

The Climate Show – Episode 39

Transcript

00:00:04 Linnéa Nordlander

Hi, and welcome to the Climate Show, a podcast that explores the law and politics of climate change. This podcast is brought to you by the University of Copenhagen.

00:00:16 Beatriz Martinez Romera

Hi, we are Beatriz Martinez,

00:00:18 Linnéa Nordlander

And Linnéa Nordlander.

00:00:19 Beatriz Martinez Romera

And we are your host at the Climate Show.

00:00:25 Beatriz Martinez Romera

Welcome to the Climate Show. This episode explores the connection between public procurement law and climate change, and how public procurement law has the potential to slow down or accelerate the green transition.

00:00:34 Linnéa Nordlander

When public authorities buy goods like infrastructure, transport or food, they're not only spending public money, but they're also shaping markets. And these purchases can drive the transition by choosing low-carbon solutions and pushing for climate ambition.

00:00:48 Beatriz Martinez Romera

To help us unpack this, we are talking to our colleague, Professor Carina Risvig Hamer from the Center for Climate Change Law and Governance at the Faculty of Law of the University of Copenhagen, who is an expert on public procurement law.

00:01:07 Beatriz Martinez Romera

Carina, welcome to the Climate Show. It is a great pleasure to have you here with us. And today we are discussing a topic that is central to the climate transition, but it often remains in the background. And this is public procurement law.

00:01:20 Carina Risvig Hamer

Absolutely. Thank you for having me on the best show in town. I'm looking very much forward to this. I've been waiting for this for so long.

00:01:29 Beatriz Martinez Romera

We too.

00:01:30 Beatriz Martinez Romera

To begin with and to put it very simply, when we say public procurement law, what are we talking about? How large is the public sector as a buyer and why does purchasing power matter for the green transition.

00:01:42 Carina Risvig Hamer

Well, public procurement is about purchasing office equipment, creating buildings, hospitals for the whole public sector. And it's a lot of money. Every year it's sort of like estimated that 2 trillion EUR is spent on public procurement across EU. And this is 14% of the GDP.

00:02:07 Carina Risvig Hamer

So, there's a huge amount of money involved in what the public sector is actually buying. And in Denmark alone, and almost 250,000 different contracting authorities are

purchasing something every year across EU. It has a huge potential to incorporate something that has green elements involved.

00:02:31 Beatriz Martinez Romera

Okay, so public procurement is not just an administrative routine, but it can be used as a governance tool with real significance for climate change. From your perspective, what can procurement actually do for climate mitigation and in the broader context of sustainability transition?

00:02:49 Carina Risvig Hamer

It can do a lot of different things. First of all, it can reduce actually buying different things. There's a lot of influence on what the public sector is actually buying if they get green products. But it can also sort of be used in the sense that by pushing what the public sector buys and what the public sector requires from undertakings in terms of green elements, this can also be used to sort of like make these requirements more general in the sector and more recognized.

00:03:23 Carina Risvig Hamer

And it can be used to create competition among undertakings in the sense that you sort of compete for being more green and being encouraged to actually make transitions in your firm or do something about the products that you're supplying. So, it has a lot of impact in many aspects.

00:03:45 Carina Risvig Hamer

And as you're saying, public procurement often recognized as something that was a boring procedure, you have to do something, but it has different kind of steps along the way where you can think about not only how you're buying, but also what you're buying.

00:04:02 Beatriz Martinez Romera

And this takes us to the core legal question, I guess, which is how far the law allows public authorities to go. There is a perception that procurement, public procurement law is mostly about price and that greener choices are legally risky maybe. Is this still accurate?

00:04:21 Carina Risvig Hamer

In some aspects, it can be risky in terms of incorporating green requirements because there are some boundaries in public procurement about only setting requirements that must be linked to the contract, so what you're actually buying, and you cannot sort of like put general requirements on the undertakings that you're purchasing different things from. It has some kind of legal risk, but I think it's a misunderstanding that only when you're, that if you're competing for lowest price, that you don't have anything that is green involved.

