



Socially Responsible Public Procurement (SRPP) for the Employment of Persons with Disabilities



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Abstract

This paper seeks to identify how public authorities can promote inclusive and quality employment opportunities for persons with disabilities through the public procurement cycle. Put differently, it aims to explore the ways in which public authorities can design public procurement contracts that simultaneously meet their needs (for a service/work/good) and achieve a positive social outcome, in this case the promotion of inclusive and quality employment opportunities for persons with disabilities.

After giving an overview of public procurement and the employment situation of persons with disabilities in Europe, we will look at how public authorities can implement a disability inclusion component in public tenders.

To do so, it is necessary to identify what constitutes quality employment opportunities for persons with disabilities, in line with internationally applicable standards, including the United Nations Convention of the Rights of Persons with Disabilities.

This document will then present promising practices from across Europe, reflecting cases where public procurement has been successfully used to promote quality employment opportunities for persons with disabilities. This exchange and dissemination of practices aims at generating incentives for replication.

Guidelines and recommendations are a further key output of the CO-RESP project¹ to effectively assist local authorities in developing national plans on how to improve their use of public procurement to effectively stimulate quality employment of persons with disabilities.

¹ Grant Agreement: 101074089 — CO-RESP — SMP-COSME-2021-RESILIENCE

Introduction

Economic and social development of local communities is closely linked, among other factors, (International Labour Organisation, 2022) combating social and economic exclusion as it provides individuals with a source of income, personal development opportunities and integration into social networks. Supporting equal opportunities for all to engage in a decent work is also pursuing the broader objective of reducing inequalities, in line with the priorities set out in the 2030 Agenda for Sustainable Development² (source 1,2,3 in Fostering Employment EASPD paper).

However, access to employment is not a straightforward path, and some face significant barriers to entering the labour market. Particularly, persons with disabilities are a social group whose protection is stipulated in various international treaties, imposing an obligation on states that ratified them to ensure the full realisation of their rights. Foremost among these treaties is the United Nations Convention on the Rights of Persons with Disabilities (hereafter: 'UNCRPD'), to which the European Union and its Member States are State parties. Nevertheless, despite the adoption of programmes and strategies to implement this Convention, persons with disabilities in the European Union still face discrimination and challenges in many areas, including their inclusion in the open labour market.

Frequently, persons with disabilities are not considered as potential members of the labour force³, latest statistics provided by Eurostat in 2022 have shown that on average in the EU-27⁴ only 50% of persons with disabilities are employed, compared to 75% of people without disabilities⁵. It is important to note that this percentage does not even reflect the overall state of play, as it does not consider all the sub-dimensions of the unemployment situation of persons with disabilities, such as intersectional discrimination, discrimination according to the form and degree of disability, or the share of 'inactive' persons, i.e., people who are not registered as jobseekers.

Alongside their duty to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities, the European Union and its Member States are committed to ensuring an open, fair, and inclusive labour market for all⁶. To this end, constructive measures must be taken to facilitate the enjoyment of this right. This applies to all areas where public authorities exercise their power of action, which certainly includes public procurement in view of the positive social outcomes it has the potential to achieve.

Defined in simple terms, public procurement is understood as a systematic and organisational process by which public authorities purchase work, goods, and services from private entities, encompassing several steps and criteria⁷. Essentially, the EU is also providing with minimum

² (International Labour Organisation, 2022), (Ryder, 2022), (United Nations, Transforming our world: the 2030 Agenda for Sustainable Development)

³ (United Nations, Disability and Employment)

⁴ European Union's 27 Member States from 2020, after the withdrawal of the United Kingdom

⁵ (Council of the European Union, 2022)

⁶ (United Nations, Convention on the Rights of Persons with Disabilities)

⁷ (Thai, 2009)

harmonised public procurement rules, that are essentially guided by principles of transparency, non-discrimination, equal treatment, competitiveness, cost-effectiveness, and quality of services provided to safeguard the public interest⁸.

Overall, public procurement is a mechanism of substantial economic importance, accounting for around 14% of the European Union's GDP in 2017 (European Commission, Making Public Procurement work in and for Europe, 2017). Besides its economic value – essentially, stimulating employment, growth, and investments – it is also a tool that has the potential for public authorities to transform their economies into more innovative, modernised, environmentally sustainable, *and socially inclusive ones*⁹. In other words, smart use of public procurement mechanisms can achieve multiple objectives, including supporting the development of more socially inclusive societies, and in the specific context of this paper, boosting employment opportunities for persons with disabilities.

Yet, achieving a positive social impact such as employment for persons with disabilities through public procurement is not something that is generated *per se*. Potential for positive social outcomes indeed exists and is part of its purpose, but the right parameters and criteria must be created and monitored for achieving the desired result. In this regard, a specific term has emerged to identify public procurement practices that follows this path, referred to as 'Socially Responsible Public Procurement' (hereafter: 'SRPP'). It is important to clarify that, as such, the concepts of public procurement and SRPP are not two different things, the latter being equal to the former with the only difference being that it is characterised by a particular focus on "*achieving positive social outcomes*" as part of the procurement process¹⁰. (X)

Through public procurement, public authorities can therefore promote and support the economic and social inclusion of persons with disabilities in the open labour market. They can use it to foresee the practical implementation of a disability inclusion component in public tenders, which ultimately promotes and improves quality employment opportunities for persons with disabilities.

While its potential to achieve social outcomes is therefore not questioned here, what remains challenging for local authorities is to set up and design public procurement contracts that successfully implement this disability-inclusive component. Because this involves making multiple conscious decisions derived from a thorough understanding of how social aspects can be considered in procurement procedures. Additionally, understanding what is constitutive of quality employment opportunities for persons with disabilities in the open labour market in line with the UNCRPD.

In this sense, the question that arises is the following: How can public authorities design public procurement contracts that simultaneously meet their needs (for a service/work/good), include transparency, cost-efficiency and quality parameters, *and* achieve a positive social outcome, in this case through the existence of clauses to promote inclusive and quality

⁸ (European Commission, Legal rules and implementation)

⁹ Ibidem

¹⁰ (European Commission, Making Socially Responsible Public Procurement Work: 71 Good Practice Cases, 2020)

employment opportunities for persons with disabilities? Or, in other words, how can public authorities promote quality employment opportunities for persons with disabilities through the public procurement cycle?

It is with this research question in mind that the ‘Community Resilience through Social Procurement’ project (hereafter ‘CO-RESP’) has emerged. CO-RESP is project co-funded by the European Commission and led by EASPD, the CO-RESP consortium is made up of 7 partners who are spread across different countries, forming a multidisciplinary consortium, which includes cities in Austria, Bulgaria and Spain.

As part of the deliverables of this project, the present paper is pursuing the following objectives:

- To provide clarity for public authorities on public procurement and on the state of play of employment of persons with disabilities in Europe;
- To identify promising practices reflecting cases where public procurement has been successfully used as to promote quality employment opportunities for persons with disabilities.

For persons with disabilities and following an employment-oriented approach, by promising practices we mean successful cases where public procurement has been used to promote ***real, quality, and inclusive employment opportunities for persons with disabilities on the open labour market, as close as possible to the principles of the UNCRPD.***

The methodology guiding the identification of promising cases will be based on a sound assessment of predefined quality criteria essentially derived from Article 27 of the UN CRPD on the right to work, as well as on the UN General Comment 8 adopted in 2022 (CRPD/C/GC/8). This approach will allow to go beyond labels and appellations – that vary greatly among EU Member States – to focus on what is essential, namely the promotion of real, quality, and inclusive opportunities for persons with disabilities.

- Finally, the document seeks to support the exchange and dissemination of these practices, as well as setting out guidelines to help local authorities improving their use of public procurement to effectively stimulate quality employment of people with disabilities.

I. Employment of persons with disabilities in Europe

According to data and figures provided by Eurostat¹¹, it is estimated that in 2022, around 87 million Europeans have some form of disability, representing one in four European adults. These data also pointed out that the likelihood of people to develop some form of disability increases with age. In the years to come, the forecast of an increase in the number of persons with disabilities in the EU is therefore significantly high, due to the general trend of an ageing population in the EU.

The European Union and its Member States are committed to the full realisation of the rights of persons with disabilities following the ratification of the UNCRPD. Nonetheless, despite several initiatives and plans for the implementation of the Convention, persons with disabilities still face a wide range of challenges, particularly with regard to employment in the open labour market.

The UNCRPD is not a legal instrument that confers ‘new’ rights on persons with disabilities. Rather, it is a human rights-based convention that aims to reaffirm their existing rights, seeking to promote and enhance their opportunities to participate in all aspects of social and political life, on an equal basis with others. Alongside this purpose, the UNCRPD recalls the rights of persons with disabilities covering a wide range of areas, including access to employment¹².

