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## **SUSTAINABLE PUBLIC PROCUREMENT: ISSUES OF LEGISLATIVE SUPPORT IN THE REPUBLIC OF KAZAKHSTAN**

**Abstract.** The article provides an overview of the legal basis for procurement for public needs or the functioning of "sustainable public procurement" in the country, taking into account economic, environmental and social aspects".

"Sustainable public procurement" is not only a new trend, but also an urgent need for our state.

In order to review the country's legislation regulating the sphere of public procurement from the point of view of the use of the principles of permanent public procurement, to assess its practical application, as well as to study the possibilities of legislative support of the concept of permanent public procurement in general, the group of authors of the article have analysed the current legislation and made forecasts related to the development of these institutions in the country, taking into account the adopted new draft law. The ways of legislative support necessary for its full-fledged launch are discussed. The successful practices of foreign countries have been thoroughly assessed and evaluated.

Considering that sustainable public procurement is an important means of ensuring environmental security, solving economic and social problems, the authors of the article conclude that its widespread use in the country is an important necessity. However, for this, in the opinion of the authors, it is necessary to approve the specific legislation of the requirements and conditions necessary to take these aspects into account when conducting public procurement. It is of utmost importance that the regulations and other documents adopted within the framework of the draft law are sufficient for the practical application of these aspects of sustainable procurement.

The authors of the article conclude that, given the fact that sustainable public procurement is an important tool for ensuring environmental safety, solving economic and social problems, the wide application of it in the country is a significant necessity. However, for this purpose, according to the authors, a clear legal procedure of requirements and conditions necessary to consider these aspects in public procurement should be approved. It is crucial that the provisions and accompanying documents enacted under the main law are adequate to effectively implement the specified aspects of sustainable public procurement in practice.

**Keywords:** sustainable public procurement, public procurement, green economy, ecology, economic aspect, social aspect.

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## **ТҰРАҚТЫ МЕМЛЕКЕТТІК САТЫП АЛУЛАР: ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДА ЗАҢНАМАЛЫҚ ҚАМТАМАСЫЗ ЕТУДІҢ СҰРАҚТАРЫ**

**Аннотация.** Мақалада экономикалық, экологиялық және әлеуметтік аспектілерді ескере отырып мемлекеттік қажеттіліктер үшін сатып алуды жүзеге асырудың немесе «тұрақты мемлекеттік сатып алудың» елімізде жұмыс істеуінің құқықтық негіздеріне шолу жасалынған.

«Тұрақты мемлекеттік сатып алу» - бұл жаңа тренд ғана емес, сонымен қатар біздің мемлекетіміз үшін аса қажеттілік болып табылады.

Мемлекеттік сатып алу саласын реттейтін еліміздің заңнамасына тұрақты мемлекеттік сатып алу қағидаттарын пайдалану тұрғысынан шолу жасау арқылы оның іс жүзінде қолданылуына баға беру, сонымен қатар жалпы тұрақты мемлекеттік сатып алу концепциясын заңнамалық қамтамасыз ету мүмкіндіктерін зерттеу мақсатында мақала авторлар тобымен қолданыстағы заңнамаға талдау жүргізілген және қабылданған жаңа заң жобасын ескере отырып аталған институттардың елімізде дамуына байланысты болжамдар жасалынған. Оның толыққанды іске қосылуы үшін қажет заңнамалық қамтамасыз ету жолдары талқыланды. Шет елдердегі сәтті тәжірибелер қарастырылады.

Мақала авторлары тұрақты мемлекеттік сатып алулар экологиялық қауіпсіздікті қамтамасыз етудің, экономикалық және әлеуметтік мәселелерді шешудің маңызды құралы болып табылатындығын ескере келе елімізде оны кеңінен қолдану маңызды қажеттілік деген түйінге келеді. Алайда, ол үшін, авторлардың пікірінше мемлекеттік сатып алуды жүзеге асыру кезінде аталған аспектілерді ескеру үшін қажет талаптар мен шарттардың

нақты құқықтық тәртібі бекітілуі қажет. Қабылданған негізгі заңның аясында қабылданатын ережелер мен өзге де құжаттардың аталған тұрақты сатып алу аспектілерін тәжірибеде қолдануға жеткілікті болуы аса маңызды.