00:04:59 Carina Risvig Hamer

Because you can have pretty high green standards in your technical specification or the requirements that you place on the products that you're buying, and then you can compete for lowest price. So, it depends a lot on how you structure your procurement, that it makes actually good sense to do lowest price in many aspects.

00:05:21 Carina Risvig Hamer

It can sometimes even be easier to incorporate green elements because it can be easier to just compete for one thing and then have really high requirements for the things that you are purchasing. So, it depends a little bit on how you look at it.

00:05:38 Beatriz Martinez Romera

If we turn to Denmark, how would you describe the current landscape? Are Danish authorities using public procurement in an effective way to support climate objectives Do you see especially interesting Danish examples or sectors?

00:05:52 Carina Risvig Hamer

I think first of all, from a Danish perspective, we don't have any national rules that says that you have to buy green. There are no requirements to add percentages on your award criteria or any requirements on what you're purchasing and that has to be green elements. So, it very much comes down to the individual contracting authority and the politics that they have maybe in a municipality, whether they want to incorporate the green criteria.

00:06:27 Carina Risvig Hamer

I think the landscape have been going very slowly in a direction of more green, but I think maybe not as fast as you could have expected it to. There was a strategy some years ago and it launched a different initiative, and it was also put into the Danish Public Procurement Act that maybe at a later stage the minister could have rules on requirements related to what you're buying or placing green award criteria in the sense. And we haven't had any of that. And there has not been a new strategy since I think 2020. And in that sense, it's more about what the different contracting authorities individually are doing.

00:07:18 Carina Risvig Hamer

And some is doing a lot but also there are also many contracting authorities who don't have the manpower to include green elements, who maybe don't have the knowledge on what to actually do and there's a lot of tools that might be missing in these aspects.

00:07:41 Carina Risvig Hamer

So it's going slowly and I think there are in many ways that this agenda could probably be pushed a little bit from a political level if you need it to be, if you have the wish to make it even more because at the moment there are a lot of other concerns in public procurement that has also been trying to be incorporated like security issues and we see concerns about having buses from China and all sorts of other elements and maybe climate issues is not the highest thing for many contracting authorities?

00:08:23 Beatriz Martinez Romera

And looking ahead, the EU is currently reviewing the EU procurement directive, and I think it's expected for around the summer to have a proposal, a draft for the proposal. What will this review mean for climate change in your opinion?

00:08:42 Carina Risvig Hamer

That's a good question. It obviously depends on what the review will be about. So, we are waiting very hopefully to see what will be in it. I think it's on the agenda to have something at EU level that pushes for a more green and public procurement.

00:09:01 Carina Risvig Hamer

And we've seen the last few years that there has been a lot of sectoral legislation. There are many different directives, regulations that influences public procurement and also have specific requirements to put into the contracts in procurement. And this sort of like sector legislation is full of a lot of examples on what you can do. But there is still no sort of like requirements in the procurement directives to actually do something. So, no requirements that you have to do it in that sense.

00:09:39 Carina Risvig Hamer

And I think it will be very interesting to see if it will be in the Commission's proposal to have some kind of mandatory elements on green targets, perhaps, or maybe even elements that a certain percentage of the award criteria and what you're competing for must be green elements.

00:10:03 Carina Risvig Hamer

It is also sort of like a little bit, I think, a dangerous step to take in many aspects because it is very difficult to have the sort of like same requirements for the same, for different kind of purchases. What you're doing on specific products might not be the same that you want to do in the construction sector and therefore this maybe belongs even better in this sector legislation.

00:10:35 Carina Risvig Hamer

So, we're waiting for this. We might also see something in relation to eco labels that has been introduced in the last version of the directive but is a little bit difficult to use in practice. That might also be something that could be easier, so a more simplification in that aspect. And then we have this requirement in public procurement that everything we are buying must be linked to the subject matter. And it's also a little bit, it'll be interesting to see if this requirement is lifted.

