

## Proposal for a fairer Public Procurement Directive

The Public Procurement Directive is a key tool for the European Commission's ambition for an economy that works for people. Based on decades of experiences with public procurement in the construction and service sectors, 3F calls for a revision of the Public Procurement Directive with the following key priorities:

**1. Socially responsible mandatory quality criteria:** The Directive currently allows the competitive tendering of public contracts to include qualitative criteria requiring decent working conditions and social and green considerations. However, this is currently entirely voluntary, which is why the requirements are often not included as a mandatory criterion.<sup>1</sup>

- 3F calls for an amendment to the Directive making the quality criteria mandatory. Thus, placing the quality criteria including working conditions, health and safety, social and green elements on an equal footing with the economic and technical criteria.

**2. A mandatory sub-contracting liability:** The majority of public tenderers have a main contractor/supplier and a number of subcontractors/suppliers. This number of links in the supply chain often pose a challenge in terms of enforcement of basic collective and legal working condition rules. This leads to both unfair working conditions for the workers and unfair competition for the companies.

- 3F calls for a revision of the Directive in which economic sub-contracting liability is mandatory. In this context, the main contractor/supplier must be obliged to establish a set-up for the enforcement of socially responsible requirements in the sub-contracting chain.
- 3F calls for a correspondence between the contracting entity's sanction system connected to the labour clauses and the trade unions' sanction system connected to the collective bargaining system. This fosters the avoidance of double sanctioning of the companies, when the object of the sanction is the same.

**3. Efficient sanctions:** The circumvention of agreements and legislation must have clear consequences for the companies who violate basic workers' rights. Companies that fail to comply with the technical elements of the contract currently risk having their contract terminated. However, the termination sanction is very rarely applied in cases of failure by companies to fulfil their social responsibilities. These violation elements include underpayment of employees, dangerous working environment or critical housing conditions. In this context, the Directive currently entail a self-cleaning mechanism, which implies that the company, without recourse to an independent third-party expert, can "self-clean" in the area of social responsibilities. Unfortunately, too often this fosters manipulation of documents aimed to prove the company's integrity.

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<sup>1</sup> In Denmark, the state has a number of obligations in terms of mandatory requirements that must be followed, while it is voluntary for municipalities and regions. In its publication "Status of Public Competition 2021", the Danish Consumer and Competition Authority has determined that the share of tenders that emphasise "quality in relation to price" and not just "low price" is increasing. However, quality in this context does not cover working conditions, the working environment, social conditions or environmental considerations.

- 3F proposes an abolishment of the "self-cleaning" mechanism of the Directive. The "self-cleaning" mechanism must be replaced by a mechanism clearly allowing the contracting entity to terminate the contract in case of substantial non-compliance with quality provisions. This proposal aligns with the Due Diligence Directive.

**4. Control of decent work:** Procurement projects are often carried out via a number of companies from different EU Member States. A large part of this labour force works temporarily in the hosting Member State as self-employed, posted workers or hired labour. Unfortunately, this group of workers are too often exposed to circumventions of the collective agreements or local labour laws, combined with creative use of taxation methods and illegal hiring-out of labour.

- 3F proposes that the contracting authority introduces a control system. Either via a specified requirement that the tenderer applies a compliance control system defined by the contracting authority - or - via a requirement that the tenderer proposes such a system in the tendering process. In this context, the European Labour Authority (ELA) has the potential to contribute to this coordination in relation to challenges with companies from other EU Member States in close dialogue with the national social partners.

**5. A well-documented prequalification:** Article 65 of the Public Procurement Directive states that, in the case of prequalification, contracting entities may put forward objective and non-discriminatory requirements for the selection of candidates. In about half of the cases where documentation is obtained from several tenderers, this is done prior to prequalification in the quality criteria area. This is far from sufficient to enable a qualified insight into the tendering companies' abilities to the socially responsible quality criteria.

- 3F calls for a requirement that the above-mentioned documentation of ability to ensure basic socially responsible quality criteria is obtained in accordance with Article 60 of the Directive, before prequalification is launched. In this way, the contracting authority will be able to identify and eliminate problematic tenderers prior to prequalification more efficiently.

**6. Mandatory requirements for apprenticeship programmes:** Apprenticeship programmes are a natural part of the investment in a future skilled workforce. In this context, apprenticeship plans are essential, as they enable the contracting authority, the apprentice and the company to regularly evaluate whether the quality and objectives of the apprentice training plan are met by all parties.

- 3F proposes that the contracting authority has the responsibility that the companies comply with their apprenticeships responsibilities and that, in this context, that an economic sanction system of the company is applied in cases of non-compliance with the training contract.

**7. A mandatory requirement for correct employment status:** Since the Public Procurement Directive entered into force in 2014, there have been countless examples of false self-employed. This group of people carry out work under the instruction of an employer, while being wrongly defined by the same employer as 'self-employed'. These numerous examples of false self-employed workers are problematic.

- 3F suggests a mandatory requirement for correct employment status in tender documents, including a presumption rule.

**8. A bonus scheme for companies' social efforts:** Many private European companies are already taking responsibility by including vulnerable citizens who have difficulties finding work under normal conditions. By providing the vulnerable people with a successful experience in the labour market, the inclusive company culture has a potential to showcase how social responsibility can be a competitive advantage at the European level.

- 3F proposes that socially responsible first mover companies can be awarded with a financial bonus, if they participate in public procurement projects. Additionally, 3F proposes that the EU Social Fund resources are activated in financing such a bonus scheme.

**9. A fair transition of green tenders:** 3F supports the green transition and the 55% emissions reduction target by 2030. Comprehensive mandatory green requirements are currently included in public procurement documents in several EU Member States. In this context, there is an increasing demand for skilled labour in the green transition process. Thus, a massive effort is needed to enable a balance between supply and demand of skilled green transition labour across Europe. This calls for further training and upskilling of workers.

- 3F calls for mandatory requirements for companies to invest in qualified lifelong learning training of employees.

### Contact

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