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The Social Economy,  
Public Procurement  
and  
Public-Social Partnership  
in Europe

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# 1 Introduction

The EU Councils of recent years, such as the ones of Gothenburg, Lisbon, Stockholm and Nice, focused mainly on the elaboration of an EU strategy for sustainable development and expressed the conviction that economic growth, social cohesion and environmental protection should on the long term go hand in hand.

As highlighted in the communication of the EU Commission (COM 2001/264), it is necessary that: *“Economic growth supports social progress and respects the environment, that social policy underpins economic performance and that environmental policy is cost effective”*.

To achieve these important results it is important to change the way economic policies are decided and applied, at both EU and Member State levels.

Sustainable development should become the main objective in all sectors and policies, and all proposals should be evaluated not only according to their economic impact, but also according to their environmental and social aspects. In particular, the above mentioned communication states that public procurement policies can make an important contribution to the realisation of sustainable development by speeding up the diffusion of new and safer technologies, promoting the development of environmentally friendly services and products, and ensuring equal opportunities for all citizens.

This is a new way of thinking that sees public procurement as one of the most important elements of the single market. Public procurement has now acquired some of the strategic elements of the single market, such as the free movement of goods, people and services.

Public procurement and its contribution to the single market are aimed at creating the necessary competition conditions so that public contracts are assigned in a non-discriminatory way, and public wealth is used rationally by choosing the best offer. There are clear rules for the definition of the object of public procurement, for the selection of candidates and for the awarding of the contract on the basis of easily measurable criteria and objectives.

EU social policy has greatly developed in the last years. There were only a few articles on this topic in the Treaty of Rome. The Single European Act gave a new importance to social policies, in particular in the fields of health, occupational safety, dialogue between management and labour, and economic and social cohesion.

We will not consider the whole development of social policy in the EU, but it is nonetheless important to focus on the communication (COM 2000/379), which is particularly meaningful since it translates the commitment taken on during the European Council of Lisbon in 2000 into concrete action. Its objective is to ensure the positive cooperation and effective coordination among economic, occupational and social policies. The EU social model would thus be updated involving the EU

institutions, the member states, the regional and local actors, management and labour, civil society and enterprises. The results it seeks to achieve are ambitious. They cover full employment and job quality, social policy development (including matters of social security, social integration, equal opportunities, the protection of fundamental rights and the fight against discrimination), the promotion of quality in industrial relations, EU enlargement and the promotion of international cooperation.

Furthermore in 2001 the Commission adopted a communication on *"Promoting core labour standards and improving social governance in the context of globalisation"* that aimed to define a strategy and indicate some possible tools for the improvement of social regulation at both international and EU levels.

What comes out is that at EU level there is a clear trend to an increasing integration of the social, ethical and environmental aspects in the fields of economic policy and market strategies. This marks a change in the way of thinking both of the public and of economic operators. For example, concepts such as "social responsibility" and "social capability" of enterprises, or "social balance sheet" and "social clause" have become more and more common.

Naturally, the EU institutions have been sensitive to this change, and in the *"Green Paper Promoting a European Framework for Corporate Social Responsibility"* they highlighted the importance of a stronger social consciousness of enterprises, both in their internal dimension (human resources management, health and safety at work, environment and natural resources protection) and in their external one (relations with local communities, partners, suppliers and consumers, and human rights in the countries, even non-community ones, where the enterprises work).

The idea of the social responsibility of enterprises is tightly linked to a *"concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis"*. However it must not be considered as a replacement for rules on social rights or for environmental standards, but must be seen as a complement to regulation, most of all in those countries where formal regulations still do not exist.

## **1.1 Social clauses**

The two new directives approved by the European Parliament in 2004 result from a long and important piece of work by the EU institutions that began in 1996 with the adoption of the Green Paper on public procurement. The Commission was then checking the implementation of the directives on public procurement in member states, highlighting two major problems that are still to be solved: on the one hand partial adoption of the directives, and on the other hand a weak economic impact registered at the moment of the coming into force of the directives themselves. In the Green Paper of 1996 the Commission, well aware that public purchases are an important orientation tool for many different social objectives, paid particular attention to issues such as working conditions, freedom of movement for workers, equal opportunities, social protection and health, environment, integration of disadvantaged groups, the fight against corruption and dishonest entrepreneurs winning public contracts. In particular, the social and environmental issues were

treated in special Commission communications, the first in the *“Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement”* of 4<sup>th</sup> July 2001 (COM 2001/274), and the second in the *“Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement”* of 15<sup>th</sup> October 2001 (COM 2001/566). These communications, agreeing with the Green Paper, underline the importance of coordinating public procurement regulations with other EU policies such as those on environment, social policy and consumer protection.

