

## Best practices in the field of social clauses in public procurements in Europe<sup>1</sup>

**Public procurement** is a significant tool of the Single Market as it represents 14% of the GDP of the European Union, spent by the public sector and utility service providers on public works, goods and services. Given its huge economic weight, public procurement is a powerful instrument to pursue broader policy objectives, including social and environmental policy goals and foster growth and innovation in the EU. The revised EU public procurement Directives<sup>2</sup> set out the rules under which public bodies purchase goods, services and works, and aim to guarantee equal access to and fair competition for public contracts within the EU market. The expert group focus its work on the Directive 2014/24/ on Public procurement.

### What's new in the Directive?

- Moving away from the logic of the lowest price. Public purchasers are encouraged to consider the qualitative aspects as well as the process by which the goods, services and specific work they intend to purchase are produced. They can do so by including performance or functional requirements, quality criteria, social and environmental considerations, innovative aspects at different stages of public procurement procedures: technical specifications, contract award criteria and contract performance clauses. The only social considerations that can be included in technical specifications are those concerning accessibility and design for all requirements. Overall, the goal is to encourage fair competition and provide better value for money, focusing on quality criteria, as well as the innovative nature of the offers. In addition, contracting authorities may require that works, supplies or services bear specific labels certifying environmental or other characteristics of the product or service.
- The ability to reserve markets (ie: Article .20 and recital 36). The market reservation is to restrict access to the procurement procedure for certain categories of enterprises (sheltered workshops and economic operators whose main mission is the social and professional integration of persons with disabilities and disadvantaged persons). It is possible to reserve markets to structures and enterprises fulfilling these characteristics in public procurement procedures concerning all types of works, services and supplies. Under the directive, these specific enterprises and structures must employ at least 30% of persons with disabilities or disadvantaged persons.
- Compliance with applicable legislation. A cross cutting "social clause" (A.18) requires Member States and public authorities to ensure compliance with the social and labor obligations in force at the place where the work is carried out or the service is provided.

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<sup>1</sup> This annex has been written taking into consideration Social Platform Guide on Public Procurement Directive.  
<http://www.socialplatform.org/what-we-do/service/public-procurement/>

<sup>2</sup> The three Directives are: (1) [Directive 2014/24/EU on public procurement](#), (2) [Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors](#) and (3) [Directive 2014/23/EU on the award of concession contracts](#).

- A simplified regime for certain social services, cultural and health services. Some specified services now benefit now from an increasingly simplified regime, with higher thresholds and an encouragement to award contracts on the basis of the best price-Quality Ratio, to take into account quality criteria, instead of the lowest price or cost. The directive also requires Member States to define national rules for awarding contracts for these services, to ensure transparency and equal treatment of economic actors as well as taking into the specificities of these services.

The use of the voluntary European Quality Framework for social services when defining quality criteria in social service provision is recommended (ie: **recital 114**).

- The possibility to reserve contracts for certain social, cultural and health services to non-profit organisations and social services fulfilling the criteria laid down in Article 77 for a period of 3 years. In this way, it is possible to value the provision of these services which in some Member States represent a long tradition and a feature of the welfare system. The group however notes that it is important that Member States pay attention to the fact that the possibility to reserve contracts only for three years is too short to guarantee the long term care relationships needed to ensure the good service from the end-users point of view<sup>3</sup>.

The working group estimates that it is clear that long-term benefits of adopting a more socially responsible procurement policy should be a **priority for** public purchasers from Member States. They should make the utmost of the different possibilities offered by the new Directives as well as reinforcing and diffusing best practices in that field<sup>4</sup>. The delivery of quality and sustainable services to citizens should be the primary objective of public procurements. The use of social clauses such as youth employment, gender balance, long-term unemployed, migrants, people with disabilities are instruments that promote decent work and strengthen to way toward a more social and inclusive Europe.

### **Where/When to incorporate social aspects in the tendering procedure ?**

The working group is of the opinion that there is more or less scope to address social issues, depending on the stage of the public procurement process. Contracting authorities should therefore take care at evaluating when they wish to include social clauses in tendering exercises. As indicated in the Directive, the inclusion can take place either:

- When identifying the need, approaches and considering the market (pre -procurement)
- When deciding the requirement – specification stage (Article 42 and recital 74)
- When selecting suppliers to invite to tender – selection stage
- When awarding the contract – award stage (Article 67 and recitals 97-99 on "contract award")
- In the performance of the contract – contract conditions and relationship management. (Article 70 and recital 98-99)

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<sup>3</sup> In Finland, this restriction to 3 years was considered to be a kind of a problem for enterprises as well as for their customers, and therefore the possibility was not taken (cf. "the MS may"). In the social and health care, the customers often need and want quality long-term services with stability and trust. FI is able to use social clauses but is not bound to the three year contracts limit which sometimes can be considered too short for persevering work and entrepreneurship. This is to guarantee quality services to the citizens in need of these services.

