obviously legislative authority is exercised by setting rules and boundaries for the public procurement market including demarcating the geographical reach of its direct and indirect influence (for example in GPNs) and permitting and forbidding actions (Christophers, 2015). A key factor for SRPP in GPNs set out by the directives is for member states to ensure compliance by contractors to the ILO CLS as a *minimum requirement* (EC, 2021). Member states at different levels of governments can voluntarily go beyond this requirement to include additional social criteria in procurement contracts, for example fair trade certifications (Sanchez-Graells, 2019; Treumer and Comba, 2018).

In Germany, public procurement takes place in a fragmented and multi-scalar legislative framework. The federal public procurement law sets rules for public contracts at the federal level (the Act against Restraints on Competition) and below thresholds for regional states. Transposition of the EU directives into the revised federal law was largely a copy and paste exercise. Only a limited transposition occurred in provisions concerning MEAT, where the federal law allows for contracting authorities to choose price or cost as the sole award criterion with other non-price criteria used as technical specifications. The national transposition also partially included the obligations concerning the use of sub-contractors based on Article 71. Contracting authorities are obliged only to verify grounds for excluding sub-contractors based on convicted violations listed in Article 57 (see Table 1 for other aspects of Article 71 which were not included) (Wolff and Burgi, 2018).

Below the federal government, 15 out of the 16 regional states (with the exception of Bavaria) have their own laws on public procurement which complement the federal law. In line with a strong constitutional right for autonomy by local communities, the over 11,000 municipalities in Germany can also have their own public procurement laws (OECD, 2019). Evidence that legislation at sub-federal levels of government can go further for SRPP is provided via the city-state Berlin. In 2020 Berlin revised its public procurement rules and went beyond the federal law by including the allowance for 'more far-reaching social standards' including the explicit mention of fair trade standards. The Berlin law applies only to public procurement above certain thresholds. Public contracts below these thresholds can include even stronger social criteria. This opens the possibility for the

city-state and its sub-city districts or borough levels governments to go beyond these minimum requirements for a stronger approach to SRPP (Gräf and Raj-Reichert, 2020).

Sweden developed the Swedish Public Procurement Act as part of its transposition of the EU Directive. In Sweden, public procurement law is established nationally and cannot be modified by sub-national levels of government. The Swedish legislation also followed the EU Directives closely (Sundstrand and Agren, 2018). It allows for the ILO CLS to be obligatory minimum criteria including for sub-contracted suppliers in GPNs. Contracting authorities must reject bidders if their abnormally low-priced tenders are due to the inability to meet social or labour law obligations. These relatively stronger SRPP provisions must be adhered to by lower levels of government. As a unitary country with a high degree of decentralization where regional authorities historically played a strong role in regional development (Hörnström, 2013), the stronger national legislation spills over to form a basis for regional and municipal procurement approaches and institutions, which we discuss below.

### *Institutional*

Institutions, in particular procurement authorities and supporting organizations, are instruments of power because ‘while there is regulatory space in principle [for SRPP], the potential for its effective implementation in practice is severely limited by general constraints on the exercise of executive discretion, and by more general resource constraints’ (Sanchez-Graells, 2019, p. 100). Implementing SRPP effectively requires capable institutions. Such institutions include actors with competencies to understand the scope for SRPP and resources including financing, guidelines and advisers that include third-party actors. Our findings shows that legal personnel, for example, can be important advisers to procurement officials for assessing legislative (un)certainties surrounding the type of social criteria to include in tendering processes and awards. This can be important given the EU directives largely allow for a voluntary approach for strong SRPP practices which can depend on the degree of legal risk taking by procurement officials (interviews, 2019).

Institutional capacity goes beyond the procurement authority or government bodies. Critical tasks for SRPP, such as risk assessments and monitoring of social criteria compliance, can require partnerships with third-party actors such as CSOs or auditing organizations. Such cooperation can be critical in the post-award or contract management phase where compliance monitoring in offshore production locations can be difficult to resource. In Sweden, the Stockholm Region, have framework agreements in place with third-party auditors to monitor compliance of social criteria in GPNs (interviews, 2019).

