



# Sustainable procurement – Climate change challenges

ProcureNet 2024 annual conference in Paris

*Roberto Caranta*

## **Why should procurement be about climate change?**

- Public Procurement accounts for approximately 14% of EU GDP. As such, it can be a valuable instrument to spur socially and environmentally responsible practices.
- Institutions should lead by example
- Ultimately, they will have to address the consequences of inaction

# 2040 towards 2050

- ❖ Circular business models reduce energy and resource consumption.
- ❖ The public sector, at all levels, should lead by example, including through green public procurement that considers sustainability criteria, and provide a blueprint to facilitate the transition.



Photo Courtesy of LEGO

Securing our future - Europe's 2040 climate target and path to climate neutrality by 2050 building a sustainable, just and prosperous society  
COM/2024/63 final

# Why should procurement about climate change? (2)

## What about externalities?



0  
1

## Social cost

Will future generations be able to enjoy an environment that, due to climate change, is collapsing?

0  
2

## Environmental costs

Will we be able to reverse the situation if we do not act in advance?

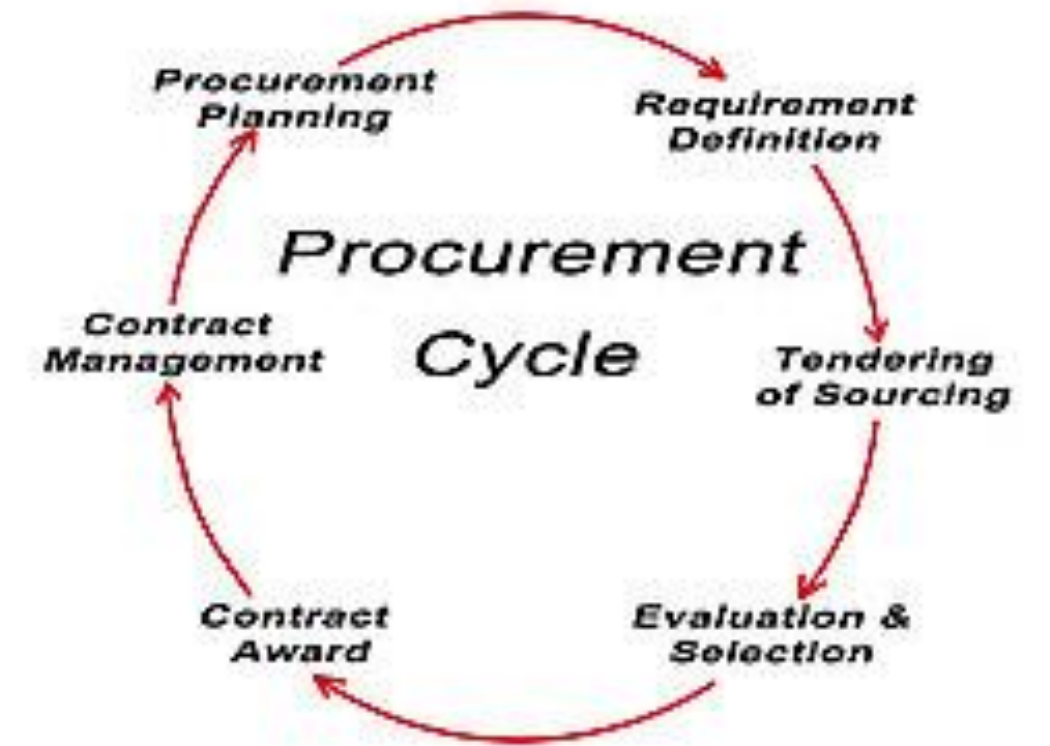
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3

## Standards costs

How much does inertia costs to us and public administrations?

# EU Law Focus(ed) On How to Buy

- Market opening instruments
- Coverage
- Tech specs/contract performance clauses
- Selection of the contractor/exclusion criteria
- Award procedures



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# 2014/Directives

- A general principle
- Exclusions/labels
- Contract design/tech specs/CPC
- Award: LCC and abnormally low

L2SM and life cycle

**empowering SPP (with hinderances) rather than mandating SPP**



# Clean Vehicles

- **NEW** Directive 2019/11/61 on clean vehicles
- Minimum MS specific targets
- reporting and review clause
- MSs have to meet at least half of the procurement target for clean buses through the procurement of zero-emission buses



# EUROPEAN GREEN DEAL

Climate change and environmental degradation are an existential threat to Europe and the world.