The field of employment is essentially captured by the right that persons with disabilities have to work on *“an equal basis with others in an open, accessible, and inclusive labour market”*, as enriched in Article 27 of the UNCRPD. This article does not grant exclusive labour rights to persons with disabilities, but rather calls for the removal of barriers and the implementation of appropriate steps to ensure that ‘disability’ does not prevent persons from enjoying their right to access to a fair, open, accessible, and inclusive employment market. These steps include a broad range of measures such as to ensure fair wage subsidies, develop support employment mechanism, ensure reasonable accommodation, protect the enjoyment of labour rights, promote career advancement, *etcetera*¹³.

The field of employment remains one of the biggest challenges when examining the performance of EU Member States in implementing the UNCRPD. It is certainly with this shortcoming in mind that the Commission adopted in 2022 the ‘Employment Disability Package’, one of the seven flagship initiatives of the [‘Disability Rights Strategy 2021-2030’](#). This newly adopted tool is specifically dedicated to improving the labour market outcomes of persons with disabilities. The commitment behind its adoption is in fact manifold, as the EU’s imperative to ensure fair, open, and inclusive employment for all does not only derive from the UNCRPD, but also contributes to the full realisation of other EU objectives, such as the European Pillars of Social Rights: *“In order to reach the EU targets of reducing the number of people at risk of poverty or social exclusion by at least 15 million, having at least 78% of the population aged 20 to 64 in employment, and having at least 60% of all adults participating*

¹¹ See footnote 5.

¹² (United Nations, Convention on the Rights of Persons with Disabilities).

¹³ Ibidem.

in training every year, it will be necessary to increase the employment rate of persons with disabilities and reduce the employment gap with persons without disabilities.”¹⁴

A brief review of the data and figures collected in the ‘Employment Package’, but also of other relevant documents¹⁵], would allow the reader to have an idea of the extent of the challenges surrounding the employment of persons with disabilities. For instance:

- It has been estimated that in 2022 in the European Union only 50% of working-age persons with disabilities are in employment compared to 75% of persons without disabilities.
- Persons with disabilities in the EU are 24.4 percentage points less likely to be employed than persons without disabilities.

Despite a slight improvement in the employment rate of persons with disabilities when comparing data from 2012 (45.5%) to those collected in 2020 (50.8%), the gap is still very wide¹⁶. The slow improvement over the last decade can be explained by the prevailing economic context in Europe since 2008, characterised by the onset of the economic and financial crisis, which had a direct impact on the employment rates across Europe. Additionally, the financial crisis led some EU governments to reduce public budgets affecting social policies and services.

- Persons with disabilities are among those disproportionately affected by unemployment statistics.

Discrimination has been reported based on the form of disability, with persons with severe intellectual disabilities tending not to work in the open-labour market but rather in forms of protected employment including sheltered employment. Women with disabilities (intersectionality) are also more likely to be affected by employment rates than men with disabilities. Lastly, one should also keep in mind that most unemployment statistics do not reflect the share of the population that is ‘inactive’.

- Persons with disabilities who are employed are still too often paid less or the equivalent of the minimum wage, while entry into the labour market is frequently accompanied by a loss of disability benefits.
- The employment rate gap varies greatly between Member States.

The graph below¹⁷, from 2017, provides an overview of the situation. It is worth mentioning that data may be calculated differently from one country to another, with some being more performant when it comes to open labour market, whereas others may have a reliance on social economy or another type of employment model. More recent data and explanations of

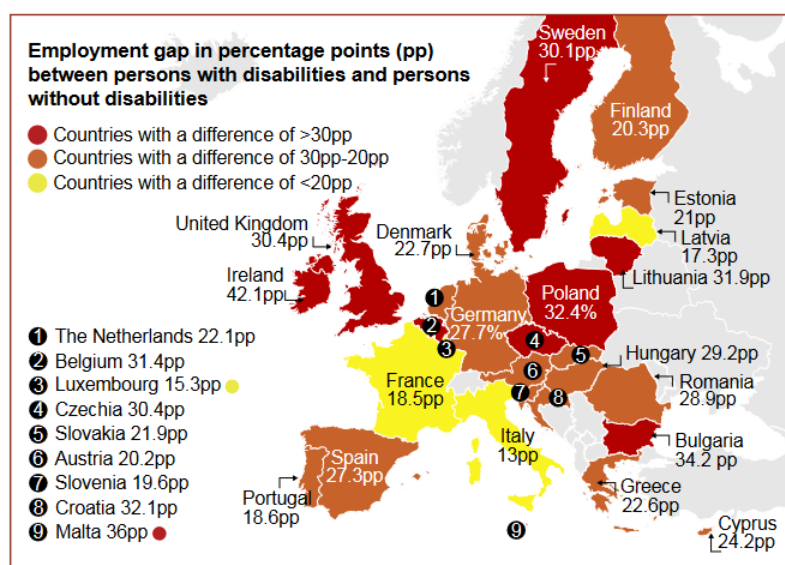
¹⁴ (European Commission, Disability Employment Package to improve labour market outcomes for persons with disabilities)

¹⁵ For instance, (European Disability Forum, Employment Policy), (Council of the European Union, 2022), (EASPD, Supporting economically inactive persons with disabilities on to the labour market, 2022)

¹⁶ (European Commission, Disability Employment Package to improve labour market outcomes for persons with disabilities)

¹⁷ (European Disability Forum, Poverty and Social Exclusion of Persons with Disabilities, 2020)

the variations in disability and employment trends between countries have been further elaborated in a report by EASPD¹⁸.



Preliminary conclusions from these data

Ensuring access to quality employment in the open labour market is undoubtedly part of the full realisation of a person's identity and contribution to the community, or in other words, in the full economic and social inclusion of all people including persons with disabilities.

Innovative practices are everyday settled to ensure a disability inclusive approach in all areas of life, including employment¹⁹. Carefully designed policies can significantly increase the labour market inclusion of persons with disabilities²⁰. This logic also applies to public procurement, as a well thought-out and designed tendering process can make a significant contribution to boosting employment opportunities. Notably, due to its significant economic weight, public procurement is an important source of employment where actions to promote a more quality and inclusive employment-approach for persons with disabilities must be included.

¹⁸ (EASPD, Supporting economically inactive persons with disabilities on to the labour market, 2022)

¹⁹ (EASPD, EASPD Innovation Awards 25 Innovative Practices for the Inclusion of Persons with Disabilities, 2021)

²⁰ See note 18.

II. SRPP in the European Union

A – What is Public Procurement under EU Legislation?

European Union legislation establishes harmonised minimum rules for public procurement to safeguard the public interest, including the principles of transparency, non-discrimination, equal treatment, competitiveness, cost-effectiveness, and quality of services provided. Those rules apply for “*tenders whose monetary value exceeds a certain amount and which are presumed to be of cross-border interest*”. Lower value tenders are governed by national rules, although they must respect the general principles of Community law²¹.

The current legal framework at EU level on public procurement and concessions is composed of 3 major directives, all of them transposed into national law since 18 April 2016²²;

- Directive 2014/24/EU on public procurement;
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport, and postal services sectors;
- Directive 2014/23/EU on the award of concession contracts.

The [Directive 2014/24/EU](#) , which repealed its predecessor from 2004, introduced major changes, including rules to make public procurement less bureaucratic and more efficient, as well as providing opportunities for addressing *social*, environmental, and innovative considerations in the procurement process. The Directive has since then become a major “*policy strategy instrument*”²³ for pursuing and achieving social outcomes. Therefore, the smart use of public procurement can contribute to the development of higher quality services and incentivises private entities to meet higher standards of social inclusion.

B – The concept of “Socially Responsible Public Procurement”

The Public Procurement Directive 2014/24/EU explicitly recognised that public procurement is a mechanism that can be used by public authorities to pursue positive social outcomes:

“Social aspects can be taken into account throughout the procurement cycle, from preliminary market consultation, through the use of reservations and the light regime, and to social award criteria and contract performance conditions”.

In the last decade, the term ‘Socially Responsible Public Procurement’ (hereafter: ‘SRPP’) was introduced to identify public procurement practices that seek to achieve a social outcome. At this point, it is important to clarify that the concepts of public procurement and SRPP are not two different things, the latter being equal to the former with the only difference being that

²¹ (European Commission, Legal rules and implementation)

²² Ibidem

²³ Ibidem

it is characterised by a particular focus on ‘achieving positive social outcomes’ as part of the procurement process. More directly, SRPP represents the idea that:

“public buyers are not just interested in purchasing at the lowest price or best value for money, but also in ensuring that procurement achieves social benefits and prevents or mitigates adverse social impacts during the performance of the contract.”²⁴

Public procurement can therefore be used by public authorities as a powerful lever to address social challenges, as they can voluntarily decide to consider multiple aspects that go beyond the elementary principles of procurement (cost-effectiveness, transparency, etc.) and include social considerations²⁵. In this regard, the European Commission stated that, while observing the principles of the European Union Treaty and the Public Procurement Directives, SRPP involves one or more of the following considerations:

“employment opportunities, decent work, compliance with social and labour rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all, taking account of sustainability criteria, including ethical trade issues and wider voluntary compliance with corporate social responsibility (CSR)”²⁶ 2011).