Sweden at the sub-national levels of government provides examples of relatively sophisticated institutional systems for SRPP. After a public scandal exposed by the CSO Swedwatch on ‘surgical instruments produced in Pakistan and textile produced in India sourced by Swedish Regions highlighting a number of labour rights violations and poor work condition including child labour’, all 21 regions across Sweden developed a national coordination system to implement SRPP (Swedwatch 2022). The national network of regions operates under a joint budget which is used to employ a National Coordinator and undertake joint activities such as risk assessments and monitoring including sharing

[Correction added on 27 April 2022, after first online publication: The text on the third paragraph, second sentence under the Institutional section has been corrected in this version.]

audit results and information on supplier violations of social criteria. They have a collective code of conduct on working conditions criteria which goes further than the national legislation's minimum requirement of the ILO CLS for procurement contracts involving offshore production. Interviews with representatives of the network showed that working together helped raise risk-taking for a stronger SRPP approach vis-à-vis the national legislation. Certain procurement authorities outsourced risk analysis of outsourced production to CSOs during preparation of tendering requirements (interviews, 2019).

While in Sweden decentralized procurement institutions led to more effective coordination on SRPP, decentralization can lead to fragmentation precluding efficient use of resources in other contexts. In Berlin, a high degree of decentralization, strong political autonomy, and individual procurement spending amongst its districts has not led to the establishment of institutions that share knowledge, expertise and resources on SRPP amongst contracting authorities. Cooperation has only occurred through pilot projects such as pooled purchasing by boroughs of Fair-Trade food for public schools, which has been the result of temporary sustainability officers externally funded by the Ministry of Development to further fair trade and fair procurement in municipalities (Gräf and Raj-Reichert, 2020).

#### *Judicial*

Courts influence the interpretation and implementation of a law through rulings on legal cases thereby shaping behaviours of actors implicated by the legislation. In the EU, the European Court of Justice (ECJ) provides the ultimate interpretation of member states' implementation of EU directives. An important former ruling which impacts SRPP involved the Dutch fair trade label Max Havelaar. In 2012, the ECJ ruled that public authorities must allow labels and certifications which are 'equivalent' to Max Havelaar as technical specifications in the award criteria. The specification on equivalency was adopted in the 2014 EU directives (Corvaglia and Li, 2018) thereby allowing for a wider usage of labels and certificates for the compliance of social criteria.

Court rulings can also affect the degree of caution, risk-taking and proactivity procurement authorities take on SRPP. The appetite for legal risk-taking by procurement officers can also be influenced by legal cultures. Given the recent national transpositions of the EU directive, there have not yet been defining court rulings to shape the practice of SRPP. However, the perceived 'threat' of the courts and how they would rule, either in favour of or against SRPP, is an influential instrument of power shaping the behaviours of procurement institutions as well as firms who bid for tenders. In Sweden procurement officials interviewed were more confident to engage in progressive SRPP practices. The Swedish officials were supported by legal advisors and some were confident that procurement authorities would win in a court case brought by a bidder against requirements for social criteria. Future court cases on SRPP were even favoured by procurement officers in order to increase legal clarity on the matter. This perception was in contrast to Germany where procurement revealed more caution and avoidance of going to court (interviews, 2019).

#### *Discursive*

Policy discourse shapes how policy problems and solutions are conceived of and acted upon. Dominant or prevailing discourses are outcomes of competing interests which

exemplify the politics of rulemaking and implementation (Bacchi, 2002). When it comes to public procurement, policy discourse can lean towards narrow economic goals of low-cost competition or strengthen an agenda of more responsible public procurement.

