

Driving Sustainable Change: the Impact of ESG Clauses in Public Procurement

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INDICE: 1. Introduction. 2. The Italian Public Procurement Code. 2.1 The Principle of Sustainability in the Code. 2.2 Award Criteria and Sustainability. 2.3 Contract Execution and Sustainability. 2.4 Control and Monitoring Procedures. 3. ESG Clauses and Environmental and Social Legislation. 3.1 ESG Clauses and Environmental Legislation. 3.2 ESG Clauses and Social Legislation. 3.3 Governance and Control in the Management of ESG Clauses. 4. The Role of ESG Certifications. 4.1 ESG Certifications in the Context of Public Procurement. 4.2 ESG Certifications and Their Impact on Governance. 4.3 ESG Certifications as Tools for Monitoring and Control. 4.4 ESG Certifications and International Competitiveness. 5. Measures Companies can take to comply with the requirements of the Public Procurement Code. 5.1. Corporate Social Responsibility and Gender Equality Certification. 5.2. Environmental Sustainability and ESG Certifications. 5.3. Benefit Corporations and Strategic Legal Structuring. 5.4. Strategic Procurement-Oriented Decision-Making. 6. Conclusions

1. Introduction

The theme of ESG (Environmental, Social, Governance) clauses in public procurement represents a significant evolution in procurement law, responding to the growing need to integrate sustainability into economic and administrative decisions. These ESG clauses reflect a broader approach that goes beyond the traditional focus on economic aspects, promoting a vision that encompasses environmental protection, corporate social responsibility, and transparency in governance. The legal foundation for the inclusion of these clauses can be traced through a series of international, European, and national provisions that emphasize the importance of aligning public procurement with sustainable development objectives¹.

¹ In the frame of the Public Sector, it is worth mentioning article 3 of Legislative Decree No. 103/2024, that establishes a voluntary system for the identification and assessment of "low risk" economic activities, aimed at the rationalisation and programming of administrative inspections in the areas of environmental protection, public health and hygiene, public safety, the integrity of public faith, and occupational safety. The system is based on the development—by the Italian National Standardization Body (UNI), following consultation with the competent authorities—of technical standards or reference practices suitable for defining objective parameters of low risk, which give rise to a certification report. A key feature of the provision is the importance assigned, among the risk assessment criteria, to the possession of ESG certifications (Environmental, Social, and Governance), issued by accredited bodies in accordance with Regulation (EC) No. 765/2008. These certifications, together with additional factors such as previous inspection outcomes, the economic sector in which the entity operates, and the scale of the business, contribute to the classification of the operator as low risk and, consequently, the application of simplified regulatory controls. The certification report is issued by accredited conformity assessment bodies and is subject to periodic audits, with revocation possible in the event of non-compliance with the relevant standards. The report is transmitted electronically for inclusion in the digital enterprise file, thereby streamlining data flows between public authorities and economic operators. The legislative framework fosters convergence between regulatory simplification and corporate sustainability, by incentivising the voluntary adoption of ESG standards through a reward-based mechanism. This reflects a model of smart regulation consistent with European policy objectives on sustainable governance and the reduction of regulatory burdens, with potential positive effects on competitiveness and corporate social responsibility.

At the European level, Directive 2014/24/EU (and Directives no. 23/2014 and 25/2014 as well) on public procurement played a key role in integrating sustainability principles into procurement procedures. Article 67 of this Directive allows Member States to adopt award criteria that go beyond the mere price or cost of the offer, including aspects related to environmental quality, corporate social responsibility, and good governance practices. In this way, Directive 2014/24/EU paved the way for the consideration of environmental and social criteria as legitimate evaluation factors in public procurement procedures, establishing an approach that favors not only economic efficiency but also aligns public decisions with sustainability goals. This approach was further reinforced through other initiatives, such as the European Green Deal and the Sustainable Finance Strategy, which highlighted the need to ensure sustainability in public procurement and financing processes.

The integration of ESG clauses, although not explicitly mandatory in every context, received a decisive boost through additional regulations such as Directive 2020/1828/EU, which strengthened the focus on transparency and consumer rights protection, leveraging social responsibility in public contracts. At the same time, Regulation (EU) 2020/852 on the taxonomy of sustainable activities provided further guidance to identify and promote sustainable economic activities, setting criteria to determine which operations could be considered "ecologically sustainable." Although primarily aimed at the financial sector, this regulation also affects public procurement.

