



## European Sectoral Social Dialogue Committee Local and Regional Government

To the attention of  
Mr. Marc Tarabella MEP  
Rue Wiertz, ASP- 12 G 157  
B- 1047 Bruxelles

Brussels, April 2012

Dear Mr Tarabella,

CEMR and EPSU in their capacity as EU Social Partners in the local and regional government sector would like to draw your attention to our joint statement on the recent European Commission Guide on socially responsible public procurement (SRPP) which includes good practice examples from our members. This is available in annex to this letter.

The joint statement recalls the wider benefits across the life of the contract and the long-term benefits of being able to adopt a more socially responsible procurement policy. It also draws attention to the Lisbon Treaty, adopted following the previous procurement Directives, which recognizes local and regional self-government, acknowledges that Services of General Interest (SGI) are an intrinsic part of Europe's social market economy, and includes the European Charter of Fundamental Rights.

CEMR and EPSU would like to emphasise that quality, sustainable and value-for-money services to citizens is the primary objective of local authorities and they must be able to determine how best to deliver services within their capacity. Public procurement is only one way of providing services and public-public cooperation ("in-house" and cooperation contracts) with the aim of providing public services remains a valid option.

Please see below for the full Joint Statement, and we would be pleased to provide you with further information in view to working with members of the European Parliament on this issue.

Anders Hammarback

Steve Comer

Chair

Chair

**European Social Dialogue Committee for Local and Regional Government**

**The EC Guide on Socially Responsible Public Procurement (SRPP) - defining principles, requirements and standards of Socially Responsible Public Procurement (SRPP) for local and regional government**

***Joint Statement, June 2011.***

1. CEMR-Employers' Platform (CEMR-EP) and EPSU welcome the EC Guide on socially responsible public procurement (SRPP)<sup>1</sup> as a tool to better explain how social criteria could be applied to public procurement, and considers that the Guide can offer useful encouragement to local and regional authorities in developing SRPP and determine their purchasing priorities.
2. The Committee, representing public employers' and employees, underlines that the Guide should be read in conjunction with the Lisbon Treaty, which recognizes local and regional self-government and states that *"in defining policies and activities the Union shall take into account requirements linked to the promotion of high level of employment, the adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health"*. The Treaty also acknowledges that Services of General Economic Interest (SGEI) are an intrinsic part of Europe's social market economy, while the European Charter of Fundamental Rights recognizes the right of citizens to access SGEI.
3. In the context of the current revision of public procurement rules, and within the mandate of this committee, CEMR-EP and EPSU recall that the wider benefits across the life of the contract and the long-term benefits of adopting a more socially responsible procurement policy should be taken into account. As recognized social partners at European level we look forward to our involvement in the follow-up to the Green Paper on public procurement, specifically regarding the impact assessment process<sup>2</sup>.
4. In this respect EPSU and CEMR-EP emphasize that the delivery of quality and sustainable services to citizens is the primary objective and that local authorities must be able to determine how best to deliver services within their capacity. EPSU and CEMR-EP point out that public procurement is only one way of providing services and that the "in-house" (including public-public cooperation) provision of public services remains a valid option.
5. With this in mind, CEMR-EP and EPSU recognize that SRPP can help to:
  - Support the development of higher standards of social public policy objectives in Europe;

---

<sup>1</sup> Available in all languages <http://ec.europa.eu/social/main.jsp?catId=89&langId=en&newsId=978&furtherNews=yes>

<sup>2</sup> The respective responses from CEMR and EPSU on the Green paper <http://www.epsu.org/a/7559>;  
[http://www.ccre.org/prises\\_de\\_positions\\_en.htm](http://www.ccre.org/prises_de_positions_en.htm)