Policy discourse at the meta-scale – the EC – can change perceptions and interpretations of member state laws. In favour of SRPP, an important discourse set by the EC during the last decade was ‘strategic public procurement’ emerging as part of the EU2020 growth strategy after the 2008 financial crisis (Handler, 2015). This opened the way for stronger consideration of social criteria in the 2014 revisions of the EU directives. Another example is the 2017 EC Communication on ‘Making Public Procurement Work in and for Europe’ promoting environmental and social goals as integral to public purchasing 2017. This policy guideline helped reverse thinking on non-economic conditions in public contracts, which were considered procurement-unrelated criteria or ‘vergabefremde Kriterien’ in Germany (interviews, 2019). A key policy guidance has been the Buying Social Guide (interview, 2019) which further clarified the inclusion of social criteria in procurement contracts. While the 2011 version focused on the domestic context, the second edition makes a stronger case for social criteria in contracts involving global supply chains (EC, 2021).

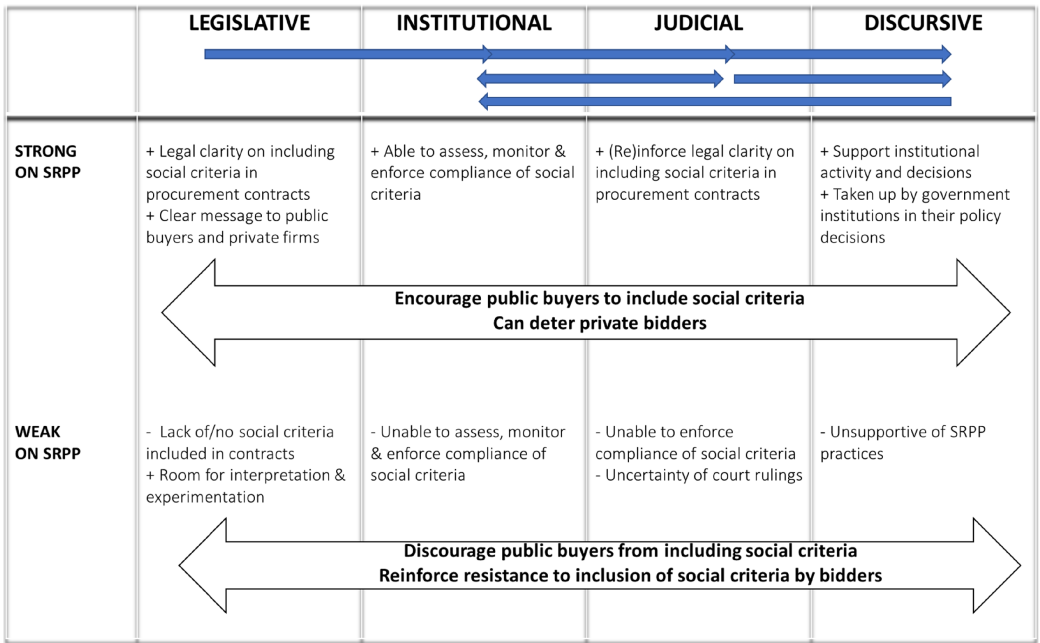
At the national level, policy discourse on public procurement is set out by national strategies, guidelines and political statements. Sweden has a National Public Procurement Strategy which sets out the ‘Government’s aim of establishing public procurement as a strategic instrument for efficient organizations and a means of achieving the national environmental, social sustainability and administration policy objectives’. Germany’s National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights states, ‘the government bears responsibility to discharge the state duty to protect human rights and ensure that the use of public funds does not cause or foster any adverse impact on human rights’.

Policy discourse can vary in significant ways at sub-national scales and across political parties. In Berlin a political shift towards the Green Party in 2020 led to a supportive policy discourse building on the city’s existing Fair Trade Town label to mobilise political support for the procurement of fair trade products and a revised procurement law which widened possibilities for stronger SRPP approaches in comparison to the national procurement law (Gräf and Raj-Reichert, 2020). As an instrument of power, policy discourse is important because it can be leveraged to support particular decisions and practices on public procurement.

