

**COMMENTS ON THE INCLUSION OF SOCIAL ASPECTS IN THE REVISED EU  
DIRECTIVES ON PUBLIC PROCUREMENT**

UNICE recognises that social policy plays an important role in promoting a high level of employment and social protection in the EU and the EEA. Nevertheless, UNICE is deeply concerned about a broad set of proposals now being discussed to include social aspects into the Directives on Public Procurement. UNICE is convinced that public procurement regulation is not an appropriate instrument for the pursuit of social policy. Compliance with social and labour law is already subject to the existing far-reaching framework of social and labour law, both national and European. It is the role of public procurement to open the market and to pursue the commercially most advantageous solution, not to enforce social and labour law or to promote social and labour policies.

Any further linking of the EU rules on the procurement procedure with aspects on social and labour law would be both unnecessary and counterproductive. It would be unnecessary because the existing legal provisions on social and labour law already provide an elaborate legal framework. Even more important, making procurement law dependant on the fulfilment of social aspects would be counter-productive, as in practice it would undermine the well-established core principles of European Public procurement . This would equally be true if the Directives were expressly to allow for a consideration of the fulfilment of certain social aspects as award criteria, or to oblige the contracting authority to examine whether every bid is in compliance with social and labour law.

Introduction of social and labour law provisions into public procurement would in practice lead to

**(1) newly arising barriers to trade, especially in cross-border procurement, thereby closing markets**

Referencing specific national or regional social provisions could be misused to favour those national or regional bidders which the contracting authority would like to be the winner of the contract. Even provisions stating that the referenced national or regional provisions should be in compliance with European law will not be of help: almost certainly it would be extremely difficult to examine whether those conditions were indeed compliant, especially given the fact that time for the examination of compliance is very short for bidders. While cross-border procurement has repeatedly been deemed insufficient until now, referencing specific national or regional labour law provisions would obviously weaken cross border procurement and in practice lead to the closing up of markets.

**(2) creation of far-reaching bureaucratic burdens both for contracting authorities and for suppliers**

References to social and labour law provisions would put unacceptable bureaucratic burdens on contracting authorities. This would especially be true in view of the proposals which would oblige contracting authorities to establish whether all bids are compliant with social and labour law. Given the multitude and complexity of

provisions on social and labour law, such obligations would put inappropriate burdens on the contracting authority. The central obligation of a contracting authority is to select works, products and services best suited to fulfil the tasks in the public interest, but not to examine private enterprises' entire compliance with a multitude of provisions on social and labour law.

**(1) dangers to the effectiveness of the procurement of works, goods and services for public needs because of strongly increased risks of cancellation by legal review procedures, and thereby**

As already mentioned under (2), public procurement would become extremely vulnerable to a further increase of legal review procedures. Competitors of the successful bidder could very easily stop procurement procedures if they merely pointed out that the successful bidder does not comply with one single provision within a multitude of social and labour law regulations.

**(2) strongly increased risks concerning public and private investments for public purposes**

The strongly increased vulnerability of procurement procedures would increase uncertainties about public and private investments in public procurement. This would potentially lead to a decrease of interest of bidders in public procurement markets.

**(3) particular disadvantages for small and medium sized enterprises (SMEs)**

The problems mentioned above would have a particular negative impact on small and medium sized enterprises (SMEs). Especially for SMEs throughout Europe it will hardly be possible to react on a complex set of provisions of national and regional social and labour law. Thus, potentially they would be forced to withdraw from participation in public procurement.

For all the reasons mentioned above, European Industry urges that the European legislator should abstain from introducing the proposals for social aspects into the Public Procurement Directives. Otherwise the well established core principles of public procurement which the legislation has set up with a lot of effort during recent years would unnecessarily be sacrificed. Public Procurement would then suffer from enormous legal and practical uncertainties which would be most harmful to the good functioning of the procurement of works, supplies and services in the public interest.

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