**Түйін сөздер:** тұрақты мемлекеттік сатып алулар, мемлекеттік сатып алулар, жасыл экономика, экология, экономикалық аспекті, әлеуметтік аспекті.

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## **УСТОЙЧИВЫЕ ГОСУДАРСТВЕННЫЕ ЗАКУПКИ: ВОПРОСЫ ЗАКОНОДАТЕЛЬНОГО ОБЕСПЕЧЕНИЯ В РЕСПУБЛИКЕ КАЗАХСТАН**

**Аннотация.** В статье представлен обзор правовых основ осуществления закупок для государственных нужд с учетом экономических, экологических и социальных аспектов или функционирования в стране «устойчивых государственных закупок».

«Устойчивые государственные закупки» – это не только новый тренд но и назревшая необходимость, в которой остро нуждается наше государство.

Данный механизм и его правовое регулирование не имеет в действующем законодательстве своего определения и какой либо дефиниции, в связи с чем авторами статьи поднимаются вопросы его внедрения, в том числе с точки зрения использования принципов устойчивых государственных закупок, оценки их практического применения, а также изучения возможностей законодательного обеспечения концепции устойчивых государственных закупок в целом.

Группой авторов проведен анализ действующего законодательства и сделаны прогнозы, связанные с развитием данных институтов в стране с учетом принятия нового закона. Рассмотрены пути законодательного обеспечения, необходимые для его полноценного запуска. Рассматривается успешный опыт и практика в зарубежных странах.

Авторы статьи отмечают, что, учитывая, что устойчивые государственные закупки являются важным инструментом обеспечения экологической безопасности, решения экономических и социальных проблем, широкое его использование в Республике Казахстан является важной необходимостью. Однако для этого, по мнению авторов, должен быть утвержден четкий правовой порядок требований и условий, необходимых для учета указанных аспектов при осуществлении государственных закупок. Крайне важно, чтобы положения и иные документы, принимаемые в рамках основного закона, были достаточными и реализуемыми для применения на практике указанных аспектов устойчивых закупок.

**Ключевые слова:** устойчивые государственные закупки, государственные закупки, зеленая экономика, экология, экономический аспект, социальный аспект.

### **Introduction**

The government is the largest customer in its own country, as public procurement accounts for around 15% of GDP in OECD countries and 30% of GDP in developing countries

(<https://www.oneplanetnetwork.org/sites/default/files/51.pdf>). This purchasing power undoubtedly presents a significant opportunity to stimulate public procurement plans for sustainable production and sustainable consumption. By facilitating the creation of new markets for sustainable products and services, helping to increase demand and promote sustainable development, the government can set an example to others through its purchases.

Many countries in the world have incorporated the principles of sustainable

public procurement into their legislation, and along with the central government, local self-government bodies are taking measures accordingly. At the same time, international management organizations such as the United Nations and the Organization for Economic Co-operation and Development are also making a significant contribution to the development of this area.

Sustainable public procurement in Kazakhstan is at the primary level and the legislation covers only certain principles of sustainability. At the same time, the most important for the government of the Republic of Kazakhstan is the economic aspect of procurement. Public authorities do not take into account all the factors in the entire purchasing cycle. In determining criteria in

practice, public purchasers do not consider aspects of sustainable public procurement.