#### *Regulator State Power for SRPP: The Interaction of Legislative, Institutional, Judicial and Discursive Instruments*

The different instruments of regulator power – legislative, institutional, judiciary, and discursive – are important for the implementation of SRPP. Each instrument of power depends on each other and result in unique outcomes for SRPP within a member state and at different levels of government. As Figure 1 shows, the implications of a strong versus weak approach to SRPP depend on whether each of the four instruments is exercised in favour of SRPP or not. This is straightforward in some ways. For example, a scenario of a strong regulator state for SRPP would include clear and favourable legislation, supported by judicial ruling, which is implemented with adequate institutional capacities and resources whereby procurement authorities make decisions based on supportive policy

Figure 1: Regulator state instruments of power for exercising SRPP. Arrows point to directions of influence across the instruments of power. ‘+’ denotes factors which support SRPP and ‘-’ are factors which are unsupportive of SRPP. [Colour figure can be viewed at wileyonlinelibrary.com]



Source: Authors’ elaboration.

discourse and objectives set by political parties or lawmakers. A weak regulatory state for SRPP, for example due to unclear or weak legislation, a lack of institutional resources or expertise, and lack of clear policy signals, could result in few procurement contracts with social criteria which could reinforce public procurement practices sidelining social responsibility.

Outcomes from the exercise of each instrument of power can also depend on each other. For example, institutional power can depend on the availability and inclusion of non-state actor capacities, cooperation and assistance. Institutional strength can also depend on a strong judiciary system. For example, banning a firm which has violated international labour laws from bidding requires a burden of proof on courts to convict a firm of breaking a law. When legislation is vague on SRPP, it could lead to increased risk-taking by contracting authorities to take advantage of the lack of clarity and experiment in favour of strong SRPP approaches or vice versa. This could be more likely during early stages of a new legislation where judicial rulings have not yet been made in favour of or against specific approaches for SRPP. These different instruments of power are shaped by external drivers such as political or CSO campaigns and the media which spur practices for (or against) SRPP. A potential unintended consequence of a strong SRPP approach is deterrence to firms from bidding for public contracts if meeting social criteria is too costly and

does not outweigh the economic benefits of receiving a public contract. This is an aspect we discuss more in the next section on buyer power.

### *The Buyer State: Coordinating Purchases in a Fragmented System*

The regulator role of the state works in conjunction with its buyer role in the exercise of SRPP. The power of public procurement is traditionally considered as buyer power (Cox, 2004; Kraljic, 1983; Martin-Ortega and O'Brien, 2019). However, in order to understand buyer power for SRPP in the context of GPNs it must be broken down into two factors: (1) purchasing volume, and (2) supplier and market characteristics.

#### *Purchasing Volume*

Much of the literature on buyer power and SRPP highlights an aggregate spending perspective expressed as the GDP share attributed to public procurement spending (Martin-Ortega and O'Brien, 2019). While an aggregate perspective is helpful in highlighting the overall potential for SRPP, it does not reveal the actual disaggregated spending of specific public buyers. Public procurement is highly fragmented because purchasing occurs across different scales of government and by different organizations reflecting the diverse types of purchasing authorities which exist in the public procurement market. This organizational fragmentation of public purchasing institutions is a result of the rise of New Public Management principles since the 1990s which led to the restructuring of government entities towards market-like rules and with more autonomous entities at all levels of government (Pollitt and Bouckaert, 2011). One reflection is the trend to transform governmental departments into autonomous corporations (Mericille and Murphy, 2017).

