

The National Agency  
for Public Procurement



# Mapping Initiatives for Ethical Public Procurement in Europe

**REPORT 2017:6**

Commissioned on behalf of The European Working Group on Ethical  
Public Procurement and The National Agency for Public Procurement



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# Förord

I Upphandlingsmyndighetens uppdrag ingår att stödja upphandlande myndigheter och enheter i upphandlingsfrågor.

Under 2016 antogs den nationella upphandlingsstrategin. Strategin är bindande för alla statliga myndigheter. Ett av delmålen i strategin är att offentliga upphandlingar ska bidra till ett socialt hållbart samhälle där bl.a. respekten för mänskliga rättigheter i leverantörsleden lyfts fram.

I de nya upphandlingsdirektiven ges hållbarhetsaspekterna i offentlig upphandling en allt mer framträdande roll. I syfte att implementera artikel 18.2 infördes den 1 juli 2017 en ny bestämmelse i de svenska upphandlingslagarna (hänvisning till de tre direktiven). Bestämmelsen innebär att det blir obligatoriskt för upphandlande myndigheter och enheter att ställa ut särskilda arbetsrättsliga villkor i enlighet med ILO:s kärnkonventioner när svensk rätt inte är tillämplig och om det anses behövt. Bestämmelsen är tillämplig i upphandlingar över tröskelvärdena i respektive lag.

Syftet med bestämmelsen är att offentliga medel inte ska bidra till att arbetstagare som utför arbete i andra länder än Sverige gör det under förhållanden som inte är förenliga med ILO:s kärnkonventioner.

Den nya bestämmelsen innebär att de särskilda arbetsrättsliga villkoren ska gälla även för de underleverantörer som direkt medverkar till att fullgöra kontraktet. Detta innebär att vinnande leverantör ska säkerställa efterlevnad av villkoren genom hela leverantörskedjan.

Socialt ansvarstagande i offentlig upphandling är emellertid inget nytt. Upphandlande myndigheter runt om i Europa har sedan länge arbetat med att säkerställa goda arbetsvillkor i samband med offentliga upphandlingar inom offentlig sektor. Sverige har varit ett av föregångsländerna där Sveriges regioner och landsting har samverkat på nationell nivå för att säkerställa att

de varor och tjänster som köps in är producerade under hållbara och ansvarsfulla förhållanden.

Under tvåårsperioden 2016-2017 har Upphandlingsmyndigheten suttit som ordförande i the European Working Group on Ethical Public Procurement och som en del i detta åtagande samt i syfte att hitta goda exempel har Upphandlingsmyndigheten gett konsultbolaget 3shifts i uppdrag att identifiera och samla information om de olika metoder och arbetssätt som finns redan idag för att säkerställa goda arbetsvillkor i leverantörskedjorna vid upphandling av varor och tjänster inom den offentliga sektorn. Uppdraget genomfördes under hösten 2016, alltså innan de svenska upphandlingslagstiftningarna trätt i kraft.

Författarna har i rapporten bl.a. redogjort för hur upphandlande myndigheter/enheter arbetar med alltifrån riskanalyser inför en upphandling till hur de särskilda arbetsrättsliga villkoren följs upp för att säkerställa efterlevnad i praktiken. Författarna ansvarar själva för alla slutsatser och bedömningar i rapporten.

Stockholm augusti 2017

Inger Ek,  
Generaldirektör



# Foreword

The National Agency for Public Procurement provides support by developing and conveying its knowledge, tools and methods for public procurement. We want to develop good public business processes, focusing on sustainable, innovative and effective procurement.

Socially responsible procurement is highly prioritized in Sweden. In 2016, the Swedish national procurement strategy was adopted. The strategy is obligatory for all national authorities. One of the sub-objectives of the strategy is that public procurement should contribute to a socially sustainable society which includes emphasis of respect for human rights in the supply chain. On 1 June 2017, new provisions on legal working conditions came into force in Sweden. The provisions mean that, in certain cases, it is obligatory for procuring authorities to have in place specific legal working conditions in accordance with the ILO's core conventions when work is carried out outside Sweden and if there is a risk of substandard working conditions.

However, social responsibility in public procurement is nothing new. For a long time, procuring authorities around Europe have worked to ensure good working conditions in conjunction with public procurement. Sweden has been one of the countries at the forefront of this, whereby Sweden's regions and counties have cooperated at a national level to ensure that the goods and services purchased are produced under sustainable and responsible conditions.

In the two-year period 2016–2017, the National Agency for Public Procurement was chair of the European Working Group on Ethical Public Procurement and – as a part of this undertaking, as well as with the aim of finding good examples – gave consultancy firm 3shifts the task of identifying and compiling information on the different methods and working methods in place today to ensure good working conditions in the supply chains when procuring goods and services in the public sector. The assignment was carried out in autumn 2016, before the Swedish procurement legislation came into force.

In the report, the authors show how the procuring authorities work on everything from risk analyses prior to a procurement, to how the specific legal working conditions are followed up to ensure adherence in practice. The authors are themselves responsible for all conclusions and assessments contained in the report.

Stockholm, August 2017

Inger Ek  
General Director



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# Acronyms

**AGID** – Agency for Digital Italy  
(Agenzia per l'Italia digitale)  
**ANAC** – Italian Anti-Corruption  
Authority  
**BKB** – Procurement Conference of the  
Federal BKB  
**BMA** – British Medical Association  
**CIDU** – The Interministerial  
Committee for Human Rights, Italy  
**CPD** – Central Procurement  
Directorate  
**CPV** – Common Procurement  
Vocabulary  
**COPE** – Centre of Procurement  
Expertise  
**CSR** – Corporate Social Responsibility  
**DIFI** – Norwegian Agency of Public  
Management and eGovernment  
**ECA** – Export Credit Agency  
**EEA** – European Economic Area  
**EU** – European Union  
**EWGEPP** – European Working Group on  
Ethical Public Procurement  
**FIVH** – Future in Our Hands (Framtiden  
I våre hender)  
**FSC** – The Forest Stewardship  
Certification  
**GBS** – Government Buying Standards  
**GDP** – Gross Domestic Product  
**GP** – General Practice  
**ICT** – Information Computer  
Technology

**ILO** – International Labour  
Organisation  
**INVITALIA** – National agency for inward  
investment promotion and enterprise  
development (Agenzia nazionale per  
l'attrazione degli investimenti  
e lo sviluppo d'impresa)  
**ISO** – International Standards  
Organization  
**MEF** – Italian Ministry of economy  
and finance  
**NAP** – National Action Plan on  
Business & Human Rights 2016-2021  
**NHS** – National Health Service  
**NPS** – National Procurement Service  
**KOFA** – Norwegian Complaints Board  
for Public Procurement  
**OECD** – Organisation for Economic  
Co-operation and Development  
**SEK** – Swedish Krona  
**SIC** – Statens inköpscentral, Swedish  
Central Purchasing body  
**SOE** – State-owned Enterprise  
**SRPP** – Socially Responsible Public  
Procurement  
**TAR** – Italian Regional Court  
**UK** – United Kingdom  
**UN** – United Nations  
**U.S.** – United States



# The National Agency for Public Procurement in Sweden

The National Agency for Public Procurement (NAPP) has an overall responsibility for developing and supporting the public procurement carried out by the contracting authorities and entities in Sweden. The task is to work for an effective and socially and environmentally sustainable public procurement to the benefit of the society and

the participants in the markets. The agency provides support to contracting authorities, entities and suppliers.

NAPP is a member of the European Working Group on Ethical Public Procurement (EWGEPP). This report is financed by NAPP as a part of the agency's contribution to the group.

# The European Working Group on Ethical Public Procurement

The European Working Group on Ethical Public Procurement is a collaboration of representatives from public authorities, governmental bodies, multi-stakeholder initiatives and NGOs from several European countries. The mission of the EWGEPP is to work towards ethical public procurement becoming a natural and integrated part of public procurement processes in Europe and beyond.

The EWGEPP has four aligned objectives:

1. To promote public procurement policy as a tool to social sustainability
2. To support public procurement practice that incorporates labour rights considerations, and thus facilitate market growth in social sustainability
3. To share best practice in ethical public procurement
4. Through these processes, to ensure and enable the protection of human rights and decent working conditions in global supply chains for public goods

## DEFINITION OF ETHICAL PUBLIC PROCUREMENT

According to the EWGEPP ethical public procurement is a strategic tool, to ensure the right to productive employment in conditions of freedom, equity, security and human dignity'. They align their vision to the ILO Decent Work Agenda and define ethical public procurement practices with respect to core ILO Conventions and Protocols, and especially:

- ▶ The ILO Core Conventions on forced labour (conventions 29 and 105), child labour (conventions 138 and 182), freedom of association and collective bargaining (conventions 87 and 98) and non-discrimination (conventions 100 and 111).
- ▶ Hours of Work (ILO Convention 1)
- ▶ Occupational health and safety (ILO Convention 155) as well as national legislation on health and safety
- ▶ National legislation on labour law, including minimum wage

Socially Responsible Public Procurement includes wider social criteria, such as employment opportunities, decent work, compliance with social and labour rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all as well as compliance with international labour standards.

Ethical public procurement is characteristically a part of Socially Responsible Public Procurement, although across Europe, the term ethical public procurement is not widely used. The EWGEPP is promoting Ethical Public Procurement to make it easier to understand what part

of the definition of Socially Responsible Public Procurement we are talking about.

The one fundamental common ground for the products/services procured by the members in the EWGEPP is that they most often lack third party evidence which, of course, reflects on the control and follow-up procedures.

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# 1. About this report

This report has been delivered by 3shifts, a UK based consultancy. The contributing consultants working on this project are:

- ▶ Dr Anna Harvey (United Kingdom) (3shifts, Co-founder)
- ▶ Marcus Borley (Norway) (3shifts, Associate consultant, Marcus Borley Consulting)
- ▶ Dr Eleanor Tighe (Australia) (3shifts, Associate consultant, Freelance Consultant)

No legal guarantee can be given by the authors and it is therefore recommended that any public authority seeks additional legal advice on a case-by-case basis when using the information provided in this publication. 3shifts does not take any liability whatsoever for the use of the information provided in this publication.

## 1.1 3SHIFTS

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- ▶ Dr Mahmood Bhutta, BMA, UK (EWGEPP member)
- ▶ Arthy Santhakumar, BMA, UK (EWGEPP member)
- ▶ Simone Ricotta, ARPAT and Management Committee of NAP on GPP, Italy (EWGEPP member)

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- ▶ Cesare Milani, Legal Counsel, Latham & Watkins, Italy
- ▶ Pia Trulsen, Contracts Manager, Sykehuspartner, Norway (EWGEPP member)
- ▶ Grete Solli, CSR Manager, Southeast Health Authority, Norway (EWGEPP member)
- ▶ Peter Nohrstedt, Sustainability Manager, SKL Kommentus, Sweden
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## 2. Executive summary

This report maps out ethical public procurement initiatives across European Union (EU) and European Economic Area (EEA) countries.

Throughout the report, we identify specific pressure points, strategies, and ethical public procurement initiatives implemented across Europe, as well as identifying existing challenges arising from these. Finally, recommendations for improving working conditions in public procurement supply chains are presented.

The report identifies that ethical public procurement is defined by various stakeholders in several ways. It appears that this term is not so widely used and is more commonly known as Socially Responsible Public Procurement (SRPP). Others use the term to refer to the conduct of contracting authorities, covering issues such as corruption and non-discrimination. There is evidence that multiple terms serve only to confuse and that using the term ethical public procurement can be misleading as the term ethical is so broad. It may be preferable to refer to supply chain risk or labour rights due diligence as pillar of SRPP. Embedding compliance to labour rights in global supply chains under the SRPP umbrella also has the advantage of this not being a peripheral or standalone issue.

We provide insight into the extent to which EU and EEA member states have transposed 2014/24/EU Article 18.2 into national law. The deadline for transposing the directive was April 2016 and by November 2016 the majority of states have developed new laws or revised existing laws to align them with Article 18.2. Some countries have simply copied the text from the Article and changed "member states" to "contracting authorities", whereas others have developed a legal text that gives a greater indication of the intentions of the Article. The former approach may simply be due to expedience, or it may indicate a lack of awareness that the latter approach illustrates.

Despite the development of good practice in many countries, such as the UK, Germany and the Nordic countries, ethical public procurement is evidently new for many European nations who will need time to navigate a new legal landscape. Our research revealed existing practice in nine countries, most have used qualification criteria relating to technical requirements of the tender object. Generally, the dominant model here would be to ensure that the economic operator is technically capable to carry out the contract without breaching labour standards prior to the contract being awarded.

Similarly, asking economic operators to provide evidence was by far the most popular method of verifying compliance to ethical requirements during contractual performance. The types of evidence included certificates such as SA8000<sup>1</sup>, Corrective Action Plans (CAPs) and audit reports from previous audits. A small proportion of contracting authorities visited production sites to inspect conditions for themselves, often accompanied by a local auditor who could speak the language.

A popular strategy identified was requiring economic operators to conduct their own monitoring practices, checking their capacity to do so, and writing this requirement into the contract terms and conditions. The approach exemplified by the Netherlands, with annual reporting on supply chain improvements during the contract period, advocates a continuous improvement approach. Only a fifth of the respondents to our survey had systems in place to implement the law effectively. Nevertheless, it is still early days and many member states have not yet enforced the revised Procurement Act, and are currently developing legislative guidelines to support practitioners in understanding the law.

In addition to a need for training and capacity building, a key barrier is a lack of leadership and/or managerial attention. This was also reiterated in interviewees who identified the need for more ethical public procurement ambassadors throughout Europe.

The new EU Directives, and consequently most national laws, provide for exclusion on the basis of non-compliance with ethical criteria. There is some uncertainty as to how this will be objectively assessed. While some member states specifically stipulate a court conviction, others open up for other means of establishing that bidders are in breach of applicable social and environmental obligations, without specifying what they may constitute.

Legislation does appear to favour termination of contracts in lieu of supportive remediation processes in the event of a breach. Legislatively, this runs counter to the UN Guiding Principles that advocate remediation strategies above 'comply or die' approaches. The private sector, after three decades of testing an audit-centric compliance approach, has now started to adapt to a remediation and capacity building approach. There is an opportunity here for the Public sector to follow the lessons learnt from the Private Sector.

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1. <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=937>

Finally, we mapped out some of the key elements of public procurement infrastructure in Italy, Norway, Sweden and the UK in order to provide insights into procurement dynamics in these countries, including key stakeholders and key leverage points. We discovered that there is a wide range of contracting authorities in each country, from national authorities negotiating framework agreements to small regional municipalities purchasing in small quantities, often under national thresholds. We identified organisations in all countries

that have the potential to take, or already have a coordinating role when it comes to ethical public procurement. Furthermore, we argue that this role is critical in building capacity and sharing good practice at a national and regional level in order to enable contracting authorities to operationalize this new legislation in an effective manner. In addition, coordination at a European level can provide learning across national borders and this may be a role that the European Working Group on Ethical Public Procurement can assume.

# 3. Introduction and background

The public sector spends on average 14 per cent of Europe's GDP on goods, services and works.<sup>2</sup> This money is spent on a wide range of goods and services, such as surgical equipment for hospitals, furniture for schools, uniforms for emergency services personnel, and weapons for military and security forces. Many of these goods are produced in countries with low levels of regulation, or where regulations are poorly enforced. Therefore, there is a risk that in these supply chains, goods are produced under conditions that do not protect workers' fundamental rights.

It is well established that public procurement can be used for sustainable development. The European Union states sustainably procured products and services are important for 'smart, sustainable and inclusive growth'. In

particular, public procurement policies that drive demand for innovative products lowering Greenhouse Gas emissions, modernising and unifying industrial policy, and stimulating the development of new and dynamic businesses.<sup>3</sup> Many local governments and city authorities have recognised the important role green public procurement can play to meet the Paris Agreement, adopting a range of energy efficient and green public procurement strategies.<sup>4</sup> Furthermore, at the global level, the UN Sustainable Development Goals target 12.7 calls on governments to promote the use of public procurement practices to further the sustainable development agenda.<sup>5</sup>

At the same time, realising sustainable growth also requires action on global abuses of workers' rights. Representing the views of individuals and global civil

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2. Public Procurement, European Commission, 2016, [https://ec.europa.eu/growth/single-market/public-procurement\\_en](https://ec.europa.eu/growth/single-market/public-procurement_en)

3. Communication from the Commission: Europe 2020 A strategy for smart, sustainable and inclusive growth European Commission, 2010, [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm)

4. Sustainable procurement: helping the Paris agreement fulfill its promise, ICLEI, 2016, <http://www.iclei.org/details/article/sustainable-procurement-helping-the-paris-agreement-fulfill-its-promise.html>

5. Sustainable Development Goal 12: Ensure sustainable consumption and production patterns, UN Sustainable Development Knowledge platform 2016, <https://sustainabledevelopment.un.org/sdg12>



society movements, the UN Sustainable Development Goals call for ‘full and productive employment and decent work for all’.<sup>6</sup> Again, governments through their public procurement are an important driver of change in this area. Indeed, the UN Guidelines for Business and Human Rights sets out expectations agreed unanimously by all UN member states, that “States should promote respect for human rights by business enterprises with which they conduct commercial transactions”.<sup>7</sup> Research by the European Union indicates that EU citizens believe ensuring social and ethical production practices are important in public procurement processes and that procurement authorities have a duty to ensure responsible sourcing practices.<sup>8</sup>

Recent changes to EU legislation mean ensuring labour standards compliance is a legal obligation for all EU and EEA contracting authorities. Article 18.2 is a mandatory principle, requiring member states to implement measures to protect the rights of workers producing goods for and providing services to the public sector:

”Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.”

(EU Directive 2014/24/EU of the European parliament and of the Council, 26 February 2014, emphasis added)

Annex X of the EU Directive 2014/24 lists International Labour Organization (ILO) core labour standards and global Conventions that protect workers’ fundamental rights (e.g., on forced labour, child labour, freedom of association and collective bargaining, non-discrimination, equal remuneration, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal). The deadline for transposing the EU Directive 2014/24 passed in April of this year (2016).

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6. Sustainable Development Goal 8: Promote sustained, inclusive and sustainable growth, full productive employment and decent work for all, UN Sustainable Development Knowledge Platform, 2016, <https://sustainabledevelopment.un.org/partnerships/goal8/>

7. United Nations Human Rights: Office of the High Commission Guiding Principles on Business and Human Rights, 2011, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

8. Commission Staff Working Paper: Evaluation report Impact and Effectiveness of EU public procurement legislation, European Commission, 2011

Legal advisors and procurement experts are currently discussing the extent to which “performance of public contracts” refers to the contracted entity (economic operator) alone or includes those producing goods (supply chain entities) globally. In other words, whether this is truly a game-changer for ethical public procurement, or an attempt to bring laggards and low performing European businesses in line with EU legislation and national laws. In this report, we have understood Article 18.2 to encompass both economic operators and their supply chain relating to the tender object. This is in line with emerging best practice, as detailed in section 6.

### **3.1 UNDERSTANDING ETHICAL RISK IN SUPPLY CHAINS**

From the perspective of human rights due diligence in global supply chains, EU Directive 24/2014 refers to the ILO core Conventions. The risk of a negative impact on such rights will vary from tender to tender. Works contracts will present different risks from supply of goods, as will the delivery of services. An example is social dumping (a practice where by employers use cheaper

labour than is usually available), which may be a relevant risk to consider in works contracts, whereas the use of child labour in small workshops for the production of surgical instruments in Pakistan is a well-documented risk for that particular good.<sup>9</sup>

Risk will also vary according to production country, and assessing the potential negative impacts on labour rights and the environment for a particular subject of a tender will need to become an integral part of tender planning in order for contracting authorities to meet their obligations under Article 18.2, as transposed into national law. In Norway, the Procurement Act alludes specifically to this:

*“... contracting authorities shall also have suitable routines to promote the respect for basic human rights in public contracts where there is a risk for breach of such rights”.*

(Norway Public Procurement Act)

The task of identifying risk specific to the tender object will be necessary in order to retain the principle of proportionality (that is, the requirements relating to managing supply chain risk will need to be proportional to the risk of negative impact for the tender subject).

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9. Fair trade for surgical instruments, Butta, M., 2006, British Medical Journal Aug 5; 333(7562): 297-299.

The Agency for Public Management and eGovernment (Difi) in Norway has provided a list of what they have classified as high-risk products for public procurers in order to help them build awareness of the need to perform adequate due diligence. This is also available in English. Below (Table 1) is Difi's list,

with the estimated value of procurement at a European level.<sup>10</sup> It should be noted that the list below relates to goods produced outside of Norway, and Difi have a separate dedicated unit working on domestic labour and employment issues such as social dumping.

Table 1 **Difi high risk products**

Products	Labour standards risk	Main countries of production /export	Estimated value procured at European level in (EUR 2015)
Coffee, tea, cocoa	Low incomes Child labour (especially African Cocoa exporting countries) Health risks from pesticides and fertilisers Difficulties with Freedom of Association Poor living conditions on tea estates	Coffee: Brazil, Vietnam, Indonesia and Colombia. Tea: China, India, Sri Lanka and Kenya Cocoa: Côte d'Ivoire, Ghana, Indonesia and Cameroon.	30,004,926
Construction structures and materials	Health and safety risks, such as ground accidents and silicosis Low wages Forced overtime Lack of accountability Child Labour Restrictions on Freedom of Association	Stone: China, India, Turkey, Iran and Italy Timber: global Other materials: global	41,278,048,209
Cut flowers	Excessive overtime Child Labour Use of chemicals and associated health risks Gender discrimination and violence against women Low wages Restrictions on Freedom of Association	Kenya, Colombia, Ecuador and Ethiopia	1,282,421

CONTINUES ON THE NEXT PAGE >

10. Note these figures represent estimations based on data downloaded from the EU Tenders Electronic Daily database. They are figures for 2015 and do not accurately represent the true value of goods procured in these categories. For details on methodology, see Appendix 2.

Table 1 **Difi high risk products**

Products	Labour standards risk	Main countries of production /export	Estimated value procured at European level in (EUR 2015)
Electronics and ICT	Raw materials mining (conflict minerals, health and safety risks, forced labour and modern slavery and child labour) Poor working conditions in production facilities (excessive overtime, low wages, health and safety risks, gender and other forms of discrimination, migrant and student worker risks) Restrictions on Freedom of Association	U.S., South East Asia, Latin America and Europe	3,507,489,590
Furniture	Poor regulation of health and safety (lifting and repetitive tasks) Wood dust Chemicals and pesticides Unpaid overtime	China, Germany, Italy, Malaysia, Taiwan and Vietnam	47,699,323,279
Stationary	Problems with payment of wages Occupational health and safety Excessive overtime Gender-based discrimination	China, India and Indonesia	1,240,312,210
Surgical Equipment	Low wages Child Labour Use of toxic chemicals and repetitive tasks Restrictions to Freedom of Association Use of casual labour	U.S., Germany and the Netherlands. Mexico and Pakistan	129,714,507,062
Textiles, workwear and footwear	Toxic chemicals used in the production processes Excessive overtime Use of low grade production equipment that damages health Use of casual labour and temporary contracting Child Labour Low wages Restrictions to Freedom of Association Poor building quality structures	China, Taiwan, Bangladesh, India, Indonesia and Thailand	3,602,351,275

CONTINUES ON THE NEXT PAGE ➤

Table 1 **Difi high risk products**

Products	Labour standards risk	Main countries of production /export	Estimated value procured at European level in (EUR 2015)
Toys and sporting goods	Excessive overtime Toxic chemicals and lack of protective equipment Use of casual labour and temporary contracting Child labour Poor living conditions provided for migrant workers Gender-based discrimination Restrictions to Freedom of Association Low wages Poor building safety	Asia, particularly China, Mexico	62,818,816
Tropical Fruit	Excessive overtime Restrictions to Freedom of Association Exploitation of migrant workers Low wages Pesticides	Central and Latin America and Africa	129,700
<b>Estimated Total Value</b>			<b>227,136, 267,488</b>

Given the different risk picture for a product or service, it is important for contracting authorities to set relevant requirements to justify the use of resources used on assessing bids and following up ethical criteria during the contract phase.

There are several inherent difficulties in gaining access to supply chain information. There is, in most cases, a lack of transparency due to a complex and dynamic web of suppliers from raw materials to production, to arrival in Europe, or for services provided by

domestic and non-domestic actors.

The true risk is largely elusive for most public procurement bodies. This is no argument for complacency.

Social criteria have been tested out in public sector procurement tenders, and have provided sufficient evidence of breach to ILO core conventions in the provision of goods and services to public sector bodies in Europe. For certain products, it is possible to predict risk with a certain degree of certainty based on current knowledge of these markets, for example cocoa, conflict minerals,

tea and coffee and other agricultural commodities, textiles and clothing. While much of the knowledge comes from the supply chain of private retailers and high street brands, there is no reason to assume that supply chain

dynamics of similar products procured in the public sector are different. The need to perform due diligence is therefore equally pertinent for the public sector as it is in the private sector.

# 4. Mapping EU directive 2014/24<sup>11</sup>

## 4.1 INTRODUCTION

The revised EU Public Procurement Directives were adopted in 2014, replacing the Public Contracts Directive 2004/18 and 2004/17, and setting the framework for public procurement procedures across the EEA. The motivation for regulating public procurement is to ensure fair competition and free movement of goods and services across the EEA.<sup>12</sup> The new directives EU Directive 2014/24; 2014/23 and 2014/25 apply to the purchase of goods, services and works by public bodies, concessions, and utilities providers.<sup>13</sup> This includes both administrative departments and public service providers.<sup>14</sup> The new Directives aim to ensure fair competition for government contracts, as well as greater efficiency and transparency, providing governments with clear pro-

curement guidelines. As of April 2014, Governments had two years to transpose the Directives, coming to an end 18th April 2016. In this report, we focus only on EU Directive 2014/24 on public procurement.

An important addition to the new procurement Directives is Article 18.2. This Article specifies certain principles contracting authorities must uphold with respect to social and environmental standards, national, European Union, and international labour laws. These revisions mark an important change to EU public procurement regulations, allowing procurement authorities space to consider how they can procure goods and services more ethically and with respect to legislation and agreements.