Legislation regulating public procurement in the country has changed, this year a new law "On public procurement" was adopted. Its entry into force is expected from 1 January 2025

([https://online.zakon.kz/Document/?doc\\_id=33291580&pos=3;-108#pos=3;-108](https://online.zakon.kz/Document/?doc_id=33291580&pos=3;-108#pos=3;-108)). It is planned to introduce new requirements for procurement in the procurement of state bodies and quasi-state companies, taking into account the principles of sustainable public procurement. Therefore, work in this direction will not stop, we understand that the improvement of the relevant legislation will continue. The relevance of the research topic lies in the continuation of efforts to improve the legislation governing this type of procurement. In general, the intensive reform of public procurement activities in recent years is increasing scientific interest in research in this direction (Ibragimova 2022(a), Ibragimova 2023(b), Ibragimova 2023(c)).

Despite the good intentions of the law to "change direction" in the field of public procurement, several issues remain unclear about how legislative changes will be implemented in practice. When several factors are identified as drivers of sustainable procurement, the organisational aspect in practice seems to be an extraordinary barrier to sustainable public procurement. Thus, we believe that knowledge about questions of implementation of sustainable public procurement in practice is still insufficient.

The purpose of the scientific article is to assess the practical application of the legislation of the country regulating the field of public procurement in terms of application of the principles of sustainable public procurement, as well as to analyse the possibilities of legislative support of the concept of sustainable public procurement in general.

### **Materials and Research Methods**

The materials for the preparation of the article were the legislative framework regulating public procurement activities in the Republic of Kazakhstan, the new law "On Public Procurement", the legislative bases of sustainable public procurement abroad,

national legislation, research and statistical data.

During the study, the analytical method of statistical data and scientific data sources was used. In addition to theoretical studies, the article made predictions for the practical implementation of the studied object using modelling, comparison and forecasting methods.

### **Discussion**

The public procurement system is a key, fundamental component of strategic management and service delivery in the public sector. A carefully thought-out system of public procurement can contribute to the implementation of topical areas such as environmental protection, support for innovation, creation of new jobs, as well as development of small and medium-sized enterprises.

Most scholars studying the issues of public procurement draw attention to the important role of public procurement in the development of the domestic economy and the implementation of state economic policy (Hamitov 2021: 98). A. A. Romanov emphasizes the important role of public procurement in the public life of Kazakhstan (Romanov 2015: 33-34).

As for the current legislation, there is no clear concept of sustainable public procurement in the country today. The legal concept of "sustainable procurement" is not defined, whether it is the law "On Public Procurement" or other regulatory acts regulating the industry.

However, article 4 of the Law "On Public Procurement" establishes the principle of procurement of innovative and high-tech goods, works, services as one of the principles of public procurement (<https://adilet.zan.kz/kaz/docs/Z1500000434>). In addition, when conducting competitions for organisers, when determining the participant providing the best quality of goods, work, services, the potential supplier is obliged to comply with the criteria affecting the tender offer, including the existence of a certified quality management system in accordance with the requirements of national standards and confirmation of the product's compliance with the environmental protection standard in

accordance with the Law of the Republic of Kazakhstan "On Technical Regulation" dated 30 December 2020 (<https://adilet.zan.kz/kaz/docs/Z2000000396>). To date, through these requirements, it is planned to implement the country's policy in the field of real public procurement and support the innovative development of the state economy.

Moreover, the procedure for taking into account the life-cycle cost of goods purchased in the implementation of public procurement, which is one of the elements of the economic aspect, is also provided for by the current law. For example, paragraph 1 of the article 31-3 of the Law "On Public Procurement" provides that public procurement is carried out according to the list of goods, works, services approved by the authorised body using the tender method used to calculate the life-cycle cost of goods, works, services (<https://adilet.zan.kz/kaz/docs/Z1500000434>). Accordingly, the order of the Deputy Prime Minister - Minister of Finance of the Republic of Kazakhstan dated 28 November 2022 "On Approval of the List of Goods, Works, Services for Which Public Procurement is Carried Out by Means of a Competitive Method Using Calculations of the Life-Cycle Cost of Purchased Goods, Works, Services" was issued, where the list of goods was approved (<https://adilet.zan.kz/kaz/docs/V2200030855>).

However, the number of goods on the list approved in that order is too small.

