

# **ICA CCR EUROPEAN RESEARCH CONFERENCE 2022**

*“Rethinking co-operatives: From local to global and from the past to the future”*

13-15 July 2022, Athens Greece

**Parallel Session: “Law and policies for *socially responsible public procurement*”**

**(Thursday, 14 July 2022)**

**Introduction to the Session / Paper No. 1 “*Law and policies for socially responsible public procurement – The EU context*”**

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# The organizer of the Session

This Session is organized by the **Social Administration Research Laboratory** (<https://sarl.uniwa.gr>), a research body of the **University of West Attica** ([www.uniwa.gr](http://www.uniwa.gr)), the third larger university in Greece.

SARL UNIWA is currently affiliated to the Social Policy Unit in the Department of Business Administration; it is committed to develop research and teaching agendas at graduate, post-graduate, PhD and postdoctoral level related to the discipline of “Social Administration”.

SARL UNIWA promotes its research and teaching agendas through concerted activities of Research Hubs, established to support relevant scope and objectives. The following Research Hubs have been founded so far: (a) The Social Insurance Hub; (b) The Social Welfare and Inclusion Hub; (c) The Health Care Hub; (d) The Employment and Labour Relations Hub; (e) The Occupational Welfare Hub; (f) **The Social Economy and Social Entrepreneurship Hub**; (g) The Hub for the History and Ideology of the Social State; (h) The Social Housing Research Hub.

# The panelists

**Gabriel Amitsis:** First rank Professor of Social Security Law in the Department of Business Administration and Director of SARL UNIWA

**Fotini Marini:** Legal Expert, Head of the Social Welfare & Inclusion Research Hub at SARL UNIWA

**Lampros Lamprinidis:** Public Policy Expert, Member of the Social Economy & Social Entrepreneurship Research Hub at SARL UNIWA

**Thanasios Papavlassopolulos:** Social Economy Expert, General Director of the Social Cooperative of Limited Liability “New Horizons” (based in Corfu) and the Treasurer of the Panhellenic Union of Social Cooperatives of Limited Liability (POKOISPE)

# The context of the Session

1. Discuss the current ***Socially Responsible Public Procurement*** (SRPP) institutional and policy framework in EU and Greece (as a case model country)
2. Present **good practices** from Greece and other European countries about the use of socially responsible public procurement clauses, with emphasis on the ways that Social Cooperatives can take advantage of the current SRPP institutional and policy framework

# The structure of the Session

- **Gabriel Amitsis**, *“Law and policies for socially responsible public procurement – The EU context”*
- **Fotini Marini**, *“Law and policies for socially responsible public procurement – The Greek context”*
- **Lampros Lamprinidis**, *“The use of socially responsible public procurement – Good practices from Europe”*
- **Thanasios Papavlassopolulos**, *“The use of socially responsible public procurement – Good practices from Greece”*

# What is SRPP?

SRPP is a legal process that implements social considerations in public contracts to achieve positive social outcomes. It aims to address the impact on society of the goods, works and services and works purchased by the public sector.

SRPP can be a driver towards:

- Promoting employment opportunities and social inclusion
- Providing opportunities for social economy enterprises
- Encouraging decent work
- Ensuring compliance with social and labour laws
- Accessibility and design for all
- Respecting human rights and addressing ethical trade issues
- Delivering high quality social, health, education and cultural services
- Reaching sustainability targets

## **How does SRPP differ from ‘traditional’ procurement?**

Traditionally, public buyers have chosen a product or service by comparing price and quality. SRPP asks procurers to consider the social impact of how a product/service is produced, sourced and delivered.

They can do this by demanding that potential suppliers have a sustainable, ethical and transparent supply chain, treat their workers fairly, or employ persons who find it difficult to enter the labour market due to specific reasons.

## In what sectors can SRPP create the most impact?

**Public buyers spend 14% of the EU's gross domestic product (GDP).** By using this purchasing power on goods, works and services that deliver positive social outcomes, they can make a major contribution to sustainable development.

SRPP can be particularly impactful in sectors **where public buyers command a large share of the market**, such as: construction, healthcare, transport, cleaning and facility management, food/catering services, furniture, gardening services, social services, ICT and textiles.

# Can SRPP be used to support better access to procurement opportunities for social enterprises?

This is a discretionary making policy decision of public byers.

**Proportionate selection criteria**, adapted where possible to the capacities of small businesses and dividing contracts into lots can make it easier for social enterprises to participate to public tenders.

**Reserved contracts** are also specific instrument to target social enterprises.

Finally, the **use of social considerations in award criteria or contract clauses** can make it more attractive for social enterprises to compete for tenders or to participate as subcontractors. Indirectly, SRPP can contribute to increased demand for socially responsible goods, works and services, thereby providing social enterprises with growth opportunities.

## **What is the EU legal framework for SRPP?**

SRPP is grounded in EU binding rules on public procurement, an important pillar of the European single market.

The 2014 EU harmonized public procurement rules regulate the European public procurement market based on the Treaty principles of transparency, equality and non-discrimination among bidders. At the same time, the Public Procurement Directives make it clear that public buyers can take social aspects into account throughout the procurement cycle. Member states have transposed this European framework to fit their own national contexts.

# What is the key legal instrument for the development of SRPP?

The **Directive 2014/24/EU** of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65), which establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests, whose value is estimated to be not less than specific thresholds.

**Procurement** within the meaning of this Directive is the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose.

# Which are the SRPP related clauses?

## Article 20 - Reserved contracts

1. Member States may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.
2. The call for competition shall make reference to this Article.

