



European Sectoral Social Dialogue Committee in Local and Regional Government

Short report of working group on social procurement meeting, 9 October 2009 Brussels

(1) Opening and introduction

We recalled the background to the working group meeting. EPSU and CEMR consider that public authorities should have full freedom to take into account social criteria in public procurement into account in order to ensure 'best value' for (taxpayers') money. The EU procurement directives give possibilities to public authorities to this,¹ including for example:

Evaluation and selection criteria and information	Directive 2004/18
Reserved contracts for people with disabilities	Article 19, recital 28
Social and environmental conditions	Article 26, recital 33
Obligations relating to employment protections etc	Article 27, recital 34
Range of possible selection criteria	Article 53, recital 1, 46
Technical competence: direct employment record	Article 48
Technical competence: sub-contracting plans	Article 48
Abnormally low bids and employment conditions	Article 55
Exclusions from tender for failure to comply with social insurance or tax requirements	Article 45, recital 43

However, we know that in practice there are uncertainties regarding the legal framework as well as the practical steps that can be taken. The European Commission wants to address this and will shortly publish a Guide on socially responsible public procurement (SRPP). Given that a growing part on public procurement is carried out at local and regional level it is important that EPSU and CEMR include this issue on our agenda.

Unfortunately we are still waiting for the Guide to be published, but we interpret the good participation from both sides in the working group meeting (see participants list) as an indication of high interest from members.

(2) Overview by Loredana Puiu, DG Market European Commission on developments regarding the preparation of an EC Guide to Socially Responsible Public Procurement

In anticipation of the Guide, Ms Puiu gave a brief overview of the policy framework on social procurement (see attached ppt). She informed the Committee that the Guide is currently under discussion within the Commission and that it is expected to be published towards the end of November. She added that the Commission had received 40 contributions from stakeholders and 13 from governments (including Norway) to the consultation on the two previous draft Guides. The contributions could not be made public for data privacy reasons but she said that they represented a wide range of opinions which needed to be taken into account.

¹ EC procurement directives: http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm
However social law also is relevant, for example in its latest Communication on equal pay (2007), the Commission calls upon local authorities to promote equality clause in public contracts.

In discussion with Ms Puiu the following points were noted:

- ✓ The Guide will be aimed at 'sensitising' public authorities and providing advice and practical examples; a previous EC study showed that there are ample possibilities for public authorities to pursue social procurement; however the Commission does not have any quantitative data regarding the extent of social procurement in the Member States².
- ✓ As the Guide is not yet finalized, it was not possible for Ms Puiu to say how the Guide will deal with the issues concerning the overlap between the posted workers directive and public procurement, as well as the relationship between EU and international law. However she noted our concerns that the issue of what labour standards could be applied procurement contracts had to be clarified.

One of the participants to the meeting also pointed out the results of a Commission study³ based on the 'old' procurement directives, which found that administrative costs in the procurement process had increased for awarding authorities on average by 35%. The study also found that procurement of standardised goods and services had improved, but for less standardised goods and services (in particular services) the opposite was true. The balance was least favorable for complex requirements and for small authorities. The authors state that the directives had "increased the emphasis on the legal aspects of procurement relative to its economic purpose." The Commission shall consider whether the current procurement directives have changed this situation. However, the Commission will need to also assess the directives from a broad perspective, encompassing social and environmental concerns and not only the economic.

(3) Round table on national experiences and practices

A number of members gave an overview of initiatives and experiences on social procurement in their countries, including:

- ✓ In Germany, where a Guide has recently been drawn up for LRG sector. Key problems identified in procurement relate to control and enforcement, especially in sub-contracting situations
- ✓ In Sweden there is a website giving information on social procurement
- ✓ In Greece it is possible to give preference in procurement to cooperatives / social enterprises; here it was also mentioned that there are problems to verify compliance. It was also said that there are a high number (25%) of workers who are not protected by collective agreements in the LRG sector itself.
- ✓ In Denmark attention has focused on how LRGs can develop overall procurement policies that secure a quality workforce able to deliver quality services. This means specifying for example wage and training requirements. Having such a policy makes it clear that the objective of quality services / quality workforce is linked to the subject matter of the contract. Copenhagen and Aarhus were cited as having such policies. An overall procurement policy needs to run throughout the whole procurement cycle, from needs assessment to contract management. Full transparency needs to be ensured at every stage.⁴ It was also said that there are limitations in the legal framework regarding the transfer of undertakings directive that need to be addressed, and for example there had been problems in the cleaning sector.
- ✓ In the UK a number of LRGs have developed 'living wage' standards, and there are also agreements to secure employment protections in privatised services ('two-tier' workforce agreements). These have helped to counter precarious work conditions and high staff turnover etc detrimental to the quality of services and employment. On gender equality, it

² Data is collected though in some countries /sectors, e.g. in Italy there is an observatory on the awarding of contracts in contract catering run by the social partners' EBNT (Ente Bilaterale Nazionale del settore Turismo), which documents per trimester the number and volume of contracts and whether contracts were awarded to economically most advantageous offer or to lowest price:

[http://www.ebnt.it/gestione_osservatorio/Documenti/8_2009_4_17_f\)Ebnt%20I%20trimestre%202009.xls](http://www.ebnt.it/gestione_osservatorio/Documenti/8_2009_4_17_f)Ebnt%20I%20trimestre%202009.xls).