Previously, EU rules on fair competition challenged the ability of contracting

11. Within the remit of this study, we have not been able to include mapping of other EU Directives and legislation outside of scope of transposition of Article 18.2. Neither have we been able to map national human rights mechanisms other than the existence of National Action Plans (NAP), or access to remedy.

12. Public Procurement Law: The Basics, Out Law: Pinsent Masons, <http://www.out-law.com/page-5964>

13. Concessions are defined 'a kind of partnership between the public sector and a (usually) private company... in a concession, a company is remunerated mostly through being permitted to run and exploit a work or service' (European Commission, 2016, Concessions Fact Sheet, <http://ec.europa.eu/DocsRoom/documents/15428/attachments/1/translations/>).

14. SIGMA 2011, OECD, <http://www.sigmaweb.org/>

authorities to adopt certain ethical procurement practices. In addition, not all contracting authorities had interests, or were required, to adopt more ethical practices.<sup>15</sup> The new Directives require that all Member States/public procurement authorities adopt ‘appropriate measures’ to ensure contract performance upholds environmental, social and labour laws. In this manner, the Directives standardise ethical purchasing practices across all European public procurement systems. To quote Article 18.2 directly:

*“Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.”*

(The Directive 2014/24 of the European parliament and of the Council, 26 February 2014)

Annex X of EU Directive 2014/24 lists fundamental International Labour

Standards cognisant of internationally recognised workers’ rights. Included are

- ▶ ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ▶ ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ▶ ILO Convention 29 on Forced Labour;
- ▶ ILO Convention 105 on the Abolition of Forced Labour;
- ▶ ILO Convention 138 on Minimum Age;
- ▶ ILO Convention 111 on Discrimination (Employment and Occupation);
- ▶ ILO Convention 100 on Equal Remuneration;
- ▶ ILO Convention 182 on Worst Forms of Child Labour.

Not included are more general Conventions related to non-core Labour Standards such as minimum wages; working hours; and other specific health and safety regulations.

The following section evaluates examples of ‘appropriate measures’ within national legislation, indicating how governments have understood, responded and transposed Article 18.2.

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15. A review of Dutch policy for socially responsible public procurement’, SOMO, 2014, ‘<https://www.somo.nl/a-review-of-dutch-policy-for-socially-responsible-public-procurement/>



## 4.2 FACTORS ENABLING ETHICAL PUBLIC PROCUREMENT

We analysed the public procurement laws of 29 EU and EEA States. Through analysis of the EU Directive 2014/24 we decided to focus on the following parameters of national public procurement laws, giving each country a score of 0 or 1 depending on whether the parameter was evident (see Table 2)<sup>16</sup>

1. Award Criteria: The contracting authority may include any matters relating to Article 18.2 and/or Annex X in their award criteria for a tender
2. Exclusion: The contracting authority must exclude from the tender any economic unit found to not comply with social, environmental and labour law during the award and pre-award stages.
3. Social Labelling: The contracting authority may include social labelling reflecting ethical trade as a technical specification within the award criteria
4. Rejection of low priced tender: Procurement law requires contracting authorities reject 'abnormally low tenders' where prices are derived through breaches to Article 18.2 and/or Annex X

5. Monitoring: Procurement law requires that the contracting authorities monitor performance of the contract in line with social objectives and/or toward Article 18.2 and/or Annex X
6. Termination: Procurement law allows the contractor to terminate the contract on social grounds, and/or those related to Article 18.2 and/or Annex X

We evaluated how these measures feature in the national labour laws, mapping countries that have adopted legislation, how the legislation is worded, and the capability of the legislation to have an impact on working conditions.

Of the 29 EU and EEA States transposing the directives since they were launched in 2014, 23 countries have adopted national legislation that reflects Article 18.2 in some way (Figure 1). Most States transposed Article 18.2 almost directly (e.g., Bulgaria, Belgium, Denmark, Ireland, Netherlands, UK and Scotland, Hungary, Czech Republic, and France), while others phrased the article slightly differently, although to the same ultimate effect (e.g., Slovakia, Bulgaria and Latvia). For instance, under Section 48

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16. For details on methodology see Appendix 1.

‘Tender of unjustifiably low costs’ in the Latvian 2016 amended Public Procurement Act the law states:

*“If a tender for a specific public works, supply or service contract is unjustifiably low, the commissioning authority shall, prior to the potential rejection of this tender, request in writing a detailed explanation regarding the significant conditions of the tender. The detailed explanation may relate in particular to the labour protection provisions and the conformity of working conditions with the location where buildings works are performed, goods supplied or services provided.”*

(Online translation of the Latvian Public procurement Law 2014 with 2016 Amendments)<sup>17</sup>

This can be compared to the Irish Public Procurement Regulations, 2016, which directly quotes the EU directives:

*“In the performance of a public contract, an economic operator shall comply with applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or the services provided that have been established by European Union law, national law, collective agreements*

*or by international, environmental, social and labour law listed in Schedule 7”*

(Ireland Regulations, EU (Award of Public Authority Contracts) Regulations, General rules ‘Principles for Procurement, 2016)

Four countries (Spain, Poland, Portugal and Estonia) have either new or updated legislation, but make no reference to Article 18.2, and three countries have not yet transposed the Directives: Luxembourg; Finland; and Croatia.<sup>18</sup>

We can see that the public procurement Directives have strengthened existing legislation. Comparing, for example, the Slovenia Public Procurement Act 2014 with the 2016 Amended Act, we can see how previously broad terminology has been reworded and clarified with respect to the labour law. In the Slovenia Act 2014 under Article 39 the law states that ‘social, ethical and environmental considerations’ must be considered, but these are vaguely defined. In contrast, the 2016 amendment clearly articulates the requirement for legal compliance within the bounds of the labour laws. To quote:

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17. Note the quotes included in this report are online and in person of available information on national Public Procurement Laws. They can be used discuss and compare different laws across Europe only and not as a mechanism for legal advice. No legal guarantee can be given by the authors as to their accuracy. Public authorities should seek additional legal advice on a case-by-case basis when using the information provided in this publication.

18. Note the conclusions on countries that have and have not transposed the articles are made on the basis of information made available on the Internet. No legal guarantee can be given by the authors as to the accuracy of the sources consulted.

*“In implementing procurement economic operators must comply with the applicable obligations in the field of environmental, social and labour law laid down in European Union law, the regulations applicable in the Republic of Slovenia, collective agreements or the rules of international environmental, social and labour law.”*

(Online translation of the Slovenia Public Procurement Act 2016, Article 3 Principles of Procurement)

In this way, we can see how the Directives have unified the inclusion of labour standards in public procurement laws across Europe. The Slovenian Public Procurement Act 2014 enabled the contracting authority to account for certain social and environmental considerations, however, it did not reference explicitly the labour laws. Rather, the nature of ‘social and environmental considerations’ was open to interpretation. Furthermore, comparing the two, the previous legislation states that

‘performance of the contract may relate to social and environmental considerations’ while the new regulations indicate that ‘procurement economic operators must comply with the applicable obligations in the field of environmental, social and labour law’. In this sense, the amended Act is more robust and clearly articulated compared to the 2014 Slovenian Public Procurement Act, setting clear guidelines for compliance with national and international labour laws and standards.

Figure 1 **Number of countries that have transposed EU Directive 2014/24 article 18.2**

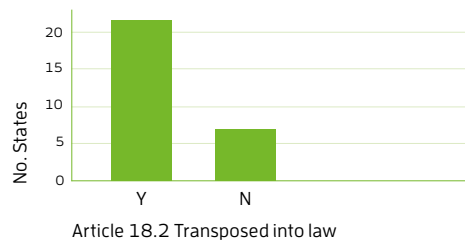


Table 2 **Provisions in national legislation for more ethical public procurement practices**

Country	The contracting authority may include any matters relating to Article 18.2 and/or Annex X in award criteria	The contracting authority must exclude from the tender any economic unit found to not comply with social, environmental and labour law during the award and pre-award stages.	The contracting authority may include social labelling reflecting ethical public procurement as a technical specification within the award criteria
Belgium	N	Y	Y
Bulgaria	Y	Y	Y
Czech Republic	Y	N	N
Cyprus, Republic of	N	Y	Y
Denmark	Y	N	N
Estonia	N	N	N
France	N	Y	Y
Germany	Y	Y	N
Greece	Y	Y*	Y
Hungary	Y	Y	Y
Iceland	Y	Y*	Y
Ireland	N	Y*	Y
Italy	Y	N	Y
Latvia	N	N	N
Malta	Y	Y*	Y
Netherlands	Y	Y	Y
Norway	Y	N	N
Poland	Y	N	N
Portugal	N	N	N
Romania	Y	Y	Y
Slovakia	Y	Y	Y
Slovenia	Y	N	N
Spain	N	Y	N
UK	Y	N	Y
Scotland	Y	Y	Y
Switzerland	Y	N	N

\*Nb. In these states mandatory exemptions are for cases of child labour only.  
For details on missing countries see Appendix 4.

Procurement law requires that contracting authorities reject 'abnormally low tenders' where prices are derived through breaches to Article 18.2/Annex X	Procurement law requires contracting authorities monitor performance of the contract in line with social objectives and/or toward Article 18.2/Annex X	Procurement law allows contractor social grounds terminate contract, and/or related to Annex X / 18.2	Total
Y	N	Y	4
Y	N	Y	5
Y	N	Y	3
Y	Y	Y	5
Y	N	Y	2
N	N	N	0
Y	N	Y	4
Y	Y	N	4
Y	Y	Y	6
Y	N	Y	5
Y	N	Y	5
Y	N	Y	4
Y	N	Y	4
N	N	Y	1
Y	Y	Y	6
Y	Y	N	5
N	N	N	Y
N	N	N	1
N	N	N	0
Y	N	Y	5
Y	N	N	4
Y	N	Y	3
N	N	N	1
Y	N	N	3
Y	N	Y	5
Y	N	N	2

### 4.3 THE LAW IN THE PROCUREMENT PROCESS

As highlighted, the new public procurement laws can frame practices that are more ethical across the whole of the procurement process. However, currently we do not know what good looks like with regards to national public procurement laws or how this works in practice. In the next section, we look at how national governments have framed the new requirements for labour standards in public procurement contracts across the procurement process.

#### 4.3.1 Invitation to tender

In the public procurement legislation of three countries a clear expectation of compliance to labour standards was indicated at the very outset. In these countries, Contracting Authorities within their initial calls to tender must specify that any economic operators intending to submit a tender must be able to demonstrate their compliance to employment protections and labour standards. For instance, in the case of the Dutch Aanbestedingswet 2012 (2016 revisions) the Terms of Reference designed by the Contracting Authority must contain information on obligations with regards to working conditions and employment laws, either in the Netherlands or in the geographical location where the work is to be carried out. To quote:

*“The terms of reference gives a contracting authority to the institution with which the candidate or tenderer may obtain information on the obligations concerning the provisions on taxes, environmental protection, employment protection and working conditions applicable in the Netherlands or, if these operations are carried out outside the Netherlands, which apply in the region or locality in which operations are carried out and that will be during the execution of the contract in relation to such transactions.”*

(Online translation of the Netherlands Aanbestedingswet 2012 containing 2016 revisions)

Similar specifications were found in the laws of Denmark and Slovenia. In this way, the Governments of these countries specify a clear requirement for compliance to labour standards and employment laws from the very start, and setting the benchmark across the duration of the contract.

#### 4.3.2 Setting award criteria

The new Directive gives space for contracting authorities to include social clauses within their evaluation criteria. In our analysis, we were looking at the social clause provision and if it could be used to improve working conditions in supply chains. We found that in most cases the mention of a social clause within the law was broad and open to interpretation. For example, the Polish Public Procurement law allows contrac-

ting authorities to include social factors in their award criteria, without defining explicitly what this looks like. To quote:

*"Contract award criteria shall be price or price and other criteria linked to the subject matter of a contract, in particular quality, functionality, technical parameters, environmental aspects, social aspects, innovative aspects, service, period of contract performance and operating costs"*

(Online translation of the Poland Act of 22 June 2016. Amending the Act - Public Procurement Law and some other acts / Ustawa z dnia 22 czerwca 2016)

Here, social aspects can reflect any social element as long as it is related to the subject matter of the contract. If the contracting authority can relate systems that promote good working conditions to the subject matter of the contract, then including these within the award criteria is, in theory, legally acceptable. What matters is that any requirements related to ethical public procurement are clearly justified and explained in the contract.

An interesting example is the case of Germany, where the law clearly specifies this matter. Relating to social aspects in production and across supply chains, Article 31 on the Terms of Reference states:

*"The characteristics [of the terms of reference] may also concern aspects of quality and innovation as well as social and environmental aspects. They may also refer to the process or method of manufacturing*

*or providing the service or to another stage in the lifecycle of the object of the contract, including the production and supply chain, even if such factors are not material elements of the service, provided that such features are linked to the object of the contract and to whose value and procurement objectives it is proportionate."*

(Online translation of the Germany Modernisation of public procurement law 2016 / Gesetz zur Modernisierung des Vergaberechts, with emphasis added)

Here the law lays out that including social provisions relate to working conditions in supply chains within the award criteria is possible, granted that such feature must link to the object of the contract.

In most cases, provisions relating to Article 18.2 were classified as a base level standard all economic operators were required to demonstrate before their application to tender could be evaluated. For instance, the Belgian Law of 17th June 2016 on Procurement (loi du 17 juin 2016 relative aux marchés publics) states compliance with social, environmental and labour laws as a baseline provision needed to qualify to evaluation stages, not an element to be evaluated. To quote:

*"Contracts are awarded on the basis of the award criteria set in accordance with Article 81, provided that the contracting authority has verified that all the following conditions are met...where the contracting authority finds that the tender which it*

*intends to award does not meet the requirements applicable in the fields of environmental law, social or work and mentioned in Article 7, it decides not to award the contract to the bidder who presented the offering, provided that it is an obligation of non-compliance is punished criminally”*

(Online translation of the Belgian Law of 17th June 2016 on public procurement / loi du 17 juin 2016 relative aux marchés publics, Article 67 Mandatory Grounds for Exclusion and Article 69 optional grounds for exclusion)

In this case, social compliance is considered a minimum standard across all applications to tender. A tenderers’ capacity to ensure good working conditions in their supply chains is not part of the evaluation process. Rather, evidence that the economic operator does not uphold labour standards in their supply chains disqualifies the tenderer from the procurement process, regardless of whether their application is judged as the most economically advantageous. The evidence supplied consists of a criminal conviction. Therefore, there is a risk that contracts may be awarded to economic operators that do not respect labour laws if practices in this respect have not been convicted.

#### **4.3.3 Certification and social labels**

Certification was the most frequent way national laws enabled inclusion of

social aspects within awarding of contracts. 15 countries allowed social labels and certification as a means to specify social specifications in the award criteria (Belgium, Bulgaria, Cyprus, France, Greece, Hungary, Iceland, Ireland, Italy, Netherlands, Malta, Romania, Slovakia, UK and Scotland). All authorities have experience using certification to satisfy environmental criteria in public contracts, and this is a good way of providing objective criteria, although the plethora of certification schemes at a European level can make comparison difficult.

Certification is potentially a suitable means of objectively evaluating decent working conditions, although the market is not quite as mature when it comes to social certification schemes compared to environmental certification schemes. In addition, there are concerns about the legitimacy of relating social criteria directly to the technical specifications of the subject matter of the contract. There are concerns that specific labelling schemes can be in a breach of discrimination and proportionality principles of public procurement. Any technical specifications must, therefore, be directly related to the subject matter of the contract. An example of this is the Hungarian Public Procurement Act 2015 that allows for social labels, provided they reflect the subject matter of the contract, to quote:



*“... provided that ... the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the subject-matter of the contract”*

(Online translation of the Hungary Public Procurement Act 2015)

Furthermore, the proliferation of social labels can be very confusing for public procurement teams to evaluate during the award phase, and requires in-depth knowledge of the different scopes of each social labelling system. Different social labels focus on different aspects of ethical trade, for instance, corporate practices (e.g., the Social Accountability International SA8000 Standard), product certification (e.g., Fair Trade labelling), or more broad environmental as well as social standards (e.g., the Økotex 100).<sup>19</sup> While there have been some attempts to provide a comparative analysis of social labels that can support this evaluation, there does not appear to one single, regularly maintained comparison of the main social labelling schemes used globally.

#### **4.3.4 Evaluating evidence**

How tender documents are evaluated, as well as the effectiveness of due diligence processes, are of great importance. In most national laws, exclusion of economic operators believed to violate labour standards in their activities is not mandatory. The exception is child labour and human trafficking, which is frequently a zero-tolerance issue (see Table 4.1). Typically, deciding to exclude a tenderer from the procurement process is up to the discretion of the contracting authority and includes how they evaluate the tender materials. Taking the UK Public Procurement Act 2015 as an example, the law states:

*“Contracting authorities may decide not to award a contract to the tenderer submitting the most economically advantageous tender where they have established that the tender does not comply with applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour*

19. SA8000, Social Accountability International, <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=937>

Our Standards'

Fair Trade, <http://www.fairtrade.net/standards/our-standards.html>;

Økotex 100, [https://www.oeko-tex.com/en/business/certifications\\_and\\_services/ots\\_100/ots\\_100\\_start.xhtml](https://www.oeko-tex.com/en/business/certifications_and_services/ots_100/ots_100_start.xhtml)

*law provisions listed in Annex X to the Public Contracts Directive as amended from time to time.”*

(UK Public Procurement Act 2015, Choice of participants and Award of contracts)

Similarly, in Denmark the contracting authority can decide to not award a contract to the most economically advantageous tender upon ‘hearing’ it may not be in compliance with labour laws. To quote:

*“The client may fail to assign an offered contract to the tenderer which has submitted the most economically advantageous tender, if the contracting entity after hearing the tenderer may prove that offer is not in accordance with current obligations in the environmental, social or labor law under EU law...”*

(Online translation of the Denmark Public Procurement Act, 2015, Chapter 13 (2) Procedure for award)

Individual national procurement laws provide little guidance on how due diligence activities should be performed, how information on working conditions and labour standards compliance should be collected, where this information should be obtained from or how it should look. These practices are left open to individual contracting authorities. Some of the more progressive contracting authorities and procurement agencies have already developed specific ethical public procurement policies and practices (see Sections 5 and 6).

In some countries, the development of resources to support practitioners is ongoing (for example in the case of the Italian Anti-Corruption Authority (ANAC) in Italy, see Section 6.2 Italy public procurement model). In other countries, legislative authorities and government agencies are reluctant to interpret the law and will instead leave this up to the courts, as in Norway where decisions around adequate risk assessment will inevitably be decided through the Complaints Board for Public Procurement (KOFA) and the courts through precedence. In the UK and Scotland legislations, contracting authorities are allowed to exclude economic operators on grounds of non-compliance with labour standards, by ‘any appropriate means’ (UK Public Procurement Act, 2015; Scotland Public Contracts Regulations 2016). The law does not state a mandatory requirement for the collection of such evidence or how such evidence should look, only that any such evidence can be used.

Perhaps the strongest guidance in this field comes from the German Modernisation of public procurement law 2016 (Gesetz zur Modernisierung des Vergaberechts 2016) that requires contracting authorities collect information on tenderers’ technical competencies. This enables the German contracting authorities to evaluate whether economic operators have the capability to uphold, or even improve working conditions in their operations. To quote:

*“Article 46 Technical and professional capacity[...]*

*3. The contracting authority may, as a justification for the technical and professional capacity of the candidate or tenderer, require the submission of one or more of the following documents, depending on the nature, purpose and quantity or scope of the supplies or services to be supplied[...]*

*4. Specifying the Lieferkettenmanagement- and supply chain monitoring system, which is available to the company to fulfil the contract available.”*

(Online translation of the German Modernisation of public procurement law / Gesetz zur Modernisierung des Vergaberechts 2016 emphasis added)

In Germany, Greece and Italy, the procurement laws specify that when procuring goods and services from low-wage sectors, such as domestic and cleaning services and labour-intensive manufacturing, it is important that economic operators have a coherent systems in place to protect workers involved. Further, evidence of these kinds of activities is found within the policies and programmes at the individual contracting authority level, often supported by a national public procurement agency (see section 5 national and regional approaches to ethical public procurement).

The most solid requests for detailed information are around justification of abnormally low pricing, specified

across the procurement law of 20 EU and EEA countries (Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Malta, Hungary, Netherlands, Romania, Slovakia, Slovenia, UK, Scotland and Switzerland). This is perhaps not surprising since pricing has the clearance implications for fair competition. The Amended Latvian Public Procurement Law 2014/2016 (Publisko iepirkumu likums 2014/2016) for instance, has clear requirements that unjustifiably low costs are explained with respect to labour protections and working conditions in the location where the goods and services are provided. To quote:

*“the commissioning authority shall, prior to the potential rejection of this tender, request in writing a detailed explanation regarding the significant conditions of the tender...the labour protection provisions and the conformity of working conditions with the location where buildings works are performed, goods supplied or services provided”*

(Online translation of the Latvian Public Procurement Law 2014 with 2016 amendments / Publisko iepirkumu likums 2014 / 2016)

In the countries listed above where prices are considered to be abnormally low because of poor working conditions, exclusion of the tenderer is mandatory.

### 4.3.5 Monitoring contracts

Requirements that contracting authorities monitor the performance of contracts with respect to labour standards also varied considerably. Where monitoring was mentioned, typically it was with respect to the procurement practices of the contracting authority and the principles of fair competition e.g., non-discrimination, accountability, transparency, etc. This was the approach to monitoring in the national public procurement legislation for Belgium, Bulgaria, Czech Republic, Hungary and Switzerland.

In other cases, the law indicated a requirement for compliance with labour standards but no requirement for monitoring (see for instance in Italy, Romania and Iceland). In Ireland, requirements for monitoring by the Contracting Authority were implicit in the law, rather than explicitly mentioned, to quote:

*“A contracting authority shall ensure that public contracts entered into it require that the obligations referred to in subparagraph (a) are complied with”*

(Ireland Principles of Procurement 2016)

While in Malta, this requirement appears to be more explicit, where the Public Procurement 2016 regulations state:

*“it is the duty of all contracting authorities: (f) to monitor the implementation of the procurement process”*

(Translated version of the Malta Public Procurement Regulations 2016 Legal Notice 352/2016)

A popular strategy was requiring economic operators to conduct their own monitoring practices, checking their capacity to do so, and writing this requirement into the contract terms and conditions. This approach was mandatory in Germany and voluntary in Netherlands and Scotland.

### 4.3.6 Terminating contracts

Grounds to terminate procurement contracts on account of labour standards non-compliance were found in the national legislation of 16 States (Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, France, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Malta, Romania, Slovenia, Scotland). Under French Public Procurement Law the contract only remains valid when upheld with compliance to the provisions of ‘Article 60’, which cites labour law compliance requirements. To quote:

*“After the closing of the electronic auction, the public contract is awarded based on the results thereof and subject to compliance with the provisions of Article 60”*

(Online translation of the French Décret no 2016-360 du 25 mars 2016 relatif aux marchés publics, Article 85)

Article 60 in the Décret no 2016-360 relates to abnormally priced tenders. According to Article 60 of the Décret, ‘the

contractor must provide evidence that prices are not derived due to non application of social, environmental and labour law' (online translation of the French Décret no 2016-360 du 25 mars 2016 relatif aux marchés publics, Article 60). Therefore, if the economic operator is found to not comply with national and international labour laws during the course of the implementation of contract, this violates the contract's terms and conditions. In such a case, the contracting authority can exit from the contract before its completion. However, as reflected in the UN Guiding Principles for Business and Human Rights, ending contractual relationships in response to violation of international labour standards does not constitute best practice in ethical trade.<sup>20</sup>

More often the law supports the establishment of systems designed to prevent contracting authorities awarding contracts to economic operators at risk of violating labour laws. Thus, once awarded, the economic operator had clear systems in place to address and remediate any labour standards issues as they arise.

To summarise, the most frequently used measures by States to adopt

Article 18.2 were related to rejection of abnormally low tenders derived through breaches to Article 18.2 / Annex X (20 Countries); using award criteria to evaluate economic operators with respect to working conditions in their supply chains; including social grounds to terminate the contract following a breach in labour standards (16 countries) and allowing contracting authorities to use social labels or certification as technical specification for social compliance (15 Countries), provided social labels are linked to the subject-matter of the contract.<sup>21</sup> The least used measures were requesting that contracting authorities monitor the performance of economic operators in line with compliance requirements (5 Countries);<sup>22</sup> and including mandatory social and ethical exclusions in the award process (11 Countries).

That few countries included monitoring of social contractual obligations within their legislation, suggests that these factors may be the most challenging for Contracting Authorities to uphold. At the same time, requiring contracting authorities to monitor con-

20. United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework' UN: Office of the High Commissioner 2011

21. The EU Directive 2014/24 Article 43 allows for the use of labels referring to specific environmental, social or other characteristics, provided that the requirements for the label are linked to the subject-matter of the contract. In addition, where economic operators demonstrate no possibility of obtaining a specific label, contracting authorities should accept 'other appropriate means of proof' (EU Directive 2014/24).

22. The EU Directive 2014/24 Article 83.2 'Enforcement' requires 'Member States shall ensure that the application of public procurement rules is monitored'. How far this extends to monitoring contracts in line with Article 18.2/ Annex X is open to interpretation by individual States.

ditions in the delivery of their procured contracts would be an expensive process and not necessarily the most effective. Here, perhaps, including and verifying economic operators' capacity to monitoring and verify their supply chains, as per the strategy taken by Germany, is more effective.

Due diligence prior to contracting appears the preferred legislative strategy to prevent contracting with economic operators in violation of national and international labour laws. The national public procurement laws recommend due diligence, however specifics on what constitutes due diligence, such as the nature of information collected are left open to interpretation by individual Contracting Authorities. Although, it is noted that such matters may be too specific to be included as a matter of law, rather than individual policy.