At the national level, the Italian Public Procurement Code (Legislative Decree No. 36/2023) placed the principle of sustainability at the heart of public procurement law, stipulating that public administrations must pursue sustainability objectives in their contracts. Article 1, paragraph 1, letter b) of the Code establishes that public procurement activities must pursue sustainability goals, thereby integrating environmental, social, and economic aspects into public procurement decisions. This provision significantly broadens the scope of public procurement, which no longer focuses solely on price as an evaluation criterion but also takes into account the environmental and social impact of offers².

In particular, Article 95 of the Code on award criteria provides that contracting authorities may adopt award criteria that go beyond the sole cost, including criteria related to environmental and social sustainability. This means that public administrations are now authorized to reward offers that are not only economically advantageous but also present benefits in terms of environmental impact reduction or social improvement. Thus, Article 95 allows for the use of rewarding criteria but also establishes mandatory conditions for participation in the tender, making the inclusion of ESG clauses a substantive requirement in the selection process.

Article 108 of the Code, which governs contract performance, introduces a crucial dimension for the integration of ESG clauses: it allows contracting authorities to impose stringent obligations during the execution of contracts to ensure that the awarded contractors comply with environmental, social, and governance standards. In this way, ESG clauses are not limited to being mere evaluation tools in the tendering phase but become binding obligations that must be adhered to throughout the contract's duration, ensuring that companies executing public contracts operate in accordance with sustainability principles during the actual performance of the contract.

The regulatory evolution, both at the European and national levels, is clear: public procurement should no longer be seen merely as a tool for purchasing goods and services but as a key lever for promoting a sustainable society and responsible governance. The integration of ESG clauses responds

² For a general overview of the current Italian public procurement system, in light of the so-called corrective decree (Legislative Decree No. 209 of 31 December 2024), reference may be made to B. Bruno- M. Mariani – E.Toma (editors), *La disciplina dei contratti pubblici. Commento aggiornato al D.Lgs. 31 dicembre 2024, n. 209*, Giiappichelli, 2025.

not only to a need for the rationalization of resources but also to a commitment to social responsibility and environmental protection, principles that are reflected in various levels of regulation.

In this context, ESG clauses in public procurement represent a concrete manifestation of the evolution of administrative law and public policy, where sustainability becomes an indispensable element for ensuring economic, social, and ecological development in a balanced manner. The legal framework, with the integration of environmental, social, and governance criteria, addresses not only contemporary needs but also anticipates future challenges, promoting a responsible and inclusive approach to the procurement and management of public resources.

Earlier, even Italian administrative jurisprudence (see *Council of State, Section V, judgment of 20 October 2021, No. 7053*) has begun to reflect on the legal boundaries within which public procurement can serve broader functional purposes, aimed at pursuing social, environmental, and sustainability-related objectives. These objectives may pertain both to the nature of the goods or services procured and to the specific processes employed in their production or delivery. The judgment affirms several key legal principles:

- a. The integration of public interest considerations of a social nature—alongside the primary interest in acquiring goods or services—can legitimately occur through the adjustment of award criteria. As a result, the admissibility of such criteria must be assessed under the guidelines set out in Article 95 of the Public Contracts Code.
- b. The contracting authority enjoys discretionary power to include, within the award criteria, specific contractual performance conditions that are designed to achieve social objectives. Such discretion is not absolute, however, and must be exercised within the framework of the applicable legislative provisions.
- c. The lawful exercise of this discretion is contingent upon verifying the existence of a link between the award criteria and the subject matter of the contract, as defined in Article 95(11) of the Code. This provision considers award criteria to be connected to the subject matter of the contract where they relate to any aspect or stage of the life cycle of the works, supplies, or services to be provided, including elements involved in the specific production or delivery process, or in a subsequent phase of the life cycle—even if such elements are not part of the substantive content of the good or service. However, this is subject to the well-established limitation under EU case law, which prohibits the inclusion of social criteria that lack a connection to the subject matter of the contract and instead relate to the contractor’s general corporate policies or unrelated aspects.
- d. Additional general limitations govern the contracting authority’s discretion in selecting which social, environmental, or sustainability-related interests to pursue. These interests must be identified and weighted in relation both to the specific procurement objective (i.e., the need to acquire a work, supply, or service to satisfy institutional needs) and to overarching principles of proportionality, equal treatment, non-discrimination, and competition within the public procurement market.

