



# What will the new Directive on public procurement achieve in terms of green and social public procurement?

*Green and Social Public Procurement:  
Opportunities and Challenges for the European Healthcare Sector  
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***NB: The information contained in this presentation is not binding for the European Commission and does not present an official position of the European Commission***



## Introduction – preparatory works

- ***Green paper on modernisation of European public procurement (27.1.2011) and "Single Market Act" (13.4.2011)***
- ***Evaluation of the European legislation on public procurement (24.06.2011)***
- ***Public consultation and conference (30.6.2011)***
- ***Report of the European Parliament (5.10.2011)***



## Introduction - State of play

- **Commission adopted proposals on 20 December 2011**
- **Political agreement by European Parliament and Council reached during summer 2013**
- **Text still to be adopted formally by European Parliament (plenary session) : end 2013 / beginning 2014**
- **As from adoption, Member States will have 2 years to implement the Directives into national law.**

# Scope of the reform

- Two proposals, **replacing:**
  - **Directive 2004/18/EC (public procurement) and**
  - **Directive 2004/17/EC ('utilities' procurement  
*i.e. water, energy, transport and postal services*)**
- **No changes to:**
  - **the Directives on Defence procurement (2009/81/EC)**
  - **nor on Remedies (89/665/EEC and 92/13/EEC, both as  
amended by 2007/66/EC)**
- **Other 'parallel' proposals:**
  - **Proposal on concessions**
  - **Proposal for a Regulation on International Access**

# Objectives of the Reform

**1. Simpler /  
more flexible  
procedures**

**2. Strategic use**

**3. Better access  
(SMEs, cross-  
border trade)**

**4. Sound  
procedures**

**5. Governance / Professionalisation of procurement**



## Strategic use of public procurement

***Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds.***

***→ to enable procurers to make better use of public procurement in support of common societal goals (environment, social inclusion and innovation).***

## Horizontal "social clause"

- **Member States shall take appropriate measures to ensure the compliance by economic operators of applicable obligations in the field of environmental, social and labour law established by Union law, national law, collective agreements or by international environmental, social and labour law provisions.**
- **At the place where works are executed and services provided**
- **Posting of workers Directive 96/71/EC**
  - General principles for choice of participants and award of contracts
  - Exclusion criteria
  - Abnormally low tenders
- Subcontracting

## Horizontal clause – violations in the past

### Specific exclusion ground

**The CA MAY exclude where it can demonstrate the violations of the applicable obligations in the field of social, environmental and labour law, by any appropriate means.**

**MS can render it mandatory.**



## Horizontal clause – violations in the tender

**CA MAY decide** not to award **a contract to the tenderer submitting the best tender** where they have established that **the tender does not comply with the applicable obligations in the field of environmental, social and labour law;**

**CA SHALL reject the tender** where they have established that **the tender is abnormally low because it does not comply with applicable obligations in the field of environmental, social and labour law.**

## Exclusion grounds - Social security

- **Mandatory exclusion for non payment of social security contributions (awareness of final judgement) – THE PAST**
- **Possibility to exclude when CA can demonstrate by any appropriate means that the economic operator is in breach of its obligations – TODAY**
- **MS can make MAY a SHALL**



## Subcontracting

- **Horizontal clause by subcontractors is ensured through appropriate action.**
- **Where there is joint liability the relevant rules must be applied in compliance with the conditions set out in the horizontal clause**
- **CA MAY verify whether there are grounds for exclusion of subcontractors.**
- **Where there are mandatory grounds CA shall require the substitution of the subcontractor;**
- **Where there are non-compulsory grounds for exclusion the CA MAY require the substitution;**
- **MS can make MAY a SHALL**

## Production process

- **Evolution of the concept of LINK with the subject matter of the contract.**
- **Contracting authorities may also take into account the production process of the specific works, services or supplies to be purchased, such as the inclusion of vulnerable and disadvantaged people or the use of non-toxic substance, in their award decisions.**
- **No general corporate policy.**

## Additional measures

- **'Life-cycle cost' concept: to encourage public authorities to consider the full life-cycle of the products/services they want to purchase; externalities might be taken into account if monetisable;**
- **Labels: specific labels might be requested by contracting authorities provided requirements are linked to the subject-matter of the product; equivalent labels + alternative evidence must be accepted as well;**

## Additional social – specific measure

- Reserved contracts extended:
  - **Currently only sheltered workshop – disabled persons and 50% of employees, now:**
  - **Extension to economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers**
  - **minimum required percentage of disabled or disadvantaged employees reduced from 50% to 30%.**

## Additional social – specific measures

- specific simplified rules for social, health, cultural and assimilated services:
  - **higher threshold – EUR 750 000;**
  - **below threshold: typically no-cross-border interest (except EU funding)**
  - **only requirement: ex-ante (and ex-post) publicity + non-discrimination principle; for the rest national rules**
  - **accessibility, continuity, affordability, availability and comprehensiveness of the services, specific needs of different categories of users, etc.**