

The social impact of public procurement - Can the EU do more?

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The [original full study](#)¹ presents the possibilities offered by Directive 2014/24/EU (hereinafter, the Directive) on public procurement to achieve social and employment policy goals (so-called socially responsible public procurement – SRPP). It identifies the main challenges encountered in the implementation of SRPP and discusses recommendations for possible future EU action. The first part of the study gives an overview of the state of play of SRPP across the EU, based on the very limited existing data, the views of experts in the field and important stakeholders at EU level, and five country cases. It also provides an analysis of the main instruments for SRPP in the Directive, and how they were incorporated in the national laws of 17 Member States. The second part of the study examines in depth the use of SRPP in Belgium, Czech Republic, Italy, Spain and Sweden, and presents the work done in Germany to support the promotion of collective bargaining and collective agreements by means of public procurement. The study concludes with a series of recommendations for the EU institutions, Member States and contracting authorities. The recommendations first suggest what could be done now for better uptake of SRPP under the Directive, and secondly provide suggestions with a view to a future revision of the Directive.

Background



The Directive on public procurement entered into force in April 2016. It facilitates the use of public procurement in a strategic way, to achieve social, environmental and innovation goals through public purchases. This study focuses on the social dimension. It is important to point out that most of the provisions of the Directive relevant for SRPP are not mandatory. Member States were not obliged to implement them during transposition, and, in most cases, nor are contracting authorities under national transposition laws. Therefore, contracting authorities have wide discretion when deciding whether to use these provisions or not.

The only mandatory provision of a social nature in the Directive is the 'horizontal social clause', which requires Member States to ensure compliance with applicable environmental, social and labour laws (obligations established by EU law, national law, collective agreements and eight specified core ILO conventions) in the performance of public contracts. Other instruments include the possibility to award contracts by attributing some points to the fulfilment of social criteria; to require bidders to commit to employing workers with disabilities or disadvantaged workers; and to promote social inclusion, non-discrimination and gender equality. Moreover, additional instruments exist to facilitate the participation of small and medium-sized enterprises (SMEs) and social economy enterprises (SEEs) in public procurement. To date, no evaluation study has been carried out on the implementation of the Directive, so there is little information available on the extent to which SRPP is used. This study attempted to partially fill this gap, by giving an initial answer to the following questions:

- Do the existing provisions ensure that labour rights, collective bargaining and collective agreements are respected and promoted? Do they promote the inclusion of people in vulnerable situations?
- Do the instruments included in the Directive facilitate the participation of social economy enterprises in public procurement?
- What actions are possible at EU and national level to foster the use of SRPP?



Key findings

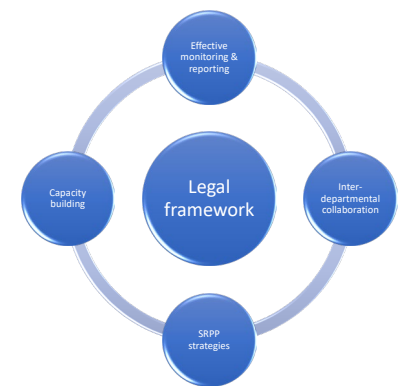
There is no data about the volume and value of SRPP in the EU, not even on the economic sectors where it is used. Only anecdotal evidence exists, based on some studies that have collected good practices and the views expressed by practitioners and stakeholders involved in SRPP. This data gap is due to the absence of systems to collect data in a consistent way on SRPP, as well as on the green and innovation dimensions of strategic procurement, both at EU and national levels.

The Single Market Scoreboard shows that the percentage of tenders that are awarded solely on the basis of the lowest price or cost is still very high across the EU, though with significant variation among Member States. This is despite the fact that more contracting authorities are showing interest in SRPP and are participating in the various capacity-building initiatives the European Commission has been organising.

The Buying for social impact project² and this study found that, of the Member States analysed, most of them had correctly transposed the provisions of the Directive that are relevant for SRPP, very often providing a literal transposition of such provisions. In a few cases, the horizontal social clause and reservations were not transposed fully in line with the Directive. All the instruments provided for in the Directive are considered useful by practitioners (e.g. horizontal social clause, social and employment clauses, reserved contracts and division of contracts into lots), although to varying extents. Some instruments have not been fully used (e.g. exclusion grounds, selection criteria, pre-market consultations, innovation partnerships and the other types of procedures beyond the open procedure, as well as the rules governing subcontracting and the light regime). An important finding from the research is that the application of the mandatory horizontal social clause for the promotion of collective bargaining and collective agreements is an area of legal uncertainty; therefore clarifications from the European Commission on what is possible or not would be welcome. This is important, as there have been complaints from companies about contracting authorities not respecting the required social clause and only awarding contracts on the basis of the cheapest offer, thus undermining fair competition with bidders that want to comply with social and labour law. Collaboration and dialogue among the European Commission, Member States, social partners and experts in industrial relations is encouraged in this area. However, the legal framework for SSRP is only one aspect, as even the most favourable legal framework would remain inapplicable without the provision of awareness-raising, training and capacity-building measures. The development of strategies or action plans at national, regional and local levels on SRPP are also very important.

The experts and stakeholders consulted are divided about the need to reform the Directive, at least at the moment. As a result, this study presents recommendations on action that could be taken now to promote better uptake of SRPP, and significant issues for the EU legislator to consider in view of a possible future revision of the Directive.

Pre-conditions that support SRPP



Source: Authors' own elaboration.

¹ Caimi, V., Sansonetti, S., 2023, *The social impact of public procurement. Can the EU do more?*, publication for the Committee on Employment and Social affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740095/IPOL_STU\(2023\)740095_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740095/IPOL_STU(2023)740095_EN.pdf).

² Buying for social impact was a project commissioned by EASME and the European Commission and was aimed at increasing the capacity of public buyers and social economy enterprises (SEEs) in the use of SRPP. It covered 15 Member States: Croatia, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, the Netherlands, Poland, Romania, Slovakia and Sweden. Findings are available at: https://commission.europa.eu/funding-tenders/tools-public-buyers/social-procurement_en.

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