This decision confirms that social and environmental considerations can form an integral part of the procurement process, provided they are relevant, proportionate, and linked to the contract’s object. It reflects the evolving view in administrative jurisprudence that procurement is not merely a transactional tool but also a strategic instrument of public policy.

2. The Italian Public Procurement Code

The Italian Public Procurement Code (Legislative Decree No. 36/2023) represents one of the most significant reforms in the field of Italian administrative law, aimed at making public procurement processes more transparent, efficient, and sustainable. The reform, which has transposed several European directives on the matter, places strong emphasis on the principle of sustainability and the integration of ESG clauses (Environmental, Social, Governance) into public procurement contracts, responding to the growing demand for public administration that, in addition to pursuing economic efficiency, also champions social, environmental, and governance values. In this context, the integration of ESG criteria within the framework of the Italian National Recovery and Resilience Plan fits squarely within the broader discourse on the transformation of public governance and the evolution of administrative law towards models of administration grounded in sustainability, transparency, and intergenerational accountability³.

2.1 The Principle of Sustainability in the Code

The Public Procurement Code, in line with European directives, introduces and embeds the principle of sustainability as an essential element in the awarding and management of public contracts within the Italian legal system. Article 1, paragraph 1, letter b) establishes that public administrations, in compliance with the principles of competition, non-discrimination, equal treatment, transparency, and proportionality, must pursue sustainability objectives through procurement activities. In other words, it is no longer sufficient for a public contract to be based solely on economic considerations; public authorities are now required to promote the integration of environmental, social, and economic aspects in their purchasing decisions and management of public resources by adopting specific ESG clauses. This represents a significant step forward compared to the previous regulatory framework, where sustainability was not explicitly considered as an evaluation criterion in procurement procedures.

In this context, the Code introduces a vision of public procurement that goes beyond the mere purchase of goods and services, positioning procurement as a tool for social and environmental responsibility, in line with the United Nations Sustainable Development Goals (SDGs) outlined in the 2030 Agenda. Thus, through ESG clauses, public administrations are encouraged to consider the

³ The *National Recovery and Resilience Plan* (PNRR), developed by the Italian State within the framework of the *Next Generation EU* initiative, constitutes a strategic economic and financial planning instrument aimed at fostering post-pandemic recovery and promoting a development model grounded in sustainability, innovation, and social cohesion. In this context, the PNRR is not merely a financial allocation mechanism but rather an integrated policy framework, whose regulatory and operational architecture is aligned with the principles underpinning environmental, social, and governance (ESG) sustainability. The connection between the PNRR and ESG criteria is neither incidental nor declarative; rather, it is substantive and operational. The six thematic *Missions* through which the Plan is articulated—ranging from ecological transition and digital transformation to sustainable mobility, education, healthcare, and social inclusion—reflect the strategic priorities defined at the European level, particularly in relation to climate change mitigation, intergenerational equity, and the strengthening of institutional capacity. From a legal standpoint, the implementation of the PNRR entails compliance—by both public and private actors involved in funded projects—with the *Do No Significant Harm* (DNSH) principle, as enshrined in Regulation (EU) 2020/852. This principle prohibits any action that would cause significant harm to one or more of the EU's environmental objectives. Compliance with DNSH is a binding requirement for funding eligibility and necessitates an *ex ante* assessment of each project's environmental impact. Concurrently, the Plan emphasizes social responsibility and sound governance, fostering institutional and corporate practices grounded in transparency, accountability, respect for fundamental rights, and the promotion of gender equality. In this regard, the progressive integration of ESG standards into the selection, evaluation, and monitoring procedures of publicly funded projects is not only a condition for eligibility but also a catalyst for the structural transformation of Italy's economic and administrative systems. Operationally, this entails that both private companies and public entities must provide adequate documentation demonstrating ESG compliance, thereby aligning economic activities with sustainability imperatives. Entities already adopting robust ESG policies and reporting mechanisms are better positioned to access funding and participate in competitive procedures under the Plan.

impact of their choices on ecosystems, communities, and the governance practices of suppliers, ensuring a balance between economic efficiency and the creation of social and ecological value.