00:11:13 Carina Risvig Hamer

And it will also be, I think, a little bit dangerous if it's lifted because then maybe you end up with something that is too broad, that is too far away from what you're actually buying and maybe doesn't involve the tables and chairs that you're purchasing but goes too far into the undertaking that you're purchasing from and maybe their supply chains

and it doesn't have anything to do with what they actually end up supplying to the contracting authority.

00:11:44 Carina Risvig Hamer

I don't know exactly what to expect and I don't know exactly what I'm hoping for, but I'm looking very much forward to see a proposal and even more to see what the results after negotiations in the council will be. And we know for sure that the Parliament wants to push a more green agenda. It can also be a tricky part or maybe an important part for the whole greener public procurement when it comes to that.

00:12:20 Beatriz Martinez Romera

So, a fascinating time to be looking into these matters.

00:12:24 Carina Risvig Hamer

It's an interesting time to be working with the public procurement at the moment.

00:12:30 Beatriz Martinez Romera

Before we wrap up, is there anything else that you would like to raise? I don't know, maybe if there were one or two things that you would like to see changing in the legal framework, either at the EU or at the Danish level, what would make the biggest difference?

00:12:44 Carina Risvig Hamer

That's a good question. I think making it a bit more easy to use, the eco-label would be an interesting place. So, you could somehow maybe require more products that has this, at least as a documentation. And I think that could be one element.

00:13:08 Carina Risvig Hamer

I'm not necessarily there yet where I believe in mandatory requirements. I used to say for a long time that this should not be the case, but I'm becoming a bit more flexible maybe in this matter. And I think that is also because it is going so slowly and maybe some requirements in specific sectors could be relevant or maybe some kind of like a

target for big contracting authorities. I still think that it's difficult to say, put the specific requirements to different contracting authorities.

00:13:54 Carina Risvig Hamer

We have large contracting authorities that are professionals. They are used to doing public procurement. They are doing very well at the moment with incorporating green elements. And then we might have smaller municipalities that don't have the manpower, the knowledge and so on. And maybe it would be nice if you saw some kind of differentiation between also big and small in this aspect, also looking at the impact that the big buyers will have on the green agenda.

00:14:29 Carina Risvig Hamer

I don't know if that might not be so precise. It's more like a general thing in that aspect. And I think also it all comes down to political will. And had it been like two years ago, I would have said that I think that we would have a green public procurement director. But now I'm not so sure anymore.

00:14:51 Carina Risvig Hamer

There are a lot of other political agendas at the EU level that raises a lot of concerns highest obviously security issues and public procurement. Defence is also a big issue and then more recently it has also been the whole European agenda. So, trying to make European undertakings stronger in the competition from China and the US.

00:15:25 Carina Risvig Hamer

And I think in that aspect, the sustainability has some kind of like element, but it's not the main agenda. So maybe you could push sustainability into this agenda, but it will not be the main purpose of doing so we will have to wait and see and maybe do another podcast when we have a proposal there.

00:15:47 Beatriz Martinez Romera

Maybe do another podcast. But yeah, very clear that there are very different concerns right now. Carina, thank you so much for joining us today and thank you to our listeners.

00:15:58 Beatriz Martinez Romera

If you enjoyed this episode of the Climate Show, please stay tuned for more conversations on the intersection of law, governance and climate change.

00:16:05 Beatriz Martinez Romera

Thank you, Carina.

00:16:06 Carina Risvig Hamer

Thank you, Bea, for being here.

00:16:11 Linnéa Nordlander

Thank you for listening to this episode. If you would like to read more about Professor Carina Risvig Hamer's work and her project PROCUREGREEN, check out the information in the show notes. Stay tuned for our next episode.