



Fair trade in public procurement in the EU

SUMMARY *A growing proportion of European citizens care more and more about contributing towards sustainable economic and social development in developing countries through their purchasing preferences, notably buying fair trade.*

This concern of consumers for fair trade, more common in western European Member States than in the rest of the EU, has been relayed by civil society, local authorities, and also echoed at EU level by the EU institutions, notably the European Parliament.

Public authorities in the EU can play an active role in sustainable development through their purchasing decisions, by promoting fair trade in their procedures, while respecting the fundamental principles of EU law. Some public authorities are already putting fair trade procurement into practice, by introducing fair trade considerations into the different stages of public procurement procedures.

However the EU legal framework lacks clarity as the European Parliament has repeatedly pointed out. As a result various interpretations of the legal framework exist, creating legal insecurity for contracting authorities and inhibiting expansion of fair-trade public procurement. The ongoing revision of EU public procurement directives could help bring clarity.



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Fair trade - a definition

Fair trade: is defined at international level as a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalised producers and workers – especially in the South. Fair trade organisations (backed by consumers) are engaged actively in supporting producers, raising awareness, and campaigning for changes in the rules and practice of conventional international trade.

This definition comes from FINE, which brings together the four main fair-trade networks, [Fair Trade Labelling Organisations International](#) (FLO), [World Fair Trade Organization](#) (WFTO), the former Network of European Worldshops (NEWS!), and the [European Fair Trade Association](#) (EFTA).

FAIRTRADE (or Fairtrade): is used when referring to the international registered trademark "Fairtrade Certification Mark" (operated by Fair Trade Labelling Organisations International (FLO)).

Context

The fair-trade concept has been developing in Western nations over the past 40 years. Fair-trade initiatives originated in private, non-governmental organisations interested in trade and development, with fair-trade goods imported by alternative trading

organisations and sold through specialist outlets such as the 'world shops'.

The objective of fair trade is to ensure that producers receive a price which reflects an adequate return on their inputs of skill, labour and resources, and a share of the total profit commensurate with their input¹.

If fair trade has come a long way since the 1970s, with better trading deals, an expanded market (fair-trade labelling initiatives such as "[Max Havelaar](#)" have facilitated greater access to the market) and an increased range of fair-trade products, it remains exceptional (fair-trade sales represent less than 0.1% of all goods traded internationally).

Public procurement is one of the tools through which public authorities can play an active role in stimulating socially-conscious markets demonstrating socially responsible governance and set an example for citizens. Public procurement accounts for about 19% of the EU's gross domestic product (GDP).

As underlined by the [European Observatory on Fair Trade Public Procurement](#), by supporting marginalised producers and workers through fair trade, contracting authorities can also show EU citizens their commitment to the three pillars of sustainable development (social, environmental and economic).

There has been increasing political interest within the EU institutions on the subject of fair trade since the early 1990s, reflecting citizens' concerns.

In addition to the European Parliament's calls for EU level initiatives to support fair trade, the Council underlined in its [conclusions](#) of November 2009 the importance of fair trade to sustainable development and supporting marginalised producers and workers in developing countries.

The European Commission adopted its first communication on fair trade in [1999](#).

This was followed by a second communication in [2009](#), providing an update on fair-trade developments since 1999, identifying issues to be addressed in different areas such as consumer protection, economic and social development, trade, corporate social responsibility, the environment and the EU's internal market.

The European Economic and Social Committee (notably in [October 2005](#) and [January 2010](#)) and the Committee of the Regions ([opinion of 10 February 2010](#)) have also expressed their support for a European strategy for fair trade in the EU, notably for local and regional authorities.

Fair Trade certification

There are two international fair trade standard setters: [Fair Trade Labelling Organisations International](#) (FLO) responsible for product certification, and the [World Fair Trade Organization](#) (WFTO) which certifies organisations. They agreed in January 2009 on the [Charter of Fair Trade principles](#), covering working conditions, transparency, wages, the environment, gender equality and more.