Specifically, some of the social considerations relevant to procurement outlined by the European Commission address directly the employment of persons with disabilities, including²⁷:

- Promoting employment opportunities for persons with disabilities, including on the open labour market through accessible and inclusive work environments.
- Guaranteeing accessibility for persons with disabilities and design for all.
- Promoting adequate working conditions and fair remuneration with basic benefits, non-discrimination, and gender equality, in accordance with labour standards.
- Supporting social inclusion and social economy organisations, by offering contracting opportunities to firms such as non-profit organisations, cooperatives and social enterprises.

Through its potential for promoting fair, decent and accessible employment opportunities, and social inclusion, SRPP helps social economy organisations and social enterprises by providing an appropriate framework for them to access public tenders. In particular, the directive envisages three main entry points.

- The first one aims to facilitate the participation of economic operators with specific characteristics
 - **Article 20**, reserved contracts.

²⁴ (European Commission, Buying Social – A guide to taking account of social considerations in public procurement – Second edition, 2021).

²⁵ (European Commission, Public Procurement).

²⁶ (European Commission, Buying social – A guide to taking account of social considerations in public procurement – First edition, 2011).

²⁷ See note 24.

The article provides for the possibility to restrict competition to economic operators whose main mission is the social and professional integration of disadvantaged workers and workers with disabilities for any type of contract.

- **Article 77**, reservation for social & health services.
The article applies to contracts in the social & health services and only to organisations which have a public service mission and which meet conditions regarding their governance.
- The second one assists the participation of SMEs and Social Economic Enterprises by
 - **Article 46**, division into lots.
The article foresees for the division into lots of contracts that benefit different organisations, which could also combine the lots assigned with reserved contracts.
 - **Article 71**, subcontracting.
- The third one envisages instruments that apply to all economic operators
 - **Article 67**, awarding criteria.
The article defines the awarded tender as *“the most economically advantageous tender from the point of view of the contracting authority [...] using a cost-effectiveness approach, [...] which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance: [...] quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions”*.
 - **Article 70**, performance clauses.
The article foresees that *“contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract”*.
 - **Article 74-76**, light regime for social and health service.
The articles state that *“Public contracts for social and other specific services listed [...] shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than [a certain] threshold”*.
At the same time, *“Member States shall ensure that contracting authorities may consider the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider shall be made on the basis of the tender presenting the best price/quality ratio, taking into account quality and sustainability criteria for social services”*.

C – Social considerations under the Procurement Directive 2014/24/EU

As mentioned, public procurement procedures may be used by contracting authorities “*not only to buy what it needs but also to achieve sustainable development, social and environmental objectives*”²⁸.

A first step is therefore now to understand how social considerations can be taken into account in public tenders so that authorities fully understand how to make meaningful use of procurement.

To this end, the European Commission has published a comprehensive guide that lists and provides interpretation for the implementation of all the articles of the 2014 Public Procurement Directive that allow for the introduction of social criteria in public tender. The ability to introduce social criteria has been considered in the entire procurement process²⁹.

The first 2011 version of this guidance, already dedicated at “*(a) raising contracting authorities' awareness on the benefits of opting for goods and services delivering good social outcomes and (b) explaining the opportunities offered by the existing EU legal framework to take into account social considerations in public procurement*”³⁰ was updated in 2021 to reflect on the changes brought about the 2014 revised Procurement Directive³¹.

Therefore, a close look at Directive 2014/24/EU and the guidance documents helps to understand the extent to which and how public authorities can include social aspects when tendering.

Substantiality of social considerations is recognised at an early stage in the Directive, more precisely in the principle of public procurement (Article 18(2)) that provides for the obligation to comply *with applicable legislations in the fields of environmental, social, and labour law*. This obligation exists at all relevant stages of the procurement procedure (Recitals 39 and 40), including the award of contract (Article 56 (1)); exclusion grounds (Article 57(4)); as well as cases of abnormally low tenders (Article 69 (3)).

In addition to these articles, contracting authorities may decide to voluntarily use other articles that provide for the consideration of social aspects in their tenders at different stages of the procurement process. In other words, these articles are the way to conceptualise SRPP contracts and represent the different forms in which social aspects can be considered in tenders.

These are summarised below, while the European Commission's guidance document ‘*Promoting Social Considerations into Public Procurement Procedures for Social Economy Enterprises – Matrix of the social clauses of Directive 24/2014/EU*’.³²

²⁸ (Social Platform, 2015)

²⁹ (European Commission, New practical guidance to help public buyers integrate social considerations into public procurement).

³⁰ See footnote 26.

³¹ See footnote 24.

³² https://equal-academy.eu/uploads/resources_files/Matrix_Social_Clauses_EU_Directive_24_2014_AU.pdf

Reserved contracts (Article 20 and Recital 36)

This provision encourages to use the possibility of restricting the participation to public procurement procedure – and therefore the performance of such contracts – to “sheltered workshops”, “economic operators active in social and professional integration of disabled or disadvantaged persons”, and in the framework of “sheltered employment programmes”. It is important to mention that the transposition of this provision by Member States is optional.

Further explanation about this provision will be provided later in this paper while discussing the case of sheltered workshops in view of the newly adopted UN General Comment 8.

Division of contracts into lots (Article 46)

This provision encourages the participation in public procurement of civil society organisations (CSOs), social economy enterprises (SCEs) and small and medium sized enterprises (SMEs). This article complements the reserved contracts.

Contract award criteria (Article 67)

This provision can be used to promote a shift from a price or cost-effectiveness approach towards the Best Price-Quality Ratio (BPQR) (previously ‘MEAT’ under the 2004 Directive). The best price-quality ratio shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question.

Conditions for performance of contracts (Article 70 and Recitals 98-99)

It represents the set of additional conditions that contracting authorities are allowed to lay down for the performance of contracts and which are related to the subject matter of the contract.

Reserved contracts for certain services (Article 77)

It allows contracting authorities to reserve to organisations the right to participate in procedures for the award of public contracts intended exclusively for the health, social and cultural services referred to in Annex XIV, as set out in Article 74 of the *Directive*. Essentially, these organisations are small-medium enterprises (SMEs) and social economy enterprises (SEEs) whose objective is to provide a public service linked to the provision of the social or special services referred to in that Article and whose profits are reinvested for the attainment of that objective.

Additionally, Article 71 on Subcontracting can facilitate the participation SMEs and SEEs in procurement contracts. It is also worth mentioning that specific provisions have been

designed for social and health services (Article 74 and Annex XIV “Award of contracts for social and other specific services”; Article 75 “Publications of notices”; Article 76 and Recital 114 “Principles awarding contracts for social and health services.

Models of Employment Supporting the Employment of Persons with Disabilities on the Open Labour Market

With socially responsible public procurement, the potential for promoting and improving employment opportunities for persons with disabilities is significant.

- On the one hand, by using public procurement to combine the need for a service, work, or product *with* addressing social shortcomings, public authorities play a leading role and pursue the general objective of transforming our societies into more inclusive ones.
- On the other hand, mainstream companies, social enterprises, and others must adapt their structures – or are finally recognised in the case of pre-existing inclusive ones – if they want to compete for the tender, which in turn leads to positive societal changes.

While in the previous sections we have looked at how public authorities can integrate social considerations into public procurement tenders, we now need to look at the different employment models offered by organisations competing for a tender. This is so that public authorities can identify those who are legitimately promoting a fair, open and inclusive employment framework.

The reason for this assessment is that public procurement should be used in a meaningful way and not lead to ‘social washing’ results. The overall outcome of using the SRPP – within the scope of this document – should always be kept in mind when tendering: to increase quality employment opportunities for persons with disabilities.

Before looking at the actual criteria for real and quality employment opportunities, in line with the UNCRPD, it is worth briefly presenting some of the different employment models available. The choice of employment model has a direct impact on employment outcomes. A sound analysis of all types of employment models is a task that deserves a proper dedicated study. Within the same model, forms of employment vary from state to state, depending on cultural and historical patterns. This work has been undertaken by EASPD in its study *“The opportunities and barriers of different employment models for persons with disabilities”*³³. We invite our readers to look at it, as it is very complementary to a thorough understanding of how tendering can lead to better employment outcomes.