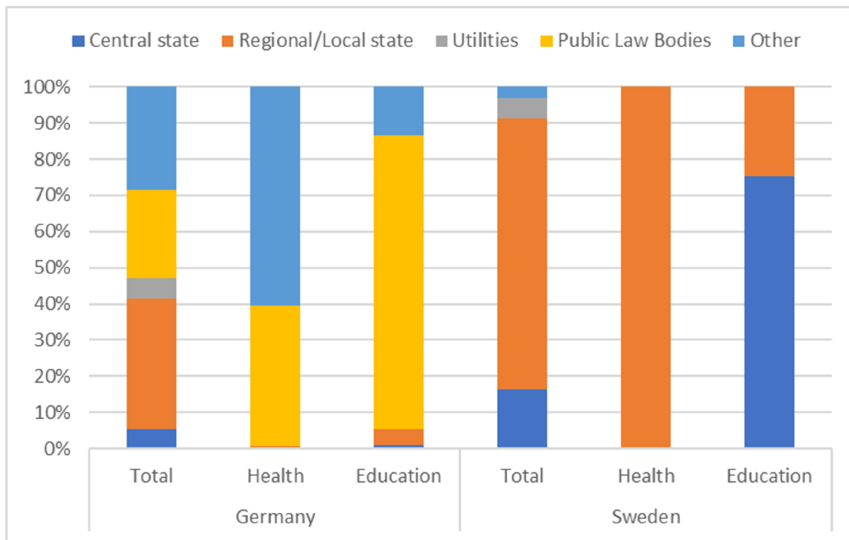
Public procurement institutions include national government departments, regional agencies, municipalities, hospitals, universities, and utilities to name a few. Figure 1 and the graph for 'Total' shows this variety of public buyers for Germany and Sweden based on all public purchases above certain thresholds<sup>7</sup> registered in TED in 2010–19. In both countries procurement by national purchasing authorities is minor in the overall number of public contracts. In Sweden, for example, regional and local authorities account for almost three quarters of contracts. Public institutions governed by public law, which include universities and hospitals, do not seem to be engaged in public procurement at higher values (or above a specified threshold) in Sweden, but they are more engaged in Germany. When we look at two specific major economic sectors – healthcare and education – there is a different mix of levels of government and types of procurement institutions which are dominant for each member state. In Germany public law bodies are of paramount importance in the education and healthcare sectors. In Sweden, on the other hand, regional and local procurement authorities dominate procurement in healthcare while in education procurement is primarily conducted by the central state.

Understanding buyer power based on purchasing volumes is made more complex when public procurement is broken down to the industry and products which are procured. Figure 2 shows how the procurement of electronics and workwear (two industries whose products are largely sourced in GPNs with a history of poor working conditions

<sup>7</sup>See footnote 5.



Figure 2: Public tenders in Germany and Sweden by type of public buyer for all purchases across all sectors ('Total') and the healthcare and education sectors for procurement registered up to 2010–19. [Colour figure can be viewed at [wileyonlinelibrary.com](http://wileyonlinelibrary.com)]



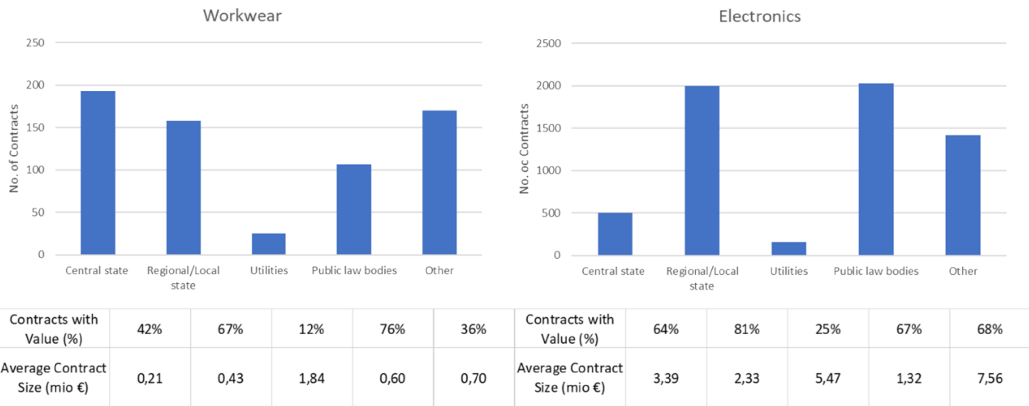
Source: TED 2021.

Note: Data from TED represents larger purchases above EU thresholds. [Colour figure can be viewed at [wileyonlinelibrary.com](http://wileyonlinelibrary.com)]

and labour rights violations (Raj-Reichert, 2019; Plank *et al.*, 2014)) is spread across different levels of government and type of public institutions in Germany. The number of contracts and overall purchasing volumes differ significantly with the number of contracts in electronics roughly ten times larger than for workwear. When it comes to type of procurement institutions, regional/local states account for an important share of contracts for both electronics and workwear while the central state is only important for workwear. However, the average contract size (calculated as the total of contracts with known value divided by the number of contracts) by the central state of electronic products is much higher than in workwear (Figure 3).