Product certification ("International FAIRTRADE Certification Mark") allows people to identify products that meet agreed environmental, labour and developmental standards (the Fairtrade standards). Overseen by an international body (FLO), owned jointly by 21 national labelling initiatives and producer networks, and a certification body (FLO-CERT), the system involves independent auditing of producers to ensure the agreed standards are met.

Organisation certification ("Fair Trade Organisation Mark") allows companies, notably handcraft producers that demonstrate 100% commitment to fair trade in all their business activities, to apply for licences to use the label.



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EU legal framework for fair trade and public procurement

The 2009 Commission [communication](#) "Contributing to Sustainable Development: The role of Fair Trade and non-governmental trade-related sustainability assurance schemes" underlines the interest in providing guidance to public purchasing authorities on how to implement sustainable public procurement.

It states that if a contracting authority intends to purchase fair-trade goods, it can define relevant sustainability criteria in the technical specifications of the goods. These must be linked to the subject matter of the contract and comply with the other relevant EU public procurement rules. These criteria must relate to characteristics or performance of the products themselves, or their production process. Contracting authorities that intend to purchase sustainability-assured goods should not simply take the concept of a particular label and include it in the technical specifications of their purchases. They ought instead to look at the sub-criteria underlying, for example, the fair trade label and use only those which are relevant to the subject matter of their purchase. Contracting authorities must always allow bidders to prove compliance with these standards by using fair-trade labels, or by other means of proof.

Following several requests for clarifications, the Commission published a guide to taking account of social considerations in public procurement "[Buying social](#)" in January 2011 (complementing the Commission's 2008 [communication on green procurement](#)).

The guide is not specifically about fair trade, but does include a section on ethical trade. According to the "Buying social" guide, a contracting authority which wants to purchase ethical-trade goods can take appropriate considerations into account in the tender specifications, but it cannot

require the products to bear a specific ethical-trade label/certification because this would limit access to the contract for products which are not certified but meet similar sustainable-trade standards. Requirements relating to the labour conditions of the workers involved in the production process cannot be taken into account in the technical specifications. However, under certain conditions, they may be included in clauses on the performance of the contract.

Despite this guide there are still certain aspects where clarifications are needed, as underlined by stakeholders (e.g. [EFTA](#), [Fair Trade Advocacy](#), the [Fairtrade Foundation](#)²) and the EU institutions (e.g. [resolution](#) of the EP of 25 October 2011 on modernisation of public procurement, [opinion](#) of the Committee of the Regions of 10 February 2010). In particular, there are questions on how to integrate "sustainability" at each stage of the EU procurement process and how to make the distinction, sometimes rather theoretical, between technical specifications (linked to the characteristics of the product or its production process) and performance clauses, linked to the execution of the contract³.

On 10 May 2012, the Court of Justice of the European Union confirmed ([Case C-368/10](#)) that fair-trade criteria can be included in public procurement requests. Concerning references to labels, the ruling clarifies that Directive 2004/18/EC allows the contracting authority to refer to the criteria underlying the label, not to the label as such.

This clarification was welcomed by stakeholders, notably the [Fairtrade Foundation](#) and the [Fair Trade Advocacy Office](#), underlining the importance of the judgment in the context of revision of the EU's Public Procurement Directives.

2004 Public Procurement Directives

Public procurement in the EU is essentially governed by two Directives⁴, commonly referred to as the "2004 Public Procurement Legislative Package". According to these Directives, the main principles by which procurement procedures in EU Member States must abide are transparency, non-discrimination and best value for money.

These Directives have been transposed into national legislation. Contracts that fall below certain thresholds⁵ are not bound by these Directives but must observe the basic principles of EU law such as equal treatment and non-discrimination.

The two Directives are currently being revised: the legislative [proposal](#) (adopted in December 2011 by the Commission) is currently [being discussed](#) in the Council and European Parliament (Committee on the Internal Market and Consumer Protection). In the view of the [rapporteur](#), Marc Tarabella (S&D, Belgium), the modernisation of the Public Procurement Directives should strike a balance between simplification of the rules on the one hand, and sound, effective procedures linked to innovative, sustainable award criteria on the other hand.

fair-trade initiatives, to propose a coherent EU policy on fair trade and to encourage public authorities to use fair-trade criteria in their public tenders and purchasing policies by, for example, producing constructive guidelines on fair-trade procurement.