To overcome these challenges, the European Green Deal will transform the EU into a modern, resource-efficient and competitive economy, ensuring:

- no net emissions of greenhouse gases by 2050
- economic growth decoupled from resource use
- no person and no place left behind



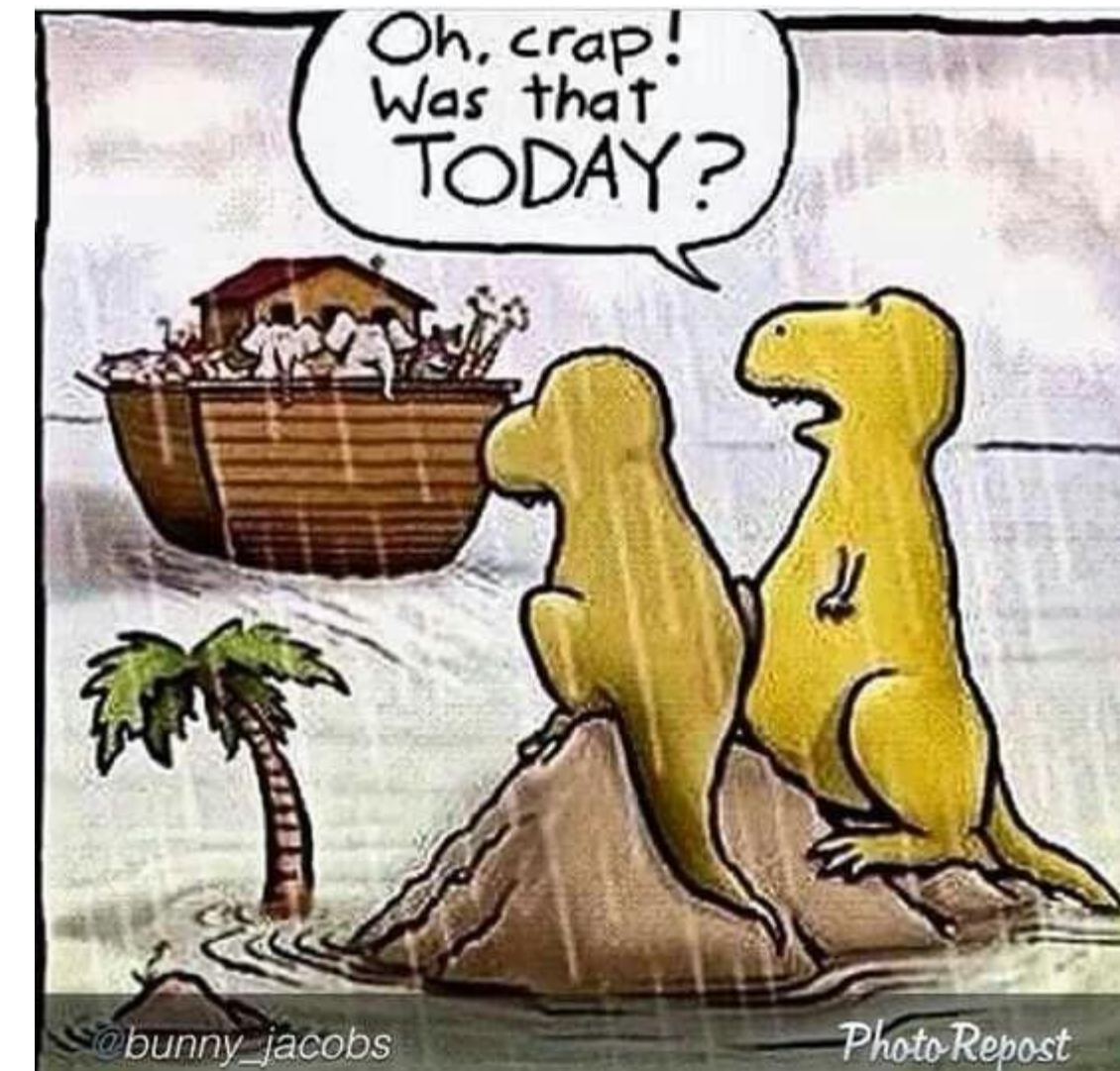
<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588580774040&uri=CELEX%3A52019DC0640>



