

State of play on the implementation of the 2014 Public Procurement Directives

EPSU/ETUC workshop

**Fair
Trade**

ADVOCACY OFFICE



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Outline

1. Introduction to the NSDPP & EWGEPP
2. New Directive: what does it mean for ethical public procurement in Europe?
3. Overview of implementation status
4. Looking ahead

1.1. NSDPP The Network



The Network for Sustainable Development in Public Procurement is a group of social, environmental NGOs and trade union organisations (individual, confederal and EU federal) united by their joint aim to achieve progress in sustainable development through enabling EU public procurement legislation and policies.

Informal network, exists since 2000 (previous revision of the public procurement Directives)

1.2. European Working Group on Ethical Public Procurement (EWGEPP)

Collaboration of representatives from public authorities, governmental bodies, multi-stakeholder initiatives and NGOs from several European countries. The mission of the EWGEPP is to work towards ethical public procurement becoming a natural and integrated part of public procurement processes in Europe and beyond

OBJECTIVES OF THE EWGEPP

- To promote public procurement policy as a tool to social sustainability
- To support public procurement practice that incorporates labour rights considerations, and thus facilitate market growth in social sustainability
- To share best practice in ethical public procurement
- Through these processes, to ensure and enable the protection of human rights and decent working conditions in global supply chains for public goods

2. Provisions in the new Directive

Clarity about the PPMs in the Directives

The Directive takes the wording from the North Holland case law “*even where such factors do not form part of their material substance*” to refer to these “invisible” characteristics that are not intrinsic to a product.

Recital 74 technical specifications

Recital 96& 98 award criteria or contract performance conditions

Reference to production processes and the phrase “even where such factors do not form part of their material substance” are included in articles 42 (technical specifications) and 67.3 (award criteria) and a direct reference to the latter is made in article 70 (conditions for performance of contracts)

2. Provisions in the new Directive

Extended concept of life-cycle and Life-Cycle Costing

Compliance with environmental, social and labour law exclusion criteria, abnormally low tenders, selection & award stage BUT control is unlikely to be effectively exercised over early stages of the production chain that happen outside of the EU

2. Fair Trade/Ethical procurement

Recital 97 of Directive 2014/24 clearly states in this regard that conditions related to the supply or utilisation of Fair Trade products may be included in the call for tenders, either in (i) the award criteria or (ii) in the contract performance conditions

Labels: art.43 sets criteria for environmental and social labels to serve as compliance with technical specifications, award criteria and contract performance clauses

New: possibility to ask for a specific label as means of proof, provided that the label in question meets the five conditions

CSR criteria

Recital 97 « However, the condition of a link with the subject-matter of the contract excludes criteria and conditions relating to general corporate policy, which cannot be considered as a factor characterising the specific process of production or provision of the purchased works, supplies or services. Contracting authorities should hence not be allowed to require tenderers to have a certain corporate social or environmental responsibility policy in place »

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Annex XII, Part II d) CA can ask for evidence of the technical abilities of economic operators : “*an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract*”

3. A review of Dutch policy for socially responsible public procurement

Figure 3: References to social criteria in 25 tenders

Reference	Phones	Coffee	Natural stone	Clothing	Total
Social Conditions	1	0	1	1	3
ILO standards and living wages	0	1	0	3	4
ILO standards	1	0	1	0	2
Living wages or abolition of child labour	0	5	0	1	6
No social criteria	6	3	1	0	10
Total	8	9	3	5	25

Figure 4: Different approaches of addressing social criteria

Approach	Phones	Coffee	Natural stone	Clothing	Total
Qualification criteria	0	0	0	1	1
Technical capacity	0	5	1	1	7
Award criteria	0	0	0	2	2
Contract performance clause	2	1	0	1	4
Multiple	0	0	1	0	1
None	6	3	1	0	10
Total	8	9	3	5	25

3. Examples from Europe

Social criteria in public procurement:

The EU's procurement directive has made it easier than before to take social perspectives into account with regard to procurements. The possibilities that the directive offers for emphasising quality factors and corporate social responsibility will be utilised in the overall reform of **Finland's Public Procurement Act**.

The Andalusian Parliament in Spain recently recognized the new opportunities offered in this Directive in a non-legal proposal on the Procurement of food products with social and environmental criteria : “Right now we submit this proposal because until recently there was an obstacle at law level, at the level of the European Directive, and it was that the prevailing criteria was price.

As of the 15th of January 2015 the revisions Process of the public procurement Directive by the European Parliament has concluded. The approved Directive allows public administrations, and also the Andalusian administration, to include other criteria in its procurement, in this case of **social nature [...]**”.

4. Windows of opportunity

New Commission CSR strategy

The EU and its Member States should encourage responsible corporate conduct through procurement policy

UN Guiding Principles on Business and Human Rights

Sustainable Development Goals



Thanks for your attention!
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