



## **Annex 2: ETUC Resolution on Public Procurement in the EU (Dec. 1998)**

### **PUBLIC PROCUREMENT IN THE EUROPEAN UNION**

(adopted by the ETUC Executive Committee on 15-16 December 1998)

Following the 1996 Green Paper, the Commission submitted a Communication in 1998 announcing a revision of the current directives, with the objective of achieving

- a simplified and more flexible framework
- an improved implementation of public procurement rules; and
- easier access to procurement opportunities.

The ETUC welcomes the revision which is announced of the existing EU directives, as an opportunity to remedy the present shortcomings in the existing procedures, by incorporating transparent and non-discriminatory social quality criteria in the EU public procurement procedures.

The ETUC is convinced that this would be an important prerequisite in achieving the overall objectives set out by the Commission. Having a total of 11% of the EU's GDP, the Commission correctly underlines the importance of the public procurement markets for the EU. It should be understood that when applying the two general selection criteria: "lowest price" or "most economically advantageous", the impact on social quality aspects also has to be taken into consideration to enable an adequate application of the selection principles. Experience shows this to be a clear reality for public authorities, which cannot be "talked off" the agenda pursuing a theoretical or ideological approach.

There is also a clear-cut link between the incorporation of social quality criteria and compliance with the equivalent Treaty objectives and the social dimension.

The Communication only addresses these questions rather briefly, which are fundamental for a proper function of the Internal Market. The intended elaboration of an interpretative document would not be sufficient.

The ETUC calls upon the Commission, as already highlighted in the response to the Green Paper, to incorporate the following proposals into

the framework of the EU public procurement procedures:

- A) to secure the observance of a "fair labour standards" clause
- B) to secure the possibility for compliance with EU social policy objectives
- C) to secure the implementation of the Treaty objective on "services of general economic interest"
- D) to secure the possibility for compliance with EU environmental policy objectives

**A: Securing the observance of a "fair labour standards" clause in the public procurement procedures**

The objective of the proposal to secure a fair labour standards clause is not to introduce new social policy legislative provisions; the objective is to secure efficiently in the public procurement procedure, the obligation to comply with the existing labour law already in force in the EU and at national level (including equivalent provisions in collective agreements according to national practice). For example, as regards the EU provisions on the posting of workers, working environment and working conditions, equal treatment and transfer of undertakings.

Likewise, the authority awarding the contract must be required to comply with the ILO Declaration on "Fundamental principles and rights at work" (Conventions 87 and 98 on the right to organise and to conduct collective bargaining, Conventions 29 and 105 on the rejection of forced labour, Conventions 111 and 100 on equal pay for equal work and combating discrimination, Convention 138 on child labour).

A key element in an efficient procedure should be the possibility to exclude those tenders from procurement which do not explicitly confirm their intention to comply with the said "fair labour standards"; the same goes for tenders who have infringed the "fair labour standards" on a previous occasion. (Such practices would be directly in line with present consequences for companies not meeting their obligations on social security contributions).

To have in place efficient monitoring and checks on compliance as well as sanctions, is essential.

Given the European nature of public procurement procedures, a list of enterprises with a proven record of bad practice should be established, as part of the Internet system for EU public procurement.

In the light of the growing practice of "in-chain-subcontracting", it should be underlined that the principle of "liability-in-chain" – meaning that the final responsibility goes to the main-contractor - should be applied.

Against the background of globalisation and the cross-border organisation of production and services, either in the form of "in-chain-subcontracting" or by multinational companies, the third-country aspect also needs to be allowed for in the procurement procedures.

The ETUC proposes that the (main-) contractor - as regards third country contributions to the realisation of the contract - should also be obliged to confirm their intention to comply at least with the core labour standards set out in the ILO Declaration on "Fundamental principles and rights at work" and ILO Convention 94 on labour clauses in public contracts.

Of course, it should go without saying that EU public procurement procedures should likewise enable Member States to observe their obligations in general via ratified ILO Conventions and other international instruments in this field.

#### **B: Securing the possibility for compliance with EU social policy objectives**

The ETUC calls on the Commission to ensure that the EU public procurement procedures do enable Member States and the public authorities to pursue the realisation of the social policy objectives of the EU Treaty fully and actively, in a transparent and non-discriminatory way. To mention a few key examples: The common European employment strategy (guidelines, targets), equality mainstreaming, non-discrimination and combating social exclusion.

A realistic approach will be essential in terms of transparent and non-discriminatory procedures, not curtailing the possibility for public authorities at national, regional and local level to "invest" in people (using taxpayers' money) and promote job creation. As long as an EU "economic governance" still lacks efficiency, this obligation is all the more important.

Without a realistic approach, the risk will be that neither the public procurement objectives pursued by the Commission nor the social policy objectives of the Treaty will be achieved and meanwhile, the backing of the European project may be called into question.

#### **C: Securing the implementation of the Treaty objective on "services of general economic interest"**

The ETUC reiterates its position that the decision of a public authority to provide public services directly, including through "inter-municipal own enterprises", rather than contracting them out to a third party, should not be constrained by the EU public procurement procedure.

It would be misleading, for ideological purposes, to use the EU public procurement procedures as a political argument for the launch of a privatisation campaign.

Likewise, there is a clear risk attached to public procurement rules, as experiences in the liberalised sectors clearly indicate, that State monopolies will be replaced by de facto market monopolies. This will bring no benefits for taxpayers, consumers or the workers concerned. It would also be counter-productive to the EU objective of supporting the development of SMEs.

Referring in general to the ETUC's "Charter of Public Services", ETUC is of the firm opinion that EU public procurement procedures must not compromise the rights given in the Treaty to national authorities, concerning how they organise and run public services.

#### **D: Securing the observance of EU environmental standards and policy objectives**

In order to secure the observance of EU environmental standards, the potential contractors should be obliged to comply with already existing environmental provisions in force in the EU and at national level.

The procedure to be put in place will be the same as proposed above by the ETUC on fair labour standards.

It should likewise be ensured that EU public procurement procedures enable the Member States and the public authorities to pursue the realisation of the environmental policy objectives as stated in the EU Treaty and by the Member States fully and actively, in a transparent and non-discriminatory way.

It would not be acceptable if the procedures would restrain the possibilities for the Member States to pursue the objective of "sustainable growth".

#### **Final remarks**

It goes without saying that the Commission and the other institutions of the European Union themselves should comply with the said social policy criteria. In fact, it should rightly be expected that the Union itself will take a lead position on these issues.

The ETUC highly appreciates the opinion on the Communication of the European Parliament when endorsing such crucial aspects to be incorporated in the EU rules.

The ETUC calls upon the Commission and the Member States to follow suite when revising the existing directives.

As a directly concerned party, the ETUC expects to be consulted on the proposals envisaged to be submitted.