With the two communications of July and October 2001 the Commission aimed to coordinate and harmonise social and environmental issues through regulation of public procurement. It was then believed that the appropriate regulation of public procurement could contribute to achieving sustainable development, which integrates economic growth, social progress and respect for the environment.

*“This Communication aims to identify the possibilities under existing Community law applicable to public procurement for taking social considerations into account in the best way in public procurement. The Communication examines the different phases of a procurement procedure and sets out, for each phase, whether and to which extent social considerations can be taken into account.”*

It must be taken into account that economic growth and social cohesion together with a major improvement in environmental quality are at the base of sustainable development and of the EU integration process. Therefore one of the main objectives of the Commission was to examine the points where these subjects all meet, in order to use this analysis for new directives on public procurement. The directives of the 1990s were indeed lacking in clear references to environment protection and in special dispositions for the achievement of social policy objectives within the award of public contracts. The communications therefore highlight if and how far these elements can be taken into account in each phase leading to the choice of the contractor.

In public procurement the first occasion for considering social and environmental issues comes at the moment when the object of the procurement is chosen, that is what the contracting authority intends to build or to buy. It was the Commission’s opinion that already in this phase the contracting authority can orient its choice, by highlighting the elements concerning social and environmental protection.

*“In general, any contracting authority is free, when defining the goods or services it intends to buy, to choose to buy goods, services or works which correspond to its concerns as regards social policy including through the use of variants, providing that such choice does not result in restricted access to the contract in question to the detriment of tenderers of other member states.”*

Another phase that permits the consideration of social and environmental issues is the selection of the candidates, such as in the case of causes for exclusion (for example a conviction for any crime concerning professional morality, including serious professional errors such as not paying social security contributions). The failure to respect dispositions on equal treatment and health and safety, or in favour of certain

categories, or on the technical, economic and financial capacities of the candidates, can also be a reason for exclusion.

*“Under the public procurement directives, contracting authorities can use technical specifications that define the subject-matter of the purchase or service more precisely, provided that they comply with the rules set out in the directives, and that they do not eliminate or favour a given tenderer.”*

As for the phase of the awarding of the contract, there are two criteria for evaluating the offers: the lowest price, or the most advantageous offer. The advantageousness of the offer is evaluated according to price and to some criteria of quality. Therefore the directive allows the introduction of social and environmental criteria if they are not against the principles of equal treatment and they do not represent an economic advantage for the contracting authority.

In Directive 2004/18/CE there are several dispositions stating that contracting authorities can impose conditions in order to promote social issues, as long as those conditions respect the EU laws. This compatibility depends on the fact that *“Contract performance conditions are compatible with this directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment and the protection of the environment. For instance, mention may be made, amongst other things, of the requirements – applicable during performance of the contract – to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.”*

*“Criteria involving social considerations may be used to determine the most economically advantageous tenderer where they provide an economic advantage for the contracting authority which is linked to the product or service which is the subject-matter of the contract”*

Finally the Commission confirms the validity of conditions in favour of social and occupational issues not only when executing the contract, but also when selecting the enterprises, considering them amongst the selection criteria. That is possible as long as “relating to the object of the contract, they aim at selecting the most advantageous offer for the administration”.