The call of the EP for policies in support of fair trade was repeated by its President [Martin Schulz](#) ahead of the [World Fair Trade Day 2012](#) (12 May 2012), an initiative of the World Fair Trade Organization (WFTO).

Facts and figures

According to Fairtrade International data⁶, more than 1.2 million producers and workers in 63 developing countries benefit from global Fairtrade sales.

The number of producer organisations has increased from 827 (in 2009) to 905 (end 2010), with more than half (509) in Latin America and the Caribbean, 253 in Africa and 143 in Asia and Oceania.

The sales of FAIRTRADE-certified products grew 27% between 2009 and 2010. In 2010, they amounted to approximately €4.36 billion.

What is the EP doing?

The EP is a long-standing supporter of EU policies in support of fair trade. It has repeatedly called on the European Commission to ensure coordinated policies in support of fair trade, translating citizens' support for ethical considerations in trade into specific follow-up measures (e.g. resolutions of [6 July 2006](#), [18 May 2010](#), [27 September 2011](#), [25 October 2011](#), and [10 May 2012](#)).

The EP has asked the Commission to promote

EP Working Group on Fair Trade

The EP cross-party Working Group on Fair Trade, founded in 2004 and chaired by Linda McAvan MEP, tries to raise awareness of the value of fair trade as an example of how equitable trading practices can benefit both the producer and consumer.

The group works in close cooperation with the [Fair Trade Advocacy Office](#) (FTAO). It has held hearings and events within the EP to allow NGOs, producers, farmers and companies to discuss issues relating to fair trade with European politicians. The group also organises an annual [Fairtrade Breakfast](#) at the EP to discuss how fair trade can better be supported at EU level. In addition, it may be noted that Fairtrade tea and coffee are now served in all EP meetings and events and Fairtrade products are available in EP restaurants and canteens.

Fair-trade sales represent less than 0.1% of all goods traded internationally according to the United States-based [Fair Trade Federation](#).

Europe (EU plus Switzerland and Norway) represents most (60-70%) of the fair-trade market.

In the EU, the largest market for fair trade products is the United Kingdom, followed by Germany, France, Ireland, the Netherlands, Sweden, Finland, Austria, Denmark and Belgium.

The main fair-trade products are food (three-quarters of products), notably coffee, bananas, cocoa, dried fruit, fresh fruit, fruit juices, quinoa, rice, honey, nuts, sugar, tea, and wine. The others come from sectors such as textiles (mainly cotton), handicrafts, decorative items, and cosmetics (e.g. argan oil).

Public opinion and stakeholders

Fair trade is a dynamic mechanism that develops along with societal and consumer awareness and demands.

A global [survey](#) in 2011 by Fairtrade International demonstrates that public support for Fairtrade is still on the rise worldwide, with shoppers increasingly expecting businesses to be more accountable and fair in dealing with producers in developing countries. Six out of ten consumers believe their own shopping choices can make a real difference to the lives of farmers and workers in poorer countries.

According to a 2010 Eurobarometer survey ([Special EB 357](#)) on international trade, a significant proportion of Europeans (almost 40%) are willing to pay more for products which help the environment, respect social standards, or help developing countries. The survey concludes that Europeans cannot be considered passive consumers: social and ethical concerns are among their criteria when buying a product or a service. The [public consultation](#) launched in 2010 by the Commission for the new trade agenda has shown a widespread call to support fair trade as a tool and best practice in building more just and responsible production and trade.

Although consumers are more and more aware of fair trade, there are huge differences between EU Member States. The national results of the Eurobarometer survey show that people in countries from the north of the EU are much more willing to pay more for ethical products than those in

countries in the south. In terms of sales, reflecting people's awareness, confidence and trust, fair-trade sales are more significant in western Europe (notably the UK, France, Germany, Benelux, Scandinavia, Italy and Spain) while fair-trade initiatives are not as well, or only recently, developed, and have less political support in Greece, Portugal, and the new EU Member States (source European Fair Trade Association).