- Contribute to a fair social market economy, and
  - Raise awareness on the possibilities to drive social standards upwards.
6. Against the background of the ongoing economic crisis and austerity measures, local and regional authorities may be pressured to go for lowest price; this may compromise the quality and sustainability of services and goods and put pressure on wages, working conditions and collective agreements. SRPP can be a tool for local and regional government actors and trade unions to maintain and enhance the quality of services, contribute to preventing social dumping and to ensure that wages and working conditions are in accordance with standards laid down in legislation and/or in collective agreements.
  7. It is therefore all the more important that EPSU and CEMR-EP play a leading role in recalling the benefits that arise when contracting authorities use SRPP as a lever to promote social concerns such as employment, skills training, equality and social inclusion – influencing the market in a positive direction.
  8. EPSU and CEMR-EP endorse the following principles and definition of SRPP in the guide:
    - to promote employment opportunities (for example, youth employment, gender balance, long-term unemployed, migrants, people with disabilities);
    - to promote decent work;
    - to promote compliance with “social and labour rights”, including collective agreements
    - to support social inclusion and equality;
    - to support universal access, and
    - to take into account ethical (fair) trade.
  9. CEMR-EP and EPSU undertake to actively promote the EC SRPP Guide by raising awareness among our members and providing best practice examples and case studies of socially responsible procurement (see Annex).
  10. The European Commission should also, with the support and involvement of the social partners, further promote these principles and provide for more guidance and awareness of using social criteria in public procurement to benefit employment and working conditions. In this respect, we would also welcome the provision of thorough training on national and EU public procurement legislation.
  11. CEMR-EP and EPSU highlight that in order for SRPP to be followed up – and as with procurement in general- sound and tested evaluation tools and monitoring practices at local and regional level should be developed. Training and capacity programmes can be a good way to exchange good practice and learn from each other; a process which should be encouraged by the European Commission.
  12. CEMR-EP and EPSU consider that the EU and national level could provide incentives for increasing the amount of SRPP, taking in a wide range of sustainability

considerations. This should be supported by European Commission guidance and peer review.

## Annex: Good practice examples

Below are examples showing how SSRP is practiced and handled in different European national, local and regional government contexts. They have been collected in the framework of the CEMR and EPSU Social Dialogue in local and regional government.

### **AUSTRIA – Example 1**

Innsbruck has implemented a strategy for including social criteria in public procurement procedures. The process of implementation, otherwise known as Project Genesis follows a simple methodology: Brainstorming → architecture of the system → district council → working group's → town senate → working paper → implementation. Concerning strategic access and decisions, Innsbruck focused on what the importance and the goal was of including social criteria in procurement, for example, enterprises which care about social responsibility are rewarded in procurements by public authorities. Some examples of positive results from taking forward such criteria's include:

- The creation of new jobs, and retention of existing jobs
- For the Enterprises: credibility, trust, brand loyalty, customer loyalty, employee motivation and performance
- CSR (Corporate Social Responsibility): active acquisition of a company's responsibility to society - to the benefit of Enterprise and Society;
- Investment in human capital; and staff retention;

Eco-Social, Economic- Social and Cultural Social criteria used in Innsbruck procurement specifications:

Place of employment	Security; Health; Mood/wellbeing
Initial instruction and further training	apprenticeship training position ; career opportunities
conditions of employment	obedience of labour legislations; salaries and wages; transparency
family-friendly policies	Compatibility of working hours and family life; Holiday seasons for workers with children; parental leave
employees	Male-female proportions in enterprises
working hours	Possibility of a part-time job; Core time ; flexible work time
enterprise	attitude to sponsoring and charity
employer-employee relationship	contracts for work labour

## AUSTRIA – Example 2

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.

Greater clarity from the EU would be useful as it was felt that unclear and vague formulations in the EU Directives hamper the consideration of social criteria.

## DENMARK

Denmark has ratified ILO Convention No. 94. The convention can be applied in all public tenders but has in the case of Denmark only binding effect in relation to government procurement.