*“One way to encourage the pursuit of social objectives is in the application of contractual clauses or of conditions for the execution of the contract, provided that they are implemented in compliance with Community law and, in particular, that it does not discriminate directly or indirectly against tenderers from other member states”.*

As far as the role of the social economy is concerned, the innovative role of this sector in Europe, its search for new markets and the increasingly structured network relations between the different regional and national actors linked to this sector are

creating the conditions for the development of a number of hybrid kinds of social enterprises and social relations with the public administration. Through the joint action of the Enterprise DG – monitoring not only the status of social enterprises in the member states, but also their approach towards development – and of the Employment DG – supporting pilot projects within the EQUAL initiative – the European Commission sees the social enterprise more and more as a major actor in the social economy. This happens also thanks to the contribution of cooperatives, associations and foundations to the development of a new spirit of enterprise, to job creation and to social cohesion. Some member states, such as for example Great Britain, have also led important actions to support the sector.

Social enterprises are affirming themselves throughout Europe as subjects capable of acting as policy makers. Furthermore, awareness of this phenomenon is increasing, as is the consciousness of the importance of the public procurement market for the development of social enterprises.

## **1.2 Social cooperatives and subsidiarity**

The Italian legal order was characterised, in recent years, by a sort of acceleration in the implementation process of a principle that was already included in the 1948 Italian Constitution. Thanks to this principle – clearly expressed today in Article 118 of the Constitution itself – public institutions must recognise that public functions are performed not only by institutional bodies but also by individual citizens and groups of citizens, called “social formations”, which are expected to support these functions.

This new panorama prompts important suggestions for the development of the relationships between public administrations and social cooperatives, using not only public procurement, but also specific agreements to share the public responsibilities referred to in missions of general interest. It is possible to find some interesting references in two recent and important European Commission documents, the Communication of 26th April 2006 (COM 2006/177) on “social services of general interest in the European Union” and the Commission decision (referred in this EC Communication) of 28th November 2005 (2005/842/CE) concerning the application of Art. 86, par. 2 of the EC Treaty on state aid by way of trade-offs for obligations of public services granted to particular undertakings entrusted with the operation of services of general economic interest.

## **2 Public procurement in Europe**

### **2.1 Introduction**

Procurement is the whole process of purchase of goods and services, and also the ordering of works, by a public authority such as a national government department, a local authority or any of their dependent bodies from third parties, and covers goods, services and capital projects.

In 2006 public procurement amounted to more than EUR 1,500 billion, more or less 16% of the gross domestic product (GDP) of the European Union, with significant variation between Member States ranging between 11% and 20% of GDP. Seventy-eight per cent of successful tenderers (above thresholds) under the EU directives are SMEs. Public procurement is therefore of considerable economic importance in the single market.

EU competition policy rules laid down by the Treaty of Rome are based on the principles of equality of treatment, transparency, proportionality and mutual recognition. EU directives have been introduced to give effect to the provisions of the treaty. At European level, the Treaty establishing the European Community (EC Treaty) requires public purchasers to respect the principles of equal treatment of economic operators, transparency in tendering procedures, real competitive tendering, the freedom to provide services and mutual recognition throughout the Union.

### **2.2 The legislative package of public procurement directives**

Before Community legislation was enacted (2004), only 2% of public contracts in the Community were awarded to enterprises based in a member state other than the one in which the invitation to tender was issued. The lack of open and effective competition was not only an obstacle to the completion of the single market, but it also pushed up the costs for contracting authorities. Moreover, the lack of intra-community competition in certain key industries inhibited the development of European enterprises which were competitive in world markets.

To pursue this issue the European Union replaced the four European directives on contract award procedures with two new directives which entered into force in April 2004 (the date for transposition by the member states was set at 31 January 2006). One of these concerns the award of public works, supplies and services contracts, the other procurement in the water, energy, transport and postal service sectors:

- Directive 2004/18/EC for public works contracts, public supply contracts and public service contracts;
- Directive 2004/17/EC on the sectors of water, energy, transport and postal services.

Directive 2004/18/EC does not apply to public works contracts, public supply contracts and public service contracts which have a value excluding VAT estimated to be less than the following thresholds:

- EUR 137,000 for public supply and service contracts awarded by central government authorities (ministries, national public establishments);
- EUR 211,000 for public supply and service contracts: awarded by contracting authorities which are not central government authorities; covering certain products in the field of defence awarded by the central government authorities; concerning certain services in the fields of research and development (RTD), telecommunications, hotels and catering, transport by rail and waterway, provision of personnel, vocational training, investigation and security, certain legal, social and sanitary, recreational, cultural and sporting services;
- EUR 5,278,000 in the case of works contracts.

