

Brief on Romanian legislative framework on socially-responsible public procurement

Socially-responsible public procurement should represent an effective way to achieve social insertion and cohesion since relevant provisions were included into the **Law no. 98/2016 on public procurement**, as subsequently amended and supplemented.

Considering the economic and social efficiency as its main objective, the above mentioned law contains specific provisions regarding the obligation of the tenderers to submit offers which are in compliance with the environmental, social and labor legislation adopted at EU and national level (art. 51 of Law no. 98/2016) so that the implementation of the contract has real impact on social sustainable development.

Also, the same obligation belongs to the subcontractors of the tenderer, since they are fulfilling parts of public procurement contracts and they must obey the same legal provisions referring to the environmental and social protection.

In line with the Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC, whose provisions transposes, the Law no. 98/2016 introduces mechanisms aiming to promote social and professional integration of disabled or disadvantaged persons, since the contracting authorities *may reserve the right to participate in public procurement procedures only to sheltered workshops and to social enterprises of insertion*. (art. 56, Law no. 98/2016).

Although specific mechanisms were provided by the public procurement legislation, their efficiency is closely related to the administrative capacity of contracting authorities to implement them so that social inclusion objective be achieved.

However, contracting authorities are rather **reluctant** towards the use of such mechanisms, since they are facing serious difficulties when preparing and initiating an award procedure, having in mind their lack of expertise into this field.

Therefore, for ensuring the effectiveness of these mechanisms, *complementary and correlative measures should be adopted in order to alleviate their lack of expertise and to encourage social enterprises of insertion to participate in public procurement procedures since they are confronting with serious problems regarding debts or lack of financing, altogether affecting their legal status and existence*.

Taking into account all the issues mentioned above, the appropriate provisions for ensuring socially-responsible public procurement could be the use of aspects like accessibility, design for all users or social characteristics when defining the criteria for awarding the contract according to the best price - quality ratio (art. 187, Law no. 98/2016).

Nevertheless, it is important to observe that the effective use of this possibility described by the provisions of the article 187 of Law no. 98/2016 is related to the fact that these criteria must be first of all, appropriate for the object of contract to be awarded, and then they must be really put into practice when implementing the contract, according to its relevant provisions.

As a result, using socially-responsible public procurement should contribute not only to social insertion or reinsertion of the disadvantaged persons, but will also reduce supplementary costs so that social efficiency of the contract is reached.

The analysis of these national provisions which are similar to those of the Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC, may lead to the following conclusions:

- the effective use of these provisions is closely related to the administrative capacity of contracting authorities; into this respect, specific actions must be undertaken in order to promote sustainable use of social criteria among public buyers as well as to increase their administrative capacity and alleviate their lack of expertise into this field;
- also, supplementary and correlative measures should be taken in order to encourage the social enterprises of insertion to participate in public procurement procedure, because either most of them do not know that they may take advantage of the award of public procurement contracts, either they are confronting with serious problems affecting their legal status such as lack of financing;
- facing the reluctance of the contracting authorities towards using such mechanisms when preparing and initiating procurement procedures, the national authorities should increase the awareness on their immediate social benefits and disseminate best practices so that other relevant social issues be inserted into the tender documentation such as accessibility or design for all users;
- also, monitoring the use of social issues when awarding public procurement contracts will significantly contribute to their effective use, when certain targets are established on short and medium term.