<sup>4</sup> Annexe 2: Best practices in the field of social clauses in public procurements in Europe

In order to include social clauses, a political momentum is necessary. Therefore, it is of the utmost importance to set up an adequate national/regional institutional framework that gives incentive to the integration of social clauses in public procurements.

Social clauses can generate reluctance in administration services because they are not well known. Contracting authorities must communicate internally to clarify that social clauses do not create work, costs or additional time for the contracting authority and the tenderer.

Therefore dedicated training for public procurement officers and services working with them is a good instrument to make awareness raising for the use of such possibility.

If a contracting authority must know where/when to use social clauses in the process, it has to know how to use it as well.

Different options can be proposed in that regards as highlighted in the following examples.

*- the price issue: moving toward the use of more quality criteria.*

In 2011, **the city of Edinburgh** established the quality criteria at 70 % against 30 % for the price in a market for services for the homeless. The city wished to increase opportunities for social enterprises to take part in bidding exercises thus promoting such kind of enterprises;

*- reserved contracts.*

**Ferrara (IT)** There is a public contract for the maintenance of green public areas, transport and disposal of waste material of municipal land and properties of Ferrara. The specific conditions of the public contract expressly foresee that part of the service, set to a minimum percentage of 10%, will be performed with the employment of disadvantaged people and with the adoption of specific programmes of work integration. Moreover, out of the 80 points (maximum) that a bidder can score, 20 points (maximum) are assigned on the basis of the integration programme brought forward by the applicant (i.e. 4 points for the number of people with disadvantages that will carry out the service, 4 points for the experience of the competitor in social integration activities, 4 points for the number of trainees involved in the service, 4 points for assistance/tutoring of people in insertion and so on).

**In Barcelona (ES)**, the City Council of Barcelona issued in 2015 a decree to require its contracting bodies to make use of reserved contracts and social (and environmental) considerations in award criteria and contract performance clauses. With this decree, the city of Barcelona set the obligation to consider the use of social clauses and reserved contracts the rule (and not the exception) in tendering procedures.

*- the use of social consideration*

**In Austria**, compliance with applicable collective agreements is a mandatory condition in the award of tenders. For smaller tenders or those for certain products (e.g. office supplies, furniture, cleaning equipment) sheltered workshops are awarded an additional point when assessing the bids. Regional political goals, such as the creation of additional apprenticeship places, are fostered and underlined through the consideration of SRPP. For certain regional or municipal tenders (e.g. constructor works) it is made clear from the outset that the percentage of apprentices in relation to the total workforce will be evaluated with additional points in the awarding process.

**In Denmark**, when inviting for tenders for services, where possible and justifiable relative to the task, Silkeborg Municipality may include social clauses to include disadvantaged groups within the labour market. Requirements must correspond to the appropriate municipal measures relating to light jobs, flexible employment, rehabilitation, job training, etc. (contractual requirement).

When inviting tenders for services, Silkeborg Municipality wishes to ensure that suppliers employ staff with permanently reduced working capacity under special conditions. (e.g. individuals in flexible employment). Where possible, the aim is to ensure that the proportion of employees with reduced working capacity is at least 10%.

#### **In Poland: A training programme for civil servants**

In Eastern Europe, initiatives are starting to be taken with regard to incorporating social criteria into public contracts, even if many countries are still at the stage of legally recognising WISEs. In Poland, a training programme to inform 1,000 local and national civil servants has been launched for 2014. Its aim is to tell them about the actual legal framework, to help them guide the writing of specifications documents for contracts including social criteria.

Since the 1990, **the City and Eurometropole of Strasbourg** decided to set-up specific social clauses in their public procurement procedures. Since then, this principle has been systematized and internalized. In 2015, it allowed 32% of the notified market above 90 000 € to include social clauses, this rate was 29 % in 2014. In 2015, the City and Eurometropole from Strasbourg allowed the delivery of 300 000 hours of work through insertion of social clauses in their market (services and work). Those 300 000 hours allowed the return to employment for about 800 persons in the Metropolis territory. Le "*Relais Chantiers*", the intermediary facilitator with whom a partnership is settled, helps the companies which carry out the market execution (candidate preselection, candidate preparation and adaptation to the enterprises specific needs, advising and follow-up within the enterprise).

The social clause has an impulsive role in the dynamical for the employment pathway, 55% of the beneficiaries are involved in an employment or formation situation after a period during 6 and 12 month after the end of the job insertion contract.

*- Making specific rules for social and health services*

**In Estonia**, from 2010 to 2014 in the frame of a European Social Fund project, providers of services to persons with disabilities and other disadvantaged persons implemented the European Voluntary Quality Framework for social services in their organisations - private, semi-public and public entities alike. One outcome of the project is that meeting the requirements of the Framework, together with financial considerations, has become one of the criteria for the funding of social services by public authorities in Estonia. The Framework was implemented through the EQUASS Assurance tool, and saw an increase in the level of quality, efficiency of service governance, promotion of users' rights and their enhanced participation. This practice, which has earned the Ministry and the partner organisations multiple awards, can be replicated through public procurement.