In any case, it is difficult to say that, even if the above requirements are met in practice, it encourages the purchase of goods and services that meet the sustainable public procurement aspects. In the case of public procurement, preferences are not given for such goods, works, services, and if the purchaser is obliged to choose a lower price, the choice is limited.

Changes in circumstances may be complicated by the entry into force of the new Public Procurement Law ([https://online.zakon.kz/Document/?doc\\_id=33291580&pos=3;-108#pos=3;-108](https://online.zakon.kz/Document/?doc_id=33291580&pos=3;-108#pos=3;-108)).

In his next message to the nation in September 2023, the Head of State Kassym-Jomart Tokayev noted that a completely new

system of public procurement will be created. Pursuant to the Head of State, the focus will now be not only on low prices, but also on the quality of goods and services. Government and quasi-public procurement will move to a single platform. To achieve all this, a new law "On Public Procurement" was required (<https://www.akorda.kz/kz/memleket-basshysy-kasym-zhomart-tokaevty-n-kazakstan-halkyna-zholdauy-181416>).

In order to fulfill the instructions of the President, a new law has been prepared and has been the subject of intense parliamentary debate (<https://www.parlam.kz/ru/mazhilis/news-details/id50719/1/1>). The adopted law only establishes general principles for the public procurement industry. In addition, it will be necessary to develop separate rules to regulate each direction (<https://legalacts.egov.kz/npa/view?id=14606808>).

The purpose of the draft law is to further improve legislation in the field of public procurement. The priority is determined by the quality of goods and services purchased, as well as the transfer of purchases of state and quasi-state organisations to a single platform. In order to improve the quality of purchased goods, works and services, it is recommended to develop non-price criteria through extensive use of these information systems of state bodies.

To improve the skills of purchasers, it is recommended to carry out purchases among potential suppliers included in the relevant rating. Ratings will be generated using a variety of data such as financial statements, credit history, reliability, reputation, court history, and more. This should allow a transition to automatic selection of suppliers by combining price and quality criteria across all types of purchases.

One of the most important conditions for improving the quality of the purchase is proper control of the execution of the contract by the customer. In this regard, it is recommended to include, in particular, schedules for the execution of works related to construction, the publication of reports on the fulfillment of conditions, which may also be in the form of photos and videos, as well as the use of public monitoring tools, such as public consultations.

It is proposed to revise the role of a single organiser of public procurement at the republican level and to independently carry out centralised procurement at the level of a state body to central government bodies. This approach, in the opinion of the project authors, should allow for an expeditious procurement procedure and contribute to the timely development of budget funds.

Also, in our opinion, one of the most important innovations being introduced in the new draft law is the introduction of the concept of "sustainable public procurement" based on the purchase of goods, works and services, taking into account economic, environmental and social aspects. The need for such changes has often been discussed in our country in recent years (Baltabaev 2021., <https://www.oecd-ilibrary.org/sites/19e56f25-en/index.html?itemId=/content/component/19e56f25-en>).

According to experts, the introduction of elements of "sustainable development" into the new system of public procurement will have a multiplier effect on the economy, contribute to the support of domestic producers of goods, as well as contribute to the solution of important social problems. Given that in our country, a significant part of the budget is spent on this public procurement every year, and this is not a small amount. Public procurement in the Republic is on average from 13% to 20% of gross domestic product, which, according to experts, can significantly contribute to the improvement of environmental and social conditions along with the country's economy (<https://inbusiness.kz/ru/last/ustojchivye-zakupki-mogut-rasshirit-vnedrenie-zelenyh-tehnologij-v-rk>).

In addition, these legislative innovations should contribute to the achievement of the goals set out in the Concept of the Republic of Kazakhstan on the transition to a green economy (<https://adilet.zan.kz/kaz/docs/U1300000577>). According to experts, a decisive factor in the transition to a "green economy" is a comprehensive state environmental policy. At the same time, the main condition for the development of the "green economy" is the state support of production from renewable energy sources, high-quality regulatory

regulation of procedures ensuring the modernisation of industrial production to reduce environmental pollution and improve energy efficiency in the fields of housing and utilities, transport infrastructure (Duisenov 2020: 81).