Several municipalities, however, have decided to inscribe the Conventions provisions in their procurement strategy. Frederiksberg Municipality, for example, has adopted a social clause, which is applicable when contracting out (Frederiksberg Kommune, 2010):

*"Suppliers/bidders must ensure employees (who are employed by the bidder as well as potential subcontractors) wages and employment conditions no less favorable than the wages and employment conditions applicable to that sector of the region where they work".*

*"If the supplier/bidder fail to meet these obligations, and this results in a valid claim from the employee Frederiksberg Municipality may withhold payment to the bidder in order to meet this requirement. Bidders have the responsibility to ensure that employees employed by the bidder or any subcontractors for task execution, have valid work and residence permits. Frederiksberg Municipality reserves the right to exclude employees who do not possess the necessary work or residence permits and who are not registered in the database RUT. Failure to meet the social clause constitutes a material breach of this contract. "*

*"The individual contracts should involve questions regarding social clauses, which require local suppliers to enter into dialogue on the recruitment of staff on special terms (to meet the obligations imposed on the municipality as an employer). Furthermore the social clauses aim to encourage the contract holder to establish apprenticeships within the construction area, where appropriate". (Source: Frederiksberg Municipality Plan)*

Read also: [Frederiksberg 8th November 2010: Open record, local council](#)

Read also: [Main principles for the use of procurement / outsourcing in Frederiksberg](#)

Read also: [Plan procedures, competitive exposure, capacity utilization \(2011-2014\)](#)

Social clauses in public procurement have little influence on the suppliers' price. This is the result of an evaluation of social clauses used when contracting out in Aarhus Municipality. According to suppliers lifting a social responsibility is today an integrated way of working and therefore not something that causes costs to rise.

When suppliers today bid for public contracts containing a social clause it only affect the price in about 50 percent of the cases. Furthermore the suppliers who raises the price due to social clauses, only raises the price marginally. This is the result of an evaluation from Denmark's second largest city, Aarhus.

The evaluation is based on 12 trials with social clauses in public procurement that Aarhus Municipality has conducted in different areas.

Read the full article in Danish By Annemette Schultz Jørgensen on: <http://www.udbudsportalen.dk/Cases/Erfaringer-med-sociale-klausuler/Case-historier-fra-kommuner-og-virksomheder/Sociale-klausuler-har-kun-lille-betydning-for-prisen/>

## **GREECE**

Many municipalities assign service provisions with exceptional procedures in order to enhance the operation of women s cooperatives and NGOs in order to enhance the employment and specific actions concerning the social integration of vulnerable social groups.

Specific measures have been taken in the formulation of a specific legislative framework for employment indicators concerning vulnerable groups and their participation in the implementation of public works as e.g. a specific percentage for financing actions against social inclusion or the control in addressing the non-violation of labour relations.

The benefit of including specific social criteria and the social dialogue has in some pilot projects resulted to the enhancement of woman employment and entrepreneurship, the integration of vulnerable social groups and the enhancement of actions regarding local long-term unemployment.

## **LUXEMBOURG**

Compliance with applicable collective agreements is a mandatory condition in the award for tenders. Additionally, if the agreed wages are not paid or payment is delayed, the contracting authority may pay salary supplements and deduct the amount spent from the final payment to the contractor. In order to foster employment of and protect disadvantaged workers, contracting authorities may reserve the right to tender for certain contracts to sheltered workplaces where the majority of employees are disabled workers who cannot, due to the nature or severity of their disability, work under normal conditions. The contract notice must make reference to this provision. Luxembourg City also promotes fair trade products by requiring service operators/contractors in school restaurants to purchase at least 10% of their fruit and vegetables and meat from fair trade sources.

## **NORWAY**

In Norway there is a regulation on pay and working conditions in public procurement contracts. The Norwegian regulation requires contracting authorities to include a clause in their contracts that obliges contractors and subcontractors to make sure that collective agreements or minimum pay and working conditions considered normal for the place and profession concerned are respected. This requirement has its origins in the ILO Convention No 94 concerning Labour Clauses in Public Contracts, which Norway ratified in 1996.

