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The EU Model of Socially Responsible Public Procurement

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Abstract

Purpose: The object of this paper is an overview of the European Model of Socially Responsible Public Procurement for the purpose of knowing the civil servants involved in the public contracts and the prospective contractors about them. Public buyers spend more than 16% of the EU' GDP. By using the Public Procurement effectively by contracting authorities, one can have positive social impact (such as the reduction of criminal rate because of the employment of ex-offenders or immigrants) and contribute to sustainable development. Socially Responsible Public Procurement, in other words, take into account social considerations in public contracts in order to achieve positive social outcomes through the purchasing power of the Public Sector.

Methodology: Concise review of the most important Articles of Directive 2014/24/EU related to Socially Responsible Public Procurement in the European Union will be made.

Findings: Presentation of the most important articles of Directive 2014/24/EU on Socially Responsible Public Procurement

Unique Contribution to Theory Practice and Policy: For the first time, stakeholders in Socially Responsible Public Procurement will have a comprehensive overview of the institutional framework in place in the European Union to be able to develop relevant public policies (employment, social policy, etc.). This work hopes to become a reference point for both Social Economy Operators and Contracting Authorities, both to facilitate the access of the former to the EU public procurement market and to provide a basis for the development of initiatives to further improve this institutional framework.

Keywords: *Procurement, SRPP, Socially Responsible Public Procurement, Social Economy, Contractors, Social Enterprise*

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INTRODUCTION

According to *Fact Sheets on the European Union* of the European Parliament, public authorities award contracts to ensure that works are carried out and services are provided. Their total value in the EU amounts to EUR 2.448 trillion, which shows that European public procurement is an important driver of economic growth, job creation and innovation. In other words, public procurement plays an important role in the economies of the EU Member States, as it is estimated to generate more than 16 % of the Union's GDP.

The use of public procurement as a tool to achieve social objectives is not a new practice, as it is increasingly being used worldwide (Pirvu & Stanciu-Tolea, 2016). In fact, McCrudden (2004) had made a historical review of the pursuit of social policies through public procurement, supporting the access of social economy actors to the public procurement market. The above public procurement is called socially responsible as through the purchasing power of the public sector it seeks to achieve broader social and environmental objectives such as employment opportunities, fair pay, compliance with labour and social rights, social inclusion (including people with disabilities), equal opportunities, accessibility for all without exceptions, as well as support for sustainability, fair trade, etc. (Pirvu & Stanciu-Tolea, 2016). However, the above should be in line with the principles of the EU Treaty and the relevant Public Procurement Directives.

In 2004 for the first time in the EU we have two Public Procurement Directives where social and environmental aspects are taken into account. These are the Directives:

- 2004/17/EU which regulates the procedures to be followed by contracting authorities in relation to public procurement of energy, water, transport and postal services
- 2004/18/EU, which regulates the procedures to be followed by contracting authorities for public procurement of works and services

The above Directives provide the possibility for contracting authorities to take into account ethical and social aspects in their award criteria (Rezzin, 2007).

Then follows the Directive 2014/24/EU where the EU appears to be more actively supporting the achievement of broader social policy objectives through the tool of public procurement. The scope of this paper is to present the main aspects of this Directive in relation to Socially Responsible Public Procurement (SRPP).

The purpose of this paper is to briefly present the main articles governing Socially Responsible Public Procurement in the EU, in order to facilitate the access of Social Economy Entities to the public procurement market and for the contracting authorities to be aware of the specific institutional framework as a result of Directive 2014/24/EU.

RESERVED CONTRACTS

Reserved Contracts to Sheltered Workshops and Work Integration Social Enterprise

The reserved contracts are not something new in the European Public Procurement Market.

The article 19 of Directive 2004/18/EU, for instance, refers to Procurement on an exclusive basis, which allows contracting authorities to grant exclusively to sheltered workshops the right to participate in public procurement procedures when the majority of the employees are disabled persons, who, due to their nature cannot find a job under normal circumstances. This is a horizontal promotion of employment that is part of the main social policy objectives of the

EU and which does not affect the competition of traditional enterprises with a normal level of productivity (Amitsis, 2014).

In other words, the importance of reserved contracts according to the previous Directive lies in their ability to provide employment opportunities and social inclusion for people with disabilities or disadvantaged persons. Under the new Directive the specific scope is expanded including also disadvantaged. At the same time economic operators can now participate to the specific public procurement market as long as they support social and professional integration of disabled or disadvantaged persons.

According to Article 20 of Directive 2014/24/EU, Member States may reserve the right to participate in public procurement procedures to sheltered workshops and “social economic operators. The aim of the specific article is to foster the participation of procurement contracts for sheltered workshops and economic operators active in social and professional integration of disabled or disadvantaged persons. Although the specific article is non-mandatory, member-states are advised to transpose it into their national regulations. If it is implemented, this article would allow contracting authorities to restrict some tendering procedures for the purchase of good, works and services to specific operators whose aim is work integration of person with disabilities and disadvantaged persons. In this way, on the one hand the contracting authorities ensure that the specific persons concerned are more effectively integrated into society and the labor market and on the other hand that the economic prospects of the sheltered workshops and other social/responsible enterprises are supported (Social Platform, 2015). Compared to Directive 2004/18/EU, the revised Directive now requires only 30% of workers in both categories, compared to 50% under the previous Directive.