2.2 Award Criteria and Sustainability

One of the most innovative aspects of the Public Procurement Code lies in Article 95, which regulates the award criteria for public contracts. Traditionally, the evaluation of bids was based primarily on the lowest price, with the risk of excluding environmental or social considerations. However, the 2023 Code significantly expands the possibility for contracting authorities to adopt award criteria that include not only price but also qualitative aspects related to environmental and social sustainability. In particular, Article 95 allows contracting authorities to assign points based on the level of sustainability in the offers submitted, rewarding solutions that, in addition to being economically advantageous, contribute to reducing environmental impact or promoting ethical and responsible labor practices.

This development marks a clear step forward in aligning public procurement with the Sustainable Development Goals (SDGs) and the growing emphasis on the green economy and corporate social responsibility (CSR) practices. The sustainability criteria provided for in Article 95 may cover a range of factors, including carbon emission reductions, the adoption of green technologies, waste management, biodiversity protection, respect for workers' rights, and social inclusion. In this way, the Code fosters a long-term perspective that seeks to combine economic development with environmental protection and the promotion of social justice.

2.3 Contract Execution and Sustainability

In addition to the award phase, the Public Procurement Code also places significant emphasis on the execution of contracts, where sustainability continues to be a central theme. Article 108 of the Code governs the obligations of contracting authorities and suppliers during the execution of contracts. Specifically, it provides that contracting authorities may include binding clauses related to the adherence to specific ESG standards. These clauses, which apply during the contract execution phase, require contractors to not only comply with the commitments made during the bidding phase but also to adopt concrete behaviors aimed at environmental protection, human rights safeguarding, and the promotion of good governance.

This aspect of the Code reflects the evolution of international and European law, which views sustainability not merely as a preliminary phase in the procurement process but as a principle that permeates the entire lifecycle of a contract. The ability to impose ESG obligations during the execution of public contracts ensures that contracting authorities can continuously monitor and verify the adoption of responsible practices by contractors even after the award, thereby promoting effective implementation of sustainability objectives.

2.4 Control and Monitoring Procedures

Another fundamental element of the Code is the provisions related to the control and monitoring of compliance with ESG clauses. While the Code primarily focuses on the award and execution phases, it also provides mechanisms to ensure compliance monitoring, that is, the ongoing monitoring of adherence to ESG requirements. Contracting authorities are thus required to oversee the actual fulfillment of clauses related to environmental, social, and governance standards through periodic checks, inspections, and performance assessments during the contract's duration.

In this regard, the Public Procurement Code aligns itself with a broader movement aimed at ensuring that public procurement processes are not only transparent and competitive but also responsible and sustainable. The control and monitoring of ESG clauses, therefore, do not merely constitute a verification activity but serve as a key element of public governance, aimed at ensuring the legitimacy, effectiveness, and efficiency of public decisions from a long-term sustainability perspective.

3. ESG Clauses and Environmental and Social Legislation

ESG clauses (Environmental, Social, Governance) in public procurement contracts represent a key element for achieving sustainability and social responsibility objectives through the regulation of public contracts. Their application not only reflects a commitment to reducing environmental impacts and promoting socially responsible practices but also integrates a governance dimension aimed at ensuring transparency and accountability from public authorities and economic operators involved. This third section examines in detail the interplay between ESG clauses and environmental and social legislation, with a particular focus on the legal instruments governing environmental protection and human rights within the context of public procurement.

3.1 ESG clauses and environmental legislation

The integration of environmental ESG clauses in public procurement contracts is a fundamental aspect for achieving global environmental sustainability goals and implementing policies aimed at reducing the ecological impact of economic activities. In Italy, this integration finds its basis in the Public Procurement Code (Legislative Decree No. 36/2023), which allows contracting authorities to introduce ecological criteria in procurement procedures, rewarding offers that provide solutions to reduce CO₂ emissions, optimize energy consumption, and promote the use of recyclable or sustainable materials.