# Which are the SRPP related clauses?

## Article 67 - Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the most economically advantageous tender.
2. The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include the best price-quality ratio, 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.**

# Which are the SRPP related clauses?

## **Article 70 - Conditions for performance of contracts**

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 within the meaning of Article 67(3) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, **social or employment-related considerations.**

# Which are the SRPP related clauses?

## Article 77 - Reserved contracts for certain services

1. Member States may provide that contracting authorities may reserve the right for organizations to participate in procedures for **the award of public contracts exclusively for those health, social and cultural services** referred to in Article 74, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8.

## And a useful reminder....

**(a) The primary responsibility for regulating the sector of social economy and entrepreneurship in the EU lies with Member States.**

(b) National authorities have the policy levers and the budget to influence the development of the sector. The social partners also play a key role, particularly in areas such as apprenticeships, training and working practices.

**(c) The EU plays a supportive role** in helping Member States to improve the sustainability of the sector in three ways:

- by providing institutional and operational definitions;**
- by creating a favourable eco-system** conducive to the development of the social economy at large;
- by providing financial support to national and cross-border action** in line with agreed priorities.

# How have EU Member States implemented the SRPP related clauses?

The transposition of SRPP provisions contained in the Directive 2014/24/EU into national legislation has been diverse in the field of **Reserved Contracts**:

- a) The main element of diversity in the transposition of art. 20 lies in the minimum share of employees with disabilities or other forms of disadvantage required to compete in reserved procedures.
- b) There is some confusion between art. 20 and art. 77.
- c) Art. 77 has not been transposed into national law in some countries.

# How have EU Member States implemented the SRPP related clauses?

The transposition of SRPP provisions contained in the Directive 2014/24/EU into national legislation has been more effective in the field of **social considerations**:

a) The encouragement to shift from a price only approach towards the most-economically advantageous tender (MEAT) in the Directive has widened the space for social considerations in the awarding of contracts (art. 67)

b) Social considerations can also be found as condition for the performance of contracts (art. 70), most commonly, considerations linked to employment, but also the promotion of gender equality or combatting discrimination.

# How has the Court of Justice of EU interpreted the SRPP clauses?

In the Case C-598/19 *Confederación Nacional de Centros Especiales de Empleo (Conacee) - Diputación Foral de Gipuzkoa*, the Tribunal Superior de Justicia del País Vasco (High Court of Justice of the Basque Country, Spain) submitted to the CJEU request for a preliminary ruling under Article 267 TFEU. This request concerned the interpretation of Article 20 of Directive 2014/24/EU and has been made in proceedings between the National Confederation of Special Employment Centres and the Provincial Council of Gipuzkoa concerning a decision of the Governing body of that provincial council of 15 May 2018 approving instructions issued to that institution's contracting authorities for certain reserved contracts.

The Court (Fifth Chamber) ruled:

*“Article 20(1) of Directive 2014/24/EU must be interpreted as not precluding a Member State from imposing additional criteria beyond those laid down by that provision, thereby excluding from reserved public procurement procedures certain economic operators which satisfy the criteria laid down in that provision, provided that that Member State complies with the principles of equal treatment and proportionality”* ([CURIA - Έγγραφα \(europa.eu\)](https://eur-lex.europa.eu/curia/doclist/curia?docid=86192)).

# What has the European Commission done to promote SRPP?

A. In 2011, the European Commission published a guide on socially responsible public procurement: ['Buying Social - A guide on taking account of social considerations in public procurement'](#). It opened in December 2017 a targeted consultation on a new guide on socially-responsible public procurement, seeking feedback from stakeholders on the scope and structure of a guide on socially-responsible public procurement to help with its drafting and other possible complementary documents ([Consultation on a socially-responsible procurement guide](#)).

# What has the European Commission done to promote SRPP?

B. The revised Guide “*Buying social - A guide on taking account of social considerations in public procurement*” ([Buying social \(2nd edition\)](#)) was published in May 2021. Its purpose is to raise public buyers’ awareness of the potential benefits of SRPP and to explain in a practical way the opportunities offered by the EU legal framework. When drafting this Guide, the Commission consulted widely with public buyers to identify good practices and examples of what can be achieved. These examples are featured throughout the text.

This Guide has been produced for public buyers, but also in the hope that it inspires others involved in procurement, whether as suppliers or service providers, private buyers, **social economy players including social enterprises**, or NGOs.

# What has the European Commission done to promote SRPP?

C. The European Commission has also launched projects and campaigns to raise awareness on SRPP. The most recent publication has been the report *Making Socially Responsible Public Procurement Work - 71 Good Practice Cases* (a deliverable of the **Buying for Social Impact** Project, commissioned by the Executive Agency for Small and Medium-sized Enterprises and the European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs to promote the use of social considerations in public procurement procedures in 15 EU Member States - <https://www.socialeconomy.eu.org/2020/03/03/buying-for-social-impact-project/>).

This Report aims to improve awareness and understanding of the potential of SRPP, by showcasing 71 examples of how public procurers have achieved social benefits in practice. The case studies demonstrate correct bidding procedures and effective policies and act as inspiration for both procurers and suppliers to stimulate replication across Europe (and beyond).

# Critical Conclusions

1. Implementation of SRPP clauses on reserved contracts is easier in countries where legal frameworks or legal forms for social economy enterprises exist. It is also easier for social economy enterprises to access public procurement procedures in countries where those legal frameworks or legal forms exist
2. Social considerations which facilitate access of social economy enterprises to procurement markets, are more widespread in certain sectors of the economy than others, in particular maintenance of public green spaces; cleaning services; and social services. They are also found to a lesser extent in the construction; food / catering / restaurants; transport services; and textiles sectors. However, social economy enterprises are in principle economically active in other sectors (including healthcare; education; environmental services and energy; sport and recreational services; culture; art; and IT) in which contracting authorities should encourage bids from SMEs and social economy enterprises.

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**THANK YOU FOR YOUR ATTENTION!**

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