

For sustainable procurement

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Procurement – a rich variety in form with legal uncertainty

There are a number of ways in which public authorities and business can interact in economic activities. Procurement rules are at the center of these relationships. Uncertainty as to which rules to apply in which circumstances, and how rules should be interpreted in particular situations, have negative consequences, not only for public authorities and business, but also for citizens and workers.

The procurement market covers a wide range of arrangements with an important share of GDP. Procurement can, as emphasised in the Kok report, be used to provide the market with new research and innovation-intensive products and services. Procurement is a cornerstone in the Lisbon strategy and key factor in the promotion of sustainable development. Procurement is an important tool in delivering the Lisbon goals of growth and employment

However, as you know, procurement is only partially regulated at European level. The public procurement Directives which were adopted in 2004 basically covers procedures for the award of public works contracts and public service contracts. The adoptions of the Directives in 2004 were followed up by a green paper on PPP's which now seems to spill its effect onto concessions and institutionalized PPP's. It is in fact difficult, and perhaps impossible, to clearly categorize and clearly

define all different forms of contractual agreements between public authorities and private parties.

This presentation focuses on three issues; firstly, what is the trade union interest in how public authorities and business choose to interact? Secondly, the adoption of the public procurement Directives in 2004 was clear, public authorities can, under EC law, award contracts with a broader understanding of best value, in which they include social and environmental concerns. However, Member States seem to be reluctant to make this clear in their implementation of the Directives. I will therefore recall why lowest price necessarily does not equals best value and how it contributes to sustainable development. Finally, as a third point, I will reconnect PPP's to some practical experiences by trade unions.

The trade union perspective – basic requirements and principles

The ETUC believes that there are basic requirements that should be present no matter which form of relationship the public authority and business choose. Legal clarity about which basic requirements and principles that apply gives less incentive for the parties to choose one form before another. The ETUC supports action by the Commission on concessions and PPP's for the clarification that following principles and requirements, as key factors in sustainable procurement, should always be observed on the procurement market;

A - a public authority should have the possibility to include social and environmental criteria in awarding contracts. The scope for social and

environmental criteria should not diminish or be excluded because of the form of the interaction. Concessions and PPP's should follow the same principles as the award of public contracts.

B - the principles of transparency, non-discrimination and equality of treatment between undertakings should apply.

C - applicable labour standards in the sector should be observed, no matter if in law or collective agreements. Contracting authorities should require a declaration in tendering documents how the employer take into account key obligations in the area of employment protection, working conditions and health and safety.

D - Worker participation in the economic activity should not be diminished. In fact, experiences show that worker participation contributes to better value for money.

E - Mid- and long-term effects of the economic activity should be taken into account. Incentives, for both public authority and business, to create common interests beyond the short-term perspective should be stimulated. This supports the effectiveness and motivation of workers involved and contributes to better value.

Social criteria – gives added value and sustainability in procurement

The Public Procurement Directives were welcomed by the ETUC. It was clarified that public authorities can include, if they want, in the

award criteria a demand for social and environmental concerns. It was also clarified that the public procurement Directives support the application of host country rules in employment relationships, no matter if in law or collective agreements. However, practical experience shows that Member States have been rather unwilling to clarify the possibility for public authorities to take up social criteria in their implementation of the Directives. Local and regional authorities should be given a clear message from their governments about the importance of including social criteria. Let me explain why:

A - Procurement is not just a process, it is a driver and a tool to achieve certain objectives – these should legitimately include sustainable development goals.

B - Much of the innovation and product development, steering sustainable development, is being driven by EU firms which if procurement was driving demand for it, could become a serious global market for EU industries, to which other emerging economies will be drawn to as they face pressure to respond to the sustainable development agenda.

C - Public Procurement was identified in the Kok report as a key driver for the Lisbon strategy and it called for this to be considered in national action plans. There is some activity by governments to the follow-up of these action plans, but more can be done.

D - Procurement is not just about the lowest price; quality and integrity of the services and goods are also an issue. For example, EU social partners have already made progress in setting standards in public

contracting in security and cleaning (Uni Europa), and there should be scope to promote this best practice when we are considering this issue.

E - Europe's economy is not going to grow on a race to the bottom of standards and quality in public contracting.

Public-Private Partnerships – some trade union experiences

PPP's arrangements seem to be concentrated to a few Member States, in particular UK, Portugal, Italy, Greece, but similar forms of arrangements, for example joint ventures are common also in other Member States. It seems as trade unions have somewhat mixed experiences of PPP.

British trade unions, that have wide experience of this type of contracting in the UK, have grave concerns about it. The poor value for money was proved by a National Audit office report in 2003. Greater efficiencies or levels of innovation have not followed the very high financing costs and the costs of private sector borrowing in the UK. Research shows that many major PPP schemes have escalated in both cost and scale. Similar experiences have been reported in Hungary, where motorways constructed as concessions have proven to be too expensive for consumers, leaving a major investment virtually unused by the public which participated in its financing.

Some experiences from Denmark on the other hand, show that PPP can be both effective and give good value for money. One important factor seems to be that workers are covered by sectoral collective agreements

and that trade unions have had a strong role in the private party involved.

The trade union experiences in different Member States seem to advocate a cautious approach to PPP's. Best value for money and sustainability in PPP's seem to depend, among other things, upon the definition of the PPP and the selection process. The fact that confusion reigns at local and regional authority level on which rules to apply, causes low transparency. It is therefore important that transparency is improved along the lines mentioned in this presentation.

Finally, it is important that PPP's are evaluated on basis of "best practice", there is also a need for more thorough evaluation of PPP's against a broad range of criteria, not just in relation to competition law, but against quality of service, employment, cost/benefits etc. Public authorities need to be in a better position to assess the different ways of providing and maintain quality public services, not just to know more about how to provide PPP's.