This approach is fully aligned with European environmental legislation, which, through the European Green Deal, the Biodiversity Strategy for 2030, and the “Fit for 55” package, emphasizes the need for an ecological transition, including through the public procurement system. In particular, Article 67 of Directive 2014/24/EU permits Member States to consider environmental criteria in award decisions, such as reducing the environmental impact during contract execution, managing natural resources, and adopting low ecological footprint technologies.

The Italian Public Procurement Code implements these principles in Article 95, which allows contracting authorities to reward offers that comply with high environmental standards, such as those set by international certifications like ISO 14001 (Environmental Management System) and EMAS (Eco-Management and Audit Scheme). Furthermore, Italian legislation, in line with European directives, establishes that contracting authorities must assess the environmental impact (EIA) in procurement procedures involving projects with potential environmental harm.

Environmental ESG clauses also extend to the monitoring and control phase during the contract’s execution, as outlined in Article 108 of the Code, which allows contracting authorities to set obligations for reporting and verifying compliance with environmental regulations, including emission reductions and sustainable waste management. In this phase, contracting authorities can adopt monitoring mechanisms to ensure that economic operators comply with the environmental obligations undertaken during the award phase.

3.2 ESG clauses and social legislation

Social ESG clauses play a crucial role in public procurement regulation as they enable public authorities to integrate criteria beyond economic and environmental considerations, promoting corporate social responsibility (CSR) and respect for human rights. Social legislation in public procurement is closely tied to provisions governing worker protection, non-discrimination, and social inclusion, all of which are grounded in both international and European law.

At the international level, the Universal Declaration of Human Rights and the UN Guiding Principles on Business and Human Rights establish the need to protect fundamental labor rights in all economic contexts, including public procurement. These principles have been incorporated into European policies on procurement, notably through Directive 2014/24/EU, which encourages the use of social criteria such as labor conditions and social inclusion in awarding public contracts. Article 18 of the Directive allows contracting authorities to consider not only price but also social guarantees provided by bidders in the award process.

The Italian Public Procurement Code fully transposes these provisions, including in Article 1, paragraph 1, letter b, which obliges contracting authorities to promote social responsibility and respect for international labor standards. In particular, social ESG clauses may include the requirement for contractors to comply with collective labor agreements, ensure equal pay, and adopt policies against gender discrimination, racial discrimination, and disability discrimination. These provisions are designed not only to promote social equality within businesses but also to ensure that businesses participating in public procurement operate in an ethical and responsible manner.

Social clauses may be applied during the execution phase of the contract, requiring the contractor to meet minimum standards of treatment for workers, including those from vulnerable or disadvantaged groups, as defined under Law No. 68/1999 (Regulations for the Right to Work of Disabled Persons) and Law No. 104/1992 (Framework Law for Assistance, Social Integration, and Rights of Persons with Disabilities). Furthermore, contracting authorities may require contractors to provide regular evidence of compliance with social obligations, setting up specific control mechanisms to ensure the protection of workers' rights during the contract execution phase.

3.3 Governance and Control in the management of ESG clauses

Another critical aspect of ESG clauses, both environmental and social, concerns the governance and transparency in the execution of public procurement contracts. ESG clauses should not be considered isolated requirements but rather integral components of a control system that ensures public authorities can effectively monitor adherence to sustainability and social responsibility principles throughout the entire contract lifecycle. In particular, governance is manifested in continuous monitoring of contractor performance through regular audits, compliance reports, and other forms of verification.

Thus, contracting authorities must implement internal auditing mechanisms and transparent reporting systems to ensure compliance with ESG criteria. These systems allow contracting authorities to track whether contracts are executed in line with the agreed-upon environmental and social standards. Moreover, sanctions for violations of ESG clauses must be clear and effective, ensuring that public authorities can take timely action to address any non-compliance.

4. The role of ESG Certifications

ESG certifications (Environmental, Social, Governance) are increasingly significant within the regulatory and operational framework governing public procurement, both at the national and international levels. These certifications serve as tangible tools that enable companies to demonstrate their adoption of responsible practices in the environmental, social, and governance spheres. As such, they represent one of the main instruments for ensuring the effective implementation of ESG principles within public contracts. In a context increasingly oriented toward sustainability, ESG certifications act as evidence of companies' commitment to managing the environmental and social impacts of their activities, thereby responding to the growing expectations of public authorities, investors, and consumers.