Fairtrade Towns and Olympic Games

A [Fairtrade Town](#) is a town, city, village, island, borough, county, zone or region that has made a commitment to supporting Fairtrade and using products with the FAIRTRADE mark. There are more than 1 000 Fairtrade towns in 14 EU Member States (including 541 in the UK), out of the 1 136 Fairtrade towns listed.

The London 2012 Olympic Games will be the 'fairest' games ever the organisers claim, as visitors will be served FAIRTRADE-certified tea, coffee, chocolate, sugar, bananas, wine and oranges, helping to support farmers and workers in developing countries. As reported by the [Fairtrade Foundation](#), an estimated 10 million Fairtrade bananas will be eaten, 7.5 million cups of Fairtrade tea served, as well as 14 million cups of Fairtrade coffee.

Public education and awareness campaigns in favour of fair trade are supported notably by fair-trade organisations, also called alternative-trade organisations. Such organisations are actively engaged in supporting the trading of producers, especially small farmers and artisans, raising awareness of fair-trade issues and advocating the integration of fair-trade principles into international practices.

Among the main fair-trade organisations are the [World Fair Trade Organization](#) (WFTO), [Fair Trade Labelling Organisations International](#) (FLO), and the European Fair Trade Association ([EFTA](#)). The [Fair Trade Advocacy Office](#) (FTAO), based in Brussels, coordinates the advocacy activities of these three fair-trade networks.

As sales of fair-trade products grow across the world, there is also a debate on fair

trade⁷ with criticism notably by free-market think-tanks⁸ on a wide range of issues such as the emphasis on agricultural cooperatives in fair-trade certification. This is seen as discriminating against smaller farmers who are wary of becoming entangled with a coop. Fair trade is also criticised as not being a long-term development strategy, and for being a model that is not appropriate for all producers, and a model unable to reach those in most need.

This debate is accompanied by increasing demands from a variety of stakeholders (including critics, consumers, the media, political authorities, donors, traders and retailers) for impact studies⁹ to measure and demonstrate the difference that fair trade makes for participating producers and workers and their families in developing countries.

Further reading

[State of play of fair trade public procurement in Europe](#), European Fair Trade Association, 2010

European Commission website on [public procurement](#)

The [European Observatory on Fair Trade Public Procurement](#) website

[Fair Trade Public Procurement legal framework in the EU and the Member States](#), European Fair Trade Association, 2010

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Endnotes

1 Communication from the Commission on fair trade, COM(1999) 619 final.

2 The Fairtrade Foundation is the independent certification body in the UK that licenses the use of the FAIRTRADE mark.

3 [Distinguishing technical specifications and award criteria on the basis of role, not content](#), ClientEarth, May 2012.

4 [Directive 2004/17/EC](#) coordinating the procurement procedures of entities operating in the water, energy, transport and postal service sectors and [Directive 2004/18/EC](#) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

5 The directive relevant to FTTP is Directive 2004/18/EC. It is applicable for contracts above certain thresholds (defined by the Directive and updated every second year by the European Commission). The current thresholds are: €130 000 for contracts for supplies/services for central governmental authorities; €200 000 for contracts for supplies/services for other public contracting authorities; and €5 000 000 for works contracts ([Commission Regulation \(EU\) n° 1251/2011](#) of 30 November 2011).

6 Fair Trade by the Numbers, key data 2009-2011.

7 Fair Trade and its critics, Uppsala University 2011.

8 [Fair Trade without the Froth](#), S. Mohan, 2010, Institute of Economic Affairs; [Ethical objections to fair Trade](#), P. Griffith; [Unfair Trade](#), M. Sidwell, Adam Smith Institute, 2008.

9 Impact studies available on [Fairtrade international](#) website, [Fair Trade Institute](#) website, [European Fair Trade Association](#) website.