Fragmentation and hence smaller purchasing volumes generally reduce the buyer power of public procurement authorities for SRPP. One solution to fragmentation is to increase buyer power through pooling or joint purchasing across procurement authorities through framework agreements or centralized procurement. There are different examples of collective purchasing practices across EU member states (EC, 2021). In Germany, there are central purchasing bodies at the regional level for the procurement of electronics and workwear. Dataport for example pools the procurement of electronics for six regions (Bremen, Hamburg, Mecklenburg-Vorpommern, Niedersachsen, Sachsen-Anhalt und Schleswig-Holstein) (interviews, 2020). In Sweden, municipalities can be part of joint purchasing framework agreements administered by the central purchasing body SKL Kommentus.

Figure 3: Public tenders in Germany in workwear and electronics, by types of buyers (2010–19). [Colour figure can be viewed at wileyonlinelibrary.com]



Source: TED 2021.

Note: Data from TED represents larger purchases above EU thresholds. [Colour figure can be viewed at wileyonlinelibrary.com]

Coordinating purchasing across procurement organizations with different objectives, organizational cultures, resources, capacities and interest in pursuing SRPP can be however difficult. Autonomy and political difference at sub-national levels of government can also present challenges for cooperation. In Germany, significant time and resources are required to align interests across organizational boundaries and be able to pool smaller purchasing volumes for leveraging SRPP. For example, the new federal purchasing authority for electronics Zentralstelle IT-Beschaffung (operating since 2017) is only responsible for framework agreements for national state institutions (interviews, 2020). The German state of Bremen, a frontrunner in mainstreaming SRPP which conducts pooled purchasing across the entire public sector at the local levels of government since the mid-2000s, has struggled to incorporate public enterprises, such as the locally owned utilities, which became autonomous from the core administration in the late 1990s (interviews, 2020). Cooperation in procurement can also lead to a weakening of SRPP approaches. In the region of North Rhine-Westphalia, for example, a shift to the conservative political party in 2018 led to weakening the region’s legislation on SRPP and public procurement authorities switching to the largest central procurement body for workwear (Logistikzentrum Niedersachsen) with a weaker SRPP approach.

*Supplier and Market Characteristics*

Buyer power for SRPP does not only depend on purchasing volumes and needs to be understood in relation to the firms and their GPNs which provide the products purchased by governments (Tangpong *et al.*, 2008). In particular, the number of potential firms that are able to and willing to provide specific products and services to public institutions can influence the leverage of state buyer power. Put simply, if public procurement authorities

are faced with a limited number of potential firm bidders, their ability to demand compliance of social criteria may be diminished. Similarly, in a situation of many procurement authorities and too few potential firm bidders with capabilities to fulfil SRPP requirements, bargaining power can tip towards firms who resist or are not interested in meeting more stringent social criteria. Potential bidding firms may also refrain from public procurement tenders if the perceived benefits such as larger and more stable contracts are outweighed by the bureaucracy and technicalities of regulatory requirements of the public procurement market, on top of SRPP conditions. The extreme case is either only one or the complete absence of firms bidding for a procurement contract (interviews, 2019).

Firm availability depends not only on the market structure but also on the maturity of the industry to meet SRPP requirements or social criteria, which can differ by the product and supplier capabilities in GPNs. Industry maturity in social responsibility is often tied to external pressures, for example from CSO campaigns or regulations, which leading brand firms face and often must respond to (Siedenberg, 2019). Here, buyer power comes into direct engagement with regulator power, namely via institutional power and how public procurement authorities can create and shape industry markets to meet SRPP requirements. Taking the workwear industry as an example, lead firm outsourcing practices have co-evolved over the last two decades to respond to the CSO Fair Wear Foundation (FWF) who monitors and verifies compliance by firms against the FWF code of conduct to meet SRPP requirements. Similarly for the electronics industry, the CSO Electronics Watch works with public procurement authorities to monitor and verify against its code of conduct as a fulfilment of SRPP requirements. There are also product-specific initiatives in the electronics industry such as the Fair Mouse or the Fairphone whose uptake amongst public buyers has however been limited due to their market availability or scale of production and favourability for competitor products (interviews, 2020).