Reserved Contracts for Certain Services

According to the Article 77 of Directive 2014/24/EU, contract authorities may reserve the right for organizations to participate in procedures for the award of public contracts exclusively for specific health, social and cultural services. As with the Article 20, the Directive doesn't oblige Member-States to transpose the specific article into their national regulations, but it is highly recommended to do so, cause the Directive provides the opportunity to reserve for non-profit organizations and social economy enterprises for a limited period of time. According to Social Platform (2015), in this way it is possible to value the provision of social and health services by non-profit organizations and social economy enterprises, which is some Member-States is a long tradition and a feature of the welfare system.

In any case, if this article is incorporated into the domestic legislation of a Member State, the following must be met:

- **Specific Services:** Reserved contracts are awarded to exclusively services according to the following Common Procurement Vocabulary (CPV): 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8
- **Four criteria must be fulfilled:**
 - **The Objective:** The economic operator has a public service mission (health, social and cultural services)
 - **Profits:** The profits must be reinvested to achieve the organization's objectives
 - **Management or ownership structures:** Based on participatory principles and requires the active participation of employees, users or stakeholders

- Time of award: Within the past three years, the operator has not been awarded a contract for the services concerned by the contracting authority concerned under the same procedure
- The maximum duration of the contract cannot be longer than three years

Social Considerations

The articles 42, 67 and 70 of Directive 2014/24/EU refer to the social aspects of public procurement. Article 42 concerns the technical specifications to be met in public procurement. The technical specifications shall be drawn up in such a way as to take into account accessibility criteria for disabled persons or design for users. The award of a contract in accordance with Article 67 shall be based on the criterion of the most economically advantageous tender at the discretion of the contracting authority, which shall be determined on the basis of price or cost, using a cost-effectiveness approach such as life-cycle costing in accordance with Article 87, and may include best value for money, which shall be evaluated on the basis of criteria including, inter alia, qualitative, environmental and/or social aspects¹ linked to the subject-matter of the contract in question. In other words, one of Directive's greatest achievements is the move from the lowest price criterion for access to tenders to the best quality criterion (BPQR) (European Platform, 2015). In this way, environmental and social aspects can be considered when awarding contracts in addition to price. According to article 70, contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of article 67(3) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations.

Facilitating the Participation of Small and Medium Enterprises (SMEs) In the Public Procurement Market

The European Union recognises the difficulties that certain categories of tenderers (e.g. SMEs) face in accessing the public procurement market. Articles 40, 46 and 71 reflect this rationale. According to Article 40, contracting authorities may, prior to the start of the procurement procedure, consult the market in order to prepare the procurement procedure and to inform economic operators of their plans and requirements. A good practice is to organize "meet the buyers" events open to all interested candidates in order to increase their awareness of the procuring authority's needs and policy priorities, thereby improving transparency and accessibility in public procurement market processes². In addition, in view of the difficulties SMEs face in participating in tenders due to their capital adequacy, Article 46 allows contracting authorities to subdivide contracts into lots in order to increase their participation in the public procurement market. Subcontracting can be used to enable SMEs to participate in public procurement tenders. The article 71 makes explicit reference to the possibility for the contracting authority to request information from candidate contractors on the share of the contract it intends to subcontract to third parties and any proposed subcontractors.

¹ Such as facilitating the social and/or labor integration of people from vulnerable groups of the population, combating discrimination and/or promoting equality between men and women

² For further information see page 25 at the Buy Social (2011): A guide to taking account of social considerations in public procurement, <https://op.europa.eu/en/publication-detail/-/publication/cb70c481-0e29-4040-9be2-c408cddf081f>

CONCLUSION

With Directive 2014/24/EU, the framework of SRPP in the EU is further strengthened, as:

- EU Member State contracting authorities are encouraged to move away from using price as the most important criterion for evaluating a tender, choosing instead the Most Economically Advantageous Tender Criterion, in which social and environmental aspects can be taken into account (Amitsis, 2022; Varga, 2021; Social Platform, 2015)
- Contracting authorities can award contracts exclusively to sheltered workshops but also to businesses whose main purpose is the employment integration of people with disabilities or disadvantaged workers (Amitsis, 2022; Varga, 2021; Social Platform, 2015)
- Development of innovative partnerships and solutions through consultation between businesses and contracting authorities (Varga, 2021)
- Supporting the access of SMEs (and by extension also Social Enterprises) to the Public Procurement market through either subcontracting or the possibility that contracting authorities have to divide the Contracts into smaller parts, so that the former do not face difficulties both in the participation in the Public Tenders as well as during the execution of the contract (Amitsis, 2022; Varga, 2021)

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