The Commission adjusts the thresholds every two years. The calculation of their value is based on the average daily value of the euro, expressed in special drawing rights (SDR), over the 24 months ending on 31 August for the revision with effect from 1 January.

To improve the quality of information on public procurement and make it easier to be translated, circulated, read and understood, the Commission is encouraging standardisation at European and indeed international level in fields which are particularly important for the opening up of public procurement. It has also developed standardised forms to simplify the drafting and understanding of the notices which have to be published under the directives in addition to a *Common Procurement Vocabulary* (CPV) which responds to the specific needs of public procurement and is available in all of the official languages of the EU.

The directives subject public contracts whose value is higher than Community thresholds to common rules on the publication of notices in the Official Journal of the European Union. At the same time, the new EU provisions simplify the contract award procedures.

The public authorities have the choice between open and restricted tendering procedures and they may, under the terms explicitly laid down in the public procurement directives, have recourse to a negotiated procedure with or without prior publication or to a competitive dialogue procedure.

Public authorities can award their contracts on the basis of the following criteria:

- either the lowest price only;
- or, where the contract is awarded to the most economically advantageous tender, various criteria linked to the subject-matter of the contract in question, such as: quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date, and completion date. The contracting authority should specify the relative weighting it gives to each of the criteria.

Contracts below the thresholds have to comply with the basic principles of the Treaty but national law is applied.

Public contracts whose value exceeds the thresholds in the directive are subject to obligations of information and transparency. These take the form of publishing information notices drawn up in accordance with standard Commission forms. There are several types:

- the notice of the publication of a prior information notice (not compulsory);
- the prior information notice (not compulsory). After having sent the notice of the publication of a prior information notice, the contracting authority publishes this notice on its buyer profile itself or sends it to the Office for Official Publications of the European Communities (Publications Office). This publication is compulsory when the contracting authority wishes to reduce the time limits for the receipt of tenders;
- the contract notice or notice of a design contest (compulsory). The contracting authority may publish this notice itself nationally and should send it to the Publications Office. Publication by the Publications Office is free. The notice is published in full in an official language of the Community, and a summary is translated into the other languages;
- the contract award notice and notice of the results of a design contest (compulsory).

The notices sent by the contracting authorities to the Commission can be transmitted by traditional or electronic means. Standard forms and details on transmission procedures are accessible through the information system for public procurement (SIMAP).<sup>1</sup>

Regarding the exchange of information, the new directive places traditional and electronic means of communication on an equal footing. It leaves market operators free to choose which means of communication to use for the procedures. If electronic means are used, the contracting authority can reduce the time limits.<sup>2</sup>

A contracting entity may hold an electronic auction to award a contract, except for certain works and service contracts such as the design of works which relate to intellectual performances. The electronic auction shall be based:

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<sup>1</sup> **SIMAP**

The EU has dedicated a website to public procurement: the System of Information on Public Procurement. This site provides public procurement professionals with information on contract opportunities at international and European levels and on purchaser profiles in some 30 countries. SIMAP offers special tools, such as the on-line notification service, and presents the rules and procedures at both European and national levels. It makes economic operators aware of the means of redress available in the member states in the event of any infringement of the Community rules on public procurement.

**TED**

For the sake of transparency, Community legislation makes it compulsory to publish notices in the Official Journal for all contracts with a value above certain thresholds. These thresholds vary depending on the nature of the contract. Notices are published, at no cost to purchasing entities, in the 20 official languages of the Union in the Supplement to the Official Journal (see the "Tenders Electronic Daily" (TED) database, which can be consulted on-line).

<sup>2</sup> The electronic publication of a prior information notice makes it possible to reduce by seven days the time limit for the receipt of tenders in open and restricted procedures. The same applies for the receipt of requests to participate in negotiated procedures and the competitive dialogue; On top of the previous reduction, time limits in open and restricted procedures may be further reduced by five days where the contract documents are available on the internet.

- either on prices when the contract is awarded to the lowest priced tender,
- or on prices and/or the values of the features of the tenders, when the contract is awarded to the most economically advantageous tender.