A – Open Labour Market (Supported Employment & Individual Supported Placement)

Supported Employment and Individual Supported Placement (IPS) are long-term inclusive approaches that support persons with disabilities and other disadvantaged groups to obtain and retain paid employment in the open labour market. Support measures include assistance for the employee before, during, and after obtaining a job, as well as support for the

³³ See footnote 18.

employer. In this model, the role of the job coach is central, as he or she will provide career guidance and coordinate the various support measures³⁴.

IPS model is a specific sub form of supported employment that particularly focuses on supporting persons with severe mental difficulties into employment, involving a more intensive and one-to-one approach³⁵.

The main findings of the EASPD study³⁶ are that SE and IPS are an employment model that offers *“relatively high employment rates, and higher wages, hours and quality of life outcomes than other models”* analysed in the paper. These results are achieved by providing long-term and continuous support, starting early and covering different stages including job search assistance, job placement, job coaching, and job retention. Training and ongoing support will ensure that the job seekers learn properly the job and support their career progression. In terms of wages, the article states that if a minimum wage is in force in the country, then persons with disabilities employed under this model should be paid at least that amount.

However, as the study points out, the use of this type of model varies considerably from state to state, and *“(…) is patchy or virtually non-existent in some states.”* *“There remain cultural and attitudinal barriers to the employment of persons with disabilities in the open labour market in some States which hampers the size of the Supported Employment sector, and the number of jobs that are delivered through it currently”*. In addition, the outcomes of this employment model can also be compromised by inadequate legislation, lack of dedicated funding and inappropriate commissioning frameworks, resulting in support being short-term rather than long-term, which ultimately undermines the model’s ability to deliver positive outcomes³⁷.

Finally, the study highlights that there appears to be little continuity and linkage between sheltered work and supported employment, which may disadvantage persons with disabilities who are considering a transition from sheltered employment to the open labour market³⁸.

B – Protected employment forms, including Social Firms (SFs), Social Enterprises (SEs) & Inclusive Enterprises (IEs)

Social Enterprises

Social Enterprises are operators of the social economy that *“combines entrepreneurial activity with a social purpose”* and whose main objective is *“to have a social impact, rather than maximise profit for owners or stakeholders”*. There is no single legal form for social enterprises. They operate in different forms across Europe, including social cooperatives,

³⁴ (European Commission, Supported Employment for people with disabilities in the EU and EFTA-EEA Good practices and recommendations in support of a flexicurity approach, 2012).

³⁵ (IPS - Employment Center).

³⁶ See footnote 18.

³⁷ Ibidem.

³⁸ Ibidem.

private companies limited by guarantee, for profit or non-profit organisations like voluntary organisations, charities or foundations, etc³⁹.

Social Firms

Social Firms are one type of social enterprises that operate around a specific social objective, that is, the creation of paid employment for persons with disabilities or disadvantaged groups in the labour market. There are enterprises that *“use their market-orientated production of goods or services to achieve their social mission and they exist all over Europe, albeit at different stages of development and with different levels of intervention/recognition/legal status”*⁴⁰.

As stated in the EASPD study, Social Firms work according to specific criteria: *“market-oriented production of goods and services to pursue its social mission of more than 50% of its income being derived from trade; a minimum of 30% of its employees will be people with a disability; every worker is paid a wage appropriate to their work; work opportunities should be equal between disadvantaged and non-disadvantaged employees.”*⁴¹

Inclusive Enterprises

Inclusive enterprises are another sub-type of social enterprises used throughout Europe, which also involve putting economic performance at the service of a social objective. They usually offer sustainable employment to persons with disabilities as a certain percentage of the workforce⁴². They operate in different forms across Europe; *“there are a number of for-profit and non-profit variants of the model with different legal structures, making it very flexible and able to develop across different State contexts”*. *“Inclusive Enterprises can be structured as a for-profit or non-profit organisation and may take a number of forms: a co-operative; a mutual organisation; a social business; a benefit corporation; a community interest company; a company limited by guarantee; or a charitable organisation. The form depends on in which country the entity exists and the legal forms available there. They can also take more conventional structures”*⁴³.

General conclusions

The main findings of the EASPD study⁴⁴ are that these types of employment model offer persons with disabilities normal jobs with regular contracts and wages in economic enterprises in which persons without disabilities are also employed.

However, there is a wide variety of social enterprises, social firms, and inclusive enterprises in Europe. It is sometimes tricky to place a specific organisation in one of these categories, as the ability to adopt different forms also leads to overlaps. A case-by-case analysis is therefore

³⁹ (European Commission, Social enterprises).

⁴⁰ (CEFEC - Social Firms Europe).

⁴¹ See footnote 18.

⁴² (EuCIE – European Confederation of Inclusive Enterprises).

⁴³ See footnote 18.

⁴⁴ See footnote 18.

necessary, as not all forms of social organisations offer the same social outcomes, especially in terms of wages.

The paper points out that *“at best, wages can be good, with good adaptation to people’s needs and jobs sustained. Where successful, these enterprises can result in savings for health and social care budgets and deliver “social returns on investment” driven by well-being and independence outcomes.”* But the report also indicates that in private sector, commercial pressure can compromise employment opportunities for persons with disabilities with wider needs. It further states that in some countries these forms of employment model have been used as an alternative to sheltered workshops.

C – Vocational Rehabilitation and Training services

Vocational Rehabilitation and Training services cover a wide range of different types of interventions and activities. As stated in the EASPD study, Vocational Rehabilitation is *“made up of a series of services that are designed to facilitate the entrance into or return to work by persons with disabilities or by people who have recently acquired an injury or disability”*. While Vocational Training aims at providing persons with disabilities, in particular younger people, with access to a professional training where *“no mainstream routes exist in mainstream education, and it has helped workers have become disabled while employed to regain jobs or retrain and qualify for other careers.”* *“However, paid jobs are not always the outcome of this model and it produces lower employment rates than other models for harder to place groups such as people with intellectual disability, mental health conditions and ASD.3”*⁴⁵.

⁴⁵ See footnote 18.

Criteria for real, quality, and inclusive employment opportunities for persons with disabilities in line with the UNCRPD

A – Impact of the 2022 United Nations General Comment 8 (CRPD/C/GC/8)

To identify promising cases of socially responsible public procurement, the methodology used in this report is based on an assessment against pre-defined quality criteria. These are mainly based on Article 27 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) on the right to work and employment, as well as on the UN General Comment 8 of September 2022 (CRPD/C/GC/8). The central role of the UNCRPD in this process stems from that it is the first legally internationally binding instrument setting minimum standards for rights of persons with disabilities. It is also the first human rights convention to which the EU has become a party⁴⁶.

In this section, we will examine these criteria, as they provide essential guidance to public authorities in establishing and assessing whether their tendering contract effectively promotes quality and inclusive employment opportunities for persons with disabilities, as close as possible to the principles of the UNCRPD.

As a preliminary step, we should first recall the content of Article 27 of the UNCRPD⁴⁷:

“1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

⁴⁶ (European Commission, United Nations Convention on the Rights of Persons with Disabilities).

⁴⁷ See footnote 6.

- f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
 - g) Employ persons with disabilities in the public sector;
 - h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
 - i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.”

In addition, on 9 September 2022, the United Nations Committee on the Rights of Persons with Disabilities (hereafter: “UN Committee”) issued its General Comment No. 8 (hereafter: “GC8”), which provides interpretative guidance on how to enforce Article 27⁴⁸.

Article 27 and subsequent UN documents have always been rather silent on the exact nature, scope, and role of sheltered employment⁴⁹. This meant that, until recently, Article 27 was seen as establishing *“the right to employment in the open market, but not in itself prohibiting sheltered employment”*⁵⁰. In its GC8, the UN Committee took a very different approach, adopting a rigid stance by specifically referring to sheltered employment as a form of *“segregated employment”*, and as a *“measure that cannot be considered as progressive realization of the right to work”*. It further explicitly calls on State Parties to *“phase out sheltered work expeditiously (...) to the maximum of their available resources”* (para X)⁵¹:

12. The Convention recognizes the right of persons with disabilities to work, on an equal basis with others, including the right to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. This reflects the jurisprudence of the Committee on Economic, Social and Cultural Rights that outlines the principle of equality in connection with work and employment by persons with disabilities, and considers the right of all persons to gain their living by work that they freely choose or accept is not realized where the only real opportunity open to persons with disabilities is to work in segregated facilities.⁵² It also considers that persons with disabilities should not be segregated in sheltered workshops.⁵³ Article 27(1) expressly identifies that persons with disability have a right to ‘work on an equal

⁴⁸ (United Nations, General comment No. 8 (2022) on the right of persons with disabilities to work and employment)

⁴⁹ Already in its introductory comment it states that: *“(...) Ableism is the foundation of the medical and charity models of disability that leads to social prejudice, inequality, and discrimination against persons with disabilities, as it underpins legislation, policies and practices such as segregated employment, for example “sheltered workshops” and can result in involuntary participation in the informal economy.”*

⁵⁰ (EASPD, Fostering Employment through Sheltered Workshops: Reality, Trends and Next Steps, 2022).

