

**CECOP POSITION ON "BUYING SOCIAL:  
A GUIDE TO TAKING ACCOUNT OF SOCIAL CONSIDERATIONS  
IN PUBLIC PROCUREMENT"**

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*CECOP – CICOPA Europe (European Confederation of Worker Cooperatives, Social Cooperatives and Social and Participative Enterprises) is a European confederation grouping national organisations in 16 countries which in turn affiliate over 50.000 cooperative and participative enterprises in industry and services, the vast majority being SMEs, and employing 1.4 million workers across Europe. Among the main sectors of activity, we find metal industries, mechanical industries, construction and public work, wood industry and furniture, white goods, textiles and garments, transport, media-related activities, social services, education and culture, environmental activities, etc. Most of them are characterised by the fact that the employees in their majority are members-owners, while some of them are second-degree enterprises for SMEs. Furthermore, around 4.000 of those enterprises are specialised in the reintegration of disadvantaged and marginalised workers (disabled, long-term unemployed, ex prisoners, addicts, etc). Cooperatives are one of the founding pillars of the social economy.*

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First of all, CECOP thanks the European Commission (EC) for giving the opportunity to stakeholders to give their point of view on the guide "Buying social: a guide to taking account of social considerations in public procurements".

- Guide title

"Buying social" gives the impression that it is about buying "social commodities". Socially-responsible public procurement is not a commodity with a defined value: social considerations are supposed to contribute to taking in consideration elements which are not quantifiable in monetary terms such as employment opportunities, decent work, social inclusion, fair and ethical trade, etc which place the human being at the centre of concerns. CECOP recommends the EC to **change the title of the guide, eg to "social considerations in public procurement"**.

- Social considerations in public procurements

Few of CECOP members<sup>1</sup>, according to their experience, consider that social and environmental clauses can effectively be included in public procurements: some point out the fact that they are seldom used by the authorities. For example, our Italian members attest the inadequacy in terms of experience and culture on this specific topic among the public authorities.

This guide could be an effective tool if, on the one hand, the positions of consulted stakeholders were taken in consideration and if, on the other, **recommendations, monitoring and assistance** were provided for to Member States for including (more often) social, ethical and environmental clauses in public procurements.

Worker and social cooperatives, by their own nature, contribute to Corporate Social Responsibility objectives and promote social inclusion: they are usual tenderers to socially-responsible public procurement. They create quality and sustainable jobs that are rooted in the local communities, and which do not delocalise, including jobs for people furthest from the labour market, and people with different types of social marginalisation by making them workers but also members-co-owners of their enterprises and thus fully integrating them in a working environment where they can mix with other types of persons with the same rights and responsibilities.

Social considerations are not in contradiction with competition law, and domestic as well as foreign enterprises can put social considerations in practice. However, worker and social cooperatives, as locally-based enterprises having as their very mission the creation of sustainable jobs and the production of goods and services of general interest, are logically more likely to maintain jobs on a long term basis and to contribute to the prosperity of the community and, in a wider way, promote social inclusion than enterprises that do not have such core missions (p.4).

*In Italy, according to the Veneto regional law, some social cooperatives have a 'subsidiary' relationship with public authorities. It means that social cooperatives, providing general interest activities, are recognized and ensured by the public authority thanks to this regional law. It corresponds to an integrated Italian approach to welfare services made through the participation of the local community. The public authority can support financially social cooperatives in order to make them pursue their public objective. In this case, the financial support can be considered as a compensation for a non economically advantageous service provided.*

CECOP fully agrees with the EC with the idea that social considerations should support social inclusion by promoting social economy enterprises such as cooperatives (p.8-9). Equal access to procurement opportunities of enterprises owned by persons from ethnic/minority groups is very important **but should not be limited only to those groups**. Cooperative membership is open to everyone (first cooperative principle, see ILO Recommendation 193 on the Promotion of Cooperatives of 2002 and EC Communication on the Promotion of Cooperative Societies in Europe of 2004), including physically, mentally and/or socially disadvantaged citizens. In order to ensure an effective integration of those persons inside the enterprise and, to a certain extent, inside society, and to avoid "ghettoisation" (and thus social exclusion) it is essential that those workers be mixed with non-disadvantaged ones at the workplace.