The specifications shall contain the following details:

- the quantifiable features (figures or percentages) whose values are the subject of the electronic auction and the minimum increment when bidding;
- the electronic auction process and the technical specifications for connection.

Before proceeding with the electronic auction, the contracting authority shall make a full initial evaluation of the tenders.

All tenderers who have submitted admissible tenders shall be invited to take part simultaneously by electronic means. The invitation shall state the date and time of the start of the auction and, if appropriate, the number of phases. It shall also state the mathematical formula to be used to determine automatic re-rankings, incorporating the weighting of all the award criteria. Throughout each phase, the participants shall know their relative rankings compared to the other participants, but without knowing their identity.

The electronic auction shall close either at a date and time fixed in advance, or when a certain period has elapsed after receipt of the last submission, or when the number of phases in the auction has been completed.

## 2.3 Public procurement procedures

There are different public procurement procedures: the open procedure, the restricted procedure, the negotiated procedure, and the competitive dialogue.

In an open procedure, any interested economic operator may submit a tender.<sup>3</sup> In the case of restricted procedures, any economic operator may ask to participate and only candidates invited to do so may submit a tender.<sup>4</sup> In a negotiated procedure, the contracting authority consults the economic operators of its choice and negotiates the terms of the contract with them. The negotiated procedure can be used with or without the prior publication of a contract notice.<sup>5</sup>

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<sup>3</sup> The minimum time limit for the receipt of tenders is 52 days from the date on which the contract notice was published. If a prior information notice has been published, this time limit can be cut to 36 days. In no case may the time limit for the receipt of tenders be less than 22 days.

<sup>4</sup> The time limit for the receipt of requests to participate is 37 days from the date of the contract notice. The contracting authority then, simultaneously and in writing, invites the selected bidders to submit their tenders. There should be a minimum of five bidders. The minimum time limit for the receipt of tenders shall be 40 days from the date on which the invitation is sent. If a prior information notice has been published, this may be shortened to 36 days. The minimum time limit for the receipt of tenders may not be less than 22 days. Exceptionally and when urgency requires, the contracting authority may set a minimum time limit of 15 days (10 days if the notice is sent electronically) for requests to participate and of 10 days for the receipt of tenders.

<sup>5</sup> Negotiated procedure with prior publication of a contract notice:

- following another procedure which revealed the presence of irregular tenders, insofar as this new procedure does not substantially alter the original terms of the contract;
- in exceptional cases, when the nature of the contracts or the risks attaching thereto prevent prior pricing;

A contracting authority may make use of the competitive dialogue; a new procedure used for complex contracts if it is not able to define by itself the technical solutions to satisfy its needs or is not able to specify the legal and/or financial make-up of a project. Large infrastructure projects, or particular social projects in some disadvantaged areas, would seem to lend themselves to this type of dialogue.

The contracting authority publishes a contract notice that includes the award criteria. The minimum time limit for receipt of requests to participate is 37 days. The contracting authority then, simultaneously and in writing, invites the selected candidates (a minimum of three) to conduct a dialogue. The discussion commences, may take place in stages and continues until the (technical and/or economic and legal) solutions have been defined. The contracting authority ensures equal treatment of all tenderers and protects the confidentiality of the information. At the end of the dialogue, the candidates submit their final tenders. These tenders may be specified, but without changing the basic features of the contract. The contracting authority awards the contract in accordance with the award criteria set and on the basis of the most economically advantageous tender.

## 2.4 Service design contests

Admission to design contests may not be limited to the territory of a member state or by the legal nature of the participants. Design contests in the field of services and design contests with prizes for participants may be organised by central government authorities (threshold of EUR 137,000); other contracting authorities (threshold of EUR 211,000 – concerning certain services in the fields of RTD, telecommunications, hotels and catering, transport by rail and waterway, provision of personnel, vocational training, investigation and security, certain legal, social and sanitary, recreational, cultural and sporting services).

The contracting authority publishes a contest notice drawn up in accordance with the rules for public procurement procedures. The exchange and storage of information ensures the integrity and the confidentiality of data. The contracting authority examines the projects only after the time limit set for submitting them has expired.

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- in the field of services, for intellectual services which do not permit the use of an open or restricted procedure;
  - for works which are performed solely for purposes of research or testing.