Where breaches to contracts in line with labour standards are found, legislation requiring Contracting Authorities to terminate contracts is more apparent, than supportive remediation processes. However, typically this occurs under the premise that in the original contracting terms and conditions the contract should not have been originally awarded. While, this approach runs counter to the UN Guiding Principles that advocate remediation strategies above 'cut and run' approaches, in most cases mandatory grounds for exclusion

are only possible where stated in the contract. Indeed in practice, contracting authorities are likely to include within the contract different steps relating to specific kinds of breaches, e.g., warnings, additional measures, and fines, prior to termination. The exception is with regards to child labour and trafficking. Generally, the dominant model is to ensure that the economic operator is technically capable to carry out the contract without breaching labour standards prior to the contract being awarded.

## **4.4 LIMITATIONS IN THE LEGAL FRAMEWORK**

### **4.4.1 Defining social criteria**

Article 18.2 relates specifically to the labour law. However, States within their national laws have included provisions relating to working conditions under 'social' criteria more generally. This can leave the interpretation of the law ambiguous, as social provisions do not carry as much weight as those relating to labour law. This links with the two least used measures: monitoring performance contracts and the ability of contracting authorities to terminate contracts on the grounds of evidence of non-compliance to labour laws. This lack of requirement for monitoring may weaken the potential of the EU Directives to have an impact on prevailing

working conditions in public procurement supply chains.

It is also not clear that laws that transpose the EU Directives closely (e.g., in Ireland, and the UK), are most effective. The Irish Procurement legislation for example specifies that the ‘contracting authority shall ensure that public contracts entered into by it ... are complied with’ (Ireland Principles of Procurement 2016I), however it does not specify clear methods towards this. How the law strengthens obligations toward measuring and monitoring public procurement performance in line with labour standards is not often clear within national legislation. Here, social demands, in particular the UN Guiding Principles for Business and Human Rights, are more likely to influence practices among contracting authorities and the private sector.

Therefore, as we will see in the next section, the initiative of local authorities, public bodies and the private sector in implementing ethical procurement practices in addition to the procurement laws is of importance.

#### 4.4.2 Exemptions

Within sectors, and depending on the value of the contracts, exemptions can apply at the discretion of the contrac-

ting authority. For example, defence and security contracts where there are concerns for national security interests, certain specialised educational materials and cultural artefacts. Certain goods and services procured through public-private partnerships may also be exempt, where majority shares are not owned by public bodies.

The EU Directives apply to tenders whose value exceeds the threshold established by the European Union. These thresholds reflect the original intent of the EU Directives, such that tenders are undertaken under conditions of fair competition, transparency, are equitable and non-discriminatory. The European Commission stipulates that at lower levels national rules apply, however, these must reflect the general principles of the EU law.<sup>23</sup>

The thresholds vary depending whether a good, service or work is purchased, and whether it is a central or sub-central government authority that is planning to undertake the procurement.<sup>24</sup> These are:

- All supplies contracts awarded by contracting authorities not operating in the field of defence, €135 000 (Central Government)

23. Public Procurement European Commission 2016

24. Thresholds’ European Commission 2016

- All other service contracts, all design contests, subsidised service contracts, all supplies contracts, €209 000 (Sub-central Government)

Some services that are considered of low interest for cross-border competition are subject to the 'light touch regime'. Typically, these are certain health, education or social services. Goods and services subject to the light touch regime have a higher threshold than those listed above. Per the UK Crown Commission, light touch goods are still subject to mandatory exclusions, but they do not apply as a matter of law, and there is more flexibility around how the EU Directives are applied.<sup>25</sup>

In addition, individual states set their own thresholds at which national laws apply. These vary across EEA States where the lowest national threshold is 33,000 EUR (Bulgaria) and the highest is 118, 773 EUR (UK); and between different supplies, sectors and departments, for example the UK general threshold is 118, 773 EUR, while there a 'small lot' threshold set at 70,383 EUR.<sup>26</sup> The legal regimes relating to below threshold public procurement are frequently not clear within national legislation. The

thresholds stipulate which tenders are subject to public publication and rules on fair competition. It is not clear whether measures to promote working conditions apply to below threshold contracts. Therefore, below threshold activity may be at risk of being ignored when it comes to labour standards in their supply chains. Interestingly, the Austria 'So-Fair' initiative advocates using below threshold public procurement believing that direct procurement provides wider scope for the use of social labelling.<sup>27</sup> In this respect, below threshold direct relationships can enable contracting authorities more freedom for selective social award criteria and more stringent requirements for ethical standards.

#### 4.4.3 Central purchasing bodies

Central purchasing bodies can coordinate public contracts and bundle multiple goods into a single contract e.g., a framework agreement. Better value for money can be offered where social criteria are evaluated and due diligence is performed at a larger scale. Central purchasing bodies coordinating large framework agreements tend to have higher requirements for transparency

25. Guidance on the new Light Touch Regime' UK Crown Commercial Services 2016 <https://www.gov.uk/government/organisations/crown-commercial-service>

26. Exchange rate IGBP to 1.12 EUR as of 26 Oct 2016 Ex: Convert [www.xe.com](http://www.xe.com)

27. How to procure fair? Austria 'So Fair' 2016 (Wie Fair beschaffen?) <http://www.sofair.at/wie-fair-beschaffen>



and larger resource budgets to engage in effective due diligence and contract monitoring. The online resources of these agencies could also function as a resource for publication of economic operators social audit scores and any Corrective Action Plans (CAPs).

#### **4.5 SUMMARY**

In this section (Section 4) we have seen how the EU Directive 2014/24 has opened up the space for national legislation to address the issue of working conditions in public procurement processes. This was previously difficult, given the primacy given to competition stipulations in the previous directives. The new laws enable contracting authorities to include social clauses in their procurement contracts, and these can reflect goals for better working conditions.

We've seen the different legal strategies governments have taken to trans-

pose the Directives, and the extent to which these facilitate ethical sourcing. It is noticeable how the Directives have raised the issue of labour standards and working conditions in the public procurement contracts of States and regions previously not active in this field. However, the stringency of the laws vary. What is emerging is a dominant practice of evaluating economic operators competency to uphold good working conditions at the award evaluation stage. In addition, only contracts above national thresholds are subject to the Directives, therefore, the extent to which labour clauses are considered for contracts of low value is not known. The next section examines how this plays out in the policies and programmes of contracting authorities, and within the procurement departments of contracting authorities themselves at the local, national and regional level.

# 5. National and regional approaches to ethical public procurement

## 5.1 ETHICAL PUBLIC PROCUREMENT POLICIES 5

We conducted a desk-based review of all ethical public procurement policies, programmes and institutions across all EU and EEA states (see Appendix 5).<sup>28</sup>

This search revealed the range of different strategies and approaches to ethical public procurement across and within Europe.

National approaches to ethical public procurement varied across the European countries. At a foundational level there were programmes aimed at strengthening government accountability and transparency frameworks within the public procurement process. These programmes of reform were typical among Eastern European countries and some of the southern European States (Croatia, Republic of Cyprus, Czech Republic, Hungary, Greece, Romania and Slovakia). In these States the public

procurement laws were important to provide a basic framework for contracting authorities and national public procurement associations to begin to consider labour standards in their procurement contracts.

At the other end of the spectrum, several countries had developed sophisticated ethical public procurement strategies, and especially risk-based approaches to labour standards management. These were most often managed by national public procurement agencies, such as the Norwegian Agency of Public Management and eGovernment (Difi) or the Swedish National Agency for Public Procurement. These agencies have developed online guidance helping contracting authorities develop both ethical procurement and follow-up strategies (see Box 1 below. There were also cases where procurement agencies across different States had joined up to

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28. Search terms used were ethical public procurement and socially responsible public procurement for each country. Only material from credible sources e.g., the websites of national procurement agencies, literature from the European Union and affiliates, reputable news agencies, and the websites of well-known civil society organizations were consulted. For more details on methodology see Appendix 1,

promote ethical public procurement practices and provide joint resources and guidance (for instance, the German Federal Government Sustainability Compass in partnership with the Swiss Procurement Conference of the Federal BKB (Beschaffungskonferenz des Bundes BKB). Leading these initiatives are strong institutions supporting Ethical Public Procurement alongside active civil

society campaigning which results in a strong social case for ethical practices.

Around these flagship programmes there were more ad hoc codes of conduct and individual strategies supporting the procurement of fair trade products, e.g., the policy of the City of Ghent, Belgium to procure uniforms made from socially sourced cotton (see Appendix 5)

#### Box 1. **Managing risk in public procurement supply chains**

##### **German Federal Government Sustainability Compass**

The Sustainability Compass from the Federal Government of Germany provides German contracting authorities and socially responsible suppliers with information and facilities on socially responsible public procurement practices. Contracting authorities can search or browse by product types and the Compass issues guidance on specific labour standards risks, labelling schemes, guidelines for procurement criteria and practical examples from other local contracting authorities. There are also options to link up with other authorities in the same area and also with ethical suppliers selling respon-

sibility sourced products and services. Guidelines are also included on how contracting authorities can integrate socially responsible sourcing across pre-qualification, qualification, awarding and monitoring stages.<sup>29</sup> The project has been shared and reproduced by the Swiss Procurement Conference of the Federal BKB.

##### **Netherlands Public Procurement Expertise Centre (PIANOo)**

The Netherlands public procurement expertise centre issue sustainable public procurement guidelines for Dutch contracting authorities. The guide helps contracting authorities engage suppliers in managing supply chain risks during the

29. Kompass Nachhaltigkeit 2016 <http://www.kompass-nachhaltigkeit.de/>

ongoing implementation of the contract. Links are provided to an online 'risk' checker.<sup>30</sup> In addition, the Centre has compiled a sustainable procurement checklist that guides contracting authorities through the procurement process, from mandatory obligations in the law, to developing social clauses in contracts.<sup>31</sup>

### **Difi Norway**

The website of the Norwegian Agency of Public Management and eGovernment (Difi) offer guidelines to contracting authorities on how to manage potential risks in public procurement supply chains. These are categorised by product type, with typical labour standards risk and options to partner with industry or multi-stakeholder initiatives presented. Difi have published a self-assessment questionnaire for suppliers to reflect on their internal processes to manage social responsibility and have developed a 'Walk the Talk Guide' that presents a social case for ethical public procurement. Included within the guide is guidance on how to execute public tenders in line with

social responsibility principles; advice on socially responsible award criteria, for instance checks on suppliers' supply chain management systems; or collection of freedom of association documentation for manufacturing units. Also included is guidance on how to conduct audits or on-site inspections and the benefits of developing a reporting strategy to demonstrate the value of socially responsible practices to relevant stakeholders.<sup>32</sup>

### **Swedish National Public Procurement Agency - Sustainability Criteria**

The Swedish National Public Procurement Agency publish comprehensive social responsibility criteria to help contracting authorities tender contracts. These are organised by product type and there is also an online tool that helps procurement authorities identify specific criteria for specific products. They publish a downloadable supplier declaration form that contracting authorities can use to check tenders documents in line with social criteria and guidelines on follow up and verification processes.<sup>33</sup>

30. CSR Risk Check, MVO Netherlands, 2016, <http://www.mvorisicochecker.nl/en>

31. Sustainable Public Procurement, Pianoo, 2016.

32. Walk the talk: Ensuring socially responsible public procurement, DIFI, 2016, [https://www.anskaffelser.no/sites/anskaffelser/files/difi\\_srpp-guide\\_walk-the-talk.pdf](https://www.anskaffelser.no/sites/anskaffelser/files/difi_srpp-guide_walk-the-talk.pdf)

33. Sustainability Criteria, The National Agency for Public Procurement, <http://www.upphandlingsmyndigheten.se/en/sustainable-public-procurement/sustainable-procurement-criteria/>

There were also a number of autonomous ethical public procurement projects and programmes initiated at the local level by local authorities and public bodies. For example, the Inter Municipal Waste Management of Greater Porto, in Portugal have developed their own suppliers' code of conduct, achieved SA8000 certification and undertake annual reporting of their ethical procurement activities. The City of Barcelona has also been particularly innovative, developing 50 different strategic initiatives across their municipal departments. They have developed an interactive social procurement toolbox available online that the different departments across the Municipal authority can use.

In countries going beyond the law, the dominant model has been a risk-based systems management approach. This approach appears to be more than just removing risks from procurement supply chains with contracting authorities required to proactively engage and to put systems in place to manage risks at each level.

Across most of the countries, Green Public Procurement and social clauses in public procurement were more established than ethical public procurement. This is probably because the laws

supporting labour standards in procurement contracts are still relatively new and activities in this space have been limited outside of the countries and regions without a strong civil society pushing for action (e.g., in Netherlands, Sweden, Denmark, Germany, and Norway). Green Public Procurement in contrast has a much wider implementation, and is linked to clear measurable goals and targets specified by the EU (e.g., the Green Public Procurement 2020 goals).<sup>34</sup> These targets, such as specific cuts to CO<sub>2</sub> emissions demonstrate immediate economic and environmental value to taxpayers. Similarly, social clauses also offer immediate social benefits that are locally derived and easily justified to taxpayers, such as public procurement tenders that create local jobs for individuals with disabilities. The challenge for Ethical Public Procurement is proving the value of good working conditions in supply chains when the immediate benefits accrue elsewhere.

In addition, Ethical Public Procurement is not as defined a concept as Green public procurement or socially responsible public procurement, as previously discussed, and there lacks clear coherence over which tools, terms and approaches are most useful and effective (e.g., codes of conduct, assessing

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34. Intelligent Energy Europe, European Commission, 2016 <https://ec.europa.eu/energy/intelligent/projects/en/projects/gpp-2020>

risk, developing policies, engaging with suppliers etc.). As well as the law, the Ethical Public Procurement movement could benefit from a clear strategy and focus, such as that found in the Green Procurement 2020 initiative.

Without a clear strategy, contracting authorities can decide themselves what constitutes an ethical public procurement strategy. Early policies in this field frequently started with procurement of fair trade products. While these are worthwhile provisions they do not adequately reflect the wide variety of risks that present themselves across the many diverse public procurement supply chains. Where countries have a clear strategy for Ethical Public Procurement, supporting institutions, policies and programmes appeared more integrated. In all cases, civil society groups appear to play an important role in promoting action. Countries with active Clean Clothes Campaign movements, or other civil society campaigns had the most comprehensive policies in place. The actions of civil society groups were also important from a transparency and accountability perspective. For

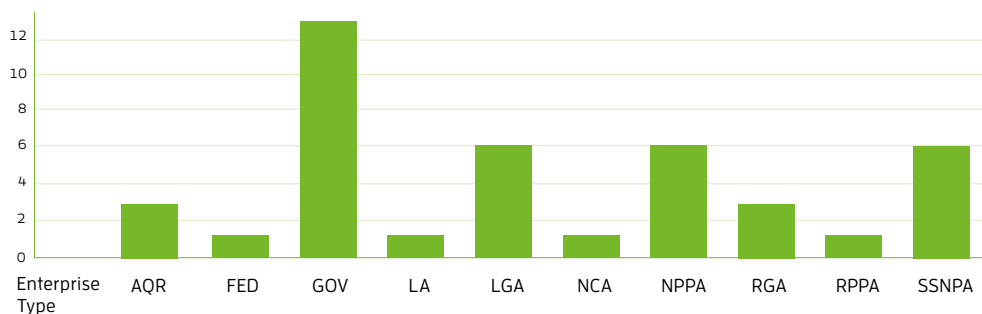
instance, the Slovakian *Otvorené* initiative publishes Slovakian contracts and invites the public to evaluate and scrutinise this process.<sup>35</sup> Similar crossovers could be developed with procurement documentations and audit reports.

## 5.2 ETHICAL PUBLIC PROCUREMENT IN PRACTICE

To explore ethical public procurement practices at the local level we carried out an online survey across Europe. The survey was sent out to public procurement professionals representing a broad range of public sectors. For each EU and EEA country a representative from a central government procurement department, a local authority, a public sector service provider and centralised public purchasing agency was contacted. The survey was sent out to an estimated 800 respondents, across all EU and EEA countries and therefore had an estimated 5% response rate (it is not possible to state the exact number of respondents because public procurement networks were encouraged to forward the invitation within their networks).

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35. Slovakian *Otvorené*, 2016, <http://otvorenezmluvy.sk/>

Figure 2 **Types of enterprises surveyed**

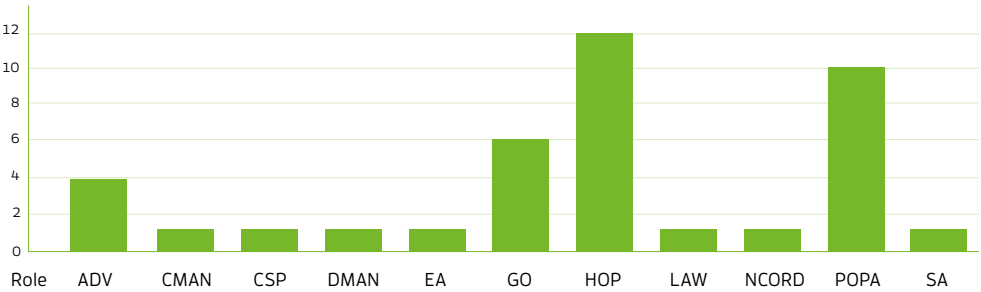
Types of Enterprises: AQR – Advisor or regulatory body; FED – Federation; GOV – Government Ministry; LA – Legal Advisory Service; LGA – Local Government Authority; NCA – National Communications Authority; NPPA – National Public Procurement Agency; RGA – Regional Government Authority; RPPA – Regional Public Procurement Agency; SSNPA – Sector Specific National Authority

Responses to the survey were received from 15 countries.<sup>36</sup> The highest response was from public procurement professionals in Norway (29%). The largest number of respondents (31 %) work in procurement departments inside government ministries. Other

respondents work in local government authorities (six respondents), national public procurement agencies (six respondents), sector specific public authorities, such as health (six respondents) and in other regional, advisory, or legal supporting agencies.

36. Belgium, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Netherlands, Norway and Sweden

Figure 3 Role of interview respondents within the enterprise



Roles of respondents: ADV – Advisor, Consultant or Trainer; CMAN – Contract Manager; CSP – Sustainable Procurement Coordinator; DMAN – Development Manager; EA – Economic Advisor; GO – Government Officer; HOP – Head of Procurement; LAW – Lawyer; NCORD – National Coordinator; POPA – Procurement Officer in a Procurement Authority; SA – Senior Advisor

The majority of respondents work directly in procurement either the Head of Procurement within the procurement authority (29 per cent) or as Procurement Officer (24 per cent). The rest were in other government, legal, advisory or other support roles across the public sector. One respondent had the responsibility of coordinating their departments sustainable sourcing programme.

Among the survey respondents, existing national public procurement legislation provided the framework through which procurement processes and procedures operated. The majority of respondents (74 per cent) were aware and able to cite the governing laws in place. Seven of the respondents referred to the laws when questioned about national policies for socially responsible public procurement, for example:

*“[The Ethical Public Procurement policy] is managed by the Public procurement law through exclusion grounds and some additional requirements”,*

Coordinator for sustainable public procurement, Latvia

This indicates that any policies or programmes in support of ethical procurement practices are firstly, fundamentally structured through legal procedures. This is different to the private sector where enterprises have more flexibility to establish their own procurement and supply chain purchasing decisions.

Of the 42 respondents, 60% had taken part in a public tender where ethical criteria were used at some stage in the tender process (Figure 4). While eleven of these were from Norway, a country that has been at the forefront of the ethical public procurement agenda for over



five years, there is evidence that ethical public procurement has been making headway across Europe. Indeed, respondents from nine European countries stated that they had been involved in public tenders where ethical criteria had been used, the majority of which used qualification criteria (mostly self-declaration in conjunction with a Code of Conduct).

In the survey, we asked questions relating to previous or current experience with ethical criteria in public procurement. What became evident is that there is a wide range of practices

in Europe, ranging from an initial risk assessment and the use of qualification criteria to conducting audits of production facilities during contractual performance.

While there is still a degree of uncertainty around the legality of such criteria<sup>37</sup>, case law<sup>38</sup> and procurement practice<sup>39</sup> over the last few years have highlighted the opportunities for contracting authorities to legally and legitimately include ethical criteria in all public procurement processes.

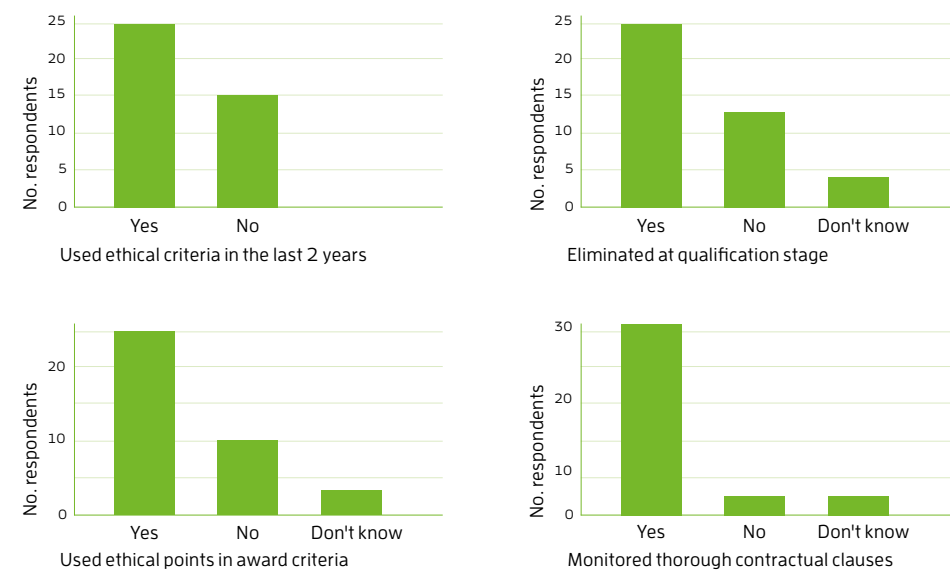
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37. In interviewing a public procurement lawyer in Italy, there were clear concerns around ethical criteria being in breach of fundamental principles of public procurement (non-discrimination, free competition, proportionality).

38. For example, *Commission v Netherlands* (C-368/10)

39. See the Landmark Project for examples

Figure 4 **Approaches to ethical public procurement**



**5.2.1 Qualification criteria**

The Directive 24/2014/EU states that member states shall implement measures “to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law”. While this may be interpreted as referring to the use of contractual performance conditions, there appears to be an indication from the survey that it is preferable to (also) use qualification criteria. 17 out of 25 respondents who reported having had experience of using ethical criteria stated that they had used qualification criteria. The majority of these required a self-declaration accompanied by a

company policy statement or supplier code of conduct. In some cases, the contracting authority asked also for a written explanation of the bidders system for ensuring compliance to international ILO conventions. One regional authority in Norway also asked bidders to provide information on where products would be produced, assumedly because supply chain mapping and transparency gives some form of assurance about the quality of the economic operator’s system for ensuring compliance in its supply chain and also provides information to the contracting authority regarding country-based risk and the need to perform additional due diligence.

### 5.2.2 Contractual performance

Methods for verifying information given during the qualification phase varied widely. During the contract phase the most popular method (43%) for following up was by asking the economic operator to provide evidence, such as audit reports, corrective action plans, minutes of meetings with suppliers or certificates. Some procurement teams (16%) visited factories where products were produced and 13% met with the economic operator to discuss compliance with ethical criteria during the contract phase. A small proportion of contracting authorities (7%) used a 3rd party audit to verify compliance, whereas 20% did not follow up at all during the contract phase. One third of contracting authorities followed up to ensure that remediation measures had been implemented during the contract period. One respondent from Netherlands reported that:

*“During the contract period, suppliers submit reports annually (or on completion, in the case of a shorter-term contract) regarding the efforts they have made in connection with improving social conditions along the supply chain. This must show that the supplier has made a “reasonable effort” to eliminate risk.”*

### 5.2.3 Preparedness

In general, there appears to be a good level of awareness around the new legislative requirements articulated in transpositions of Article 18.2, although some uncertainty as to the practical implications of the law. While only 60% respondents stated that they could use ethical criteria in the qualification phase, 83% said they could use ethical criteria in the contractual performance phase. This lack of awareness was also evident in our interviews with public procurement professionals in Italy, where a public procurement lawyer described the current status in Italy as a state of limbo, while contracting authorities await guidelines from ANAC (see section 6 on Italy Public Procurement).

Other contracting authorities appear to be well-prepared for the new law, with over 21% stating that they have due diligence systems in place for assessing risk and the need for setting ethical criteria in tender processes<sup>40</sup> with a further 28% stating that they partly have systems in place<sup>41</sup>. Over half of all respondents have (24%) or partly have (28%) systems in place for following up ethical criteria during contractual performance. This indicates

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40. Respondents were from Italy, Norway, Finland, Sweden, Malta

41. Respondents were from Latvia, Greece, Belgium, Denmark, Norway, Italy, Malta and Netherlands

that just over half of the respondents are aware of the legal implications of the relevant legislation in their countries and are implementing systems or already have systems in place for managing this aspect of contracts.

#### **5.2.4 Capacity building**

Nearly 60% of respondents stated that they would like to receive training on how to understand and implement the new requirements regarding ethical criteria in public contracts. In addition to insufficient knowledge and expertise, key challenges were a lack of commitment and will from managers, insufficient time and resources to follow up economic operators and their suppliers during the contract phase, and cultural issues resulting in CSR-related criteria being poorly prioritised or even neglected in favour of other requirements.

#### **5.2.5 Sharing best practice**

A particularly encouraging sign is that contracting authorities are sharing their experiences internally (37%) and with other stakeholders externally through workshops and meetings (16%) or through publishing a report (13%). In addition to this, 24% stated that they performed an internal review of procedures and practices in light of their experience, and 10% made actual changes to internal procurement procedures.

### **5.3 DISCUSSION AND LIMITATIONS**

Before making any declarations about the significance of survey results it is prudent to mention issues relating to response rate and selection bias. Given the restricted timeframe allocated to the study, survey respondents were selected primarily in liaison with networks working within the social and ethical public procurement field. Members of these networks more often represent larger contracting authorities or national agencies, and the voice of the small remote municipality or smaller contracting authority is not represented to any significant degree. Neither were we able to secure a response from all public sectors. Members of the networks we recruited respondents from are naturally interested in ethical public procurement as a topic, receive information and other materials from these networks, and are therefore not necessarily representative of all public procurement professionals in all countries. Despite this, there was only a 5% response rate, which may also indicate that the issue of ethical public procurement is very marginal, even for those who indicate an interest in the topic. As such, it is reasonable to suggest that those who did answer the survey may represent an interested minority, but do not represent the population of European public procurement professionals. The issue of selection bias response

rates can be better addressed in a larger and more comprehensive study.