4.1 ESG Certifications in the context of Public Procurement

In public procurement, ESG certifications play a crucial role in evaluating tenders, as they allow contracting authorities to select economic operators who not only meet legal minimum standards but also actively engage in responsible management of their environmental, social, and governance impacts. Italian law, as well as European directives, recognize the importance of integrating sustainable criteria in award procedures, and ESG certifications serve as tools for measuring and verifying companies' commitment to these criteria.

The Italian Public Procurement Code (Legislative Decree No. 36/2023) explicitly provides for the use of ESG certifications as evidence in evaluating offers, ensuring that economic operators adopt adequate measures in environmental matters. Specifically, Article 95 of the Code allows contracting authorities to award additional points to tenders that stand out for adopting environmentally responsible practices or meeting specific social and governance standards. Environmental certifications such as ISO 14001 (which certifies an organization's environmental management system) or EMAS (Eco-Management and Audit Scheme) can thus serve as a favorable factor in a tender, as they demonstrate that the company has implemented a structured system for managing natural resources and reducing negative environmental impacts.

In a broader context, social certifications represent another essential tool. Certifications such as ISO 26000 (which concerns corporate social responsibility) or others related to human resources management and labor conditions can be used by contracting authorities to reward companies that promote employee well-being, respect human rights, and adopt inclusive and non-discriminatory policies.

4.2 ESG Certifications and their impact on Governance

In addition to demonstrating tangible commitment to environmental and social spheres, ESG certifications are deeply connected with corporate governance. Governance, understood as a set of practices, norms, and procedures regulating the functioning of organizations, is one of the main dimensions of ESG certifications. Certified governance standards, such as ISO 37001 (which addresses anti-corruption management), are vital for ensuring that companies uphold principles of transparency, accountability, and fairness in their operations, particularly when participating in public procurement.

In the context of public procurement, good governance is an indispensable requirement to prevent conflicts of interest, corruption, and illicit practices. Contracting authorities can require that companies participating in tenders be certified according to governance standards that include, among others, independent verification of their operations and transparent reporting of corporate activities.

In particular, anti-corruption certifications and the establishment of effective compliance systems help ensure that businesses engage in ethical practices and meet public expectations regarding transparency and accountability. In this sense, ESG certifications serve as a preventive measure to ensure that contracting authorities can select suppliers who adhere to ethical business standards and demonstrate a commitment to good governance.

4.3 ESG Certifications as tools for monitoring and control

Beyond serving as initial evaluation tools during the tender process, ESG certifications also play a significant role during the execution phase of public procurement contracts. These certifications not only attest to a company's commitment when it participates in a tender but also act as monitoring and control mechanisms throughout the contract lifecycle. Contracting authorities, having access to such certifications, can conduct regular checks to ensure that companies adhere to the ESG commitments made during the award phase, thereby ensuring the practical implementation of these commitments.

Thus, ESG certifications help reduce risks associated with contract execution, enhancing the traceability of actions taken by contractors. The use of certified systems ensures that corporate policies are systematically and consistently applied, allowing for effective monitoring by public authorities. Furthermore, in cases of non-compliance, certifications serve as the foundation for corrective measures or contractual sanctions, providing documented evidence of the practices implemented by companies.

4.4 ESG Certifications and International Competitiveness

Another important aspect concerns the influence of ESG certifications on the international competitiveness of companies participating in public procurement. ESG certifications are globally recognized and valued, allowing companies to access foreign markets where both public authorities and private companies increasingly demand high standards of sustainability. The presence of an ESG certification enables Italian companies to compete internationally, as it demonstrates their alignment with global standards of corporate responsibility and environmental and social sustainability.

In this context, ESG certifications represent not only a competitive advantage but also a strategy for internationalization for Italian companies. The ability to demonstrate the adoption of responsible practices in all three ESG areas (environmental, social, and governance) constitutes an added value that can facilitate access to public contracts abroad, where sustainability is now a crucial criterion for selection.