Indeed, in the longer term, the state can play a strategic role in market making and shaping (Mazzucato, 2018) by tendering for specific products and criteria and engaging with firms and third-party organizations to deliver them. The EU Big Buyer Initiative<sup>8</sup> is an example where a group of European cities through joint purchasing are helping create a market for sustainable goods and services such as zero emission electric heavy-duty vehicles as the only permitted public service vehicles in their cities (interview, 2019).

#### **IV. The Regulator-Buyer State at Different Scales of Government and SRPP in GPNs**

In this penultimate section, we combine the regulator and buyer state to understand the impacts of this hybrid role through the exercise of SRPP can have on working conditions in GPNs. Table 2 details the different regulator and buyer practices across different scales of government. A strong outcome of SRPP would entail both strong regulator and buyer powers combined. In other words, a trade-off between the strength of the regulator power vis-à-vis buyer power would constitute a weak outcome for SRPP. This is because, for example, despite large buyer power, SRPP would not be sustained without the ability to enforce compliance or have the institutions in place to ensure monitoring of working conditions. Similarly, despite having strong regulatory instruments of power, small or

<sup>8</sup>See <https://sustainable-procurement.org/big-buyers-initiative/>

Table 2: Exercising SRPP as regulator-buyer state at different scales of government

<i>Scale of government</i>	<i>Regulator-buyer state powers</i>	<i>Types of SRPP activity</i>
Meta-scale EU	<u>Regulator:</u> The EU is considered a regulator state representing the collective EU member states. Although it is not fully autonomous at the regulatory level, it steers conduct over national laws and regulations through directives, guidelines, and rulings of the ECJ.	<u>Regulator:</u> Directives enable buyers to engage in SRPP; EC Communications provides guidance on how to implement SRPP within GPNs; funding to support SRPP activities, e.g. Big Buyers Initiative, which can create and shape procurement markets and their GPNs.
National/Central	<u>Regulator:</u> Responds to Directives and the ECJ (not fully autonomous at the regulatory level). Regulatory control over sub-national scales of government through laws, judicial rulings, and steering implementation through resource allocation and policy discourse. <u>Buyer:</u> Varies by degree of centralization of public procurement; can create and shape markets including for social criteria compliance in GPNs.	<u>Regulator:</u> Transposition of EU directives; legislate autonomously where EU directives do not apply; development of procurement strategy and guidance material; competence centers for guidance on SRPP and in GPNs. <u>Buyer:</u> Ministry level procurement authorities; Central Purchasing Authorities.
States/regions	<u>Regulator:</u> Not fully autonomous from national government; must operate within the parameters of national legal frameworks and judicial system. Depending on member state, can have autonomy in establishing sub-national regulations, institutions, regional court decisions, and policy discourse. <u>Buyer:</u> Centralized or fragmented buyer power; can create and shape markets including for social criteria compliance in GPNs.	<u>Regulator:</u> Develop regional regulations, procurement strategy, and guidance material; competence centers for SRPP. <u>Buyer:</u> Central Purchasing Authorities or framework purchasing agreements for specific regions or pooled purchasing across regions; can exercise joint purchasing cross-border in the EU.
City/municipality	<u>Regulator:</u> Depending on the member state, has autonomy in establishing city/municipal regulations and policies on public procurement. Not fully autonomous due to dependency on regional or national scale of government for resource allocation. <u>Buyer:</u> Centralized or fragmented buyer power; can create and shape markets including for social criteria compliance in GPNs.	<u>Regulator:</u> Develop local regulations: procurement strategy and guidance material; competence centers for SRPP. <u>Buyer:</u> local procurement authorities at city or sub-city scales; can exercise joint or pooled purchasing across cities/municipalities and cross-border in the EU.