⁵¹ See footnote 48.

⁵² Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994), para. 21.

⁵³ Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016), para.47 (c).

basis with others {which includes} work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to all'. These words clearly indicate that segregated employment settings are inconsistent with the right.

15. Segregated employment, such as sheltered workshops, for persons with disabilities is not to be considered as a measure of progressive realization of the right to work, which is evidenced only by freely chosen or accepted employment in an open and inclusive labour market. Employment ventures that are managed and led by persons with disabilities, including those that are jointly owned and democratically controlled may not be considered segregated employment if they provide just and favourable conditions of work on an equal basis with others.

This new position has a direct impact on the topic of public procurement. While the UN Committee points out that, if public procurement is a powerful instrument for increasing the employment opportunities of persons with disabilities (para 41), *“preferential purchasing policies that promote or support segregated employment are not affirmative action measures consistent with the Convention.”* (para 42).

With this new – and rather rigid – interpretative guidance, the UN Committee relies entirely on a human rights-based approach to clarify the obligations incumbent on Member States under the UNCRPD. While this is theoretically uncritical, it might be far removed from the reality on the ground, and ultimately negatively impact the rights of persons with disabilities. A purely rigid application of this logic would not consider the diversity in nature and social achievements that some sheltered employment infrastructures have been able to achieve. It is incontestable that there must be a continuous shift in investment towards the inclusive open labour market. And it is true, as explained in further details in the EASPD study⁵⁴, that in 2022, this transition remains modest, as in many countries *“sheltered workshops remain the dominant pathway for people with a disability to enter paid employment”*. The rigid stance adopted in the GC8 underlines the need to prioritise and support the transition to more individualised and open labour market approaches, as *“these provide the best outcomes in terms of finance, social inclusion, and career progression for persons with disabilities”*⁵⁵. This means that we need to develop more effective supported employment opportunities to enable people to try open employment and to strengthen the links and opportunities for moving from sheltered employment to the open labour market⁵⁶.

However, we also need to be pragmatic and realistic in our approach to achieving this transition. A prompt phasing out of sheltered employment facilities could have dramatic consequences and undermine the rights of some persons with disabilities, particularly in countries where sheltered workshops remain the only viable option. We should not underestimate the significant contribution that some sheltered employment schemes have and are providing to many persons with disabilities in enabling them to be active in the labour market, maintain an income, and be part of the local community. It would be also quite controversial to lump them all together taken the wide variety of sheltered workshops across

⁵⁴ See footnote 18.

⁵⁵ Ibidem.

⁵⁶ Ibidem.

the European Union; in terms of organisation, but also wages and working conditions outcomes.

Additionally, the definition of sheltered employment provided in the GC8 is ambiguous due to its broad applicability. Some criteria, especially those enumerated in (a) and (b), are easy to be fulfilled. It leads to situation where a very broad range of organisations fall under this designation to be considered as segregated employment⁵⁷:

14. The Committee observes that segregated employment, such as sheltered workshops, includes a variety of practices and experiences, characterized by at least some of the following elements:

(a) They segregate persons with disabilities from open, inclusive and accessible employment;

(b) They are organized around certain specific activities that persons with disabilities are deemed to be able to carry out;

(c) They focus on and emphasize medical and rehabilitation approaches to disability;

(d) They do not effectively promote transition to the open labour market;

(e) Persons with disabilities do not receive equal remuneration for work of equal value;

(f) Persons with disabilities are not remunerated for their work on an equal basis with others;

(g) Persons with disabilities do not usually have regular employment contracts and are therefore not covered by social security schemes.

In other words, we should keep in mind that *“sheltered workshops remain a dominant force and the most significant contribution to the employment and income of people with a disability in some European States, less so in others.”*⁵⁸

While it is incontestable that we should continue to invest in the inclusive labour market, we should also take sheltered employment into account in our assessment, rather than adopting a black and white approach. This means that in this report we will undertake to identify promising public procurement practices against a predefined list of inclusion and quality of employment criteria. On the one hand, we will not automatically exclude employment structures that meet the definition of sheltered employment as defined in GC8. On the other hand, we will not consider the application of the article 20⁵⁹ of Directive 24/2014/EU on ‘reserved contracts’ as automatically a promising practice. With this approach, we aim to encourage public authorities to initiate and conduct their procurement process considering a set of pre-defined inclusion and quality criteria. This will ultimately enable them to effectively

⁵⁷ See footnote 50.

⁵⁸ See footnote 18.

⁵⁹ EASPD. (2019). The opportunities and barriers of different employment models for persons with disabilities. Brussels. Available: https://www.easpd.eu/fileadmin/user_upload/Publications/s.beyer_report_-_opport_and_barriers_of_diff_employment_models_final.pdf

stimulate quality employment opportunities for persons with disabilities during the tendering process.

B – List of criteria

In this report, we have decided to present the criteria in the form of priority levels, distinguished by the complexity of achieving them. These criteria could serve as basis for the identification of fair employment practices during a public procurement process.

Level 1 – What type of job

Crit.1	Remuneration	<p>Fair and equal remuneration for work of equal value.</p> <p>This implies a remuneration for the work done that should not below the minimum wage.</p>
Crit.2	Labour rights and trade unions	<p>Labour and trade union rights on equal basis with other workers.</p> <p>This also implies regular employment contracts with legal status and social security schemes attached to it. It emphasises the need to establish a social dialogue between the employee and the employer.</p>
Crit.3	Working benefits and conditions	<p>Fair and equal working conditions on equal basis with other workers.</p> <p>This implies benefits and protections on equal basis with other workers, such as retirement benefits, sick leave, parental leave, promotions, etcetera.</p>
Crit.4	Meaningful employment	<p>Incorporation of a disability-inclusive component in the enterprise that operates following the promotion of a person-centred and human rights-based approach to disability.</p> <p>This implies, among other things, absence of ‘fake’ employment whereby persons with disabilities are engaged but do not perform work or do not have a meaningful employment on an equal basis with others. It also reflects to ensuring that persons with disabilities are not restricted to certain occupations or employment units based on their disability.</p>
Crit.5	Career progress	<p>Persons with disabilities are not excluded from promotion and opportunities for career progress.</p> <p>This implies, among other things, ensuring job retention and refraining from restricting persons with disabilities</p>

		from opportunities for promotion and career growth. This can be achieved by provided for vocational training and assistance.
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Level 2 – Inclusion

Crit.6	Inclusion in relation with persons	By inclusion in relation to people, we mean that in the working environment, inclusion is ensured, whether with direct colleagues or in relation to customers.
Crit.7	Inclusion in relation with the environment	By inclusion in relation to the environment, we mean that reasonable accommodation is provided based on an individualized approach while requested.
Crit.8	Open labour market or transition towards the open labour market	As explained above, this report argues for a moderate application of the interpretation provided in GL8. The question is therefore whether the business is operating in the open labour market and, if not, whether it is effectively promoting the transition to an open labour market, with a clear focus on the extent to which the transition is being promoted.

Level 3 - Choice

Crit.9	Choice of persons with disabilities of their employment facility/job	<p>Is there any reflection on how to consider the choice of persons with disabilities regarding their job setting and function?</p> <p>The topic of creating choice is very complex and that is why we have identified it here as the third level. However, it is essential to encourage public authorities to think about how to address the issue of choice in public procurement procedures.</p> <p>How do public authorities consider creating more choice in their public procurement action plans?</p>
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		For example, do public authorities take into account the diversity of employment models, and funds different types of models to encourage more diversity of choice?
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Level 4 – Synergies

Crit.10	Creating and Enabling Environment	Organisations that provide support to local authorities to improve guidance and support to local authorities to improve their procurement practices and make it more inclusive and socially sustainable.
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Examples of Socially Responsible Public Procurement

Social Clauses in Wallonia Region, Belgium

At the federal level in Belgium, ad hoc initiatives for public procurement practices have been promoted in recent years. These initiatives cover both the facilitation of SEMs' participation and sustainability criteria. At the regional level, various initiatives have also been taken in Flanders, Wallonia, and Brussels Capital Region. The Walloon Region and the Wallonia-Brussels Federation offer, on their public procurement portal, a page dedicated to social clauses in works contracts, provisions intended to encourage construction companies to engage in the training, and/or integration of people with disabilities or who have disadvantage entering the labour market.