Public sector procurement is highly regulated by law, more so than the private sector. There are a number of reasons for this, including the responsible use of public funds, protection of the principle of free competition and non-discrimination, and to ensure accountability. The private sector is regulated to a larger degree through soft law mechanisms, such as the UN Guiding Principles of Business and Human Rights, and the OECD Guidelines for Multinational Companies (with the OECD National Contact Points as a non-judicial grievance mechanism), and self-regulatory mechanisms such as UN Global Compact and the Equator Principles. The advantage of implementing hard law in the form of EU Directives is that it sets a common set of rules, a level playing field, for all contracting authorities and economic operators across the EU and EEA. The ability to understand the implications of this law and to implement effective procurement procedures for enforcing the law is critical.

While there are some good examples of proactive approaches to implementing national legislation into procedures for public procurement, these can to a large degree be classified as sporadic, experimental and isolated to certain regional authorities. The results from the survey

and our mapping of national legislation above, give a relatively strong indication that there is not yet a common understanding of the implications of Article 18.2 of the EU Directive 24/2014 and a common approach at a national or even pan-European level. Indeed, it will inevitably take several years for contracting authorities to fully understand the intentions of Article 18.2 and integrate these into public contract management consistently at a national level.

One of the key findings from our survey (and interviews with public procurement professionals) is that there is still a certain degree of clarity concerning both the legitimacy of requiring economic operators to provide information about how they perform due diligence in their supply chains as well as how to effectively (and legally) do this in practice. This is perhaps to be expected given that the new legislation has only just come into enforcement in many countries (and has still not yet come into force yet in a few countries). Clear guidelines from governmental authorities, sound legal advice based on case law and decisions from national and regional complaints authorities, training for procurement staff, and a common platform for sharing good practice will be critical in the coming years. An example of the latter is the Landmark Project.<sup>42</sup>

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42. <http://www.landmark-project.eu/>

# 6. Procurement infrastructure – country profiles

We conducted interviews and performed detailed research in four countries: Italy, Norway, Sweden and the United Kingdom. The main objective was to highlight some of the dynamics of different models of public procurement infrastructure in Europe. This information is deemed useful for comparative analysis and as input to the strategy for the European Working Group on Ethical Public Procurement.

## 6.1 NORWAY

Norway is widely recognised as one of the most democratic nations in the world. The Norwegian civil service has a strong democratic tradition, has relatively strong collectivistic and egalitarian values, is consensus-oriented and has a low level of internal conflict. It also has one of the most comprehensive and universal welfare states in the world with a large public sector.

Legislative powers are held by the Storting (Norwegian parliament). Norway is a constitutional monarchy with a parliamentary democratic system of governance.

State power is formally distributed between three institutions: the Storting (the legislative power), the Government (the executive power) and the courts (the judicial power). There is also a geographical distribution of political power into state, county and municipal levels.

The Council of State is Norway's executive power and its members are normally referred to as the Government. The office of the Prime Minister is the central office of the Government. Most decisions made by the executive power are taken by a minister in his or her capacity as head of a ministry. Any decisions which a minister does not have the authority to make will be made by the Government.

The Supreme Court is Norway's most superior court, and the other main courts are the Interlocutory Appeals Committee of the Supreme Court, the Jury Courts, and the District Courts. All can rule on both civil and criminal cases.

The National Action Plan on Business & Human Rights clearly states that the "State should promote the respect

for human rights in companies it has business transactions with”, and pledges to do this through legal instruments (the Public Procurement Act).

### **6.1.1 Government administration**

There are 5.2 million people living in Norway. Norway has three levels of government: national, regional and local. The powers of the county and municipal councils for self-government have been delegated from the State, and are set out in legislation, not in the Constitution. The State is directly represented at a local level through the County Governors’ offices.

At the national level, the Norwegian people are represented by the Storting (Norwegian parliament). Norway is divided into nineteen first-level administrative counties administrated through directly elected county assemblies who elect the County Governor. The counties are then sub-divided into 430 municipalities, which in turn are administrated by a directly elected municipal council.

The 430 municipalities are responsible for primary and lower secondary education, social services, municipal roads, water and sewerage and zoning regulation. Upper secondary schools and a number of technical services are administered at the county level. Each of these levels of administration receives part of their revenues through local taxation, fees and local business management, and

partly from allocations from the central authorities and other public institutions.

### **6.1.2 Public procurement**

Public procurement for over 350 billion NOK, around 15% of GDP. Public procurement is regulated through the Public Procurement Act and accompanying regulations. These regulations ensure that public funds are used in a cost-effective manner, and also contribute to maintaining and developing a competitive market in Norway.

There is a high degree of autonomy and each public enterprise is responsible for its own procurement activities and must ensure that it has procedures in place that secure compliance to the Norwegian Procurement Act and related laws. Sometimes public enterprises, such as smaller municipalities, collaborate (on a voluntary basis) in order to pool resources and competence, and to gain economies of scale.

Public procurement in the health sector is divided into four regions: North Norway, West Norway, South-East Norway, and Mid-Norway. Each are independent and responsible for their own procurement either through a central purchasing body (HINAS), or dedicated purchasing body (Sykehuspartner for the Southeast Health Authority). Hospitals and health service providers can make small ad hoc purchases independently. HINAS is a limited company owned by

the four regional health authorities. Their main role is to negotiate national framework agreements, and currently manage agreements in over 50 product categories from consultant services to ambulances to surgical instruments. Contracts were valued at nearly four billion Norwegian kroner in 2013. HINAS act as project manager for these contracts, in coordination with project groups consisting of category experts from each regional authority. HINAS accounts for approximately 10% of all health sector procurement, with the remaining 90% happening at regional level. At the end of 2016 a new national procurement agency, Sykehus Innkjøp, will be responsible for procurement for all four regional health authorities. HINAS will be merged into this new entity, as will the logistics and procurement services of Sykehuspartner.

The State's Procurement Centre (statens innkjøpssenter) is relatively new, and is tasked with creating and administering framework agreements, which will be mandatory for all state authorities, including national universities, municipalities and the police force. Examples of agreements that are currently under development include ICT services, travel services, internal audits, legal and professional services and office and cleaning materials.

The Agency for Public Management and eGovernment (Difi) is the government agency tasked with developing

organisation and leadership in the public sector. Difi is overseen by the Ministry of Local Government and Modernisation. Difi aims to strengthen the government's work in renewing the Norwegian public sector and improve the organisation and efficiency of government administration. It does this through a range of activities, such as providing assistance with reorganisation processes in the public sector, leadership development within the public sector, setting up solid public procurement procedures and encouraging coordinated and cost-efficient use of ICT within the public sector, as well as making public information and services more accessible for citizens and public agencies.

Difi has been instrumental in driving the socially responsible public procurement agenda in Norway, and provides training and a range of web-based resources to assist contracting authorities in implementing social and environmental criteria in all phases of the public tender process. Accompanied by support of the Ethical Trading Initiative in Norway, and campaigns by civil society organisations such as Future in Our Hands (Framtiden I våre hender, FIVH), there has been a considerable drive towards holding contracting authorities accountable for human rights breaches in their supply chains.

Grete Solli, CSR Manager at the Southeast Health Authority, cites reputational damage as being the driver for



the health authority to take its first steps into ethical public procurement, following a scathing report by FIVH in 2008. Managing reputational risk is still a key driver in developing procedures and practice seven years later.

One of the key success factors mentioned by both Grete Solli, and Pia Trulsen (Contracts Manager at Sykehuspartner) is top management commitment, and a continued focus on developing a culture around ethical public procurement. As Pia Trulsen states, ethical criteria are used in all goods contracts, and this is one of the permanent agenda points on management meetings. Human rights due diligence is an integral part of the procurement process, and all new staff take a course in ethical criteria during their induction period. Socially responsible procurement is one of the pillars of the new “Sykehus Innkjøp”, and is an element in all 14 category strategies. As Pia Trulsen states, however, it has been a long road to get to where they are today, both internally and externally; suppliers in different categories vary considerably in where they are in the maturity process towards being able to understand criteria and provide satisfactory data during the qualification phase. Capacity building in less mature category markets is an example of a possible measure in the relevant category strategy.

In April Difi and the Ethical Trading Initiative in Norway launched a common

set of guidelines on how to implement social criteria for all public contracts.

### **6.1.3 State-owned enterprises**

The state is a significant owner of enterprises in Norway. Eleven ministries manage shares in a business portfolio of 70 enterprises, (45 of these are wholly owned by the State). The value of the government’s stake in these businesses was 644 billion NOK in 2015. Government whitepapers on corporate social responsibility (2010) and responsible ownership (2014), as well as the National Action Plan on Business & Human Rights (2016), outline the role that the government has in ensuring that state-owned businesses take a leading role in creating and sharing good practice in responsible business. Clear mandates from government and government agencies have arguably been instrumental in allowing both state-owned enterprises and public authorities to lead the development of good practice.

### **6.1.4 Remedy**

In Norway, legal recourse can be sought through the Complaints Board for Public Procurement (KOFA). KOFA is an independent body assigned to review complaints regarding infringements of the law on public procurement and associated regulations. The procedure for reviewing cases consists of a written exchange of pleadings, similar to

the hearing of civil actions. There is however no oral proceedings. Similar to civil actions before the courts, the procedure is adversary, as opposed to inquisitorial, and is limited to the parties' claims, pleas, allegations and evidence. A complaint does not have the effect of suspending the procedure for the award of a public contract. An action for interim measures to suspend the procedure must be brought before a court. In the absence of a court-ordered suspension of the conclusion of a contract, the contracting authority decides whether to suspend the procedure pending the outcome of the KOFA's decision. KOFA handles the case in an expedited procedure if interim measures are in place or the contracting authority confirms that the conclusion of the contract will be suspended.

All KOFA's decisions are written and published in Norwegian. Decisions considered by the KOFA Secretariat to be of importance are picked out as "Selected cases", and short summaries of these cases are published on the website.

In the absence of specific guidelines from the authorities regarding interpretation of the law, for example, what represents "suitable routines" or what represents adequate risk analysis, such issues will undoubtedly be decided through precedent in complaints procedures and case law.

### **6.1.5 Good practice**

In 2008, the Ethical Trading Initiative – Norway (ETI – N) developed ethical contractual criteria for Norwegian contracting authorities covering the eight ILO core conventions, working hours and wages, occupational health and safety, regular employment and statutory social insurance. The municipality of Stavanger (approx. 128.000 inhabitants) was the first public body to apply the criteria. Since then, gradually more and more public buyers at local, regional and national level have adopted the criteria in contracts where there is a perceived risk of breach to the criteria developed.

#### **6.1.5.1 The Municipality of Stavanger**

The Municipality of Stavanger has applied ethical criteria as contractual clauses since 2008. In 2010, in cooperation with ETI-N, they were the first public body to apply ethical criteria as selection criteria (required tenderers to document their supply chains). Their procedure is as follows:

- ▶ Initial risk assessment: Once a year look into procurements for the coming year
- ▶ Desktop risk analysis. Based on volume, type of agreement (e.g. framework agreement), known human rights risks (based on international acknowledged resources), internal resources, in addition to a more

unconventional factor: “products we don’t know anything about”, they decide in which procurements to apply ethical criteria, typically two – four procurements a year.

- ▶ A comprehensive selection criteria for ethical trade is default in the chosen procurements.
- ▶ Arrange supplier seminars to prepare the market
- ▶ In the contracts phase, the Municipality of Stavanger takes advantage of different follow-up activities / strategies:
- ▶ Scan if contracted supplier(s) are members of ETI (Norway, England, Denmark). If yes, this is deemed adequate to affirm that they have adequate systems in place to monitor their supply chain, or are in the process of developing such systems.
- ▶ Individual supplier meetings in order to review performance towards ethical criteria, amongst other things.
- ▶ Reading (existing) audit reports, and based on findings, implementing relevant measures
- ▶ Seeking advice and discussing topics with ETI-N as needed
- ▶ Gradually implementing the UN Guiding Principles for Business and Human Rights framework with a focus on salient human rights issues in questionnaires sent to contracted suppliers

The Municipality of Stavanger does not use self-declaration as a main follow-up activity. They are also careful when it comes to audits because of the relatively well-documented shortcomings of using audits as a tool for driving improvements. The Municipality of Stavanger is recognized as a frontrunner in ethical public procurement in Norway, as is the South-East Regional Health Authority.

#### **6.1.5.2 The South-East Regional Health Authorities**

The South-East Regional Health Authorities (Helse Sør-Øst) has been a major contributor to developments within the field of ethical public procurement. Other contracting authorities and the government look to the South-East Regional Health Authorities when it comes defining good practice in ethical public procurement in Norway. The South-East Regional Health Authorities was the first public buyer to apply a comprehensive selection criteria in 2012. The criteria was developed in cooperation with ETI-N. The criteria has become “gold standard” for advanced public bodies in Norway.

Over several years the South-East Regional Health Authorities has systematically built internal competence. They have adopted a risk-based approach and select appropriate monitoring and follow-up strategies based on their risk exposure, including:

- ▶ Risk assessment by product category
- ▶ Desktop risk analysis of the chosen categories, using internationally acknowledged resources in combination with their own competence
- ▶ Applying ethical contractual clauses in all procurements
- ▶ Arranging supplier seminars to prepare suppliers / markets
- ▶ In high risk procurement, a comprehensive selection criteria for ethical trade is applied
- ▶ In the contract phase a suitable monitoring strategy is compiled, based on risk exposure and experience, including (but not limited to):
- ▶ Highlighting ethical contractual clauses in the first meeting when signing the contract
- ▶ Regular individual supplier meetings
- ▶ Reviewing (audit) reports and other information
- ▶ Seeking advice and discussing issues with IEH-N as needed
- ▶ Factory visits
- ▶ Third party audits accompanied with new supplier meetings

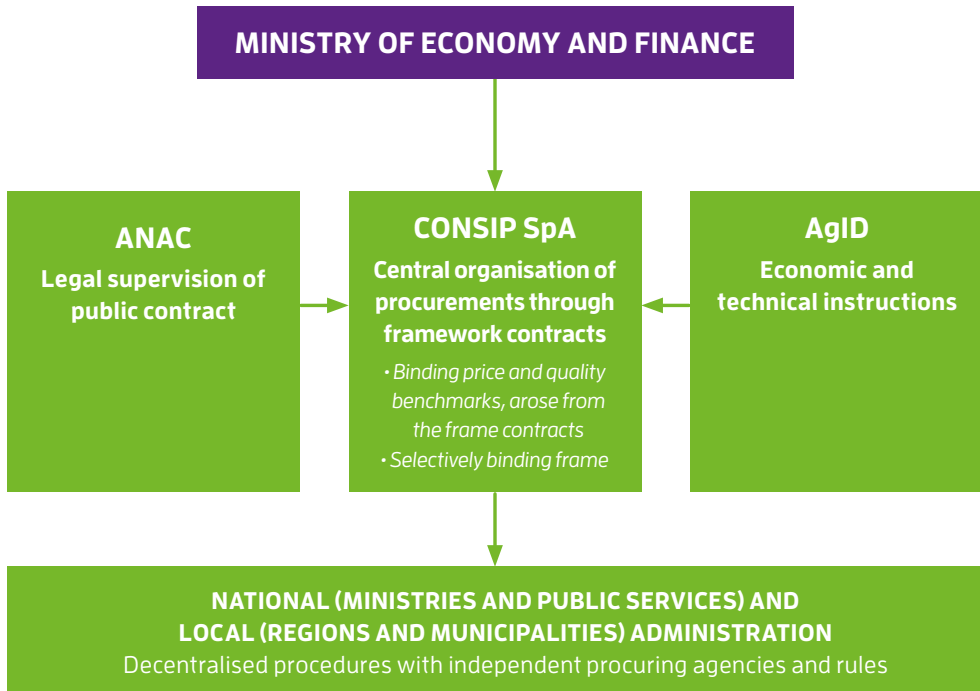
#### The South-East Regional Health

Authorities have gradually been implementing an approach based on salient human rights issues, in alignment with the UN Guiding Principles for Business and Human Rights. In this approach, the South-East Regional Health Authorities are keen to understand how

suppliers identify, prevent, mitigate and account for the most severe potential and actual negative impacts on human rights. In the wake of this new approach, other strategies for improving fundamental workers' rights will develop.

## 6.2 ITALY

The constitution of 1948 Italy recognizes federalism and localism. Regions, provinces, towns and other local bodies enjoy a large degree of political and administrative autonomy. There are 20 regions (or Regioni) with a further 8,101 municipalities (or Comuni). In addition, there are regions like South Tyrol, with special arrangements to reflect non-Italian speaking populations. All regions are governed by an elected council (Giunta regionale) and president. The regions are further divided into provincial areas and each elect their own council and president under proportional representation. They are also supervised by a prefect appointed by the national government in Rome. The Italian municipalities are each headed by a mayor (sindaco) and elected council (consiglio comunale) of between 15 and 80 members. In addition to civil registration and local public services, including roads and schools, municipalities have responsibility for their own local police forces, while Regioni have responsibility for local healthcare services.

Figure 5 **Major organisations of procurement at the national level**<sup>43</sup>

### 6.2.1 Public procurement

Public procurement in Italy is decentralised. The new Legislative Decree 50/2016 (Italian Public Contracts Code) was accompanied by a consolidation of contracting authorities. The number of authorities will be dramatically reduced from over 35,000 to an estimated 1600, each of which has had to go through a qualifying process administered by the Italian Anti-Corruption Authority

(ANAC). Consip and another 31 central purchasing bodies were automatically qualified. The qualified contracting authorities are bound by the national Italian Public Contracts Code 2016 in a bid to standardize and harmonise public procurement processes in Italy. Consip, National agency for inward investment promotion and enterprise development (Agenzia nazionale per l'attrazione degli investimenti e lo

<sup>43</sup>. Credit for Figure 5: [https://cordis.europa.eu/innovation-policy/studies/pdf/8\\_italy.pdf](https://cordis.europa.eu/innovation-policy/studies/pdf/8_italy.pdf)

sviluppo d'impresa, INVITALIA) and the Ministry for Infrastructure and Transport operate at a national level while the other 30 qualified contracting authorities operate at a regional level (see below). All public contracts exceeding the threshold of €40,000 (€150,000 for public works) must go through one of the qualified contracting authorities. This move aims, amongst other things, to provide a better overview over public contract administration for the ANAC, the supervisory authority for all public contracts in Italy. In addition, experience indicates that corruption is more common in local contracts issued by smaller contracting authorities due to the proximity to economic operators and low levels of administrative controls. As such, the consolidation of contracting authorities is a counter-corruption measure.

Contracting authorities, depending on their typologies and on contract values, are required to use the tools provided by Consip (MePA, framework agreements, framework contracts, etc.), or those provided by regional central purchasing bodies, or to use Consip's price and quality benchmarks (where these exist). The Contracting authorities are required to use AgID's economic and technical instructions and the ANAC's legal supervision on public procurement contracts. The tendering procedure, in most cases, remains under the

responsibility of the individual procuring authorities, although Consip can provide this service too if required.

Italian Anti-Corruption Authority (ANAC) supervises and regulates the entire public procurement market to ensure compliance with:

1. the principles of legitimacy and transparency;
2. the effective performance of contracts;
3. anti-corruption rules.

With regard to companies directly or indirectly owned by the State, and following a joint effort with the Minister of Economy and Finance, in 2015 the ANAC issued guidelines on:

1. public disclosure of corporate decision-making processes on the rotation of managers and executives;
2. establishment of new conflict of interest rules;
3. definition of risk areas and protection of whistle-blowers;
4. respect of the rights of workers involved.

Legislative Decree n. 50/2016, which transposed the new European Directive, provides that ANAC draw up some guidelines, some binding and others non-binding, for the contracting authorities, for the full implementation of the new public procurement's regulatory framework.

The process for the definition of the guidelines provides an open consultation for each guideline.

Six guidelines have been already published on the Italian Official Journal, other four are in the open consultation phase.

One of these six guidance documents refers to MEAT (most economically advantageous tender) and addresses the issue of social and environmental criteria in public contracts. The Legislative Decree n. 50/2016, provides a “companies’ legality rating” among the criteria used to select the most economically advantageous tender (art. 95.13). This legality rating is a national system managed by the Italian Competition Authority established in 2012 for the introduction of ethical principles in business behaviour and applies to all Italian companies. The rating is awarded on voluntary base for Italian companies with revenue over 2 million EUR and is used, amongst other things, for the granting of public funds. One of the criteria in the legality rating is “[a]doption of processes to ensure forms of corporate social responsibility through membership in programs promoted by

national or international organizations and the acquisition of sustainability indexes”. The Legislative Decree n. 50/2016 provides that ANAC builds a “companies rating system” based on reputational requirements, and ANAC will develop guidance notes on this system.

While Italy has a comprehensive environmental law, and experience in using certification as qualification requirements in public contracts (e.g., ISO 14001), social criteria are less well-known. Italy has the world’s highest proportion of SA8000 certified manufacturers<sup>44</sup>, and while this can provide useful information about conditions in Italian factories and farms, this cannot be used as a reliable indicator of conditions in supply chains outside of Italy (due diligence requirements for suppliers and sub-suppliers was added in the 2014 revision of 2014). A number of researchers have also drawn attention to the inherent risks associated with audit and certification schemes, including audit fraud, and not adequately addressing non-compliance with rights-based issues.<sup>45</sup>

According to Ilaria Gobbato, Senior Associate at Dentons law firm, delays

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44. as of 9th December 2016

45. Lund-Thomsen P, Lindgreen A, 2014, “Corporate Social Responsibility in Global Value Chains: Where Are We Now and Where Are We Going?” *Journal of Business Ethics* 123(1) 11–22. Barrientos S, Smith S, 2007, “Do workers benefit from ethical trade? Assessing codes of labour practice in global production systems” *Third World Quarterly* 28(4) 713–729. Jenkins R O, Pearson R, Seyfang G, 2002 *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (Earthscan, London).

in providing guidelines, including for social criteria, have resulted in many contracting authorities freezing all activity relating to new contracts in fear of being in breach of the new legislative requirements. Ms. Gobbato also stated that there are inherent difficulties in using social criteria because they are commonly seen as being in breach of the underlying principles of proportionality, free competition and non-discrimination. This is in contradiction to the legal provision in Article 30.3 of the Italian Public Contracts Code 2016 which states that “In the performance of procurement contracts and concessions, contractors shall respect the environmental, social and labour obligations provided by European and national legislation, collective agreements or international provisions listed in Annex X (where Annex X refers to the core ILO conventions and environmental conventions)”. As Simone Ricotta, who represents Italy in the European Working Group on Ethical Public Procurement, states, there is a general lack of awareness around ethical criteria in Italy, and he suggests looking to the Nordic countries for both inspiration and guidance in orienting the legal minefield of ethical public procurement. Furthermore, interviews from other countries illustrate the importance of developing training and awareness around social criteria in order for markets to mature.

In Norway, for example, it became very clear that the market was not ready for such criteria initially, and contracting authorities worked closely with potential suppliers to ensure that there was a clear understanding of expectations, and that suppliers implemented systems that would be able to meet these expectations. As such, it is plausible to suggest that Italian Ministries, contracting authorities, especially the larger central purchasing bodies. It can be argued that national authorities such as Consip, and ANAC have a responsibility to provide some form of capacity building for Italian companies interested in bidding for public contracts.

In addition to uncertainty around interpretations of the new law and fears of litigation claims, it appears that a key issue that should be addressed in Italy is that of ambassadors for socially responsible public procurement. Interviewees in Norway were very clear that having advocates and support in top management was a key success factor in being able to drive the socially responsible public procurement agenda in Norway. This was also supported at a governmental level in Norway, in particular the government agency Difi, who have been proactive in providing forward-thinking contracting authorities with information and guidelines on how to incorporate social criteria into public contract processes. In Italy, specific

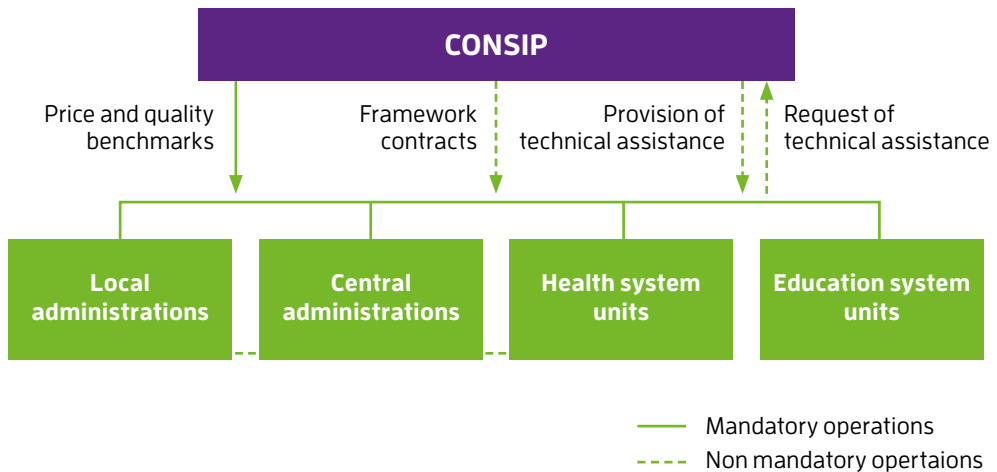


reference to the National Action Plan on Business & Human Rights (see below) as well as the National Action Plan on Green Public Procurement (comprising both environmental and ethical criteria) currently being developed by local stakeholders including ARPAT (Environmental Protection Agency Tuscany), will help in achieving top level commitment to ethical public procurement.

### 6.2.2 Consip

Consip S.p.A. is a joint-stock company held by the Italian Ministry of economy and finance (MEF), which is the sole shareholder. The company operates in keeping with the MEF's strategic goals, working primarily to serve the Public Administration sector – Consip framework see Figure 6 below.