*Source:* Authors' elaboration.

fragmented buyer power would lessen the impact of SRPP influence over firm practices on working conditions in GPNs.

In reality, the regulator-buyer state can function with differing degrees of power at different scales of government, at times leaning more towards a stronger regulator or a stronger buyer state. Table 2 provides a few scenarios of these varying outcomes and in particular points to the relationship between different scales of government which are determined by degrees of autonomy or power asymmetry. While we have focused on EU member states, their ability to exercise SRPP in GPNs begins with EU directives established by the EC which functions as a decisive regulator at the meta-scale. Its current

policy discourses and future ECJ rulings can have a significant impact on the future of SRPP practices for GPNs. At the member state level and its different scales of government, it is the content of the public procurement contract and the ability to ensure compliance of its conditions which ultimately determines the efficacy of SRPP for GPNs. Here, the inter-play between regulator and buyer powers are critical. Without the legislative space and institutional capacities for SRPP, buyer power is not materialising. Moreover, if the regulator instruments of power supported a strong SRPP approach, fragmented buyer power would not make a considerable difference to working conditions in GPNs.

While the characteristics of regulator-buyer state powers follow the same logic at different scales of government, the difference in more progressive versus conservative approaches to SRPP can also be shaped by politics. Here, theories of ‘new municipalism’ explain transformative politics at local levels of government as a ‘strategic scale’ which has led to more progressive policies (Russel, 2019). This includes, more recently, ideas of ‘entrepreneurial municipalism’ where progressive public procurement policies are geared to wider societal goals (Thompson *et al.*, 2020). Thus, it might be the case that the regulator-buyer role in exercising instruments of power for SRPP is stronger at lower scales of government – a hypothesis which ultimately impinges on whether progressive political parties are in power – which helps explain our previous examples of the regions of Stockholm, Bremen, and Berlin.

## Conclusion

We know relatively little about how governments can drive improvements to working conditions, as labour governance actors, in GPNs. This is because of the greater focus on private labour governance measures in GPNs. This paper brings a focus back to the state through a unique governance instrument – SRPP in the EU – which provides opportunities for EU member states governments to improve working conditions in GPNs. This adds to the growing literature on labour governance in GPNs more broadly, and to the role of the state in this regard more specifically.

We have presented a conceptualization of the various instruments of power which comprise the hybrid regulator-buyer state in the exercise of SRPP as a labour governance tool for improving working conditions in GPNs. We conclude that in order for a strong approach for SRPP, both regulator and buyer elements of power must be strong as they depend on each other and cannot be traded off. In our two EU member state examples, Sweden and Germany, we have discussed the opportunities and challenges which exists across the various facets of regulator-buyer state powers. In the end, a conclusion of whether there can be an efficacious regulator-buyer state to improve working conditions in GPNs through SRPP will require analysis at the specific levels of government and specific products purchased. We have presented a preliminary discussion of such an analysis by briefly considering a few GPN products. More research and work in this regard will be needed to operationalise and test the efficacy of the regulator-buyer state and especially with regards to how it functions within particular types of GPNs, which are shaped by their own network of actors and (geo-)politics.

It is also important to note, as we are in the midst of the Covid-19 pandemic, that future research could extend this conceptualization into a ‘post-Covid-19’ environment characterised by a rise in geo-political and geo-economic competition and tensions which

are reflected in more protective EU and national policies. This could provide an opportunity for the exercise of SRPP even though social criteria may primarily be used for protective reasons. Similarly, it remains to be investigated to what extent the changes and increased flexibilization in procurement rules during the current Covid-19 pandemic become institutionalised and thereby impact state powers for promoting SRPP or alternative policy agendas, including those that run counter to the completion of the single market.

Indeed, the aims of the paper are to contribute to improving understanding on the role of the state as a labour governance actor in GPNs serving the public market; the complexity of state power in this regard; and the differences in the limits and opportunities of the regulator-buyer state for SRPP at different levels of government within EU member states. The understanding of how state powers work together for SRPP can help assess the opportunities and challenges governments may face for improving working conditions in GPNs.

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