# EUROPEAN GREEN DEAL

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# The European Green Deal

- Lot of emphasis on procurement
- More Guidance
- More mandatory criteria

[https://privpapers.ssrn.com/sol3/papers.cfm?abstract\\_id=3589168#references-widget](https://privpapers.ssrn.com/sol3/papers.cfm?abstract_id=3589168#references-widget)



# The Green Deal!

- Public authorities, including the EU institutions, should lead by example and ensure that their procurement is green. The Commission will propose **further legislation and guidance** on green public purchasing.
- COM(2019) 640 final



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# EED

## **Directive (EU) 2023/1791 on energy efficiency and amending Regulation (EU) 2023/955 (recast)**

- art. 5 - public bodies to achieve an annual energy consumption reduction of 1.9%
- Art. 6 - 3% of public buildings renovated each year to achieve nZEB
- Art. 7 CA/Es purchase only products, services buildings and works with high energy-efficiency performance in accordance with the requirements in Annex IV, unless it is not technically feasible



- **Regulation (EU) 2023/1115** on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation
  - **Art. 25(2)(d)** temporary exclusion for a maximum period of 12 months from public procurement processes and from access to public funding, including tendering procedures, grants and concessions
  - Commission to manage data base of final judgments
  - Self-cleaning arguably possible



# Batteries Regulation

Regulation (EU) 2023/1542 concerning batteries and waste batteries

- Art. 85(1) CA/Es shall “take account of the environmental impacts of those batteries over their life cycle with a view to ensuring that such impacts are kept to a minimum”.
- Art. 85(3) Commission establishes award criteria for procurement procedures for batteries, or products containing batteries, based on the sustainability requirements. CA/Es shall refer to those criteria



# RED III

- **Directive (EU) 2023/2413 - promotion of energy from renewable sources**
- reforms Art. 15(2) Dir. **2018/2001** “2. MSs shall clearly define any technical specifications which are to be met by renewable energy equipment and systems in order to benefit from support schemes and to be eligible under public procurement. ”
- new Art. 15a(4) MSs ensure that public buildings at national, regional and local level fulfil an exemplary role as regards the share of renewable energy used e.g. by providing for the roofs of public or mixed private-public buildings to be used by third parties for installations that produce energy from renewable sources



# Construction Products Regulation

- ❖ Commission to *“adopt delegated acts specifying mandatory minimum environmental sustainability requirements for construction products”*.
- ❖ mandatory minimum environmental sustainability requirements may, as appropriate to the product family or category concerned, may take the form of technical specifications, selection criteria, performance clauses or award criteria as defined under the procurement directives.





# Flexibility in the CPR

- ❖ CAs may set “more ambitious environmental sustainability requirements” or “additional environmental sustainability requirements”
- ❖ not apply the minimum mandatory requirements when (c) “its application or incorporation in construction works would oblige that contracting authority or contracting entity to have disproportionate costs, or would result in incompatibility or technical difficulties”. An estimated value difference above 10% may be presumed to be disproportionate if it is “based on objective and transparent data”.





# EPBD & the public sector

- 3% renovation rate (EED)
- Earlier date for zero emissions buildings (2028)
- Stronger and earlier pre-cabling obligations for e-cars  
(MSs shall ensure pre-cabling for at least one in two parking spaces by 1 January 2033)