³Evaluation of the public procurement directives Markt/2004/10/D by Europe Economic, 15 September 2006

⁴This is also important to ensure non-discrimination, as well as to prevent corruption (see OECD working paper 'Integrity in public procurement' GOV/PGC (2007)16)

was noted that the EU principle of equal pay for work of equal value needs to apply also when services are outsourced and there is a change of employer.

- ✓ In Ireland the industry collective agreement for construction is recognized in the LRG sector, and suppliers who do not respect are excluded from future tenders. It was also said that outsourcing can provide flexibility to local authorities.

(4) Discussion on future work and conclusions

We said that the working group should meet again after the SRPP Guide is published, but on a smaller scale (2 or 3 persons per side). Both sides need to reflect on the objectives of the working group.

In the meantime, all members are asked to send relevant information to the Secretariats on national activities and practices concerning social procurement.

It was recalled that the EU social acquis, and indeed European integration, is based on the premise of an upwards convergence in the living and working conditions and the creation of an *'ever closer union among the peoples of Europe'* (first cited in the Preamble of the Treaty of Rome). In this respect, minimum standards are intended to be a 'floor' rather than a 'ceiling' and are not to be confused with quality of work.

Indeed, quality of work is a central theme for EPSU and CEMR, and we have recognized that this is central to the provision of quality public services. In the annex there is a description of the concepts of quality of work / decent work, as developed by the ILO and the EU to aid further reflection.

Annex

Below is a brief description of the two concepts. The most important distinction is that *decent work* as developed by the ILO includes social protection (interpreted broadly to include minimum wages and health and safety); whereas the EU's *quality in work* indicators do not. The EU does however include the instruments (collective bargaining) as well as the objectives, and broadly the two concepts should be seen as overlapping, not least as all EU Member States have ratified the basic ILO conventions.

Decent work

The decent work concept was introduced by the ILO in 1999 and includes four strategic objectives:

1. Access to freely chosen and productive employment
2. Rights at work
3. Social Protection
4. Social Dialogue

The four strategic objectives are inseparable, interrelated and mutually supportive: *"The failure to promote any one of them would harm progress towards the others. To optimize their impact, efforts to promote them should be part of an ILO global and integrated strategy for decent work"*, (ILO Declaration on Social Justice for a Fair Globalisation, p.11).

With its social protection pillar, decent work concerns both people active in the labour market as well as people who are outside the labour market (e. g. pensioners; children). In time of crisis, with the ILO foreseeing 200 million new poor by the end of 2009, policies aimed at extending social protection coverage to all will be crucial to the success of every recovery rescue package.

The European Commission's view on the relevance of 'decent work' can be found in the Communication COM(2006) 643 'Promoting decent work for all, which states:

"The Community acquis in the fields of employment, social policy and equal opportunities in many respects goes beyond the international standards and measures which underpin the concept of decent work and incorporates the major principles of that concept. The ILO standards form the background to a number of policies, laws and collective agreements in the Member States and at European level. The standards and measures of the ILO also complement the acquis in areas which are not covered or only partly covered by legislation and Community policies, such as labour administration and inspection, trade union freedom, collective bargaining and minimum standards in terms of social security".

Quality of work

The Commission identified 10 'dimensions' of job quality in the Communication 2001COM(2001) 313 final. In follow up to this, a list of indicators was approved by the Council (Indicators of Quality in Work, Report by the Employment Committee to the Council, 14263/01, 23.11.20012). The 10 dimensions (and accompanying indicators) relate to:

1. Intrinsic job quality (includes pay level indicators)
2. Skills, training
3. Gender equality
4. Health and safety
5. Flexibility and security
6. Access to labour market
7. Work organisation and work-life balance
8. Social dialogue and worker involvement (includes the percentage of employees covered by collective agreements)
9. Non discrimination
10. Overall work performance

A progress report "Improving quality in work: a review of recent progress" COM(2003) 728 final recalled the objective of the exercise: *"Quality in work goes hand in hand with progress towards full employment, higher productivity growth and better social cohesion."*