5. Measures Companies can take to comply with the requirements of the Public Procurement Code

In the evolving framework of public procurement regulation, economic operators are increasingly called upon to meet multidimensional eligibility and award criteria, which go beyond traditional technical and financial requirements. In particular, recent legislative and policy developments have introduced enhanced expectations concerning sustainability, ethical governance, and corporate accountability. As such, companies seeking to participate successfully in public tender procedures must proactively align with these standards through strategic and certified commitments in the areas of corporate social responsibility (CSR) and environmental, social, and governance (ESG) performance.

5.1. Corporate Social Responsibility and Gender Equality Certification

One of the most prominent instruments for demonstrating commitment to CSR is the Gender Equality Certification, which has gained increased relevance in light of its recognition within public procurement frameworks as an indicator of ethical and inclusive business conduct. This certification is entirely voluntary and is issued by accredited third-party certification bodies operating in accordance with UNI/PdR 125:2022, a nationally recognized reference practice outlining measurable objectives and key performance indicators in the field of gender equality and inclusion.

The certification process assesses organizational practices in terms of recruitment, career progression, remuneration policies, work-life balance, and measures against gender discrimination. While not mandatory, possession of such certification can function as a qualitative criterion in tender assessments and may lead to additional scoring or eligibility advantages in jurisdictions where social value or ethical procurement policies are explicitly incorporated into the selection and award phases.

Further, the ISO 26000 Guidelines—although not certifiable in themselves—provide a comprehensive technical and conceptual framework for companies wishing to embed CSR principles within their strategic and operational activities. These guidelines assist organizations in translating ethical commitments into concrete actions across multiple domains, such as fair operating practices, labor rights, consumer protection, community involvement, and environmental stewardship. Adherence to ISO 26000 can be instrumental in building an integrated CSR approach that supports both compliance and competitive positioning.

5.2. Environmental Sustainability and ESG Certifications

From an environmental perspective, a growing number of public procurement authorities have introduced sustainability-linked criteria within their tender processes. In this regard, ESG-related certifications serve not only as markers of regulatory compliance but also as evidence of an organization's broader environmental responsibility and risk management capacity.

Key certifications include:

- a) **ISO 14001: Environmental Management Systems:** this internationally recognized standard sets out the criteria for establishing and maintaining an effective environmental management system (EMS). Certification under ISO 14001 demonstrates an organization's capability to minimize its environmental footprint, ensure compliance with applicable legal obligations, and pursue continuous improvement in resource efficiency, waste reduction, and pollution control. In public procurement, ISO 14001 is often treated as a benchmark for environmental diligence and may serve as a precondition or award criterion in tenders with green procurement mandates.
- b) **Carbon Footprint Assessment:** the quantification of a company's greenhouse gas (GHG) emissions through Carbon Footprint analysis has become a vital tool for measuring climate impact. This assessment, which can be conducted in line with methodologies such as the GHG Protocol or ISO 14064, allows companies to understand, disclose, and mitigate their CO₂ emissions across Scope 1, 2, and—where applicable—Scope 3 categories. Demonstrable reduction strategies can enhance a firm's credibility in sustainability-driven procurement, particularly where climate action goals are embedded within the contracting authority's strategic objectives.
- c) **B Corporation (B-Corp): Certification.** B-Corp Certification, issued by the non-profit entity B Lab, attests to a company's performance in social and environmental impact, transparency, and stakeholder governance. Unlike sector-specific or impact-limited certifications, B-Corp status reflects a holistic evaluation across multiple dimensions including worker rights, community

involvement, and environmental practices. Its growing recognition by public and private entities alike makes it a valuable differentiator in competitive tenders where ethical standards are considered in the selection or evaluation criteria.

5.3. Benefit Corporations and Strategic Legal Structuring

An additional legal instrument with substantial relevance in the context of public procurement is the Benefit Corporation (in Italy, *Società Benefit*). This corporate form, introduced to bridge the gap between for-profit and socially-driven enterprises, mandates a statutory commitment to generate positive social and environmental impact, alongside the pursuit of profit.