# Driving industrial change

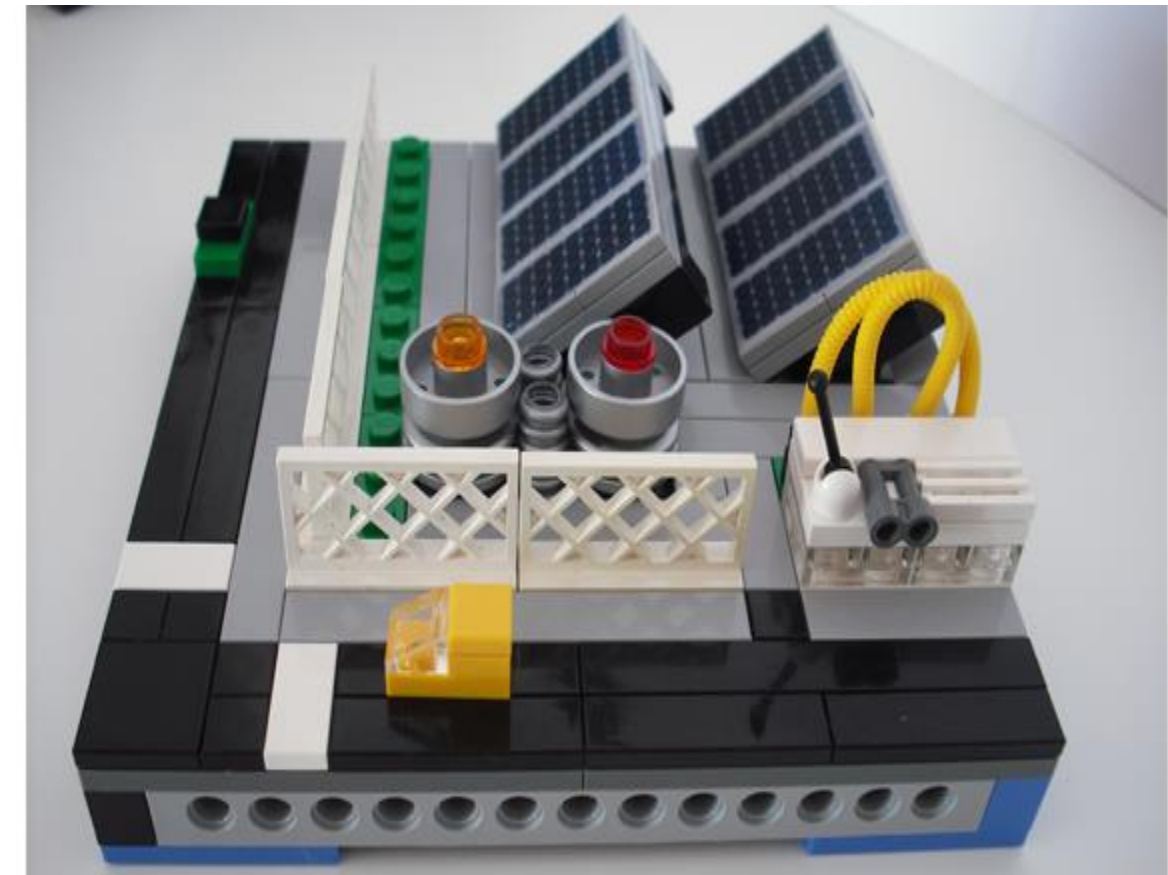
- ★ Green Deal must also be an industrial decarbonisation deal
- ★ an enabling framework for decarbonised industry should complement a strengthened EU industrial policy with:
  - resilient value chains
  - increased domestic manufacturing capacity in strategic sectors and
  - competitive sustainability fully incorporated in public procurement.



COM/2024/63 final

# NZIA

- ★ Green Deal Industrial Plan for the Net Zero Age (COM(2023) 62 final)
- ★ NZIA to incentivise purchase of net-zero technology products
- ★ eight technologies, and their components, ranging from solar photovoltaic and solar thermal technologies to grid technologies
- ★ Mandatory environmental and social sustainability contribution going beyond mandatory minimum requirement (min 30%, half each)



# NZIA - Resilience

- ★ resilience contribution will be applied if there is a third-country dependence of more than 50% for a specific strategic net-zero technology (or for its components) based on a list regularly updated by the Commission
- ★ no more than 50% of the financial value of net-zero technology part of the tender shall originate from third countries which are not signatories of the GPA
- ★ all equipment supplied under the net-zero technology part of the tender shall be certified in terms of cyber security insofar as a Union or national cyber security certification framework exists for the equipment” and
- ★ suppliers must not hail from countries having been the subject of to an IPI measure under Article 6 of Regulation 2022/1031/EU

