

Socially responsible procurement: Will the new directives help?

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Public Procurement Analysis

- What is socially responsible public procurement?
- Social ambitions of reform
- Role of European Parliament and Court of Justice
- Specific possibilities to target social objectives (summary)
- Examples of national policies
- Critique
- Questions & Discussion

What is SRPP?

- Public procurement which takes account of the social impact of the goods, services and works being purchased throughout their life-cycle in order to reduce negative impacts and increase social value.
- 'Life-cycle' includes supply chain impacts (e.g. fair trade) as well as use phase (e.g. accessibility) and end-of-life (e.g. TUPE)
- Does this include access for SMEs or local businesses?
- 'Three pillars' approach but the lines between social, economic and environmental are often blurred
- Minimum standards vs. added value

Social ambitions of reform

- 2011 evaluation of public procurement rules: 39% of contracting authorities applying SRPP
- Existing guidance on 'Buying Social' not very helpful, despite Treaty basis for social measures
- Concern about disguised restrictions on trade
- Strong lobby from NGOs and unions on some points



Flashpoints in reform process

- Social criteria – what can be asked for and when?
- References to labels
- Measures to promote SME participation: lots, maximum turnover limits
- Employee-owned mutuals – now in Article 77
- Award criteria – use of lowest price only vs. MEAT
- Scope of concessions directive – water now excluded

- Rapporteur Marc Tarabella, BE – Committee tabled 253 amendments to the draft directives
- Many of these related to social and environmental matters, e.g. use of lowest price award criterion
- Member States also negotiated for specific social provisions within the Council
- CJEU issued two important judgments during the revision process: Case C-368/10 *Dutch Coffee* on inclusion of fair trade criteria and use of labels; Case C-599/10 *SAG Slovensko* on treatment of abnormally low tenders

Summary of relevant provisions

Contract definition/Pre-procurement	Exclusion and selection	Award	Contract performance
Social and other specific services (74/Annex XIV)	Mandatory: child labour, human trafficking (57.1)	Accessibility for persons with disabilities (42/67)	Subcontracting – Direct payment of subcontractors (70.3)
Reserved for workshops (20)/public service organisations (77)	Mandatory: tax and social security if final judgment (57.2)	Trading conditions or other social characteristics (67)	Subcontracting – names and details of subcontractors (70.5)
Preliminary market consultation (40)	Discretionary: ILO core conventions, tax and social security (57.2)	Abnormally low tenders (69)	Other conditions ‘linked to the subject matter’ (70)
Division into lots (46)	Technical capacity and prior experience (58/Annex XII)	Limitation on number of lots awarded to one operator (46)	Compliance with social & labour law (18.2)

Three main approaches

1. “Who” – **reserve** contracts to certain enterprises, or control **who can bid** based on compliance with social obligations.
2. “What” – specify, or award marks based on social characteristics of products or services either in **production** or **use** phases.
3. “How” – include social obligations in **contract performance clauses**.

Examples of national policies

Belgium: long history of measures designed to help long-term unemployed via public contracts

Germany: many authorities focus on supply-chain issues and look for certification e.g. SA 8000

UK: 1891 parliamentary resolution to ensure fair wages paid to workers on government contracts; now many 'Fair Trade Towns' and 'London Living Wage'
More recently: Social Value Act 2012, PPN on tax compliance (2014)

US: Set asides for minority and women-owned businesses

Korea: Set asides for businesses owned by war veterans

Canada: Preferences for aboriginal-owned enterprises

Critique

1. Unfair competition

Other companies cannot compete on equal terms to win government contracts (more of an issue with set asides).

2. Bad procurement

Interferes with ability to award contract to the best company, taking all factors into account.

3. Creates dependencies/expectations

Programs may not last forever.



Thank you.

Questions/Discussion



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