Figure 6 **Consip Framework**<sup>55</sup>



Consip's activities involve three main areas:

1. Price and benchmarks, arising from extensive market research and from contracts previously implemented by Consip, through framework agreements. These benchmarks are valid as long as the framework contract is being executed. All contracting authorities are obliged to respect these benchmarks, meaning that they cannot enter into a contract with an economic operator where their price exceeds the corresponding benchmark, where this exists.
2. Framework contracts, usually binding for the central administration (ministries and central public services) and optional for the rest of the public sector. Framework contracts is a solution selected for the grouping of purchasing needs and may be either ordered directly by the government or proposed by Consip in areas where market analysis has shown a prosperous field for the centralisation of the procurement.
3. Provision of technical assistance for the implementation of individual procurements by public agencies.

ANAC is an independent body responsible for legal supervision and guidance on all public contracts from 2014. The role of ANAC is to diffuse and supervise the proper implementation of effective

regulation by the public authorities and the contractors.

The Agency for Digital Italy (AgID: Agenzia per l'Italia Digitale) is responsible to spread the effective use of new technologies and methodologies throughout the Public Administration (central and regional). AgID offers compulsory technical and economic instructions to the public sector regarding the procurement of ICT products and services.

### **6.2.3 Local Administrations (Regions, Municipalities)**

Local and regional administrations are authorized to manage procurement either through Consip or internally, respecting the price and quality benchmarks of the Consip (where they exist). In addition, regional authorities have some degrees of freedom in establishing independent procurement rules using their legislative power provided they respect the European and National law. This, however, does not apply to the general provisions relating to social and environmental criteria, as these are not deemed to be affected by local or regional interests. So, while theoretically possible, in reality there is very little likelihood of two regions being granted a waiver with regards to using social criteria in public procurement.

SACE and SIMEST are Export Credit Agencies and Investment Insurance Agencies (ECAs) that provide

government-backed loans, insurance and guarantees to support business enterprises industrial projects abroad, especially with regard to complex and risky environment. The strategic role of these public agencies make them more exposed to the risk of being associated or linked with human rights infringement: they both apply the OECD Recommendation on Common Approaches and Environmental Due Diligence and conduct risk analysis on environmental and social impact in their operations.

#### **6.2.4 Relevant developments**

On 15th December 2016 Italy adopted its National Action Plan on Business & Human Rights 2016-2021 (NAP). This has been compiled by the Interministerial Committee for Human Rights (CIDU). There is recognition of the need to regulate public procurement and business so as to avoid a skewed market:

*“Situations such as the distortion of market prices due to the import/export of goods and services from countries or enterprises not compliant with fundamental human rights rules and standards or the social costs of flows of migrants recruited as illegal workers in the informal economy, have serious economic implications on labour markets and on competition.”*

(Italy National Action Plan on Business & Human Rights 2016-2021)

In the context of public procurement, this would mean that economic operators

who breach national law or international labour rights conventions in order to out-price their competitors should be excluded from public contracts.

To achieve the goals set in Principles 4, 5 and 6, and within the overall framework of the implementation of EU directives, the Italian Government will conduct the following activities to be jointly developed and monitored by CIDU and ANAC:

1. Establish an ad hoc permanent Working Group with business enterprises that are owned or controlled by the State involving all relevant institutions and stakeholders to monitor the performance of applicable due diligence mechanisms;
2. Develop within the CIDU the concept of a “human rights clause” to be included as a requirement for competing enterprises in all model tenders and agreements with business enterprises for the purchase of goods and provision of services, with focus on:
  3. enterprises operating abroad;
  4. enterprises availing themselves of foreign suppliers;
  5. foreign enterprises;
  6. Introduce mandatory non-financial reporting for Government Agencies;
    - a. Share data regarding human rights protection policies adopted by State-owned Enterprises (SOE) according to the EU

- b. Directive on Non Financial Reporting;
- c. Strengthen the implementation of socially responsible public procurement rules by adopting a comprehensive framework of reference for bidders coordinated by ANAC and covering:
  - d. Anticorruption,
  - e. Non-financial disclosure,
  - f. Supply chain, Environment,
  - g. Labour,
  - h. Equal opportunities and
  - i. non-discrimination.

### 6.2.5 Remedy

Complaints against decisions and procedural complaints relating to a specific tender can be dealt with at the TAR (Regional Court). If the complaint is accepted, the tender process is frozen pending a court decision. Appeals against decisions of the TAR can be sent to the Supreme Court in Rome. Complaints and concerns can also be sent to the ANAC, where they refer to procedural issues (including unfair tender requirements). The ANAC will not usually freeze the tender process during the investigation of a complaint, but they have the power to stop a contract or tender process should this be deemed necessary.

### 6.2.6 Good Practice

In Italy, the Ministry of the Environment, which coordinates the National Action Plan (NAP) for green public procurement, has set national green criteria (“criteri ambientali minimi”, CAM) for seventeen sectors, published on the Italian Official Journal<sup>46</sup>. With the Legislative Decree n. 50/2016, which transposed the new European Directive on public procurement, all contracting authorities are obliged to introduce these green criteria as technical specification and contract clauses. A guide<sup>47</sup> that accompanies the NAP, published by the Ministry of the Environment, takes inspiration from the Swedish and Norwegian experiences and it is based on the integration of “social criteria” in contract clauses.

In the guide, social criteria refer to criteria for the promotion, throughout the supply chain, of social standards relating to human rights and working conditions, internationally recognized and defined by:

- the eight ILO core Conventions;
- ILO Convention n. 155 on health and safety in the workplace;
- ILO Convention n. 131 on minimum wage;
- ILO Convention N. 1 on hours of work (Industry);

<sup>46</sup>. <http://www.minambiente.it/pagina/criteri-vigore>

<sup>47</sup>. Guide for the integration of social aspects in public tenders (2012)

- ▶ the "Universal Declaration of Human Rights";
- ▶ article n. 32 of the "Convention on the Rights of the Child";
- ▶ the national legislation in force in the countries of the various stages of the supply chain, related to health and safety in the workplace, as well as work-related legislation, including that relating to wages, hours of work and social security.

The Guide also foresees a “structured dialogue”, developed in eight phases, between the contracting authority and the contractor, including information for economic operators, and the use of monitoring and verification methods including follow-up questionnaires and audits and sanctions.

An example of an purchasing authority that has implemented the guidelines provided is the regional purchasing body of Lombardy Region (ARCA Lombardia). ARCA is the central purchasing body for 1600 public administrations (including healthcare structures), and has engaged economic operators in a survey on ethical criteria. On the basis of the results of the survey, ARCA Lombardia has integrated the principles of the Guide into eight tenders, four of which are in the healthcare sector (pharmaceutical products, vaccines, flu vaccine and incontinence pads), for a total purchasing amount of over 990 million euros.

Other authorities are following similar approaches to those detailed in the Guide, such as the Tuscany Region and the Emilia-Romagna regional purchasing bodies (Intercent-ER).

Piloting new guidelines is an excellent way to learn more about the implications of using ethical criteria through the tender and contract process. In Italy, it has become evident that a key barrier is a lack of competence in the public procurement staff and the lack of awareness of the management of the various public bodies. This highlights the need for training and capacity building.

Experience highlights the fact that all the Decrees of the Ministry on the Environment about the green criteria indicate the possibility to introduce the ethical criteria, especially for high risk sectors. A recent revision of the criteria regarding the textile sector has provided an opportunity to implement learning and introduce new ethical criteria based on the Decree of the Ministry of the Environment.

While environmental criteria are mandatory in Italy, the inclusion of non-mandatory ethical criteria in the same criteria set is a good example of promoting a normative approach to ethical public procurement. The newest ethical criteria in the textile sector, one of the highest risk sectors, are based on the possibility to introduce social criteria in Legislative Decree n. 50/2016, and comprise:

- ▶ selection criteria: technical and professional skills that economic operators must possess. The evidence of such capabilities refers to management systems and traceability in supply chains (Directive 2014/24/EU, Annex XIV, Part II, letter d)<sup>48</sup>
- ▶ award criteria: the award criteria relating to social characteristics of specific production stages (i.e. the supply chains of the tender object); Fairtrade certification is considered a means of proof of this social characteristic;
- ▶ contract clauses: conditions that relate to social needs relating to the supply chains of selected tender objects. For the formulation of the contractual clauses, the contracting authority may refer to the Guide adopted by Ministerial Decree in 2012.

### 6.3 SWEDEN

There are 9.5 million people living in Sweden. Sweden has three levels of government: national, regional and local. At the national level, the Swedish people are represented by the Riksdag (Swedish parliament) which has legislative powers. Proposals for new laws are presented by the Government, which also implement decisions taken by the Riksdag. The Government is assisted in its work by the Government Offices, comprising a number of ministries,

and some 400 central government agencies and public administrations.

Local self-government is a longstanding tradition in Sweden and of fundamental constitutional significance. The principle of local self-government has been enshrined in the Constitution as an integral part of democratic government in Sweden. Sweden has also ratified the European Charter of Local Self-Government. Local self-government at local and regional level is exercised, respectively, by municipalities and county councils, and is regulated through the Local Government Act (revised 1991).

#### 6.3.1 Government Administration

Sweden is divided into 21 counties. Political tasks at this level are undertaken by the county councils, whose decision-makers are directly elected by the people of the county, and by the county administrative boards that are government bodies in the counties. Some public authorities also operate at regional and local levels, for example through county boards.

Sweden has 290 municipalities. Each municipality has an elected assembly, the municipal council, which takes decisions on municipal matters. The municipal council appoints the municipal executive board, which leads and coordinates municipality work.

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<sup>48</sup> selection criteria makes reference to the "OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector"

Figure 7 **Number of public sector institutions in Sweden**

### 6.3.2 State-owned Enterprises

The state is a significant owner of enterprises in Sweden. The state business portfolio contains of 49 wholly or partly owned enterprises, two of which are listed in Figure 8. In addition, two business foundations and one EU company are administered. In total, these enterprises employ approximately 163 000 people.

### 6.3.3 Public Procurement

The National Agency for Public Procurement estimate purchases covered by Swedish procurement laws to SEK 630 billion (approximately

€60 000 000 000). This corresponded to approximately a fifth of GDP (excluding VAT). As a share of GDP, the value has not changed since 2006. 36 per cent of the published procurements were governed by the EU's public procurement directives. This percentage has increased dramatically over the last five years. Under the threshold, there is national legislation for procurement. Under the amount of SEK 534000, direct contracts can be awarded, but most often the organisations have internal routines to handle those purchases as well.

Table 3 **Estimation of the number of organisations that are subject to the procurement laws**

Authority	Number
Government agencies or state owned organisation	1223
Municipalities and municipality owned organisations	2227
County councils and county council owned organisations	168
Companies in the utility sector (private)	286
<b>Total</b>	<b>3904</b>

The different levels of governing in Sweden are responsible for different public services and each municipality or county council are responsible for the procurements needed to provide the service.

Municipal responsibilities, for example, include basic schooling, child-care amenities and caring services for the elderly. Recreational and cultural activities are also important municipal concerns. On the technical side, municipalities are responsible, for example, for water supply and sewerage, rescue services and refuse disposal.

County council responsibilities focus mainly on public health and medical services, but county councils also have other important duties in connection with public transport and regional cultural institutions.

Each municipality or county council decides in what form the service will be provided, if the service will be insourced or outsourced. The procurement history in Sweden has been to provide

the service within the own organisation – to insource the service but procure the goods needed. But this is changing, at least in some areas. For example, there are still only one outsourced hospital in Sweden but a lot of the primary health care is outsourced (approximately 50 %). (The hospitals are most often run as a county council owned company) There is one private hospital in Sweden, and it only provides parts of the health care normally provided at a complete hospital. Despite this the public procurements stands for a fifth of GDP.

Sweden has a central purchasing organization owned by the county councils and public organisations. However, these public bodies are responsible for their own procurement activities. There is no central or governmental system for purchasing. Sometimes the different organisations voluntarily purchase together. For instance, five county councils take part in joint procurements of consumables. Often municipalities organise themselves in the same way

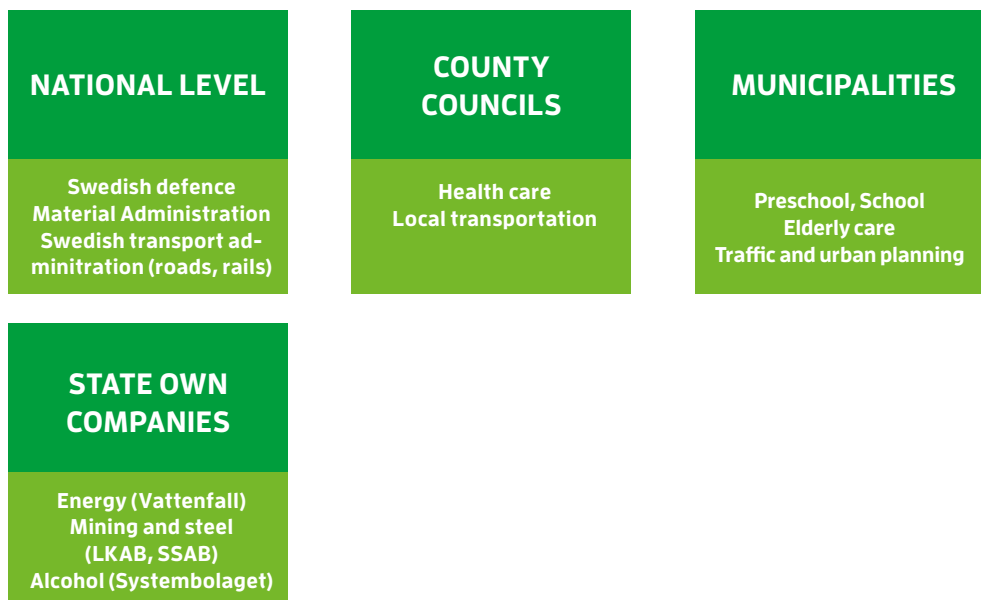


for strategic reasons. The responsibility for which criteria used in these procurements becomes unclear and there is a big risk that sustainable criteria is not set, and if they are the responsibility for the follow-up, is unclear and often forgotten. There are two central purchasing bodies that are of concern when it comes to ethical public procurement, Statens inköpscentral (SIC) and SKL Kommentus Central purchasing body (SKI). SIC is purchasing framework agreements for the public agencies and SKI is doing the same mostly for municipalities but also for county councils. The procurements are often related to IT, office supplies and services related to

these areas. SKI is also procuring food and fuels for instance. SKI has a substantial work on follow-up ethical criteria.

Figure 8, below, shows examples of the different responsibility that lays under each level. The examples are related to organisations and activities that stands for a high share of the procurements concerning products that are produced in third countries or, as in the case of the Swedish transportation administration, is one of the largest contracting authorities in Sweden. The organisations named and activities stated within the county councils and municipalities are where ethical considerations often are taken.

Figure 8 **The public Sector in Sweden**



When it comes to ethical considerations in public procurement the aspects described in this text have a great impact. In Sweden it has given us following conditions: Nothing a contracting authority does can be a secret because of the principle of public access to information; the procurement principles are scrutinised in every procurement – is it transparent enough? Is it equal between bidders? Do we treat all bidders equally? This means that contracting authorities have to describe their working methods systematically and it is of great advantage so that all work in the same way. The ambition to set ethical criteria is often high politically, also on a national level, but it is the local ambition that is most important. The local government act means that even if the minister says that you should it's up to each municipality or county council to make the decision. The government doesn't have the direct power over the public agencies, either as the ministerial rule is prohibited, and the government has no powers to intervene in an agency's decisions in specific matters relating to the application of the law or the due exercise of its authority. In this case, the result is that the public agencies can lack political intention and ethical criteria is not as often set within the governmental (national) level.

### **6.3.4 Remedy**

There is no specific court or any other review body that handles review applications from economic operators. The review cases are under the jurisdiction of the administrative courts. There is no application fee and the applicant does not stand the risk to cover the other parties' legal costs. There are 18 407 call for tenders published. A high percentage of these are framework agreements. Out of the total number of published procurements, 7.6 per cent were subject to review procedures. Review procedures were almost twice as common in procurements governed by the EU directives as they are for those falling outside the scope of the directives.

The average processing time was 2.2 months. All public procurements can be contested in court. As mentioned earlier, ensures procurement principles are strictly followed in all public procurements and contracting authorities need to be very professional in their procurement strategy, as well as in the actual procurements.

### **6.3.5 Good Practice**

#### **6.3.5.1 The Swedish Regions and County Councils**

There are 21 county councils in Sweden, each responsible for providing healthcare, dental care and public transportation

to its citizens. The county councils together procure goods and services for approximately 120 billion SEK/year. Procurement is conducted separately by the county councils; matters of sustainability are coordinated nationally. In 2010, all Swedish County Councils politically adopted a national Code of Conduct in order to make public their commitment to protect human rights, workers' rights, the environment and prevent corruption in any activities linked to public procurement. To put their commitment into practice, the Swedish Regions and County Councils include social requirements as special contract terms when entering into agreements with suppliers.

Based on the code of conduct, the National Secretariat for SPP- together with SKL Kommentus (Swedish municipalities) and the National Agency for Public Procurement- has developed procurement criteria that are applied as special contract terms. These address the supplier's management systems for sustainability and are based on the UN Guiding Principles for Business and Human Rights. The National Secretariat for SPP has also developed a guide to explain the criteria and support suppliers on how to live up to the criteria. The guide can also be used by procurers as a means to understand what is expected

of suppliers when it comes to the social criteria.

The county councils have identified 8 prioritized risk areas where sustainability criteria are always included in procurement. The 8 risk areas are:

- ▶ Surgical instruments
- ▶ Food
- ▶ ITC
- ▶ Surgical gloves
- ▶ Medtech
- ▶ Textiles
- ▶ Pharmaceuticals
- ▶ Dressings

The eight risk areas have been divided between eight regions (each regions consisting of several county councils). Each region is responsible for deciding on a 3-year risk-based action plan and for following through on the action plan. The action plan discloses the county councils' areas of focus for the upcoming years with regards to the sustainability goals (Agenda 2030) for that specific product category. Thus, if any specific risk areas or issues are to be addressed, this will be communicated through the action plan (action plans are made publicly available for suppliers to take part of). The action plan then states the activities for the 3-year-period including follow-ups, stakeholder dialogues, development of new criteria/tools, etc. The county councils

long term work has proven effective and in 2016 three external reports highlights the Swedish initiative and described improved working conditions in factories in Malaysia, Pakistan and China (Swed-Watch and Electronics Watch). To increase their leverage, the county councils are cooperating with the municipalities' central purchasing body (SKL Kommentus). They have also signed a Letter of Intent with the South-East Regional Health Authorities in Norway to plan follow-ups and share results.

#### **6.3.5.2 SKL Kommentus AB**

SKL Kommentus AB is owned by the Swedish Association of Local Authorities and Regions (SALAR), which is an employer's organization. SALAR's membership consists of 290 municipalities and 21 county councils/regions. SKL Kommentus AB is primarily focused on public procurement. Main activities are to carry out both coordinating contracts and individual contracts assignments for all local governments in Sweden.

SKL Kommentus AS has two subsidiaries; Affärskoncept and SKL Kommentus Inköpscentral, SKI, (SKL Kommentus Central Purchasing Body). SKI is a purchasing group working with coordinated procurement. All municipalities, county councils and regions and their companies can use the integrated framework agreement that are procured in SKI's own name. The goal is to drive sus-

tainable business for Swedish municipalities, county councils and regions, and hence SKI has a responsibility to provide framework agreements that promote sustainable development. SKI has a code of conduct that all suppliers have to adhere to, covering ILO's eight core conventions, UN Declaration on Human Rights, and anti-corruption practices, amongst other things.

#### *Hållbarhetskollen*

Since 2011, SKI offer customers supplier monitoring services, consisting of social and environmental audits, through "Hållbarhetskollen". The aim is to promote sustainable and responsible conditions in the production of goods and provision of services. Currently there are 90 municipalities that are members of Hållbarhetskollen. So far 38 contracts with 29 suppliers in high risk product areas have been monitored to verify that working conditions meet the standards laid down in the code of conduct. Financing is done through membership fees. Hållbarhetskollen takes care of all planning of follow up actions, engaging auditors, publishing audit reports and ensures that corrective actions are implemented by suppliers. The plan for 2017 is to perform 30 audits (both desk-top and on-site audits).

#### *Cooperation on monitoring*

Since 2016 the Swedish County Council Network on sustainable public procure-

ment and SKL Kommentus AB cooperate regarding follow up on the social requirements. Focus is on procurements and contracts with a joint interest, for example, food products and textiles.

## 6.4 UNITED KINGDOM

The UK public sector is composed of 25 Ministerial departments and 21 Non-ministerial departments with 373 public agencies and public bodies. The Prime Minister is the head of the government,

with the Prime Minister's office having overall responsibility of 118 ministers, as well as public agencies and other public bodies.<sup>49</sup> Public services, such as education and healthcare, are delivered at the local level overseen by local authorities.

Ministerial departments are headed by government ministers, with support from public agencies and public bodies (see Figure 9 for the UK Government Department of Business, Energy and Industrial Strategy).

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49. UK Government 2015 How government works <https://www.gov.uk/government/how-government-works>

Figure 9 **Agencies and public bodies working with the UK Government Department of Business, Energy and Industrial Strategy**

DEPARTMENT FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY						
47 agencies and Public bodies	Non Ministerial Departments	Executive Agencies	Executive Non-departmental public body	Advisory non-departmental public body	Tribunal non-departmental public body	Other
	Competitions and Markets Authority  Land Registry  Ordinance Survey	Companies House  Land Registry  Ordinance Survey	Advisory, Conciliation and Arbitration Service  British Hall-marking Council  Comittee on Climate Change  Research Councils UK  Innovate UK  Coal Authority	Committee on Fuel Poverty  Industrial Development Advisory Board  Low Pay Comission  Committee on Radio Active Waste Management  Insolven-cy Rules Committee	Central Arbitration Committee  Insolvency Practitioners Tribunal  Compe-tition Appeal Tribunal  Copyright Tribunal	British Busi-ness Bank  Groceries Code Adju-dicator  Office of the Regu-lator of Communi-ty Interest Companies  Wave Hub  Certifica-tion Officer  Independ-ant Complaints reviewer

Scotland, Northern Ireland and Wales have devolved administrations and are responsible for their own domestic policies, as well as having their own rule making authorities (the Scottish Parliament; the Northern Ireland Assembly; and the Welsh Assembly).

Local government in England is either single tier unitary authorities, such as city councils, or two tier local government systems (county councils with district, borough or city councils). There are 353 councils across England responsible for delivering varied

services such as education and social services; transport and planning; cultural services, libraries and trading standards.<sup>50</sup> Decisions are made by local councils consisting of either i) a council elected leader and cabinet, ii) an executive mayor and a cabinet, or iii) a full committee with no cabinet. Councillors are elected for a period of four years and represent their wards: an administrative unit of on average 5,500 people.<sup>51</sup>

The Public Contracts Regulations 2015 sets the legislative framework for public procurement contracts. The Regulations apply to the procurement contracts for goods, services and works across central government, non-ministerial departments, executive agencies and non-departmental public bodies above the value of £10,000. Procurement of goods, services and works by local government and the health and education sectors are also subject to the Public Procurement Regulations, however, the threshold is set higher. There are also certain restrictions in the procurement of defence and security contracts.

Northern Ireland and Wales share the Public Contracts Regulations 2015 with England, while public procurement in Scotland is governed by the Procurement (Scotland) Regulations 2016.<sup>52</sup> Local councils, public and central government bodies establish their own public procurement policies in line with the Public Contracts Regulations 2015. The Freedom of Information Act 2000 and Transparency Principles 2015 require central government to proactively release procurement information prior to, and during, the implementation of public contracts. The UK is a founding member of the Open Government Partnership and are working toward goals for better data reporting and transparency including across public procurement contracts.<sup>53</sup> The UK has an active civil society sector that holds public institutions to account and engages in central and local government consultative activities.

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50. UK Government 2016 Understand how your government works Available: <https://www.gov.uk/understand-how-your-council-works/types-of-council>

51. The LGA quick guide to local government

52. Scottish Government 2016 Changes to Scotlands public procurement legislation <http://www.gov.scot/Topics/Government/Procurement/policy/ProcurementReform/procurementlegislationfaqs>

53. Open Government Partnership 2016 Independent Reporting Mechanisms Available: <http://www.opengovpartnership.org/country/united-kingdom/irm>

In recent years, local agencies and service providers have been granted greater autonomy over their own procurement strategy and budgets, removing responsibilities from local authorities. For instance, independent academy schools control their own procurement budgets, as do hospitals and GP clinics.<sup>54</sup> Correspondingly, the role of local authorities in delivering social and community services has been reduced as local authority budgets are decreased and public services are being outsourced and privatised. Increasingly, services are being delivered via not-for-profit companies and social enterprises accounting for more than £4 billion of public funding.<sup>55</sup>

The Crown Commercial Service manages central government public procurement contracts. They are responsible for coordinating group purchasing, standardising and managing supplier contracts, and building capability of procurement officials to

uphold procurement policies and standards.<sup>56</sup> They have capacity to negotiate procurement contracts on behalf of government departments coordinating cross-departmental purchasing of commonly purchased goods and services, for instance office furniture and ICT equipment.<sup>57</sup> Crown Commercial Services provide support and training to public procurement staff and publish newsletters and communications on national procurement trends.<sup>58</sup> Central government are required to make their purchases through the Crown Commercial Services, while local authorities and other public bodies have greater autonomy. The Crown Commercial Service coordinate both framework agreements and direct purchasing arrangements depending on which offers the best value for money.<sup>59</sup> The National Audit Office undertakes overall evaluation of the performance of public contracts in terms of their value for money.