# NZIA flexibility

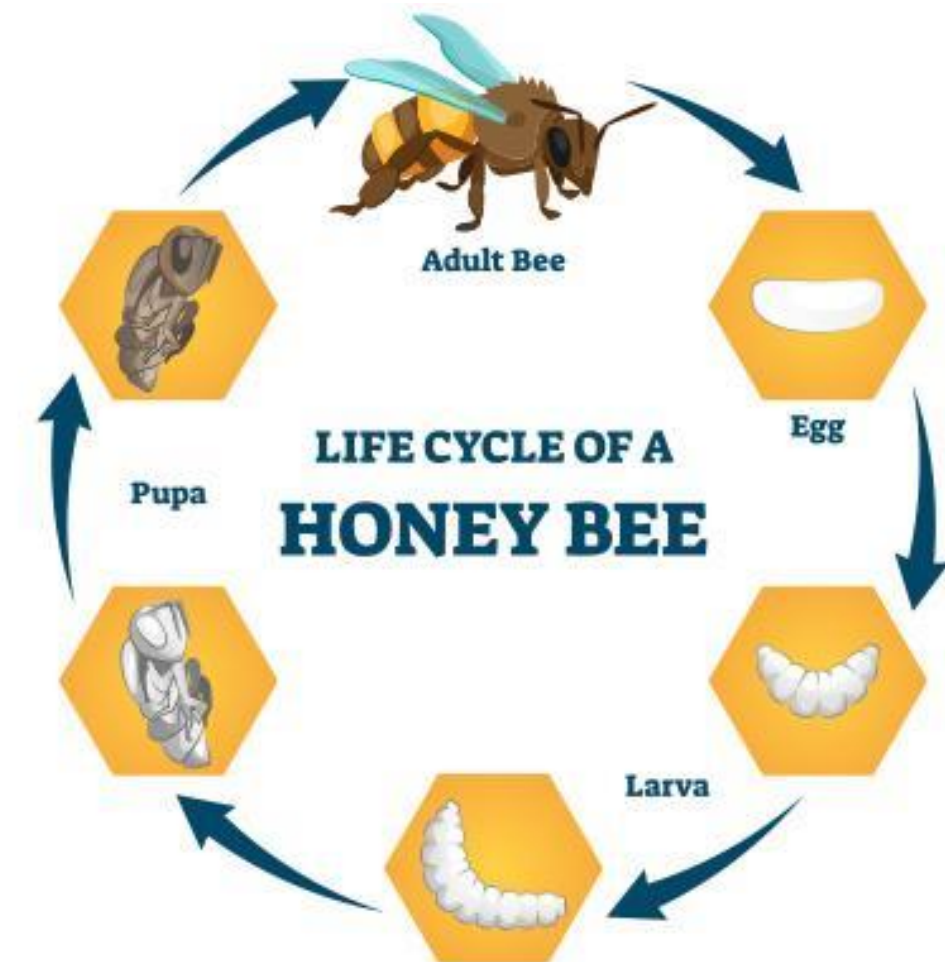


- ★ Not applicable if it would **clearly** oblige that authority or entity to acquire equipment having disproportionate costs, or technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance
- ★ Cost differences **shall be calculated only for the cost of the equipment, excluding related services, and may be presumed by contracting authorities and contracting entities to be disproportionate when they are above 30%, compared to a tender without the sustainability and resilience contribution.**



## It is about **WHAT** to buy!

- ❖ Moving away from lowest price
- ❖ Focus on life-cycle
- ❖ Nudging markets
- ❖ Limiting MSs/CAs discretion
- ❖ 49 pieces of sectoral legislation!



# REFORM THE 2014 directives

- ❖ Kill the L2SM (and Rec 97)
- ❖ Rethink exclusions
- ❖ Include/Link to specific provisions





This project has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 956696.

The screenshot shows the top navigation bar of the SAPIENS NETWORK website. It includes a 'Member Login' button with a user icon, the SAPIENS NETWORK logo, and a 'Subscribe to Newsletter' button. Below the navigation bar is a menu with links for 'ABOUT', 'RESEARCH', 'IMPACT', 'TRAININGS', and 'NEWS/EVENTS', along with a search icon. The main content area features a large yellow call-to-action box for the 'Attend the SAPIENS Network Conference on June 20!'. The text in the box describes the conference's focus on procurement and sustainability, lists topics like environmental protection and labor rights, and provides a 'Register Now' button. The background of the call-to-action box is a blurred image of people at a conference.