An interesting practice is carried out by *La Société wallonne de Financement complémentaire des infrastructures (SOFICO)* – the regional institution in charge of the maintenance of the highways in Wallonia. SOFICO included a 5% social clause of the entire market (which represents more than 600 million Euros). Social clauses are the way used to include the social economy organisations and SMEs in the public procurement procedures and a company provide placements for trainees directly in their own workforce, or to subcontract specific work to social enterprises, thus supporting the integration of persons with disabilities. Additionally, Wallonia has also enabled a system of facilitators or intermediaries, working as a helpdesk to assist public authorities in integrating clauses into tenders, and to help companies to execute them.

A concrete example, is the public procurement contract with SOFICO for the [Lighting plan 4.0](#), which concerns the design, modernisation and maintenance of the public-lighting equipment located along the 2,700 kilometres of the structured network managed by SOFICO in Wallonia.

For this project, [ENTRA](#), an adapted work company that, since 1968, has had the mission to create and maintain quality, adapted and sustainable jobs for people with disabilities and other vulnerable groups, was awarded the contract to provide the components required to assemble the devices (70.000 devices). In this context, ENTRA received all the components from the suppliers (cables/ circuit breakers/ terminal blocks) and the workers (persons with disabilities and other disadvantaged groups) assembled it to provide the final electrical boxes. These electrical boxes will be inserted in all the electric poles of Wallonia's motorways by other companies.

The workers are on the payroll of ENTRA are provided coaching and training, either by ENTRA or its clients and ENTRA ensures that all the workers are placed in a job with fair salary, stable, rewarding and evolving.

Enabling Environment and Social Clauses in France

In 2020, public procurement in France reached about 16% of GDP. Approximately 13% of all public procurement was executed by local authorities. In France, the government sets national policy on the basis of EU directives and has set the target that from 2025, 100% of public procurement should include ecological criteria and 30% with social considerations. In this context, the French government has deployed strong support to strengthen sustainable public procurement by enabling and promoting the role of facilitators assisting and guiding public authorities in the procurement process. One of these facilitators are:

- [Marché de l'inclusion](#): a kind of marketplace platform, where the public buyers present their needs, and the inclusive sector (integrated by more than 8 000 inclusive social enterprises) can provide support and services. This platform facilitates the sourcing and the inclusive procurement throughout France.
- [Rapidd](#): is a forum between public buyers, for the exchange of experiences and knowledge on public procurement with environmental and social considerations in which stakeholders can get involved.
- [Relais 2D](#) (Facilitator): a cooperative society of collective interest that provides guidance and support to public buyers to include and implement social and environmental criteria in public contracts.

A concrete example of the social clauses in the public contracts can be found in the practices of [Eau de Paris](#), the state-owned company responsible for the public water supply and wastewater collection for the city of Paris, that has been performing in sustainable and responsible procurement for several years. The company's purchasing department relies on multi-year planning to identify contracts that can be reserved and those that can contain social clauses to promote the professional integration of disadvantaged groups. This practice also allows greater visibility of the markets, giving public buyers the opportunity to anticipate future markets and organise themselves to prepare them as optimal as possible, particularly through outsourcing. Eau de Paris' goals and its collaboration with organisations such as Maison de l'emploi de Paris (The Paris Employment Centre) have enabled the company to receive quality offers and to implement a purchasing strategy focused on sustainability and inclusion.

The role of the Maison de l'Emploi de Paris is to identify potential markets that could contain social clauses and after the consultation phase organised by Eau de Paris, it continues by supporting the successful companies in the execution of these social clauses (implementation procedures and recruitment assistance) and will verify their compliance. This is to ensure the effectiveness of the insertion system put in place. In order to monitor the implementation of its responsible purchasing policy, Eau de Paris has set itself a steering indicator, which is regularly reported to the Executive Committee, on the number of reserved contracts awarded and the number of contracts awarded containing a social clause.

Reserved Contract in Czech Republic

In recent years public institutions in the Czech Republic have been promoting responsible public procurement by including different social clauses and reserving contracts to promote the integration of people with disabilities in the labour market. Leading by example, the Ministry of Labour and Social Affairs has been promoting socially responsible public procurement for several years. It adopted the underlying principles of socially responsible public procurement in its governing documentation and has been continuously and systematically applying them, as well as providing incentives for other public institutions to follow the same principles.

A notable example was the public procurement for the maintenance of photocopiers, printers, and multifunctional devices for the Ministry of Labour and Social Affairs' office operations in 2016 for a 3-year contract. Using Art. 101 Par. 1 of the Czech Public Procurement Act (transposition of Article 20, r. 36 of the Directive 2014/24/EU) and reserved the contract only to organisations employing “more than 50 % of persons with disabilities, in accordance with a special regulation [...] of the total number of their employee”.⁶⁰

Each such bidder had to provide evidence of the above in its bid and submit a confirmation from the Labour Office of the Czech Republic or a confirmation or a decision from a “social security authority concerning persons with disabilities” to ensure the employment of persons with disabilities in equal conditions.

Furthermore, the contract also included contractual penalties for breaching the specifications of the tender and established some criteria for the hiring of persons with disabilities and their involvement in the implementation of the contract. In this sense, the Contractor was required to employ persons with disabilities with various degrees and nature of disability (sight, hearing, physical or mental impairment) at various positions within its facilities, and a minimum of two persons with disabilities had provide for the services to be carried out directly within the Ministry's offices.

⁶⁰ Socially Responsible Public Procurement in Czech Republic: <https://sovz.cz/>

Country Fiches

Austria

The Public Procurement legislation in Austria is based on three Acts:

- Federal Public Procurement Act 2018.
- Federal Act on the Award of Concession Contracts 2018.
- Federal Act on the Award of Contracts in the Fields of Defence and Security 2012.

The [65/2018 law](#), which finalised the transposition into national legislation of the European directives on the topic, sets specific rules regarding social, environmental and economic procurement procedures. For instance, in relation to the social clauses, it foresees the possibility of specifying relevant awarding criteria or conditions in the service contracts to foster the employment of people with disabilities or from other disadvantaged groups. Linked to this, the law also provides for contracting authorities to restrict the participation in certain procedures to sheltered workshops, integrative companies or other social organisations whose main purpose is the social and professional inclusion of people with disabilities or other disadvantaged persons and at least 30% of their workforce comes from these groups.

The Act also envisages that within the award procedure, consideration must be given to the environmental friendliness of the service. In the process, authorities need to consider features such as energy efficiency, material efficiency, waste and emission avoidance, soil protection; laying down conditions to limit the use of energy and the overall environmental impacts.

In addition, a national plan – the [naBe action plan](#) on Sustainable Public Procurement – was defined in 2010 by the Austrian government to foster sustainability in its three main dimensions: environmental, social and economic. Complying with the plan is mandatory for all federal public procurers. Other public entities – states and local authorities – are encouraged to use the criteria as well. According to the current government, the 2020-2024 government program has set some key goals around public procurement such as:

- The introduction of eco-social award criteria for nationwide procurement.
- The use of public procurement as an instrument to fight climate change.
- Shifting in the main awarding principle. From the lowest price principle to the most economically advantageous approach.

In terms of awarding the contract⁶¹, once the contracting authority has outlined the provision of the procedure and publish the invitation for tender in the relevant media, the awarding process can follow different procedures such as direct awarding, restricted and negotiated procedures or innovation partnerships.

Contracting authorities are generally allowed to freely choose the procedure to apply. However, procurement procedures with no prior publication may be used in exceptional circumstances only due to the lack of transparency. Contracting authorities can award direct

⁶¹ (Stalzer, Johannes; Schneider, Felix, 2021), (Marboe, 2023).

contract to economic operators if the contract values is below certain thresholds (EUR100,000 or EUR130,000 for direct award with prior consultation of public supply and service contracts (in case of public works contracts, the threshold is generally EUR500,000) provided contracts are awarded in situations of emergency or where there is only one organisation capable of delivering the service.

Bulgaria

The [Bulgarian Public Procurement Act](#) was enacted in 2016, transposing the relevant European directives. In Art. 12, the Act outlines the “Reserved Public Procurement”. It provides a set of goods and services according to the Common Procurement Vocabulary, whose procurement contracts are meant for organisations and economic subjects that pursue social and professional inclusion of people with disabilities or from disadvantaged groups. The article also makes mandatory – as for the case of Austria – that, in order to participate to such calls, organisations need to employ at least 30% of people from disadvantaged groups. In addition, it foresees that certain organisations employing people with disabilities may participate in public procurement calls if *“they can fulfil at least 80% of its subject with own machines, facilities and human resource. For fulfilment of the conditions, they may use subcontractor or the capacity of third persons, if the subcontractors or the third persons are specialized undertakings or cooperation of disabled people”*.

