



SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT IN THE LIGHT OF THE NEW EU PROCUREMENT DIRECTIVES

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WHAT WILL CHANGE IN REGARDS TO THE NEW RULES?

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IMPORTANCE OF SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT (SRPP) IN THE EU

- public authorities are major consumers in Europe, spending approximately **two trillion Euros annually**
- SRPP is a powerful tool for **advancing sustainable development** and for **achieving the EU's and member states' social objectives**
- SRPP can be used by public authorities to **further the European social model**
- SRPP is an **important part of the Europe 2020 strategy** for smart, sustainable and inclusive growth



REVISION OF EU PUBLIC PROCUREMENT DIRECTIVES

- 15 January 2014: The European Parliament approved the new Public Procurement Directives
- 11 February 2014: The Council of the European Union adopted the Directives
- the new legislation will replace the current Directives 2004/18/EC and 2004/17/EC
- The Directives will enter into force 20 days after publication in the EU's Official Journal. After this date, member states will have two years to implement the provisions of the new rules into national law.



WHAT ARE EU DIRECTIVES?

- EU Directives lay down certain end results that must be achieved in the EU Member States, national authorities have to adapt their laws to meet these goals
- each EU Directive specifies the date by which the national laws must be adapted
- if a member state has not transposed a directive by the deadline, a directive can have direct effect in relations between individuals and the state.



MOST IMPORTANT REFORM OF PUBLIC PROCUREMENT LAW SINCE 2004

- The new Directives mark the most important reform of public procurement law since 2004 (when the current directives 2004/18/EC and 2004/17/EC were adopted).
- The reform will improve a wide range of areas applying to the procurement of goods, works and services, including:
 - simplification and flexibilisation of procurement procedures
 - strategic use of public procurement in response to new challenges
 - better access to the market for small and medium-sized enterprises (SMEs)
 - sound procedures
 - governance



INCREASED SCOPE FOR TAKING ACCOUNT OF SOCIAL CONSIDERATIONS

- greater inclusion of common societal goals in the procurement process
- these goals include, inter alia, social responsibility, innovation, employment, public health, and other social considerations
- the new rules clarify how the contracting authorities can contribute to the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts



SIMPLIFIED HANDLING OF SOCIAL CONSIDERATIONS THROUGH LABELS (ARTICLE 43)

- where contracting authorities intend to purchase works, supplies or services with specific social characteristics they may require **a specific label**, provided that **all underlying requirements** are linked to the subject-matter of the contract
- where contracting authorities **do not require** the works, supplies or services **to meet all of the label requirements**, they shall **indicate which label requirements are referred to**
- **equivalent labels** must be accepted as well
- where an economic operator had **demonstrably no access to the label in due time**, the contracting authority shall accept **other appropriate means of proof**



INCREASED POSSIBILITIES FOR TAKING INTO ACCOUNT SOCIAL CONSIDERATIONS IN THE AWARD CRITERIA (ARTICLE 67)

- new criteria regarding the "**most economically advantageous tender**" (MEAT): public authorities will be able to put more emphasis on social aspects while still taking into account the price and life-cycle-costs of what is procured
- best price-quality ratio can be assessed on the basis of criteria including **social aspects** linked to the subject-matter of the contract; Article 67 (2): "Such criteria may comprise, for instance, ... **accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions.**"
- member states may provide that contracting authorities may not use price only or cost only as the sole award criterion

WIDE DEFINITION OF THE NECESSARY LINK TO THE SUBJECT MATTER OF THE CONTRACT (ARTICLE 67 (3))

- Article 67 (3): **award criteria** shall be considered to be linked to the subject-matter of the contract where they relate to the works, supplies or services to be provided under that contract **in any respect and at any stage of their life cycle, including factors involved in**
 - (a) **the specific process of production, provision or trading** of those works, supplies or services or
 - (b) **a specific process for another stage of their life cycle, even where such factors do not form part of their material substance**
- European Court of Justice (ECJ) **“Dutch coffee case”** (C-368/10): **"there is no requirement that an award criterion relates to an intrinsic characteristic of a product, that is to say something which forms part of the material substance thereof"**



CORPORATE SOCIAL RESPONSIBILITY (CSR)

- CSR concerns actions by companies above their legal obligations towards society and the environment
- companies can significantly contribute to the EU's treaty objectives of sustainable development and a highly competitive social market economy
- **EU strategy for Corporate Social Responsibility** underlines the importance of CSR and emphasizes that better implementation of the **UN Guiding Principles on Business and Human Rights** will contribute to EU objectives regarding human rights issues and core labour standards
- 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 (cf. Recitals 97 and 104)



EXCLUSION GROUNDS IN CASE OF ABNORMALLY LOW TENDER (ARTICLE 69)

- Article 18 (2): member states shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law
- the new Directives will provide for the **compulsory exclusion in case the tender is abnormally low because it does not comply with the obligations in the fields of environmental, social and labour law** (Article 69 (3))



FACILITATING THE PARTICIPATION OF SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

- given the potential of SMEs for job creation, growth and innovation it is important to encourage their participation in public procurement, both through appropriate provisions in this Directive as well as through initiatives at the national level (Recital 124)
- better access of SMEs to public procurement was precisely one of the objectives of the revision of the Directives
- general simplification measures in procurement procedures will benefit SMEs
- division of contracts into smaller lots that are more accessible for SMEs is being encouraged through the “apply or explain” principle (Article 46)
- except in duly justified cases, the turnover requirements will be limited to a maximum of twice the estimated value of the contract (Article 58 (3) and Recital 83)



EXTENSION OF THE EXCEPTION IN FAVOUR OF SHELTERED WORKSHOPS AND SIMILAR UNDERTAKINGS (ARTICLE 20)

- to favour social inclusion, the current contracts' reservation in favour of sheltered workshops has been extended to economic operators whose main aim is the social and professional integration of disabled and disadvantaged persons
- minimum required percentage of disabled or disadvantaged employees reduced from 50% to 30%
- the exception could thus benefit to a larger number of social integration undertakings



NEW SIMPLIFIED REGIME FOR SOCIAL, HEALTH, CULTURAL AND ASSIMILATED SPECIFIC SERVICES (ARTICLE 74 et seq.)

- public contracts for social, health, cultural and assimilated services listed in Annex XIV of the new Procurement Directive shall be awarded in accordance with simplified rules
- the new simplified regime benefits from a **much higher threshold of EUR 750 000** (Article 4 (d)).
- apart from the general EU principles, the only obligations that have to be respected are **ex ante publicity** through prior information notice and **ex post publicity** through contract award notice (Article 75)
- member states will also have to make sure that contracting authorities may take into account inter alia quality, continuity, accessibility, and affordability (Article 76 (2))



THANK YOU FOR YOUR ATTENTION!

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