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54. Rutter, T., 2016 Local government and the budget 2016 <https://www.theguardian.com/public-leaders-network/2016/mar/16/local-government-budget-2016-devolution-academies>

55. Social Enterprises UK 2016 <https://www.socialenterprise.org.uk/>

56. Crown Commercial Service About Us Available: <https://www.gov.uk/government/organisations/crown-commercial-service/about>

57. Crown Commercial Services 2016 <https://www.gov.uk/government/organisations/crown-commercial-service>

58. Crown Commercial Services Schools Newsletter November 2016 Available: <https://www.gov.uk/government/publications/crown-commercial-service-newsletter-for-schools-and-academies>

59. Green, W., 2015 'We're moving away from frameworks says Crown Commercial Boss Sally Collier CIPS 2016' <https://www.cips.org/supply-management/news/2015/september/were-moving-away-from-frameworks-says-crown-commercial-service-boss-sally-collier/>



### 6.4.1 Public procurement

It is a central government requirement that contracting authorities buy sustainably and engage with suppliers to reduce any negative impacts on their supply chains.<sup>60</sup> The UK Central government publish Government Buying Standards (GBS) that outline mandatory requirements and best practices for sustainable public procurement. Thus far, these mostly reflect environmental goals and objectives, however, social and ethical considerations are becoming of increasing importance. Pressures for ethical standards in textiles supply chains have resulted in the inclusion of ethical trade standards in the GBS for textiles. An impact assessment of the value of socially responsible sourcing was conducted in 2010. This report recognised non-monetary benefits in preventing child labour and ensuring good working conditions, but noted that such social benefits accrued to employees outside of the UK.<sup>61</sup> Labour standards are included in the GBS for timber products, although indirectly via requirements for sustainable sourcing certifications that include labour

standards criteria, e.g., the Forest Stewardship Certification, (FSC) and the Programme for the Endorsement of Forest Certification.<sup>62</sup> Agencies and departments are required to publish data and report on their environmental impact only. The GBS are mandatory for central government and related institutions, while only encouraged at the wider public sector level.

The UK Government have published a Standard Selection Questionnaire (Procurement Policy Note 08/16) outlining mandatory and voluntary requirements for ethical public purchasing. This requires that suppliers indicate they, and their organisation, have not been convicted of charges of child labour or other forms of human trafficking in the last five years (mandatory); and also any cases of breach of labour law obligations in the last three years. Breaches of labour law are considered grounds for discretionary exclusion, as per the Contracts Regulations 2015, and require that tenders provide an explanation to demonstrate their reliability as an organisation. Breaches are defined as either a remedial order in relation to

60. UK Government 2016 Guidance Procurement Policy 2016 <https://www.gov.uk/guidance/public-sector-procurement-policy>

61. DEFRA 2010 Revised government buying Standards for textiles Available: <https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-textiles>

62. The 10 Principles, Forest Stewardship Council, 2016 <https://ic.fsc.org/en/certification/principles-and-criteria/the-10-principles>; Requirements and Criteria, PEFC, 2016 <http://www.pefc.org/standards/sustainable-forest-management/requirements-criteria>

health and safety or a complaint upheld following investigation by the Equality and Human rights commission.<sup>63</sup>

#### **6.4.2 Northern Ireland, Scotland and Wales**

Scotland operates a devolved system of government with its own Procurement (Scotland) Regulations 2016 and a separate threshold value at which the Regulations apply. This is £50,000 for goods and services and £2 million for works.<sup>64</sup> Management of public procurement in Scotland is clearly structured across department sectors

- ▶ Scottish Procurement are responsible for central government contracts
- ▶ NHS Scotland for the health sector
- ▶ Scotland Excel for local authorities contracts
- ▶ Advanced Procurement for Universities and Colleges, for Universities and Colleges.<sup>65</sup>

The Scottish government have been reforming public procurement policies

in line with social responsibility goals since 2006, emphasising social benefits from public procurement processes. Requirements for ethical standards are specified in the Scottish Government Public Procurement Reform Programme, Scottish Procurement Policy Handbook 2008 issued by the Scottish Government.<sup>66</sup>

Northern Ireland and Wales are governed by the UK Public Contracts Regulation 2015, but have flexibility to develop their own procurement policies and regulations.<sup>67</sup> The Northern Ireland Executive have a variety of institutions that both support public procurement processes, as well as performing policy making functions. Public procurement strategies and policies are developed by the Public Procurement Board. Monitoring and implementation of public procurement policy is undertaken by the Central Procurement Directorate (CPD). Seven 'Centres of Procurement Expertise' (CoPEs) support the delivery of procurement policies for roads, water,

63. Crown Commercial Services 2016 Procurement Policy Note: Standard Selection Questionnaire 9.09.2016 Available: <https://www.gov.uk/government/publications/procurement-policy-note-816-standard-selection-questionnaire-sq-template>

64. Scottish Government 2016 Changes to Scotland's public procurement legislation <http://www.gov.scot/Topics/Government/Procurement/policy/ProcurementReform/procurementlegislationfaqs>

65. Scottish Government 2016 How Procurement is Structured in Scotland <http://www.gov.scot/Topics/Government/Procurement/about>

66. Scottish Government 2008 Public Procurement Reform Programme: Scottish Procurement Policy Handbook

67. Northern Ireland Department of Finance and Personnel Central Procurement Directorate 2011 Northern Ireland Public Procurement Policy Handbook Available: <https://www.finance-ni.gov.uk/publications/ni-public-procurement-policy-handbook>

logistics, housing, health and education, and skills, and transport sectors. Overall steering of public procurement is provided via the Procurement Practitioners' Group consisting of the head of each CoPE and the Director of the Central Procurement Directorate. Socially responsible public procurement is promoted within Northern Ireland's public procurement policies, and public tenders are evaluated in terms of their value for money. Value for money is defined as 'the most advantageous combination of cost, quality and sustainability to meet customer requirements' and the Northern Ireland Government include environmental, economic and social factors in their definition.<sup>68</sup>

Procurement in Wales is coordinated by the National Procurement Service (NPS) who negotiate and coordinate framework agreements.<sup>69</sup> In contrast to the mixed procurement strategy of the Crown Commercial Services, the Welsh government believe centralised framework agreements offer the best

value for money. Public Procurement in Wales was fully reviewed in 2012 and is being restructured to promote social impact via public procurement.<sup>70</sup> This is defined within the 'Future Generations (Wales) Act 2015 and includes promoting both local social benefits and a 'globally responsible' Wales.<sup>71</sup> Public contracts are tendered online via the 'Sell2Wales' platform and, going forward, the revised Procurement Policy statement 2015 requires Welsh Public authorities report progress toward the Future Generation (Wales) goals.<sup>72</sup>

Other progressive ethical public procurement activities are found at the local government and public sector service delivery level. For instance, Halton Borough Council has stated a commitment to consider social value outcomes in all contracts above £1000, requiring that social values are evaluated and measured across procurement contracts. In London, most boroughs have stated commitment to procurement of Fairtrade products<sup>73</sup> and Transport for

68. Northern Ireland Department of Finance and Personnel Central Procurement Directorate 2011 Northern Ireland Public Procurement Policy Handbook p.13 Available: <https://www.finance-ni.gov.uk/publications/ni-public-procurement-policy-handbook>

69. National Procurement Service Wales 2016 <http://nps.gov.wales/?skip=1&lang=en>

70. Welsh Government 2015 Welsh Procurement Policy Statement Available: <http://gov.wales/topics/improving-services/better/vfm/publications/procurement-policy-statement/?lang=en>

71. Welsh Government 2015 Well-being of future generations (Wales) Act 2015 Available: <http://gov.wales/topics/people-and-communities/people/future-generations-act/?lang=en>

72. Welsh Government 2015

73. My Borough' Fair Trade Capital, <http://fairtradelondon.org.uk/my-borough/>

London have partnered with the Fairtrade Foundation and Fairtrade cotton sourcing programme to procure uniforms made with Fairtrade cotton.<sup>74</sup> The UK government Environmental Agency have a similar policy specifying social criteria in the award of uniforms.<sup>75</sup>

### 6.4.3 Good Practice

While most surgical instruments are procured through companies based in Europe and the USA, a large proportion of these products are actually produced in so-called low-cost or developing economies. An example of this is the production of disposable gloves, which happens primarily in Malaysia, Thailand and Sri Lanka.

The manufacture of disposable gloves is a large global industry that produces about 150 billion pairs of gloves a year, with a market value of over £3 billion. Of all disposable gloves, around 85-95 per cent are used in the medical sector.

In recent years, there have been a number of audits and investigations of labour conditions across the industry which revealed endemic and serious labour rights abuse of workers in factories in Thailand, Malaysia, and

Sri Lanka. This includes both factories manufacturing for small-scale medical glove suppliers, and those manufacturing for major international brands.

The initial response from some of the glove suppliers was one of denial and a failure to take these concerns seriously. Consequently, in 2015 the BMA Medical Fair and Ethical Trade Group convened a group to tackle labour rights concerns in the medical gloves industry, which included members of the European Working Group on Ethical Public Procurement (EWGEPP).

One of the first steps was to instigate discussions with senior management at some of the major global glove brands implicated in labour rights abuse, with the aim of influencing industry response to these issues. This was followed by audits, where a number of non-compliances around issues such as freedom of association, working hours and wages, modern slavery and health and safety. Migrant workers were particularly vulnerable.

NHS Supply Chain has had a Supplier Code of Conduct, which includes provision for the protection of labour stan-

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74. Fair Trade Foundation, 2016, Tfl uniforms to feature Fair Trade Cotton in New Partnership Deal <http://www.fairtrade.org.uk/en/media-centre/news/march-2016/tfl-uniforms-to-feature-fairtrade-cotton-in-new-partnership-deal>

75. Revised Government Buying Standards for Textiles: Impact Assessment, DEFRA 2010, <https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-textiles>

dards, since 2009. A Labour Standards Assurance System (LSAS), developed in collaboration with the UK Department of Health, to support implementation of the code of conduct. In addition, NHS Supply Chain suggest that capacity building of suppliers is a cornerstone of their responsible procurement strategy, implemented partly through pre-market engagement activities (e.g. webinars). LSAS makes it a contractual requirement of suppliers (of specified to goods) to demonstrate they have effective systems in place to evaluate and respond to labour standards concerns. The LSAS system was piloted on the procurement of surgical instruments in 2012, and has demonstrated benefit to workers' lives in this supply chain. In December 2015, NHS Supply Chain applied LSAS to the new contract for gloves. This contract has a total value of

£70-80 million, and includes 21 suppliers across examination gloves and sterile gloves. Two companies approved for the contract, Ansell and Semper-med have both made significant efforts to manage social and ethical criteria in their supply chain as a result of the remediation approach adopted by NHS Supply Chain.

In addition, those involved in national or regional procurement of gloves in the UK, Sweden and Norway have since put into place requirements such that suppliers of gloves to these regions are now contractually required to evaluate and improve labour standards in their supply chains.

More information about this good practice case can be found at <https://www.bma.org.uk/collective-voice/influence/international-work/fair-medical-trade/medical-gloves-report>

## 7. Conclusions and recommendations

EU Directive 24/2014/EU, Article 18.2 aims specifically to ensure that public money is used responsibly. Labour standards compliance in procurement supply chains is now a legal obligation for all EU and EEA contracting authorities. New laws in all EU and EEA member states have the potential to drive responsible supply chain management throughout Europe, and result in the normalisation of a respect for labour rights and environmental stewardship in public procurement. Public procurement across Europe is now accountable for promoting and furthering the sustainable development agenda. Furthermore, contacting authorities, being accountable for public spending, are an important steward of a states' obligations and commitments under national and international standards, including the core ILO conventions.

While some states have already gained considerable experience within the field of ethical public procurement, for many it is a completely new field. We found that there was good knowledge of legislation relating to ethical public procurement in our survey and over half (from 9 different countries) had

experience of using ethical criteria in public contracts. There was, however, differing opinions on how the law could be implemented, pointing to one of the main findings in the survey, namely the need for more training and information about how to implement legal requirements into procurement practices. We found that most of those who reported having experience of using ethical criteria have used qualification criteria, and that using a self-declaration, often coupled with a code of conduct, was the preferred method. Similarly, asking economic operators to provide evidence was by far the most popular method of verifying compliance to ethical requirements during contractual performance. The types of evidence varied from certificates such as SA8000 to minutes of meetings with suppliers to corrective action plans and audit reports. While this approach has its flaws, it is cost effective and efficient and easily scalable. A small proportion of contracting authorities visited production sites to inspect conditions for themselves, often accompanied by a local auditor who could speak the language. While this approach has been shown to improve

relations with suppliers over time, and that there is some evidence that building a trust relationship is a mediator for improved working conditions.<sup>76</sup>

This does produce somewhat of a dilemma, however, and the public sector is in danger of going down the same path as the private sector did 30 years ago, relying on a compliance driven audit regime. This approach has been shown in research to have minimal effect on rights-based issues such as freedom of association and collective bargaining, child labour and modern slavery, four of the core ILO conventions.<sup>77</sup> This logical contradiction (using auditing as a means to address deep-rooted systemic issues) presents a key challenge for public sector procurement. On the one hand, in order to ensure non-discrimination, free competition and an open market, contracting authorities must take an arms' length approach to relations with suppliers. On the other hand, wishing to address some of the deep-rooted systemic issues in Annex X of Article 18.2 requires a long-term approach based on relationship-building and engagement with suppliers along the whole supply chain. It is therefore recommended that

public procurement reviews different approaches over time in order to measure the impact on the rights of workers the ethical criteria are aimed at respecting. This will include, but should not be limited auditing. Compliance for the sake of compliance is not sufficient and will contribute mostly to further expanding the burgeoning auditing market while having significantly less impact on the daily lives of workers in global supply chains.

This emphasises the importance of engaging with potential bidders at an early stage and having a capacity building approach with a timeframe that exceeds the standard contract. There is clearly a need for more research on the types of engagement strategies that result on measurable impacts in the production facilities around the world, and particularly in low-cost countries. A popular strategy identified in our survey was requiring economic operators to conduct their own monitoring practices, checking their capacity to do so, and writing this requirement into the contract terms and conditions. The approach adopted by the Netherlands, with annual reporting on supply chain

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76. Locke R, Amengual M, Mangla A, 2009, "Virtue out of Necessity? Compliance, Commitment, and the Improvement of Labor Conditions in Global Supply Chains" *Politics & Society* 37(3) 319–351; Lund-Thomsen P, Lindgreen A, 2014, "Corporate Social Responsibility in Global Value Chains: Where Are We Now and Where Are We Going?" *Journal of Business Ethics* 123(1) 11–22, <http://link.springer.com/10.1007/s10551-013-1796-x>  
 77. Barrientos S, Smith S, 2007, "Do workers benefit from ethical trade? Assessing codes of labour practice in global production systems" *Third World Quarterly* 28(4) 713–729,

improvements during the contract period, builds on this and acknowledges to the fact that there is no quick fix and there are no guarantees. This aspect of business is like quality; it takes time, and is therefore framed within a continuous improvement cycle. Demands for guarantees on the other hand are likely to produce nothing more than falsified reports, negligible improvements to workplace conditions, and happy shareholders in auditing firms.

On a related issue, certification is an efficient and objective indicator of workplace conditions either at the production facility or product level. However, the plethora of certification schemes at a European level can make comparison difficult. There have been some attempts at providing a comparative analysis of social labels at national level, but there does not appear to be one single, regularly maintained comparison of the main social labelling schemes used globally. This is an opportunity for the EWGEPP or similar organisation to undertake.

In this report, we have provided insight into the extent to which EU and EEA member states have transposed EU Directive 2014/ 24 Article 18.2 into national law. Many states have developed new laws or revised existing laws to align them with Article 18.2. Some countries have simply copied the text from the Article and changed "member states" to "contracting authorities". In these

states, governmental agencies and other national bodies will not need to develop guidelines on how to understand and operationalise the new law. In Norway, for example, we have seen that terms such as "suitable routines" is somewhat diffuse, and there is no specification relating to how contracting authorities shall establish whether there is "a risk for such a breach". While Norway has yet to complete work on its regulative guidelines (due 2017), indications are that guidance will be limited and that these terms will ultimately be defined through case law and the decisions of KOFA, the national complaints board.

Despite the development of good practice in many countries, such as the UK, Germany and the Nordic countries, ethical public procurement is evidently new for many European nations who will need time to navigate a new legal landscape. Fortunately, there is good help at hand, and many national and international stakeholders have developed, and will continue to develop, a range of tools and resources to support contracting authorities in developing efficient processes and procedures for managing this new element of their contracts. In addition, contracting authorities will need to take on the role of capacity building agent in order to ensure that setting ethical criteria does not compromise the fundamental principles of proportionality, free competition and non-



discrimination. Again, help is at hand from some of the more progressive contracting authorities such as Stockholm City Council in Sweden or the Southeast Health Authority in Norway.

In addition to a need for training and capacity building, key barriers were insufficient resources and a lack of leadership and/or managerial attention. This was also reiterated in interviews with Italian and Norwegian procurement professionals who identified the need for more EPP ambassadors throughout Europe. Identifying potential ambassadors at regional and national level will have a huge impact on both driving better practice and, if networked, also has the potential for sharing good practice and experience at a national and even European level.

The new EU Directives, and consequently the majority of national laws, provide for exclusion on the basis of non-compliance with ethical criteria. There is some uncertainty as to how this will be objectively assessed. Belgian law specifies this by stating that it has to be a conviction in court. This is challenging when it comes to global supply chains because a nation's law rarely applies outside of its jurisdiction. While we have recently seen some examples of class cases, these are regarding laws that do transcend the country's jurisdiction (e.g. Modern Slavery Act in the UK and California Transparency Act in the U.S.).

In the UK, the law states that contracting authorities can decide not to award the contract to a bidder:

*"where they have established that the tender does not comply with applicable obligations ... established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions".*

Again, this bears the question, how will this be ascertained? Is an audit report sufficient? Even if it were, it would not be economically viable to audit the production facilities of all potential bidders prior to awarding the contract. Furthermore, litigation could take years and mean that contracts never materialise. If there is to be a reliance on a previous audit report, for example from 12 months ago, this would not necessarily be indicative of the workplace conditions at the current time. This approach could, however, be used in decisions to award an extension to an existing contract, where an audit indicates non-compliance and the supplier shows a lack of will in remediating the non-compliance.

Legislation does appear to favour termination of contracts in lieu of supportive remediation processes. Legislatively, this runs counter to the UN Guiding Principles that advocate remediation strategies above 'cut and run' approaches. Generally, the dominant model here would be to ensure that

the economic operator is technically capable to carry out the contract without breaching labour standards prior to the contract being awarded. In certain instances it may be appropriate and relevant to review performance against ethical criteria in decisions to renew or extend a contract. Part of this renewal/extension decision can be based on a review of remediation against an action plan (e.g. have all agreed measures been completed).

We have provided examples of how ethical public procurement is defined by various stakeholders. It appears that this term is not so widely used as its big brother, socially responsible public procurement (SRPP). SRPP is seen to include a broader set of issues such as employment generation, social inclusion, education, training and health. This was evident in interviews with some procurement professional in Italy who referred to the use of apprenticeships and disabled employees when being asked about ethical public procurement. Others use the term to refer to the conduct of contracting authorities, covering issues such as corruption and non-discrimination. There is therefore some evidence that multiple terms serve only to confuse and that using the term ethical public procurement can be misleading as the term ethical is so broad. It may be preferable to refer to supply chain risk or labour rights due diligence

as a facet or pillar of SRPP. Embedding compliance to labour rights in global supply chains under the SRPP umbrella also has the advantage of this not being seen as a peripheral or standalone issue.

## 7.1 RECOMMENDATIONS

The following recommendations have been identified following our research:

1. Experience exchange and sharing good practice, through the development of the EWGEPP or similar organisation.
2. Capacity building at a regional and national level. There are some good examples of organisations that have been working hard to drive the ethical public procurement agenda, such as the Ethical Trading Initiative and DIFI in Norway, the Agency for Public Procurement in Sweden, and PIANOo in the Netherlands. We recommend developing more such organisations in all European countries. Members of these organisations could also develop a European-wide network.
3. Centralising procurement for certain framework agreements, specifically those identified as being high-risk, will facilitate competence development of procurement teams in this specific area. Centralisation can also offer economies of scale for supply chain monitoring costs through resource- and information-sharing.

4. Developing a clear strategy for Ethical Public Procurement movement could benefit from a clear focus, such as that found in the Green Procurement 2020 initiative. Part of this should be redefining supply chain monitoring and due diligence as a facet of SRPP
5. Include ethical qualification criteria in the European Single Procurement Document
6. Develop tools and resources to perform human rights due diligence throughout the contract, from risk assessment during the design phase to supply chain monitoring and remediation during contractual performance.
7. Develop a comparative analysis of certification schemes. This should be a regularly maintained comparison of the main social labelling schemes used globally.
8. Develop a network of ethical public procurement ambassadors in each country, with the aim of promoting good practice, providing pragmatic solutions to challenges, and lobbying for wider use of a due diligence approach to ethical criteria in all public contracts.

# Appendices

## Appendix 1. Methodology

This report brings together a full desk-based review of ethical public procurement policies and legislation across EU and EEA countries; qualitative data from interview with public procurement professionals in Italy, Norway, Sweden and the UK; and data from an online survey on ethical public procurement practices within contracting authorities. For details on the methodology to this report please refer to Appendix

To explore the way ethical public procurement is designed a full web-based search and evaluation of “ethical public procurement” and “socially responsible public procurement” was conducted. We evaluated the use of these terms from the websites of European national governments, local authorities, international and European organisations and publicly available academic articles. As we were looking at how the term is practically applied, we did not include use of the terms by consultancy firms, legal service providers or the media. This was to prevent bias in the use of the terms. We only looked at sites that contain either ethical

or socially responsible public procurement in their caption title. We also only looked at sites that contain either ethical, socially responsible public procurement in their caption title. In total 43 websites and downloadable materials were reviewed for ethical public procurement, and 19 websites and downloadable materials for socially responsible public procurement.<sup>78</sup> The number of websites and materials for socially responsible public procurement was lower as there was overlap in the use of the two terms.

To evaluate the extent to which the EU public procurement directives enable ethical public procurement practices across national legislation, we first analysed how the EU Directive 2014/24 addresses the issue of labour standards in its articles. This resulted in an assessment framework focusing on the following mechanisms: award criteria, exclusion mechanisms, use of social labels, rejection of abnormally low tenders, monitoring mechanisms and contract termination. We then conducted a full and comprehensive analysis of the public

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78. All the documents detailing the analysis in this report are available on request.

procurement rules and regulations of 29 EU and EEA states, using a combination of translation services and online translation tools.<sup>79</sup> Across the countries we identified which countries had legal mechanisms in place reflecting the assessment framework, analysing how specific articles in the laws are phrased and what this means for ethical public procurement in practice. We were able to calculate which countries had

the most legal mechanisms in place as well as evaluate the strength of these mechanisms to protect workers' rights. Finally, we considered the limitations of the law with respect to national thresholds, exemptions, and the subject-matter clause. Our recommendations in this section consider how governments can use the subject matter clause to promote more ethically responsible public procurement.

Parameter	Details of scoring
1. Award Criteria: The contracting authority may include any matters relating to Article 18.2 and/or Annex X in their award criteria for a tender	National public procurement laws that include any matters relating to Article 18.2 are given a score of 1. National laws that do not contain any evidence of matters relating to Article 18.2 are given a score of 0.
2. Exclusion: The contracting authority must exclude from the tender any economic unit found to not comply with social, environmental and labour law during the award and pre-award stages.	National laws that give an indication that contracting authorities must exclude economic operators believed not to be in compliance with social, environmental and labour laws at award or pre-award stages are given a score of 1. Non-mandatory and voluntary exclusions of economic operators believed to not be in compliance with social, environmental and labour laws at award or pre-award stages are given a score of 0.
3. Social Labelling: The contracting authority may include social labelling reflecting ethical trade as a technical specification within the award criteria	National laws that allow contracting authorities to include social labelling in assessment criteria are given a score of 1. National laws that have no reference to social labelling are given a score of 0.

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79. Full details and translations are available on request. Where national legislation is missing, the States has either not yet transposed the new Directives into law, or access to translation was not possible. See Appendix 2 for a full list of the laws and appendix 2 for details on missing countries.

Parameter	Details of scoring
4. Rejection of low priced tender: Procurement law requires contracting authorities <i>reject</i> 'abnormally low tenders' where prices are derived through breaches to Article 18.2 and/or Annex X	National laws that specify that contract authorities must reject abnormally low tenders where prices are derived through breaches to Article 18.2 and/or Annex X are given a score of 1. National laws that do not specify, or where exclusion is voluntary, in relation to abnormally low tenders where prices are derived through breaches to Article 18.2 and/or Annex X are given a score of 0.
5. Monitoring: Procurement law requires that the contracting authorities monitor performance of the contract in line with social objectives and/or toward Article 18.2 and/or Annex X	National laws that go beyond the Directive, and require economic operators to monitor contract performance in line with social objectives and/or toward Article 18.2 and/or Annex X are given a score of 1. National laws that do not require any additional monitoring of contract performance in line with social objectives are given a score of 0.
6. Termination: Procurement law allows the contractor to terminate the contract on social grounds, and/or those related to Article 18.2 and / or Annex X	National laws that allow contracting authorities to terminate contracts where breaches related to Article 18.2 and/or Annex X are found are given a score of 1. National laws that do not allow contracting authorities to terminate contract in line with Article 18.2

A full search of ethical public procurement practices and policies across EU and EEA states was undertaken to identify specific practices at the national, regional and local level (see Appendix 3 country profiles, public procurement infrastructure, institutions, policies and practices). This included summarising the overall structure of public procurement across all EU and EEA states and looking at what specific projects and programmes have been implemented by contracting authorities and public procurement agencies. For

each country we searched on “ethical public procurement policies”, “ethical public procurement practices”, “socially responsible public procurement policies” and “socially responsible public procurement practices”. It is noted that this approach may have excluded actions undertaken by contracting authorities that have not been explicitly defined within the bounds of “ethical public procurement”. Section X outlines the full range of activities in this space and innovative projects by contracting authorities and procurement agencies

to support ethical public procurement in their jurisdictions.