Fagforbundet has discovered in February 2011 that private contractors in the health sector had been taking advantage of their employees. The employees at Ammerlunden elderly home had been working for wages below the agreed rate, working double shifts and sleeping (and living) in the basement of elderly home. Because Norway had ratified ILO 94 the local authorities had the necessary legal basis to cancel the contracts with the contractor, Adecco. Local authorities around Norway are now investigating their contracts with Adecco, and several local authorities have found reasons to end their contracts.

## **SCOTLAND (UK)**

The Scottish Government and COSLA have jointly prepared guidance on “Community Benefits on Public Procurement” which takes stock of the practices at local level procurement practices that reflect wider social, environmental and economic benefits. The report illustrates the scope to incorporate social benefits in public procurement contracts, helping to maximise the impact of public spending. In particular the report focuses on the scope to take account of wider community benefits such as targeted recruitment and training, during public procurement processes.

The report draws on the experiences of a number of public authorities in Scotland, most of whom are located in areas that have suffered from a high degree of deprivation. Pilot participants have used community benefit clauses in contracts that would traditionally have been limited to construction and social care requirements. Through using such clauses they have been able to provide recruitment and training opportunities for some of those furthest from the labour market. This guidance aims at encouraging local procurement departments to take stock of these best practices and guidance to extend the use of social criteria in their procurement activities.

<http://www.scotland.gov.uk/Resource/Doc/212427/0056513.pdf>

## **SWEDEN**

Many local governments are placing social requirements in contracts, such as that it procures goods manufactured in accordance with fundamental ILO Conventions. Such terms are supported by the Swedish procurement law, the Act (2007:1091) on public procurement, paragraph 1:9 a) and 6:13. Social demands can also be in service contracts, such as the supplier will recruit unemployed youth to the mission. Local politicians like to take social considerations into public procurement. Local authorities and regions have previously been criticized by media for buying goods produced under unacceptable working conditions.

A key barrier for use of SRPP is that it requires effective practices and tools for the control of the supplier's compliance with the requirements. To address this obstacle, the Swedish Association for Local Authorities and Regions (SALAR) has produced an example of code of conduct.

1 § Goods supplied under this contract shall be manufactured in conditions that are consistent with:



- The eight ILO core Conventions 29, 87, 98, 100, 105, 111, 138, 182,
- Rights of the Child, Article 32
- Work related health and safety legislation in the country, and
- The labour law, including rules on minimum wage and social security protection in the manufacturing country.

2 § The supplier is obliged on request from the client account to the requirements of § 1 are satisfied. The declaration shall be in the manner and within the time requested by the customer if this is not unreasonable. The supplier is also obliged to enable the client to person or by proxy check in place to the requirements of § 1 are satisfied;

3 § Should the client, for example, what has emerged at the control exercised by or on behalf of the purchaser or otherwise, have reasonable grounds to suspect that the requirements of § 1 are not met, the supplier is obliged to by their own investigation to prove that he meets these requirements. In other cases, as provided in § 4 ;

4 § Failure to comply with the obligations of 1-3 § § means a breach of contract. Purchaser may, by reason of breach of contract seek correction within the time the customer decides if the period is not unreasonably short. Is not correct or is notification inadequate employer is entitled to a price reduction that is proportionate to the client's interest in compliance with its requirements, termination or cancellation. The choice of the penalty must not be disproportionate to the breach

SALAR has also prepared a short note on the procedure for incorporating SRPP, suggesting for example the use, where possible, of verification of requirements such as "ethical" labels from an independent body or requiring the supplier to provide your own documentation showing compliance. Supplier self-monitoring should be supplemented by external monitoring. Additionally, SALAR has developed support materials, which can be downloaded free of charge, that will help members to follow up the ethical standards in public procurement.