Art. 190 prescribes contracting authorities may extend to such organisations the participation in calls for procurement provided that the selected one proves *“that minimum 70% of his staff contains disabled people or disadvantaged people and that they will be engaged in the fulfilment of the procurement”*.

Contracting authorities are also allowed to include special conditions in the implementation of the procurement that relate to *“economic or social aspects of the implementation, innovations, environment protection or of employment”*. In the offers’ evaluation, they need to apply the principle of the economically most advantageous offer, which is defined based on one of the following criteria:

- The lowest price;
- Cost level while accounting the cost effectiveness, including the costs for the whole life cycle;
- Optimal correlation quality/price, which shall be evaluated based on the price or the level of costs, as well as of indicators, including quality, ecological and/or social aspects, related to the subject of the public procurement.

It is up to the contracting authorities to decide which of the criteria include in the notice and whether to add any further clauses related to – for instance – *“technical specifications, accessibility, [...] social, ecological and innovation”*.

Spain

In Spain, the [Law 9/2017, of 8th November, on Public Sector Contracts](#),⁶² transposing into Spanish legislation the European Parliament and Council Directives 2014/23/EU and 2014/24/EU, provides a national legal framework for social, ethical and ecological clauses in public procurement. Several articles refer to the authorisation of the contracting entities to establish special conditions in relation to the execution of the public contract. Significantly, article 145 expressly introduces social considerations in the awarding contract phase, which is a noteworthy of this law in comparison to its predecessor, the [Royal Legislative Decree 3/2011, of 14th November](#).

Furthermore, it recognises strategic procurement and the evaluation of the best quality-price including social and ecological considerations. Conditions that may relate to social considerations such as promoting the employment of vulnerable persons in the labour market, eliminating gender inequalities in the labour market, combating unemployment, promoting on-the-job training, or other social purposes. In this sense, the Spanish legislation abandons the bureaucratic formality and the economism goal of the lowest-cost and puts a strong emphasis on public procurement as a strategic instrument for the pursuit of social outcomes.

Additionally, article 71(d) explicitly establishes the obligation for companies, that have a workforce of 50 or more workers to have at least 2% of their workforce made up of people with disabilities to be awarded with a public contract. Nonetheless, the law also provides for very specific situations of exceptionality for these reserved quotas. All of this is also enshrined in the article 42 of the [Royal Legislative Decree 1/2013, of 29th November](#) on the Consolidated Text of the General Law on the Rights of Persons with Disabilities and their Social Inclusion.

Additionally, it should be noted that the Spanish Government has put in place a legally binding instrument known as [La Estrategia Nacional de Contratación Pública 2023-2026 \(ENCP\)](#) (in English: National Public Procurement Strategy 2023-2026), in accordance with the provisions of article 334 of Law 9/2017. The strategy will focus on monitoring and promoting the professionalisation of public procurement, as well as developing best practice manuals on procurement procedures and designing measures to promote social, environmental and innovation policies.

⁶² This regulation repealed the [Royal Legislative Decree 3/2011, of 14th November](#), approving the revised text of the Public Procurement Law.

Conclusions and Recommendations

Working towards achieving the sustainable development goals and making progress in building a more inclusive and resilient society is directly linked to the socio-economic development of local communities by providing equal opportunities for all to unleash their full potential. In the same line, employment is considered an effective mechanism for combating social and economic exclusion as it allows personal development opportunities, integration into social networks and a source of income. Promoting equal opportunities for all to engage in fair and well-remunerated work is also pursuing the broader objective of reducing inequalities, in line with the priorities set out in the 2030 Agenda for Sustainable Development.

However, the crisis caused by the COVID-19 pandemic and its socio-economic effects added further complexity to existing challenges while bringing new ones essentially for the most vulnerable groups such as persons with disabilities that still face significant barriers to entering the labour market. However, despite the adoption of programmes and strategies to implement this Convention, persons with disabilities in the European Union still face discrimination and challenges in many areas, including their inclusion in the open labour market.

Usually, persons with disabilities are not seen as potential valuable members of the labour force, in fact, according to statistics provided by Eurostat in 2022 have shown that on average in the EU-27 only 50% of persons with disabilities are employed, compared to 75% of people without disabilities. Nonetheless, these statistics do not include subdimensions of disabilities, such as intersectional discrimination, discrimination according to the form and degree of disability, or the share of 'inactive' persons, i.e., people who are not registered as jobseekers; which means that these numbers could possibly be worse for the persons with disabilities.

Persons with disabilities are most commonly employed by sheltered workshops and other social economy organisations. Meaning that a wide range of employment models co-exist, with a multitude of variations and overlaps, and what's very important is that these models must be transitory paths to or jobs in the open labour market. The choice of employment model and the extent to which that model is regulated, spread, funded, and framed in each country is of substantial importance. There are many other factors that have a direct incidence on the extent to which persons with disabilities are included on the labour market. These includes general anti-discrimination law provisions, benefits schemes in place, active labour market policies, compensation measures and other types of subsidies and fundings, etcetera.

The protection and integration of persons with disabilities stipulated in various international treaties such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) that was ratified by the European Union and its Member States, imposes obligations to ensure the full realisation of their human rights. Alongside their duty to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities, the European Union and its Member States are committed to ensuring an

open, fair, and inclusive labour market for all. To this end, it is necessary to take political measures that promote and facilitate the enjoyment of this right, for which public procurement can play a fundamental role, considering the positive social (and environmental) outcomes it has the potential to achieve.

In this research, public procurement was defined as the process of acquiring goods, civil works and services, encompassing the entire process from the identification of needs, selection and solicitation of sources, preparation and award of contract, to all the phases of contract administration through the end of a services' contract.

The EU legislation has set minimum rules for public procurement to safeguard the public interest and ensuring transparency, non-discrimination, equal treatment, competitiveness, cost-effectiveness, and quality of services provided. Additionally, the Directive 2014/24/EU introduced new framework with the intention of making public procurement less bureaucratic and more efficient, as well as providing opportunities for addressing *social*, environmental, and innovative considerations in the procurement process. Therefore, the Directive recognised the role of public procurement and provided a framework for smart and sustainable procurement pursuing social outcomes. Public procurement pursuing social outcomes is known as 'Socially Responsible Public Procurement' ('SRPP').

Public procurement can therefore be used by public authorities as an efficient mechanism to pursue social changes, as the Directive leaves the use of SRPP at discretion of the public buyers to include social considerations, beyond the elementary principles of best value. The considerations of SRPP as defined by the European Commission, address directly the employment of persons with disabilities, as it seeks to:

- Promoting employment opportunities for persons with disabilities, including on the open labour market through accessible and inclusive work environments.
- Guaranteeing accessibility for persons with disabilities and design for all.
- Promoting adequate working conditions and fair remuneration with basic benefits, non-discrimination, and gender equality, in accordance with labour standards.
- Supporting social inclusion and social economy organisations, by offering contracting opportunities to firms such as non-profit organisations, cooperatives and social enterprises.

The Directive provides several articles that allow the use of different mechanisms to favour the allocation of contracts on the basis of social or ecological interests. Such articles include reserved contracts (art. 20), division of contracts into lots (art. 46), contract award criteria (art. 67), reserved contracts for certain services (art. 77), among others. In countries such as France and Belgium, the integration of social clauses has favoured the awarding of contracts to organisations employing people with disabilities, while in the Czech Republic reserved contracts have promoted the employability of people with disabilities.

Making the participation of disadvantaged groups mandatory for the execution of a public contract is one of the most typical social considerations that can be encouraged through responsible public procurement to promote employability and inclusion. This procedure is greatly facilitated by the national laws of the Member States, into which the European public

procurement directives (in particular Directive 2014/24/EU) are transposed. For example, in public procurement, the contracting authority can simply require the contractor to involve in the performance of the public contract a certain number or percentage of people with disabilities in the labour market or, in general, the long-term unemployed (assuming the creation of new jobs).

Recommendations

Considering the experience and data collected in accordance with the objectives and activities developed throughout the project, a series of courses of actions are presented below for the local authorities' considerations on the use of socially responsible to create more job opportunities for persons with disabilities:

- Safeguarding the rights and promoting inclusion of persons with disabilities in the local community, following the principles of the UN Convention on the Rights of Persons with Disabilities.
- Facilitating and actively encouraging the creation of jobs for people with disabilities and other vulnerable groups in the open labour market, by using socially responsible public procurement.
- Enabling environment and supporting the development of social economy organisations and SMEs in the community.
- Enabling environment and supporting the development of facilitator organisations that provide guidance and assistance to public authorities for the inclusion of social and environmental criteria in public contracts.
- Creating positive synergies and leading broad stakeholder dialogue with disabled person organisations, social economy organisations and mainstream business employing persons with disabilities, and other public authorities and institutions.
- Engaging and actively participating in public procurement networks at the EU level and through project such as CO-RESP, for peer-learning and exchanging of promising practices on socially responsible public procurement, with particular attention to the creation of job opportunities for persons with disabilities and disadvantaged groups.
- Ensuring the compliance of the principles of the public procurement outlined in the Directive 2014/24/EU.
- Following the principles and using the mechanisms of the socially responsible public procurement, for instance, (a) by reserving the tender for suppliers employing at least 50% of persons with disabilities out of the total number of their employees, and (b) including social clauses.
- Accelerating the upskill and re-skill of public authorities in charge of public procurement processes.
- Analysing in detail both the needs of the contracting authority (the situation on the labour market, the composition of disadvantaged groups on the labour market in its territorial area) and to know the possibilities of the market.