To support our findings an online survey was developed exploring approaches to ethical public procurement at the local level. The survey was sent out to more than 1000 procurement officers and other agents involved in the procurement process. To collect information from a range of different contracting authorities across diverse sectors for each country we identified at least one local authority and one public service provider, as well as central government procurement departments and national agencies. Unfortunately, the survey had a low response rate across all EU and EEA countries, therefore the representativeness of this survey to ethical public procurement activities across Europe must be treated with caution. Further more comprehensive data collection in this field is required.

The data were analysed to identify specific approaches to managing labour standards risks across public procurement supply chains as well as the challenges public procurement officials

face in implementing these. Further research in this field could provide more in depth detail around these specific challenges, as well as collect a body of evidence on the impact that these programmes have on working conditions and adherence to labour standards across public procurement supply chains.

Finally, the public procurement infrastructures and current status of ethical public procurement policies were mapped out across Italy, Sweden, Norway and the UK. For each country, we mapped out the public sector institutions and looked at how public procurement is structured. This included mapping out relationships between central government, local authorities, public service providers and state-owned enterprises. We then used this to assess the framework for more comprehensive ethical public procurement strategies and possible points for pressure and intervention. Semi-structured interviews with public procurement officials and desk-based research were used to provide evidence to support our findings.

# Appendix 2. Calculating the value of high-risk procurement

Data were downloaded via the EU Tenders Electronics Daily database. The following CPV codes identified for ‘high-risk’ goods were used to calculate the value of high risk goods procured.

Data source: Tenders Electronics Daily  
 TED Contract Awards Notices 2015  
<https://data.europa.eu/euodp/en/data/dataset/ted-csv>

1. Coffee, tea, cocoa	
Coffee beans	03131100
Coffee, tea and related products	15860000
Coffee	15861000
Roasted Coffee	15861100
Decaff	15861200
Coffee Substitutes	15862000
Tea bushes	03131200
Tea	15863000
Green Tea	15863100
Black Tea	15863100
Preparations of tea or mate	15864000
Tea bags	15864100
Herbal Infusions	15865000
Cocoa, chocolate and sugar confectionary	15840000
Cocoa beans	03131400
Cocoa	15841000
Cocoa paste	15841100
Cocoa butter, fat or oil	15841200

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**1. Coffee, tea, cocoa**

Unsweetened cocoa powder	15841300
Sweetened cocoa powder	15841400
Chocolate and sugar confectionery	15842000
Chocolate	15842100
Chocolate products	15842200
Drinking chocolate	15842210
Chocolate bars	15842220
Chocolate milk	15982200

**2. Construction structures and materials**

Construction structures and materials; auxiliary products to construction (except electric apparatus)	All CPV codes from 44000000 up to and including 44200000
Construction materials and associated items: road construction materials; concrete; building fittings; sewer mains; pipeline, piping, pipes, casing, tubing and related items; plates, sheets, strip and foil related construction materials; miscellaneous construction materials	

**3. Cut flowers**

Cut flowers	3121200
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**4. Electronics and ICT**

Office and computing machinery, equipment and supplies except furniture and software packages; parts and accessories of office machines	All CPV codes between 30000000 to 30130000
Computer equipment and suppliers; data processing equipment; parts, accessories and supplies	All CPV codes between 30200000 to 31000000

**5. Furniture and furnishings**

Furniture (incl. office furniture), furnishings, domestic appliances (excl. lighting) and cleaning products; Tables, cupboards, desk and bookcases; office furniture; kitchen furniture and equipment; Bed-room furniture; Living-room furniture; Library furniture; School furniture; Shop furniture; Laboratory furniture; Furnishings;	39000000 – 39340000
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**6. Stationary**

Office supplies - Organisers and accessories; Drafting supplies; Small office equipment; Lottery machines; Paper stationery and other items	30192000 to 30199000
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**7. Surgical Equipment**

Medical equipment - Imaging equipment; Recording devices; Dental equipment; small medical consumables (plasters, bandages etc.); other large physical devices (physical therapy, gamma therapy, lasers etc); functional devices (dialysis, pacemakers etc); Miscellaneous medical devices and products (sterilisers, surgical furniture	33100000 – 33200000
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**8. Textiles and work-wear**

Medical Clothing	33199000
Protective and Safety clothing	35113400 – 35113500
Arctic clothing	37411300
Occupational clothing; Coveralls; Special workwear and accessories	18000000 – 18500001
Fire-brigade uniforms; Military uniforms and equipment;	35811100 – 35821100

**9. Toys and sporting goods**

Sports equipment	37400000
Games and toys	37500000 – 37535000

**10. Tropical fruit**

Tropical fruit	03222110 – 03222200
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# Appendix 3. List of laws

## AUSTRIA

- Bundesvergabegesetz BVergG,  
1 March 2016

## BELGIUM

- The Act of 17 June 2016 on public procurement (Public Procurement Act 2016)

## BULGARIA

- Public Procurement Law Act 2016 (Закон за обществените поръчки 2016)

## CYPRUS

- The Act on the Adjustment of the procurement procedure and for Related Matters Law of 2016 (N. 73 (I) / 2016) (Ο Περί Ρύθμισης των Διαδικασιών Σύναψης Δημοσίων Συμβάσεων και για Συναφή Θέματα Νόμος του 2016)

## CZECH REPUBLIC

- Act no. 134/2016 Coll., On public procurement (Zákon č. 134/2016 Sb., o zadávání veřejných zakázek)
- Act no. 135/2016 Coll., Amending certain laws in connection with the adoption of the law on public procurement (Zákon č. 135/2016 Sb., kterým se mění některé zákony v souvislosti s přijetím zákona o zadávání veřejných zakázek)

## DENMARK

- Denmark Public Procurement Act, 2015

## ESTONIA

- Public Procurement Act 2007 with 2016 amendment

## FRANCE

- Ordonnance no 2015-899 du 23 juillet 2015 relative aux marchés publics
- Décret no 2016-360 du 25 mars 2016 relatif aux marchés publics

## GERMANY

- Regulation to modernise public procurement law (Verordnung zur Modernisierung des Vergaberechts, VergRModVO, 12.April 2016)

## GREECE

- Award and execution of concession contracts - Compliance with Directive 2014/23 / EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94 / 1 / 28.03.2014)

## HUNGARY

- Hungarian Public Procurement Rules 2016

## ICELAND

- Law on Public Procurement 2016

## **IRELAND**

- Regulations entitled European Union (Award of Public Authority Contracts) Regulations 2016

## **ITALY**

- Implementation of Directives 2014/23 / EU, 2014/24 / EU and 2014/25 / EU on the award of concession contracts, the Government and on procurement by entities procurement procedures in the water, energy, transport and postal services, as well as to revise the current rules on public contracts for works, services and supplies'

## **LATVIA**

- Amendments to the Public Procurement Law 2016

## **NETHERLANDS**

- Law of June 22, 2016 amending the Public Procurement Act 2012 in connection with the implementation of public procurement Directives 2014/23 / EU, 2014/24 / EU and 2014/25 / EU (Wet van 22 juni 2016 tot wijziging van de Aanbestedingswet 2012 in verband met de implementatie van aanbestedingsrichtlijnen 2014/23/EU, 2014/24/EU en 2014/25/EU)

## **NORWAY**

- Norway Public Procurement Act 2016

## **POLAND**

- The Act of 22 June 2016. Amending the Act - Public Procurement Law and some other acts (Ustawa z dnia 22 czerwca 2016 r. o zmianie ustawy

- Prawo zamówień publicznych oraz niektórych innych ustPoland

## **PORTUGAL**

- Rules and Obligations of transparency and provision and use of electronic procurement platforms (1. ei n.º 96/2015 - Diário da República n.º 159/2015, Série I de 2015-08-1770017225 Assembleia da República Regula a disponibilização e a utilização das plataformas eletrónicas de contratação pública e transpõe o artigo 29.º da Diretiva 2014/23/UE, o artigo 22.º e o anexo IV da Diretiva 2014/24/UE e o artigo 40.º e o anexo V da Diretiva 2014/25/CE, do Parlamento Europeu e do Conselho, de 26 de fevereiro de 2014, revogando o Decreto-Lei n.º 143-A/2008, de 25 de julho')

## **ROMANIA**

- Government Decision no. 395/2016 approving the Methodological Norms for the application of provisions concerning the award of public procurement contract/framework agreement of Law. 98/2016 on public procurement (Hotărârea Guvernului nr. 395/ 2016 pentru aprobarea Normelor metodologice de aplicare a prevederilor referitoare la atribuirea contractului de achiziție publică/acordului-cadru din Legea nr. 98/2016 privind achizițiile publice)

## **SCOTLAND**

- ▶ The Public Contracts (Scotland) Regulations Scotland 2016

## **MALTA**

- ▶ Public Procurement Regulations, 2016

## **SLOVAKIA**

- ▶ Amended Act no. 343/2015 Coll. public procurement

## **SLOVENIA**

- ▶ Slovenian Public Procurement Act (Zakon o javnem naročanju) 2014

## **SPAIN**

- ▶ Law 40/2015, of 1 October, the Legal Regime of the Public Sector (ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público)

## **SWITZERLAND**

- ▶ Federal Law on Public Procurement 2015
- ▶ Regulation on Public Procurement 2015

# Appendix 4. Missing countries in legal analysis

Missing Countries	
Croatia, Republic of	A government endorsed public procurement bill has been enforced but not yet publically available. <sup>80</sup>
Finland	Reform of the Finnish Act on Public Contracts is still in process. The new law is expected to come into force at the end of 2016. <sup>81</sup>
Lithuania	Adequate translation was not available
Sweden	According to the Swedish National Public Procurement Agency (April 2016) the new rules on public procurement are not yet in force. <sup>82</sup>

80. Government of the Republic of Croatia 2016 The government endorsed a new public procurement bill <https://vlada.gov.hr/news/the-government-endorsed-a-new-public-procurement-bill/19159>

81. Sosiaaliala 2016 Hankintalain kokonaisuudistus edennyt eduskuntakäsittelyyn (Comprehensive Procurement progressed to handling by Parliament) <http://www.sosiaaliala.fi/hankintalain-kokonaisuudistus-edennyt-eduskuntakasittelyyn/>

82. Swedish National Agency for Public Procurement 2016 New support for the implementation of procurement legislation during the interim period <http://www.upphandlingsmyndigheten.se/en/news/new-support-for-the-implementation-of-procurement-legislation-during-the-interim-period/>

# Appendix 5. Country profiles public procurement infrastructure institutions and ethical public procurement practices

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Austria	Austria is a federal republic state. The Bundesbeschaffung GmbH (BBG) is the Federal Government Procurement Agency offering central procurement services to federal agencies as well as other public bodies. <sup>83</sup> BBG negotiate framework contracts. Federal institutions are obliged to order via BBG contracts, while other public bodies have access to these services.	BBG are working toward a 'Sustainable ICT strategy'. 'So Fair Initiative' & the ÖkoKauf Wien" (Eco-buy), Innovations at the local level include Innsbruck social criteria in public procurement procedures. <sup>84</sup>

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83. About the Federal Public Agency, BBG 2016 <http://www.bbg.gv.at/english/about-the-fpa/>

84. 'The EC Guide on Socially Responsible Public Procurement', CEMR-Employers' Platform, 2011, Joint Statement June 2011; So.Fair 'Die Initiative' <http://www.sofair.at/>; ÖkoKauf Wien: Programme for sustainable public procurement; <https://www.wien.gv.at/english/environment/protection/oekokauf/>

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Belgium	<p>Regional and federal government authorities are responsible for their own procurement. There are 5000 contracting authorities spread among three regions, five provinces, 589 municipalities, and more than 20 public limited companies.<sup>85</sup> Central Procurement Body for the Federal Services, and the Purchasing Advice and Policy Unit (ABA-CPA) provides support federal level Federal Public Service Personnel and Organisation (FPS P&amp;O) provide guidance on social procurement. Federal Institute of Sustainable Development (Institute federal pour le Développement Durable) provide guidance on ethical public procurement.<sup>86</sup> The Federal Public Service Chancellery are responsible for regulating legal compliance. There is no central purchasing agency, but federal services (e.g., insurance, fuel, hygiene, ICT, furniture) have sector specific units. Local agencies have their own procedures and practices</p>	<p>The Brussels-Capital Region has social clauses in award criteria. The Federal Institute of Sustainable Development (Institut federal pour le Développement Durable) conduct supply chain monitoring with federal agencies. City of Ghent has a sustainable working clothes pilot project.<sup>87</sup></p>
Bulgaria	<p>Procurement takes place at the local level with municipals mayors, school administrators, and other officials responsible for their own procurement. The Bulgaria public procurement agency provides services for procurement legislation and implementation rules, e-procurement and a database of contractors and contracting authorities.<sup>88</sup> Framework agreements for the Executive Authorities are negotiated by the Ministry of Finance: Centralised Contracting and Public Procurement Unit.<sup>89</sup> Other public authorities oversee their own procurement activities.</p>	<p>Bulgaria engage with green public procurement and eco-innovations but limited policies for Ethical Public Procurement beyond the legal framework.<sup>90</sup></p>

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85. Stock-taking of administrative capacity, systems and practices across the EU to ensure the compliance and quality of public procurement involving European Structural and Investment funds: Final Report Country Profiles (ESI), European Commission & PWC, 2016, [http://ec.europa.eu/regional\\_policy/en/newsroom/news/2016/04/14-04-2016-public-procurement-a-study-on-administrative-capacity-in-the-eu](http://ec.europa.eu/regional_policy/en/newsroom/news/2016/04/14-04-2016-public-procurement-a-study-on-administrative-capacity-in-the-eu)

86. Ethical responsibility in public procurement, Institute Federal pour le Développement Durable

87. Guide des achats durable, Institute federal pour le Développement Durable (FIDO), 2015, <http://guidedesa-chatsdurables.be/fr/etudes-projets/responsabilite-societale-2015>

88. Public Procurement Portal: Public Procurement Agency, 2016, [http://rop3-app1.aop.bg:7778/portal/page?\\_pageid=173,1086250&\\_dad=portal&\\_schema=PORTAL](http://rop3-app1.aop.bg:7778/portal/page?_pageid=173,1086250&_dad=portal&_schema=PORTAL)

89. Centralised Contracting and Public Procurement, Ministry of Finance of the Republic of Bulgaria <http://www.minfin.bg/en/page/52>

90. European Commission: Eco Innovation Bulgaria, 2016, [https://ec.europa.eu/environment/ecoap/bulgaria\\_en](https://ec.europa.eu/environment/ecoap/bulgaria_en)



Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Croatia	<p>Croatia has five main public procurement authorities the Directorate for the Public Procurement System (DPPS), the Central Procurement Office (CPO), the Ministry for Regional Development and EU Funds, the State Commission for Supervision of Public Procurement (DKOM) and the State Audit Office (SAO). Regulation of contracting processes and legal compliance is undertaken by the SAO and DKON.<sup>91</sup> The CPO manage costs and undertake some monitoring and analysis.</p> <p>The DPPS Portal of Public Procurement provide design laws and policies and provide contracting authorities with guidance.</p> <p>Procurement for central state administration bodies is carried out by the Central State Office for Public Procurement.</p> <p>Local procurement is carried out by regional and local authorities.</p> <p>The large number of state-owned companies are responsible for their own procurement activities.</p>	<p>The focus in ethical public procurement in Croatia has been on improving transparency.<sup>92</sup></p>
Republic of Cyprus	<p>Different departments are responsible for their own procurement activities.</p> <p>Central support is provided via the Public Procurement Directorate of the Treasury of the Republic of Cyprus<sup>93</sup></p> <p>Procurement is highly decentralised across central government and locally</p>	<p>The Government of the Republic of Cyprus have been reforming their public procurement framework since 2015 aiming for greater transparency.<sup>94</sup> There are few developments in the field of ethical public procurement.</p>

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91. European Commission & PWC, 2016.

92. Responsible and determined management of public procurement', Transparency International HRVAT '<http://www.transparency.hr/en/article/responsible-and-determined-management-of-public-procurement/136>

93. Public Procurement Directorate of the Treasury of the Republic of Cyprus 2016 [http://www.treasury.gov.cy/treasury/publicpro/ppro.nsf/dmlindex\\_en/dmlindex\\_en?OpenDocument](http://www.treasury.gov.cy/treasury/publicpro/ppro.nsf/dmlindex_en/dmlindex_en?OpenDocument)

94. Psyllides, G., 2016 Govt announces public procurement reform, Cyprus Mail 02.04.2016 <http://cyprus-mail.com/2015/04/02/govt-announces-public-procurement-reform/>

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Czech Republic	<p>Public procurement is guided via the Czech Republic Public Procurement Act.</p> <p>Reforms of public procurement infrastructure are focusing on increased joint purchasing across departments.</p> <p>The Ministry for Regional Development provides overarching monitoring of contracts. They have an online database of approved and banned contractors.<sup>95</sup></p> <p>Public procurement is decentralised with independent departments responsible for their own procurement activities.</p>	<p>Procurement that promotes sustainable consumption.<sup>96</sup></p> <p>Reforms have focused on greater transparency.<sup>97</sup></p>
Denmark	<p>Public procurement in Denmark is decentralised with most procurement activities taking place at the local level.</p> <p>Each Ministry has a dedicated buyer that oversees purchasing and quality.</p> <p>Contracting and purchasing among regional health authorities is coordinated by the Centralized Purchasing Agency for Hospital Sector (Amgros).<sup>98</sup></p> <p>The Danish Competition and Consumer Authority regulate public procurement to ensure fair competition.<sup>99</sup></p> <p>The Public Procurement Portal facilitates business access to public sector contracts.<sup>100</sup></p> <p>SKI is the Central purchasing agency. Contracting authorities can opt for SKI to coordinate their procurement needs or participate in joined up framework agreements. SKI are a not-for-profit company 55 per cent owned by the Danish state.</p>	<p>Danish Environmental Protection Agency steer sustainable public procurement.</p> <p>Danish public procurement portal (Umbudsportalen) publish a responsible purchasing guide.<sup>101</sup> This guide supports ethical criteria and the development of social clauses.</p> <p>SKI have a Code of Conduct for all CSR-related issues (based on the Global Compact) and set specific environmental requirements depending on the subject matter of the contract.<sup>102</sup></p>

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95. Public Procurement and Concessions Portal, Ministry of Regional Development-CZ, 2016 <http://www.portal-vz.cz/en/Homepage>

96. Hajek, D., Green Public Procurement in the Czech Republic Presentation Slides Ministry of the Environment of the Czech Republic

97. Activities in Ethics, Skanska, 2015 <http://group.skanska.com/sustainability/ethics/activities-in-ethics/><sup>98</sup>

98. About Amgros, Amgros, 2016 <http://www.amgros.dk/en/about/about-amgros/>

99. EC & PWC, 2016.

100. Umbudsportalen, 2016. <http://udbudsportalen.dk/om-udbudsportalen/>

101. Responsible Purchaser, Umbudsportalen, 2016, <http://csr-indkob.dk/>

102. CSR Guide, SKI, 2016. <https://www.ski.dk/viden/Documents/CSR-haandbog.pdf>

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Estonia	<p>The Ministry of Finance who draft law and supervise contracts coordinates public procurement and provides consultancy services.<sup>103</sup></p> <p>Procurement notices are published online via the State Public procurement register.<sup>104</sup></p> <p>The Department of Public Procurement and State coordinates the public procurement of the state agencies.</p> <p>Some central purchasing of IT via the Centres of Registers and Information systems.</p> <p>Individual procurement is carried out by contracting authorities largely independently. Some contracting authorities have engaged in ad hoc joint purchasing arrangements.<sup>105</sup></p>	<p>According to Freedom House procurement choices are price-based, rather than on ethical or social values. There are some on-going issues with transparency.<sup>106</sup></p> <p>Estonian policies promote social procurement rather than ethical public procurement.<sup>107</sup></p>
Finland	<p>Public procurement in Finland is largely decentralised. The Ministry of Employment and Economy provide guidance on the legal framework with the Association of Finnish Local and Regional Authorities. Support and training is also provided by the Public Procurement Advisory Unit (PPAU). Regional health authorities coordinate procurement in hospitals. Hansel Oy coordinate framework agreements for central government authorities. Other agencies have a high level of discretion as to how they conduct their procurement activities.<sup>108</sup> KL-Kuntahankinnat Oy coordinates regional purchasing contracts for municipal authorities.</p>	<p>Finland has pioneered the use of national targets to benchmark progress toward sustainable public procurement since 2009.<sup>109</sup></p> <p>Hansel have risk assessed their contracts and include compliance provisions for ILO Conventions, awareness of ethical and voluntary reporting.<sup>110</sup> KL- Kuntahankinnat Oy consider environmental factors in negotiation of contracts only.<sup>111</sup></p>

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103. EC & PWC, 2016.

104. Department of Public Procurement and State Aid, 2016

105. Ibid.

106. Estonia in Transit, Freedom House, 2016, <https://freedomhouse.org/report/nations-transit/2016/estonia>

107. Raising of incomes and promotion of entrepreneurship, Republic of Estonia Government 2015 <https://valitsus.ee/en/raising-incomes-and-promotion-entrepreneurship>

108. CORDIS Innovation Policy Studies Country: Finland, 2006, [https://cordis.europa.eu/innovation-policy/studies/gen\\_study13.htm](https://cordis.europa.eu/innovation-policy/studies/gen_study13.htm)

109. Sustainable public procurement, UN SDG's 2016, <https://sustainabledevelopment.un.org/partnership/?p=2106>

110. Annual Sustainability Report Hansel, 2015, <https://annualreport2015.hansel.fi/en/vastuullisuusraportti/vastuullisia-hankintoja/vastuullisuusnako kohdat-ohjaavat-elintarvike-ja-non-food-hankintoja/>

111. Combining municipal power, Kunta hankinnat, 2015 <http://kuntahankinnat.fi/en>

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
France	Public procurement in France is highly decentralised with different laws and regulations across different sectors. <sup>112</sup> Governance legal support and advice is provided by the Ministry of Economy and Finance. A number of private companies provide services linking private companies to public sector procurement contracts. <sup>113</sup> Contracts are published on the State public procurement website. <sup>114</sup> The Union of Purchasing Groups (UGAP) is the central purchasing body for State, public bodies, and other local agencies. Some municipal authorities are coordinating their own joint procurement on an ad hoc basis. <sup>115</sup>	Policies give primacy to social public procurement. <sup>116</sup> UGAP have in place policies for sustainable public procurement. Requests for ethical public procurement has to come from the purchaser. <sup>117</sup> Socialement-Responsable.org provide support to contracting authorities wishing to develop their strategy for socially responsible public procurement. <sup>118</sup>

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112. EC & PWC, 2016.

113. For example Achat Public <https://www.achatpublic.com/societe/propos>

114. Plate-forme des Achats de l'Etat <https://www.marches-publics.gouv.fr/index.php?page=entreprise.Accueil&lang=en>

115. Cohen, C., 2010 Groupement de commande quand l'union fait la force Instinct Business 01.10.2010 <http://www.decision-achats.fr/Decision-Achats/Article/Groupement-de-commandes-quand-l-union-fait-la-force-37985-1.htm>

116. Achats socialement responsables: un decret renforce le developpement local durable, Le portail de l'economie et des Finances, 2015, <http://www.economie.gouv.fr/decret-fixant-le-seuil-du-schema-d-achats-socialement-responsables>

117. Association des Directeurs Generaux des Communautes de France, Union des groupements d'achats publics (UGAP), 2016 <http://www.adgcf.fr/5-25-117-ugap-union-des-groupements-achats-publics.html>

118. Socialementresponsable.org <http://www.socialement-responsable.org/pourquoi-ce-site>

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Germany	<p>Germany operates a federal system of governance, where 16 federal States determine policies on schooling, education and local government.<sup>119</sup> Public procurement is highly decentralised across federal states and local municipalities.<sup>120</sup> Regulatory oversight is provided through the Bundeskartellamt.<sup>121</sup> The Federal States Committee coordinates public procurement across federal states and there are multi-stakeholder committees at the local level that join up public procurement by sector. Joint purchasing is organised at sector level. For instance the EK-UNICO purchasing community for medical and pharmaceutical supplies.<sup>122</sup></p>	<p>Central government have an action programme for sustainable development that includes sustainable public procurement. Yearly monitoring reports are published and the plan will be reviewed in 2019.<sup>123</sup> A number of local governments have adopted their own ethical criteria for purchasing.<sup>124</sup> Alliance for sustainable public procurement is a platform that brings together socially responsible public procurement practices across the federal states.<sup>125</sup> Initiatives come from departments that want to procure ethically, and businesses tendering for government contracts that want to operate in a more ethical way. Support is provided through the sustainability compass<sup>126</sup> and the German Procurement Agency of the Federal Ministry of the Interior has founded the Competence Centre for Sustainable Procurement that provides advice and training for public authorities to engage in sustainable public procurement.<sup>127</sup></p>

CONTINUES ON THE NEXT PAGE ➤

119. Facts about Germany, Frankfurter Societäts-Medien GmbH and Federal Foreign Office, 2016 <https://www.tatsachen-ueber-deutschland.de/en/successful-reforms#background-page-4>

120. CORDIS Innovation Policy Studies, Germany, 2006 <http://cordis.europa.eu/innovation-policy/studies/home.html>

121. Public Procurement, The Bundeskartellamt, 2015 [http://www.bundeskartellamt.de/EN/Publicprocurement/publicprocurement\\_node.html](http://www.bundeskartellamt.de/EN/Publicprocurement/publicprocurement_node.html)

122. The purchasing community of the university clinics, EK UNIDO, 2015 <http://www.ek-unico.de/>

123. Mechanisms of Vertical Integration: Germany, European Sustainable Development Network, 2016 <http://www.sd-network.eu/?k=country%20profiles&s=vertical%20integration&country=Germany>

124. Bremen on its way to socially and ecologically responsible procurement, Bremen 2014, Landmark Project <http://www.landmark-project.eu/en/landmark-in-action/international-conference/programme-and-presentations/>

125. European Sustainable Development Network, 2016.

126. Compass Sustainability, 2016, <http://www.kompass-nachhaltigkeit.de/>

127. BME The Association for Supply Chain Management, Procurement and Logistics

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Greece	Public procurement in Greece has been largely decentralised and not joined up, however, there is a process of ongoing reform focusing on greater coordination and moves to make it easier for business to access government contracts. <sup>128</sup> A number of new institutions have resulted. The Greek General Secretariat of Commerce (SGC) has recently become the national purchasing bod, and the Greece Independent Single Public Procurement Authority has been established to provide a national strategy and public procurement policies. The Central Electronic Registry collects data on public procurement contracts. The National Electronic Public Procurement System carry out electronic bidding and monitor contracts. <sup>129</sup> Public procurement is going through reform and centralised purchasing is in early development.	Ethical public procurement in the Greece context involves ongoing strengthening of accountability and transparency of public procurement institutions in Greece. <sup>130</sup>
Hungary	The central Public Procurement Authority is responsible for drafting legislation, providing support and guidelines to local authorities, keeping a database of procurement activities and the operation and management of e-procurement. The Directorate General for Public Procurement and Supply, functions as a central purchasing agency for government agencies and arranging framework agreements for generic products (e.g., ICT, stationery and office supplies). Contracting authorities at local level are responsible for their own procurement. <sup>131</sup>	Ethical public procurement in Hungary has focused on strengthening systems of accountability and transparency. <sup>132</sup>

CONTINUES ON THE NEXT PAGE ➤

128. OECD Public Procurement in Greece <http://www.oecd.org/gov/ethics/public-procurement-greece.htm>; New institutional framework for economic activity and other provisions, Greek Ministry of Economy and Development, 2016, <http://www.mindev.gov.gr/index.php/γραφειο-τυπου/δελτια-τυπου/3745-2016-11-25-06-58-08>

129. Hellanic Independent Single Public Procurement Authority, 2016, <http://www.eaadhsy.gr/index.php>

130. Assessing country procurement systems and supporting good practice: The contribution of the OECD Recommendation on Public Procurement WTO Symposium on Government Procurement, OECD 2015, Agreement 17 September 2015 Geneva.