*According to article 5 of the Italian law 328 from 2000, public authorities have the possibility to introduce special calls for tenders in order to enhance the social economy (or third sector) providers of services related to persons. This law has ensured the primacy of service quality in the selection process. According to D.P.C.M. of 30 March 2001 (act that coordinates the system*

<sup>1</sup> Testimonies expressed in a consultation with CECOP members in October 2008 and during the CECOP seminar on public procurements of 17 December 2008, Brussels

*regarding services related to persons according to Art.5 of the Italian law 328/2000), when assigning contracts, municipalities must seek the best offer and not the cheapest one. It means that for social purposes, it is no longer accepted to take into consideration the sole price as the main criteria. However it must be pointed out that some contracts are still assigned only according to the price criteria.*

*The European Court of Justice has already legitimated the possibility that certain categories of enterprises, mandated by public authorities, can provide social services. In particular that has been pointed out in the sentence C-70/95 from 17 June 1997: « In that regard, it must be stated that, as Community law stands at present, a Member State may, in the exercise of the powers it retains to organize its social security system, consider that attainment of the objectives pursued by a social welfare system which, being based on the principle of solidarity, is designed as a matter of priority to assist those in need, necessarily implies that the admission of private operators to that system as providers of social welfare services is to be made subject to the condition that they are non-profit-making.» and besides « Art.52 and 58 of the Treaty do not preclude a Member State from allowing only non-profit-making private operators to participate in the running of its social welfare system by concluding contracts which entitle them to be reimbursed by the public authorities for the costs of providing social welfare services of a health-care nature.»*

Regarding decent work criteria (p.9), **provisions for long term job sustainability and workers' safety should be added** to the technical and economic requirements in call for tenders.

*As regards safety, Italy is currently testing a special mechanism that should be able to monitor and prevent potential risks for workers.*

- Reserved public contracts

Art.19 of Directive 2004/18/EC on Public Procurements states that "the Member States may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes where most of the employees concerned are handicapped persons."

Although Art. 19 has to do with public tenders at European-level, its implementation at such level is likely to be complicated, as the first concrete cases brought to CECOP's knowledge tend to demonstrate. First, the notion of "sheltered workshops" has disappeared from virtually all national legislations and has not been defined at the EU level: thus, there is the risk that such reserved public contracts will, *de facto*, remain national. Another risk is that such lack of a clear definition can favour "opportunistic tenderers" which, in order to win the tender, hire disabled and disadvantaged persons without ensuring them long-term employment prospects, and do not necessarily have such goal in their core mission.

In order to limit such risks, and to stick to the spirit of Art. 19, CECOP recommend that the guide **encourage public authorities to see to it that the tenderers are enterprises in which the disabled are workers with long-term contracts and in compliance with the national labour law, and which can show that the long-term integration through work of disabled and disadvantaged persons is part of their core mission.**<sup>2</sup>

<sup>2</sup> Another problem, which goes beyond the scope of this guide, is that this article refers to both "sheltered workshops" and "sheltered employment programmes" and goes on to say that it is a requirement that the majority of the workers concerned (in other words more than 50%) be handicapped persons in both cases.

- Access of SMEs to public procurement

CECOP welcomes the specific reference in the guide for the promotion of SMEs' participation in public procurements.

There is a large consensus among CECOP members on the fact that public contracts, usually very complex administratively, are particularly difficult to access for small and medium sized cooperative enterprises. The main difficulties highlighted by our members are:

- the large scale and thresholds of public contracts
- the complexity of the administrative procedure of calls for tenders and high expenses rising from it
- required high reference levels, economic and technical criteria
- too short time for preparing an offer
- the presence of provisions of guarantees which are harmful for small cooperatives
- finding collaboration partners abroad
- the term of many contracts that provide low profit margins and at the same time require high amounts of cash flow.

Obviously these conditions make it difficult for a business with relatively low financial reserves, such as are SMEs in general, to participate.

**Adapted measures should be implemented in order to enable SMEs to take part in public procurements and in particular through the implementation of the Small Business Act.**

- Conclusions

❖ **recommendations, monitoring and assistance to Member States to use (more often) social, ethical and environmental clauses in public procurements, and include in them the creation or maintenance of sustainable employment through enterprises where the majority of employees have long term work contracts and have a majority participation and control in the share capital and in the decision-making process of the enterprise, as well as employment provided to physically, mentally and/or socially disadvantaged citizens**

Although this threshold of 50% is well established by all the European texts that refer to sheltered employment – and there is no dispute over this – this threshold has not been set out as a requirement in the various national legislations concerning enterprises dedicated to the integration through work of disadvantaged or disabled citizens, that correspond to sheltered workshops. Indeed, the results of a survey carried out amongst CECOP members (October 2008) show that, in order to gain recognition as a “sheltered workshop” in Rumania, Finland and Italy, only 30% of the employees must be handicapped persons. It should also be added that the Italian legislation deals with “disadvantaged persons”, such as former prisoners, for example, a concept which is far wider than disabled persons. . . .

- ❖ **some guidance to public authorities aimed at properly interpreting the spirit of Art.19 of Directive 2004/18/EC and at limiting risks of ineffectiveness or wrong utilisation**
- ❖ **adapted measures for SMEs in order to enable them to take part in public procurements (in particular through the implementation of the Small Business Act)**
- ❖ **fight against the discrimination of cooperatives in public procurements procedures: set specific legal or administrative provisions for cooperatives within the framework of the contract award procedures.**