Another consideration is that the successful implementation of sustainable public procurement is also directly related to the eco-labelling system in our country. When applying sustainable public procurement aspects, there is an increased need to determine the environmental safety of goods, works and services needed for public procurement. The pressing issue is around this eco-labeling, which legislative recognition and encouragement has become an even more difficult task for our country. We believe that the presence of eco-labelling is an indispensable element for the reform of public procurement in this direction. However, there are too many problems with eco-labelling in the country, and it is difficult to classify all goods bearing such a label as "green" products (<https://igtipc.org/kk/news-res/297-20190614-115351>).

Despite the adoption of the Law "On the Production of Organic Products" (<https://adilet.zan.kz/kaz/docs/Z1500000423>) in 2015, the situation with the "eco" or "organic" labeling of certain goods in Kazakhstan is unclear. For example, neither the Government, nor manufacturers, nor purchasers are able to distinguish between the specific concepts of this label and their differences, so there is still no clear understanding as to which products should be recognised as organic and which deserve the right to be labelled as environmentally friendly.

In its strategy, the European Commission highlights the importance and role of sustainable public procurement for the EU as a whole. The current Purchase Directive 2014/24/EU emphasizes such a route (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>). The Directive explains that public contractors can contribute to environmental protection and sustainable development while maintaining price and quality consistency. The current public procurement strategy focuses

more on using public procurement to achieve the Sustainable Development Goals (Halonen 2021).

Thus, the requirement to promote sustainable development and environmental protection is enshrined in the EU treaties. As Sophie and Wisbruck pointed out, the main idea should not be to balance economic efficiency with environmental or social goals, or to choose between them, but rather to develop measures where these different goals can coexist (Sjåfjell 2016: 3-4). However, maintaining balance between opposing goals is not always easy. On the other hand, Kingston believes that in the current policy of the European Union there are signs that economic aspects take precedence over environmental objectives (Kingston 2015).

The exchange of best practices within the framework of the Union's comprehensive strategy and overall structure has proven to be an important and necessary measure for the results of the implementation of sustainable public procurement by the European Union. Member states have been trying to eliminate differences in national laws at different stages of public procurement regulation. This is particularly evident when defining the procedures and criteria for sustainable public procurement (Mélou 2020).

In summary, the legislative framework for the application of sustainable public procurement in the Member States of the European Union has been sufficiently developed. Regulations approving criteria affecting the tender offer, including confirmation of compliance with the environmental cleanliness standard, have been adopted and are constantly being improved. Member States shall endeavour to apply all three aspects of sustainable public procurement. To date, environmental aspects seem relevant, but there are enough norms in the states to guide the application of economic and social aspects. As a result, the Union member states were able to save money through public procurement, support small and medium-sized enterprises, recycle waste and use resources more efficiently, and reduce damage to the environment as a whole. According to these indicators, these countries are at the forefront of the world.

## **Results**

Regular public procurement in Kazakhstan is at the primary level and the legislation only covers certain principles of sustainability. At the same time, the most important for the Government of the Republic of Kazakhstan is the economic aspect of procurement. Public authorities do not take into account all the factors in the entire purchasing cycle. In determining criteria in practice, public purchasers do not consider aspects of sustainable public procurement.

There is no legal concept of "sustainable procurement" in the legislation of Kazakhstan, the law does not encourage the purchase of environmental products. And neither state bodies nor quasi-state companies have their own sustainable procurement strategies.

Changes in legislation are required not only in the area of public procurement, but also in the development of eco-labelling, standardisation and control systems.