- Identifying public contracts that could include social criteria for the implementation of the work and/or collaborating with facilitator organisations to identify public contracts that could include social criteria.
 - Communicating intensively, long-term and widely its intentions regarding the requirement for the involvement of persons with disabilities towards suppliers and potential contractors.
 - Establishing clear parameters for the identification of needs, the requirements for the implementation of the contract (such as a minimum percentage of persons with disabilities employed), evaluation of the bids and awarding of the contract, as well as a procedure for periodically monitoring, re-evaluating and assessing the full compliance of the requirements set in the tender.
 - Verifying and periodically monitoring that persons with disabilities employed by the contractor receive fair, reasonable and equal work conditions and benefits as those employees without disabilities.
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Bibliography

Bulgarian Public Procurement Act. Retrieved from <https://www.mrrb.bg/en/public-procurement-act/>

CEFEC - Social Firms Europe. Retrieved from <https://www.socialfirmseurope.org/social-firms/>

Council of the European Union. (2022). *Infographic - Disability in the EU: facts and figures*. Retrieved from <https://www.consilium.europa.eu/en/infographics/disability-eu-facts-figures/>

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. Retrieved from <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0024>

Disability Rights Strategy 2021-2030. (2021). Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/ip_21_810

EASPD. (2021). *EASPD Innovation Awards 25 Innovative Practices for the Inclusion of Persons with Disabilities*. Retrieved from https://www.easpd.eu/fileadmin/user_upload/Publications/easpd-awards_FINAL.pdf

EASPD. (2022). *Fostering Employment through Sheltered Workshops: Reality, Trends and Next Steps*. Retrieved from <https://www.easpd.eu/publications-detail/fostering-employment-through-sheltered-workshops-reality-trends-and-next-steps/>

EASPD. (2022, April). *Supporting economically inactive persons with disabilities on to the labour market*. Retrieved from https://www.easpd.eu/fileadmin/user_upload/Supporting_inactive_people_with_disabilities.pdf

EASPD. (2020). *The opportunities and barriers of different employment models for persons with disabilities*. Retrieved from https://www.easpd.eu/fileadmin/user_upload/Publications/s.beyer_report_-_opport_and_barriers_of_diff_employment_models_final.pdf

ETUC. (2021). *Social clauses in the implementation of the 2014 public procurement directives*. Retrieved from https://www.etuc.org/sites/default/files/2021-12/Public%20procurements%20directive_Final.pdf

EuCIE – European Confederation of Inclusive Enterprises. *Inclusive Enterprises for persons with disabilities in Europa*. Retrieved from <https://www.eucie.org/inclusive-enterprises-europa/>

European Commission. (2011). *Buying social – A guide to taking account of social considerations in public procurement – First edition*. Retrieved from



<https://op.europa.eu/en/publication-detail/-/publication/cb70c481-0e29-4040-9be2-c408cddf081f>

European Commission. (2012). *Supported Employment for people with disabilities in the EU and EFTA-EEA Good practices and recommendations in support of a flexicurity approach*. Retrieved from <https://op.europa.eu/en/publication-detail/-/publication/b270b26a-bb7f-40d7-8883-53c78e436b5b/language-en>

European Commission. (2017, October). *Making Public Procurement work in and for Europe*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0572>

European Commission. (2020, May). *Making Socially Responsible Public Procurement Work: 71 Good Practice Cases*. Retrieved from <https://www.socialeconomy.eu.org/wp-content/uploads/2020/06/SRPP-EC-Publication.pdf>

European Commission. (2021). *Buying Social – A guide to taking account of social considerations in public procurement – Second edition*. Retrieved from <https://op.europa.eu/en/publication-detail/-/publication/47c69b3a-cfcf-11eb-ac72-01aa75ed71a1/language-en>

European Commission. *Buying for social impact - Training and awareness-raising*. Retrieved from https://www.socialenterprisebsr.net/wp-content/uploads/2021/02/EA0120084ENN.en_.pdf

European Commission. *Disability Employment Package to improve labour market outcomes for persons with disabilities*. Retrieved from <https://ec.europa.eu/social/main.jsp?catId=1597&langId=en>

European Commission. *Legal rules and implementation*. Retrieved from Public Procurement: https://single-market-economy.ec.europa.eu/single-market/public-procurement/legal-rules-and-implementation_en

European Commission. *New practical guidance to help public buyers integrate social considerations into public procurement*. Retrieved from https://wayback.archive-it.org/12090/20211006134804/https://ec.europa.eu/growth/content/new-practical-guidance-help-public-buyers-integrate-social-considerations-public-procurement_en

European Commission. *Public Procurement*. Retrieved from https://wayback.archive-it.org/12090/20211006122547/https://ec.europa.eu/growth/single-market/public-procurement_en

European Commission. *Social enterprises*. Retrieved from https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu/social-enterprises_en

European Commission. *United Nations Convention on the Rights of Persons with Disabilities*. Retrieved from <https://ec.europa.eu/social/main.jsp?langId=en&catId=1138>

- European Disability Forum. (2020). *Poverty and Social Exclusion of Persons with Disabilities*. Retrieved from https://mcusercontent.com/865a5bbea1086c57a41cc876d/files/ad60807b-a923-4a7e-ac84-559c4a5212a8/EDF_HR_Report_final_tagged_interactive_v2_accessible.pdf
- European Disability Forum. *Employment Policy*. Retrieved from <https://www.edf-feph.org/employment-policy/>
- International Labour Organisation. (2022). *Decent Work*. Retrieved from <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>
- IPS - Employment Center. Retrieved from <https://ipsworks.org/index.php/what-is-ips/>
- Marboe, P. J. (2023). *The Government Procurement Review: Austria*. Retrieved from <https://thelawreviews.co.uk/title/the-government-procurement-review/austria#:~:text=The%20main%20sources%20of%20law%20for%20public%20procurement,of%20Defence%20and%20Security%202012%20%28BVergGVS%29%2C%20as%20amended.>
- National Public Procurement Strategy 2023-2026*. Retrieved from <https://contrataciondelestado.es/b2b/noticias/ENCP.pdf>
- Royal Legislative Decree 1/2013, of 29th November*. Retrieved from <https://www.boe.es/eli/es/rdlg/2013/11/29/1/con>
- Royal Legislative Decree 3/2011, of 14th November*. Retrieved from <https://www.boe.es/buscar/act.php?id=BOE-A-2011-17887>
- Ryder, G. (2022). *Decent Work and the 2030 Agenda for Sustainable Development*. Retrieved from International Labour Organisation: http://ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436923.pdf
- Social Platform. (2015). *Public Procurement for Social Progress*. Retrieved from https://www.socialplatform.org/wp-content/uploads/2015/10/Public_procurement_for_social_progress.pdf
- Spanish Law 9/2017, of 8th November, on Public Sector Contracts*. Retrieved from <https://www.boe.es/eli/es/l/2017/11/08/9/con>
- Stalzer, Johannes; Schneider, Felix. (2021). *Public Procurement & Government Contracts*. Retrieved from <https://www.schoenherr.eu/media/bh4h0e2y/chambers-public-procurement-government-contracts-guide-2021-stalzer-schneider.pdf>
- Thai, K. V. (2009). *International Handbook of Public Procurement*. New York: Routledge.
- The naBe action plan*. Retrieved from <https://www.nabe.gv.at/en/nabe-action-plan/>
- United Nations. Retrieved from Convention on the Rights of Persons with Disabilities: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of->

[persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html](#)

United Nations. *Disability and Employment*. Retrieved from Factsheet on Persons with Disabilities:

<https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities/disability-and-employment.html>

United Nations. *General comment No. 8 (2022) on the right of persons with disabilities to work and employment*. Retrieved from [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/518/57/PDF/G2251857.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G22/518/57/PDF/G2251857.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/518/57/PDF/G2251857.pdf?OpenElement)

United Nations. *Transforming our world: the 2030 Agenda for Sustainable Development*.

Retrieved from <https://sdgs.un.org/2030agenda>