UNIVERSITY OF COPENHAGEN - FACULTY OF LAW  
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# PUBLIC PROCUREMENT AS A TOOL FOR CLIMATE CHANGE MITIGATION

A comprehensive analysis of  
the EU legal framework

*by Federica Muscaritoli*

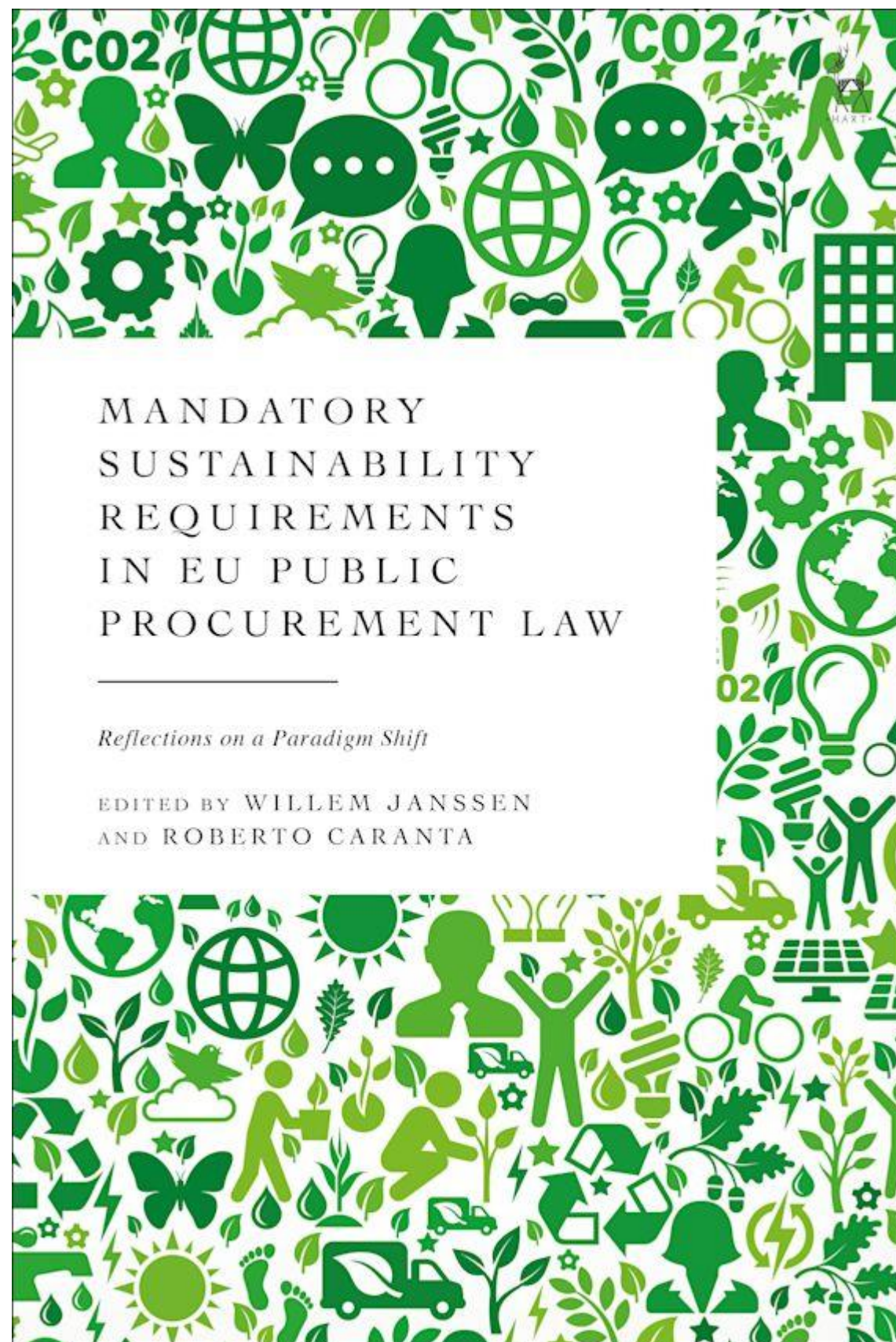


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# THANK YOU