

EPSU part of discussions with larger cities on the use of social clauses in public procurement

(7 December 2016) Eurocities and the Nantes Metropole organized a larger seminar with 22 city representatives to exchange how cities are engaging in using social clauses in public procurement contracts.

The new EU Directive on public procurement is a step forward for green and social public procurement, it paves the way to introduce compliance with social and labour obligations, including collective agreements.

Key elements of the public procurement Directives include:

- The right for public authorities to provide services directly is confirmed and concepts of 'in-house' and 'public-public cooperation' clarified
- All parties and operators of public procurement contracts are obliged to meet national employment and labour laws and collective agreements (see ETUC guidance[\[1\]](#) on this aspect).
- MEAT (Most Economically Advantageous Tender) is the main basis for contract criteria and no longer cost or price.
- Life-cycle concept is included (but not clear if it can cover social elements)
- It will be easier for contracting authorities to include social and environmental factors throughout the procurement process, i.e. can now include in award criteria (in line with positive ECJ rulings)
- There is more transparency in supply-chain – including obligation to provide details of sub-contractors, which should make it easier to ensure compliance [\[2\]](#)
- Stronger possibilities to exclude suppliers with poor track record
- Substantial modifications of contracts will have to be retendered

On the other hand:

- There is no real improvement on transparency for citizens, 'commercial confidentiality' and lack of freedom of information requirements on private companies remain an obstacle to getting 'best value'
- There is no reference to ILO labour clauses (public contracts) Convention 94

and so certain collective agreements / social clauses will still be contested.

- Social criteria not mentioned in the section on technical specifications (i.e., minimum requirements for all tenderers)
- Member States will have option to reserve contracts for certain services (including health and social services) to certain types of social enterprises, but the definition of 'social enterprise' is ambiguous and potentially damaging
- Measures to promote the measuring and monitoring the qualitative aspects of contracts remains limited.
- Joint liability for subcontractors and direct payment to sub-contractors by the authority are optional to member states

Currently, Member States are still in the process of transposing this new framework. It is important to monitor that these new achievement will not be lost in the transposition phase. A number of countries have chosen a voluntary approach to Article 18.2 that covers the social criteria. However, many cities lead by example in creating corporate social responsibility criteria for companies that work with public authorities in a tendering process to ensure a life-cycle approach to procurement.

EPSU represented by Christine Jakob took part in the plenary debate involving Marie-Christine Vergiat MEP (GUE-NGL, France); Martine de Regge, deputy mayor of Ghent; André Sobczak, vice president of Nantes Metropole; Anna Lupi from European Commission DG Grow.

Christine Jakob especially mentioned the importance of collaboration between cities and trade unions to elaborate on social criteria. She further highlighted the need of guidance and training from the EC in order to ensure legal security for local authorities. The new framework also clarifies that cities or municipalities can also choose to provide their services "in-house".

[For a full EPSU assessment of the new framework directive, please read this summary article](#)

[1] Key points for the transposition of the new EU framework on public procurement
<http://www.etuc.org/issue/public-procurement>

[2] See e.g., EIRO article on Cyprus where only two of the 26 public works inspected in 2011 were found to be in compliance with labour legislation. Violations concerned

both contractors and subcontractors.

<http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/cy016.htm>



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