131. EC & PWC 2016.

132. Anita N., and Tunde, T., 2015 Red Flags: New Warning System for the identification of Red Flags in Public Procurement Transparency International, Hungary, [www.redflags.eu/files/redflags-summary-en.pdf](http://www.redflags.eu/files/redflags-summary-en.pdf)

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Ireland	The Office of Government Procurement operates to match private sector to public sector contracts and provide support for contracting procedures. The Office of Government Procurement is responsible for sourcing all goods and services across the health, defense, education and local government sectors. <sup>133</sup> They also develop procurement policies and procedures. All tenders above €25,000 are published online. The Office of Government Procurement arrange central purchasing. Individual contracting authorities are moving over to procurement through the Office of Government Procurement. Currently, most procurement still takes place at the local level. <sup>134</sup>	The Government E-Tender portal issue guidelines on ethical behaviours in terms of transparency and accountability. The 2013 Social clauses in Public Procurement Bill states intent to develop a 'buy social' policy and the Office of Government Procurement recently established a social clauses project. <sup>135</sup> The Office of Government also have strengthened the procedures in place to ensure contractors abide by national employment laws. <sup>136</sup>
Italy	Reforms of Italian public procurement in Italy have focused on greater coordination via three main contracting authorities. This is being coordinated by the Italian Anti Corruption Authority (ANAC) (see Italy infrastructure model in the main report).	A National Action Plan on Ethical Public Procurement is currently being developed. They are in the process of setting up institutions to implement their National Action Plan on Business & Human Rights 2016-2021 (see main report).
Latvia	Public procurement in Latvia is moving toward greater centralised coordination with the number of framework agreements increasing. The State Regional Development Agency handle EU Structural Funds. In this role the State Regional Development Agency have gained responsibility of ethical public procurement. <sup>137</sup> Latvia is moving toward greater centralisation and coordination of public procurement. <sup>138</sup>	The Latvian Public Procurement Portal issues guidelines on information to collect on a number of labour protection measures. <sup>139</sup>

CONTINUES ON THE NEXT PAGE ➤

133. Ireland Office of Government Procurement, 2016,

134. EC & PWC 2016.

135. Community Benefit Clauses, Irish Social Enterprises Network <http://www.socent.ie/community-benefit-clauses/>

136. House of the Oireachtas: Tithe an Oireachtais, Ireland Office of Government, 2015

137. 'Join Up', European Commission, 2016 <https://joinup.ec.europa.eu/elibrary/document/state-regional-development-agency>

138. In brief: Public Procurement Office in Lithuania, Central Public Procurement Information system and Central Risk Analysis System, Public Procurement Network, 2013

139. Latvia Portal 2016 <https://www.latvija.lv/en/PPK/Tiesibu-aizsardziba/Darba-tiesibas-un-aizsardziba>

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Lithuania	The Lithuanian public procurement office sets the policies and legal framework. Lithuania have a central purchasing organisation who procure for the central administration as well as a range of other products and services. Centralised procurement infrastructure coordinated by the Lithuanian public procurement office.	The focus in socially responsible public procurement has tended to focus on environmental criteria <sup>140</sup> and governance and accountability through moving to E-procurement. <sup>141</sup>
Luxembourg	Public procurement is managed centrally through the Central Directorate: Ministry of Sustainable Development and Infrastructure. <sup>142</sup> Public sector contracts are published online via the Luxembourg Public Procurement Portal. <sup>143</sup> The Guichet website helps join private contractors with public sector procurement needs and provide support service.	Ethical and socially responsible public procurement in Luxembourg is governed by the law. Guichet publish guidelines for business on Corporate Social Responsibility policies on their website. <sup>144</sup> The National Institute for Sustainable Development and Corporate Social Responsibility also publish policy guidelines for business. <sup>145</sup> The government have been developing specific policies for high risk products, such as Timber, although it is not clear the status of these policies at present. <sup>146</sup>

CONTINUES ON THE NEXT PAGE ➤

140. EC & PWC 2016.

141. Popescu, A., Onofrei, M., Kelley, C., An overview of European good practices in public procurement. *Eastern Journal of European Studies* 7:1 pp. 81-91.

142. Portail du Développement durable et des infrastructures, Grande Duché de Luxembourg, 2014, <https://developpement-durable-infrastructures.public.lu/fr/developpement-durable-infrastructures/index.html>

143. Guichet, 2016, <http://www.guichet.public.lu/entreprises/en/commerce/marches-publics/appele-d-offre/consulter-annonces-marches-publics/index.html>

144. Corporate Social Responsibility, Guichet, 2016, <http://www.guichet.public.lu/entreprises/en/urbanisme-environnement/entreprise-responsable/responsabilite-sociale/entreprise-socialement-responsable/index.html>

145. Institute National pour le développement durable et al responsibility sociale des entreprises 2009 <http://www.indr.lu/>

146. Support for the development of Luxembourg's public procurement policy for timber, Proforest, 2012, [http://www.environnement.public.lu/forets/dossiers/1Flegt/Etude\\_Proforest\\_PAP\\_Luxembourg.pdf](http://www.environnement.public.lu/forets/dossiers/1Flegt/Etude_Proforest_PAP_Luxembourg.pdf)



Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Malta	Public procurement in Malta is coordinated by central government institutions with individual purchasing undertaken by local contracting authorities. As Malta is a small State, all procurement contracts pass through the Ministry of Finance: Department of Contracts. The Ministry centralise purchasing of contracts over EUR 120,000. <sup>147</sup> Contracts are published in the Maltese Government Gazette.	The National Action Plan for Sustainable Public Procurement has focused on Green Public Procurement policies with an action plan for socially responsible public procurement in development. <sup>148</sup> The focus of the procurement reform thus has focused on value for money and local social benefits. <sup>149</sup> Ethical Public Procurement is regulated via the Public Procurement Regulations 2016. <sup>150</sup>
Netherlands	Public procurement in Netherlands is highly decentralised with individual contracting authorities responsible for their own procurement. This can cause some confusion for procurement officials where services, such as health insurance, are provided by private companies. <sup>151</sup> Central government provide several supporting institutions including publishing contracts online through TenderNed. The Ministry of Economic Affairs draft procurement policies and legislation. <sup>152</sup>	Local Contracting Authorities in the Netherlands have been proactive in developing their own innovative socially responsible and ethical public procurement procedures. For instance the Rotterdam local authority have committed to 100 per cent green procurement from 2015 onwards. <sup>153</sup> City of Rotterdam are also participants in the European Sustainable Tropical Timber Coalition along with the City of Amsterdam and Government of Netherlands. <sup>154</sup> The Public Procurement Expertise Centre (PIANOO) have dedicated function to lead socially responsible and ethical public procurement and include on their website clear guidelines of ethical public procurement across the whole procurement cycle (preparing, review and monitoring). <sup>155</sup>

CONTINUES ON THE NEXT PAGE ➤

147. EC & PWC 2016.

148. Peer Review on Corporate Social Responsibility, European Commission ICF: GHK, 2013, [ec.europa.eu/social/BlobServlet?docId=11474&langId=en](http://ec.europa.eu/social/BlobServlet?docId=11474&langId=en)

149. Malta: National Reform Programme, Ministry of Finance, 2015, [ec.europa.eu/europe2020/pdf/csr2015/nrp2015\\_malta\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/nrp2015_malta_en.pdf)

150. Malta Department of Contracts: Resources, 2016, <http://contracts.gov.mt/en/Resources/Pages/Resources.aspx>

151. Schoenmaekers, S., To procure or not to procure? That's the question! Maastricht University 17.07.2014

152. EC & PWC 2016.

153. ICLEI celebrates 20 years of work on Sustainable Public Procurement 17.05.2016, ICLEI Local governments for sustainability, 2016, <http://www.iclei.org/details/article/iclei-celebrates-20-years-of-work-on-sustainable-public-procurement.html>

154. European Sustainable Tropical Timber Coalition 2016 <http://www.europeansttc.com/thesttc/participants/>

155. Sustainable public procurement in the procurement process, PIANOO, 2016, <https://www.pianoo.nl/public-procurement-in-the-netherlands/sustainable-public-procurement-spp/spp-in-the-procurement-process>

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Norway	Each public enterprise is responsible for its own procurement in line with the National Public Procurement Act. Reform of public procurement in Norway has established a new State Procurement Centre responsible for negotiating contract framework agreements and through which procurement by all state authorities will become mandatory. Presently, procurement in the health sector is conducted through two purchasing agencies (HINAS and Sykehuspartner) and there is some ad hoc joint purchasing arrangements by local authorities. Public procurement in the health sector is currently undergoing restructuring. The Norwegian Agency for Public Management and EGovernment (Difi) have overarching responsibility for public procurement policies and procedures. (See the Norway public procurement model in this report).	An active civil society and the Norwegian Ethical Trade Initiative (ETI) have raised the profile of socially responsible public procurement in Norway. Difi, in partnership with the Norwegian ETI, have issued common guidelines for social criteria in public contracts, and provide training and a range of web-based resources to help contracting authorities procure ethically. (see the Norway public procurement model in this report).
Poland	Public procurement in Poland takes place at the local level across around 14,000 government ministries, municipalities and government services. Drafting of legislation and oversight is provided by the Polish Public Procurement Office. The information, education and systems analysis department of the Public Procurement Office organise training and publish guidance materials. <sup>156</sup> The Polish Supreme Audit Office monitor procurement processes. <sup>157</sup> Health services are delivered by private companies contracted by the National Health Fund. <sup>158</sup>	Ethical public procurement policies are not yet developed, most focus thus far has been on Green Public Procurement and developing social clauses in public procurement contracts. <sup>159</sup> Green Procurement criteria have been developed and requirements in award contracts. Social clauses in procurement contracts are required to be reported to the Public Procurement Office systems analysis department. <sup>160</sup>

CONTINUES ON THE NEXT PAGE ➤

156. Urząd Zamówień Publicznych 2016 <https://www.uzp.gov.pl/en/structure>

157. EC & PWC 2016.

158. Health in Poland, European Commission, 2016

159. Corporate Social Responsibility in Poland, Ministry of the Economy Poland, 2016

160. Kucinska, J., 2015 Changes regarding social clauses in public procurement in Poland Social Entrepreneurship Network

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Portugal	Two central institutions coordinate public procurement the Institute of Public Markets, Real Estate and Construction (InCI) and the Entity of shared services of Public Administration (eSPap) and local authorities can choose to go through framework agreements coordinated through these institutions or purchases independently. Central government procure through eSPap. The Portugal Court of Auditors provide overarching oversight. <sup>161</sup>	There are a number of agencies and initiatives operating in the spaces of sustainable and ethical public procurement in Portugal. The Building Sustainable Public Procurement Initiative is supporting public authorities in Greece and Portugal to develop a Sustainable Public Procurement strategy and work towards a joined up sustainability approach across different contracting authorities. <sup>162</sup> They have a toolkit for sustainable public procurement and have been engaged in a number of projects with contracting authorities in Greece and Portugal. Innovative public service bodies have developed their own socially responsible practices. For instance, the Inter Municipal Waste Management of Greater Porto, have a suppliers code of conduct and have achieved SA8000 certification, annually reporting on their progress in this sector. <sup>163</sup> The Portuguese Laboratório Nacional de Energia e Geologia (LNEG) is a leading institution in the EU Green Public Procurement 2020 initiative <sup>164</sup> , which appears as a fore-runner prior to engagement with ethical public procurement, which is in its infancy.
Romania	The Romanian government established the National Public Procurement Agency (NAPA) in 2015. <sup>165</sup> The NAPA is responsible for establishing and monitoring legal compliances among contracting authorities. Public bodies coordinate their own procurement activities and there are several agencies providing services to support contracting authorities publish contracts. In the Health sector, joint purchasing of large contracts is coordinated by the Ministry of Health. E-Procurement tools were revised and made more simple to use in 2016. <sup>166</sup>	Reforms have focused on transparency and accountability measures moving toward more effective eProcurement systems. The National Public Procurement Agency requires that tenders contain information on compliance. As the institution has recently been established most services are in the process of development. They are working with 'International Development Norway' to look at ways to share best practice. <sup>167</sup>

CONTINUES ON THE NEXT PAGE ➤

161. EC &amp; PWC 2016

162. Building Socially Public Procurement, 2016, [http://www.building-spp.eu/pag\\_lista\\_simples.php?menu=1&tema=en](http://www.building-spp.eu/pag_lista_simples.php?menu=1&tema=en)163. Good Practice in Socially Responsible Public Procurement: Approaches to verification across Europe, The Landmark Project, 2015 [http://www.landmark-project.eu/fileadmin/files/en/latest-achievements/LAND-MARK-good\\_practices\\_FINAL.pdf](http://www.landmark-project.eu/fileadmin/files/en/latest-achievements/LAND-MARK-good_practices_FINAL.pdf)164. G2020 Procurement for a low carbon economy, Laboratório Nacional de Energia e Geologia (LNEG), 2016, <http://www.lneg.pt/iedt/proyectos/490/>165. Romania National Public Procurement Agency (Agentia Nationala Pentru Achizitii Publice) <http://anap.gov.ro/web/prezentare-valori-obiective-misiune/>166. JoinUp Romania augments eProcurement portal, European Commission, 2015, <https://joinup.ec.europa.eu/community/epractice/news/romania-augments-eprocurement-portal>167. Sustainable and Ethical Public Procurement in Romania, International Development, Norway, 2016 <http://www.id-norway.com/projects/sustainable-and-ethical-public-procurement-romania/?print=1>

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Slovakia	In Slovakia, procurement occurs at central, regional and local government level with optional purchasing from the Ministry of Interior, which operates as a central purchasing agency. The Urad Pre Verejne Obstaravanie (UVO) Office for Public Procurement monitors and supports procurement in line with the Laws on Public Procurement. <sup>168</sup> Auditing and regulation is undertaken by the Supreme Auditing Office. All contracts are published in the online central register.	Ethical public procurement in Slovakia has mostly focuses on campaigns for greater transparency and shifts to open tender systems. Otvorené Zmluvy, a partnership of Fair Play Alliance and Transparency International Slovakia are a civil society organisation who collect data on public procurement contracts in Slovakia and use this data to monitor accountability in transactions. <sup>169</sup>
Slovenia	Public procurement in Slovenia is in the process of reform. Public services are delivered by state own enterprises and these are responsible for their own procurement. Drafting legislation, providing training, monitoring contracts and coordination of contracts is handled by the Slovenia Public Procurement Directorate. <sup>170</sup> National Review Commission and Court of Audit oversee compliance to procurement laws.	A number of public bodies have their own ethical policies, the Slovenian Control Air Navigations services, for instance have their own code of ethics. <sup>171</sup> Slovenia has a national action plan for Green Public Procurement and there has been some civil society action campaigning for ethical public procurement practices. <sup>172</sup>

CONTINUES ON THE NEXT PAGE ➤

168. Office of Public Procurement, UVO, 2015 <http://uvo.gov.sk/introduction-of-the-office-for-public-procurement--456.html>

169. Otvorené Zmluvy, 2016, <http://otvorenezmluvy.sk/o-projekte>

170. Public Procurement Directorate, Direktorát za javno naročanje, 2016 <http://djn.mju.gov.si/english>

171. Code of Ethics, Slovenia Control, 2016, <https://www.sloveniacontrol.si/en/about-the-company/code-of-ethics>

172. Umanotera Slovenian Foundation for Sustainable Development <https://www.umanotera.org/kaj-de-lamo/trajne-vsebine-projekti-kampanje/ozelenjevanje-obcinskega-proracuna/>

The Government Action Plan for Green Public Procurement for the period 2009–2012, Government of the Republic of Slovenia, 2009, [http://www.vlada.si/en/media\\_room/government\\_press\\_releases/press\\_release/article/the\\_government\\_action\\_plan\\_for\\_green\\_public\\_procurement\\_for\\_the\\_period\\_20092012\\_2621/](http://www.vlada.si/en/media_room/government_press_releases/press_release/article/the_government_action_plan_for_green_public_procurement_for_the_period_20092012_2621/)

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Spain	<p>In Spain, the Director of General State Assets sets the regulatory framework and national strategy for public procurement. The Directorate General for Rationalisation and Centralisation of Procurement coordinates framework agreements and provide central purchasing services. Purchasing from the Directorate General is voluntary and up to each contracting authority. Legal advice is provided by the State consultative board on Administrative Procurement.<sup>173</sup></p>	<p>Ethical public procurement in Spain has been driven by civil society and procurement officers at the local level with local initiatives promoting socially responsible and ethical procurement since 2006. For instance, the City of Barcelona have a responsible sourcing policy for uniforms, timber and Fair Trade coffee and tea and require copies of audit reports and certification at tender stage.<sup>174</sup> Similar strategy is found in the Barcelona Parks and Gardens Department.<sup>175</sup> The City of Barcelona have 50 strategic initiatives across municipal departments that include provisions for responsible sourcing.<sup>176</sup> The City of Barcelona and a number of other municipalities are members of Electronics Watch that supports ethical public procurement across IT supply chains.<sup>177</sup> They also publish an interactive social procurement toolbox for Municipal authorities to use.<sup>178</sup> The Clean Clothes Campaign is very active in Spain raising awareness of these issues. The government have proactively encouraged social and green public procurement. The Spain Ministry of Environment provide guidelines for Green Public Procurement and the Ministry of Employment and Social Security have issued the 'Spanish Strategy on Corporate Social Responsibility'.<sup>179</sup></p>

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173. EC & PWC 2016

174. Castiella, T., 2006 Sustainable procurement in Barcelona, Barcelona City Council ICLEI World Congress

175. Textile Products, Ajuntament Barcelona 2006/2015 [http://www.ajsosteniblebcn.cat/en/textile-products\\_3997](http://www.ajsosteniblebcn.cat/en/textile-products_3997)

176. Strategic plan for internal sustainability: Department for Urban Ecology, Ajuntament Barcelona, 2015, [http://www.ajsosteniblebcn.cat/en/urban-ecology-management\\_59581](http://www.ajsosteniblebcn.cat/en/urban-ecology-management_59581)

177. Electronics Watch 2016 [http://electronicswatch.org/en/join-the-advisory-group\\_3003](http://electronicswatch.org/en/join-the-advisory-group_3003)

178. Ajunta de Barcelona Social Procurement Guide <http://ajuntament.barcelona.cat/contractaciopublica/es/>

179. RSE, Consejo estatal, 2016 <http://www.responsabilidadimas.org/canales/index.asp?canal=8>

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Sweden	Public procurement is mostly decentralized with individual contracting authorities responsible for their own procurement activities. Two institutions: the Statens inköpscentral (SIC) and SKL Kommentus act as central purchasing body for central government and municipalities respectively. Some organisations have coordinated their own joint purchasing activities (see Sweden public procurement model in the main report).	Public campaign and civil society organisations have been active in bringing ethical public procurement into public focus. <sup>180</sup> As such, ethical public procurement practices are well established among Swedish procurement agencies. The Swedish National Agency for Public Procurement list all procurement goods on their website, as well as possible labour standards risks that may arise. On their website they have a procurement tool plan and manage responses to various labour standards risks. <sup>181</sup> Statens inköpscentral (SIC) and SKL Kommentus have social criteria and labour standards codes of conduct that they require economic operators to comply with prior and for the duration of the contract. City municipalities have also developed their own ethical public procurement strategies, for example the City of Malmö have been applying socially responsible criteria to the procurement of tea, coffee, bananas, textiles and flowers since 2007. <sup>182</sup>
UK inc. Scotland	The Crown Commercial Service manages central government public procurement contracts and is responsible for coordinating group purchasing, standardising and managing supplier contracts, and building the capability of procurement officials to uphold procurement policies and standards. The Central government is required to use the services of the Crown Commercial Services, while local authorities and other public bodies have greater autonomy (see UK public procurement model in this report).	Central government requires contracting authorities buy sustainably and engage with suppliers to reduce negative impacts on their supply chains. Government Buying Standards (GBS) outline mandatory requirements and best practices for sustainable public procurement. These have mostly reflected environmental goals and objectives. England, Scotland, Northern Ireland and Wales have their own separate ethical public procurement policies and strategies. There are also a number of innovative projects and programmes at local level coordinated by local councils and public bodies. (See UK public procurement model).

CONTINUES ON THE NEXT PAGE ➤

180. News, Clean Clothes Campaign, 2006, <https://archive.cleanclothes.org/newslist/401-news-from-the-cccs-clean-clothes-newsletter-nr22.html>

181. Environmental and social requirements wizard, Swedish National Agency for Public Procurement 2016 <http://www.upphandlingsmyndigheten.se/en/sustainable-public-procurement/sustainable-procurement-criteria/>

182. LANDMARK 2015

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Iceland	Ríkiskaup manage central procurement for state institutions and corporations. <sup>183</sup> Ríkiskaup negotiate framework agreements on behalf of state institutions and also provide support and consultancy services. Contracts and opportunities to tender are published on the Ríkiskaup government purchasing website. <sup>184</sup>	The Icelandic government have had a policy on Green Public Procurement since 2009. <sup>185</sup> There is very little information available on socially or ethical public procurement activities.
Liechtenstein	The Specialised body of Public Procurement division of the Office of Government Chancellery oversee public procurement activities, collect data and transpose EU Directives. <sup>186</sup>	The government of Liechtenstein publish an annual accountability report on procurement contracts. There has been minimal engagement with both socially and ethically responsible public procurement, with no evidence of plans or policies in this respect.

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183. About Ríkiskaup 2016 <http://www.rikiskaup.is/english/nr/324>

184. Government Purchases Ríkiskaup 2016.

185. Green Public Procurement Action Plan, UN Sustainable Knowledge Platform 2015 <https://sustainabledevelopment.un.org/index.php?page=view&type=99&nr=139&menu=1449>

186. Public Procurement Office, Landesverwaltung Fürstentum Liechtenstein, 2016, <http://www.llv.li/inhalt/11615.html>

Country	Public Procurement Infrastructure and institutions	Ethical public procurement policies
Switzerland	Public procurement policies in Switzerland are coordinated at three levels: national treaties, national level and municipal level. Overall procurement strategy, legal framework and policies is coordinated by the Beschaffungskongferenz des Bundes BKB (Procurement Conference of the Federal BKB), which is further divided into specific procurement sectors e.g., buildings and logistics, economic affairs, federal office of the environment, international development cooperation etc. Swiss public enterprises are also joined up to the BKB. <sup>187</sup> Public tenders are published online at simap.ch. Public bodies, for instance, hospitals are responsible for their own procurement.	<p>The BKB promote sustainable public procurement including socially responsible procurement and publish guidelines for contracting authorities.<sup>188</sup> Ethical public procurement initiatives in Switzerland have emerged at the local and municipal level.</p> <p>The Swiss government have partnered with the German GIZ on the Compass Sustainability initiative. This initiative supports public sector procurers include social and ecological criteria in procurement contracts. It also supports Small and Medium sized enterprises (SMEs) adopt sustainable procurement practices.<sup>189</sup> Innovative initiatives have been adopted at the local level, particularly among city authorities, Stadt Zürich for instance have had a sustainable public procurement policy in place since 2008 specifying compliance with ILO Core Labour Standards, risk assessment of potential procurement contracts and external social audits. Approaches are developed by product category e.g., child labour risk in natural stone procurement.<sup>190</sup> Similar risk based responses are found within the policies of other public bodies, such as the Eidgenössische Technische Hochschule Zürich who have developed risk assessment guidelines and strategies for responses.<sup>191</sup></p>

187. Beschaffungskongferenz des Bundes BKB, 2016, <https://www.bkb.admin.ch/bkb/de/home/organisation/beschaffungskongferenz-des-bundes-bkb.html>

188. Nachhaltige Beschaffung, Beschaffungskongferenz des Bundes BKB, 2016.

189. Kompass Nachhaltigkeit Öffentliche Beschaffung 2016.

190. Felton, B., 2010 The Zurich move toward socially responsible public procurement City of Zurich Department of health and environment archive.

191. Guide for sustainable procurement at ETH Zürich, Eidgenössische Technische Hochschule Zürich, 2015, [http://www.nachhaltige-beschaffung.ch/pdf/ekk\\_Guide\\_for\\_Sustainable\\_Procurement\\_at\\_ETH\\_V21122015.pdf](http://www.nachhaltige-beschaffung.ch/pdf/ekk_Guide_for_Sustainable_Procurement_at_ETH_V21122015.pdf)





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