Benefit Corporations are subject to transparency and accountability obligations, including the preparation of an annual impact report verified by an independent third party. Their legal form is increasingly valued by contracting authorities as a credible signal of long-term ESG commitment, thereby contributing positively to legality ratings and qualitative award criteria. As the legal framework evolves, this model may even become a preferred or recommended form for economic operators engaged in high-impact or socially sensitive sectors.

Crucially, any for-profit entity, regardless of sector, may either be incorporated as a Benefit Corporation or adopt such a status through a corporate charter amendment, provided the governance structure accommodates the expanded purpose and reporting obligations. This adaptability enhances the attractiveness of the model within competitive procurement environments.

5.4. Strategic Procurement-Oriented Decision-Making

In conclusion, to effectively position themselves in public procurement markets, companies must adopt a strategic and anticipatory approach to sustainability and compliance. This entails not only securing relevant certifications and legal statuses but also embedding ESG principles throughout the value chain, starting with the selection of suppliers, product design, and logistics.

Each of these decisions should be subjected to a **comprehensive long-term evaluation**, balancing legal compliance, reputational risk, operational efficiency, and alignment with the public sector's evolving procurement priorities. Expert consultation, regulatory foresight, and continuous monitoring are essential to ensure that companies remain competitive, compliant, and credible in increasingly sophisticated and socially responsible public markets.

6. Conclusions

ESG clauses in public contracts not only represent a significant normative innovation but also mark a profound cultural shift in how public administration approaches contracts and economic relationships. Traditionally, public administration has played the role of a mere contracting authority, primarily focused on acquiring goods, services, or works at the best price and conditions. However, the inclusion of ESG clauses expands this role, assigning public administration the task of regulating and encouraging sustainable economic behaviors. The adoption of these principles implies that public procurement is no longer viewed solely as an economic transaction but as a tool for promoting the integration of ethical, social, and environmental values within the economic and productive fabric.

In this new context, the introduction of ESG clauses has far-reaching significance: public procurement is no longer just about meeting legal minimum requirements, but about using public purchasing power to steer businesses toward more responsible and sustainable behaviors. Public procurement is thus seen as a means of fostering a fairer and more sustainable economy, capable of addressing global challenges related to climate change, human rights protection, and responsible resource management.

However, in order for the adoption of ESG clauses to avoid being counterproductive or ineffective, it is crucial that they are introduced with criteria of clarity, proportionality, and verifiability. Ambiguity or the absence of clear standards for defining ESG obligations could lead to inefficiencies, inadequate controls, legal disputes, or even discriminatory practices against certain economic operators. It is essential that contracting authorities establish clear rules that effectively guide companies' choices while also allowing for fair evaluation of tenders. ESG clauses must be accessible and applicable to all companies, regardless of their size, so that the regulation does not become an obstacle for small and medium-sized enterprises (SMEs), but rather an incentive to improve their sustainability standards.

Another crucial aspect for the success of ESG clauses concerns their verifiability. The effectiveness of these clauses depends not only on their inclusion in procurement tenders but also on the ability of public authorities to monitor and ensure that companies comply with the commitments made. In other words, contracting authorities must have the capacity to constantly verify that environmental, social, and governance conditions are respected throughout the execution of contracts. This requires the introduction of adequate monitoring and auditing tools, as well as a transparent and accountable management of sustainability-related data.

Finally, the effective implementation of ESG clauses cannot overlook the strengthening of administrative capacity. First, it is necessary for public authorities to be able to design tenders that integrate ESG principles in a structured manner, avoiding generic or poorly targeted approaches. This requires staff training and the development of specific expertise in drafting and managing sustainable procurement. Secondly, during the contract execution phase, it is essential that contracting authorities have appropriate tools to monitor the actual application of ESG commitments by suppliers. To this end, the adoption of continuous monitoring systems and the capacity to manage data related to social and environmental impacts are indispensable.

In summary, ESG clauses represent a decisive step toward a more aware and responsible public administration, promoting not only economic efficiency but also social and environmental sustainability. Their correct application can transform public procurement into a tool for positive change, provided it is realized with an appropriate system of monitoring and administrative support. Only through the harmonious integration of these elements will it be possible to ensure that ESG clauses not only represent a formal commitment but become a true driver of sustainable development for the entire public sector.