A review of foreign legislation shows that "sustainable public procurement" requirements in regulatory acts at the international and national levels direct the public sector to purchasing products and services that take into account the state of the environment and social actors, assisting to stimulate the global production of sustainable products and services. Over the past 20 years, many states have introduced the principles of "sustainable public procurement" into their legislation, and along with the central government, local self-government bodies are taking measures accordingly. At the same time, international management organisations such as the United Nations and the Organization for Economic Co-operation and Development are also making a significant contribution to the development of this area (Behravesh 2022: 11-12).

The best practices for the legislative support of sustainable public procurement belong to the Member States of the European Union. In its strategic documents, the Union recognises the important role of sustainable public procurement. The current Purchase Directive 2014/24/EU emphasises such a direction. In the United States, the necessary legislative framework for the application of sustainable public procurement has been

sufficiently developed. Regulations approving criteria affecting the tender offer, including confirmation of compliance with the environmental cleanliness standard, have been adopted and are constantly being improved. States shall endeavour to apply all three aspects of sustainable public procurement.

### **Conclusion**

As the results of the analysis of existing legislation demonstrate, an integrated approach to the introduction and implementation of lawful sustainable public procurement in the country has not been implemented, and the legislation covers only certain components of sustainable public procurement. This includes a wide range of economic-oriented tools (competition, fairness of choice, support for domestic producers, transparency of processes, etc.) and coverage of specific social issues (support for socially significant suppliers).

Practice shows that the introduction of sustainable public procurement elements is carried out not only economically, but also through the implementation of procurement taking into account environmental and social aspects. We would like to emphasise that it is an important tool for ensuring environmental safety, solving ecological and social problems. However, for this, it is necessary to approve the specific legal procedure of sustainable procurement requirements and conditions during the implementation of public procurement. We appreciate that the new legislation adopted and the changes that need to be made in general, as well as the measures taken to improve legislation, are a significant step towards introducing sustainable public procurement in the country. The main and, in our opinion, the most important thing is that the rules and regulations adopted within the framework of the main law should be sufficient to apply these aspects of sustainable procurement in practice.

That is, taking into account the complexity of the existing legal framework and the novelty of the approach to public procurement as a strategic means of achieving sustainable production and consumption, a clear and unambiguous legislative approach is needed, explaining the obligations of public purchasers to take into account sustainability issues in

their practices, economic, environmental and social aspects of procurement activities.

In this regard, we recommend the following measures necessary to improve the legislation governing the industry:

1) It is also necessary to establish the principle of "sustainable procurement" by introducing the concept of "sustainable procurement" in the Law "On Public Procurement". This will allow procurement organisers to indicate in the tender documentation additional "sustainable procurement" requirements for the goods, works and services to be delivered.

2) The state must transform the implementation of environmental legislation into an ethical norm and culture of any strategic, regulatory and economic activity. At the same time, the public should definitely be involved in discussing the environmental review and environmental impact assessment process.

3) It is necessary to establish rules on "green" environmental criteria for goods, works and services and to clarify the preferences insofar as they comply with such requirements, such as:

- conditional benefits for persons performing such goods, works and services;
- priority in determining the winner;
- the conclusion of a long-term contract or offshore agreement.

4) It is necessary to improve the legislative and regulatory framework in the field of eco-labelling and environmental standards, as well as to increase the level of knowledge on eco-labelling.

5) It is necessary to consider the possibility of establishing the existence of a certificate confirming the production of goods in the territory of the Republic of Kazakhstan as an advantage when submitting tender documentation.

6) Approval of participation in public procurement of certain categories of potential suppliers in the Law: public associations and organisations of persons with disabilities. The legislation provides for the first purchase of a certain list of goods, works and services from these organisations.

In summary, it is clear that sustainable public procurement can only be fully

implemented if there is an appropriate legal framework. The best practice of legislative support for sustainable public procurement in the Member States of the European Union shows that only the adoption of a set of systematic measures in the formulation of

legislation in this direction will lead to positive results. If sustainable public procurement can start with the regulation of specific environmental and social policy issues, it will gradually become a normal phenomenon and will begin to be implemented on a sustainable basis.

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