Negotiated procedure without prior publication of a contract notice:

- for all types of contract: when no tenders have been submitted in response to an open procedure or a restricted procedure; when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be executed only by a particular economic operator; in cases of extreme urgency brought about by unforeseeable events;
- for supply contracts: when the products involved are manufactured purely for the purposes of RTD; for additional deliveries over a maximum period of three years where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics; for supplies quoted and purchased on a commodity market; for purchases of supplies under particularly advantageous conditions from an economic operator definitively winding up his business activities or in receivership;
- for public service contracts, when the contract is awarded to the successful candidate in a design contest;
- for works and service contracts: up to 50% of the amount of the original contract, for additional works or services which are not included in the initial project and have become necessary through unforeseen circumstances; for new works or services consisting in the repetition of similar works or services entrusted to the initial economic operator for a maximum of three years.

The selection criteria are clear and non-discriminatory, ensuring genuine competition. The jury shall be composed exclusively of independent natural persons. Where a professional qualification is required of participants in a contest, at least a third of the jury members shall have this qualification. The jury is autonomous in its decisions and examines the plans on the basis of the selection criteria. Anonymity must be observed until the jury has reached its final decision.

## **2.5 Final provisions**

By 31 October of each year at the latest, member states shall send the Commission a statistical report on public supply contracts, service contracts and works contracts. This report shall specify in particular the number and value of the contracts awarded, their breakdown by type of award and the nationality of the economic operators selected.

### 3 Social enterprises and Directive 2004/18/EC

Public bodies have been able to link their procurement strategy with their mission to deliver public benefit where they have pursued best value and a joint approach that focuses on the impact or long-term outcomes of service delivery (rather than just the output). This enables them to ensure that community benefit (via social and environmental clauses) is core to anything that they wish to obtain.

This approach to public expenditure allows public bodies to deliver innovative solutions to complex social needs, and provide higher quality, cost-effective public services.

The inclusion of social clauses in purchasing decisions brings many advantages. These include:

- Achieving multiple aims
  - Social clauses achieve multiple outcomes simultaneously, such as purchasing services and tackling employability issues. Used in this way, procurement works as a strategic tool for achieving a wider range of desired impacts.
- Better returns on money spent
  - In addition to the social gains, economic benefits can be substantial too. Recent Social Return on Investment (SROI)<sup>6</sup> research indicates significant welfare and healthcare cost savings. In the long term, added value to taxpayers' money is achieved.
- Strengthening the value base of decisions
  - Public authorities must operate on a strong ethical basis. By stressing social issues, it can be possible to promote the "public good" in a transparent and non-discriminatory manner. Supporting social enterprises that have strong social aims makes sound civic values explicit to everyone.
- Getting better and more innovative services
  - Using social clauses allows service providers with strong social principles a better chance of winning the tender. These service providers often put extra emphasis on service quality and user satisfaction. Social enterprises are often good at combining social and market values with an innovative approach to service planning and delivery.

Many goods and services can be bought from social enterprises. They successfully deliver a number of services such as cleaning property and garden maintenance, processing waste for recycling, catering, food production and construction, as well as creating jobs for disadvantaged people. Many other social enterprises achieve their social aims by providing high quality social care services, recycling/reusing goods and

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<sup>6</sup>*Social Return on Investment* measures an organisation's added value by calculating the social, environmental and economic benefits it creates and by attributing a financial value to them. It is based on standard accounting principles and investment appraisal techniques.

materials, and providing financial services in areas that mainstream lenders ignore, affordable childcare, housing and community transport.

Through Directive 2004/18/EC for public works contracts, public supply contracts and public service contracts, the European Union seems to acknowledge and to promote the role of social economy enterprises in some recitals and articles; the directive also emphasises the social and environmental aspect, encouraging social enterprises to tender:

(1) "(.....) This Directive is based on Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the contracting authorities to meet the needs of the public concerned, including in the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority, are expressly mentioned and comply with the fundamental principles mentioned in recital 2."

(18) "The field of services is best delineated, for the purpose of applying the procedural rules of this Directive and for monitoring purposes, by subdividing it into categories corresponding to particular headings of a common classification and by bringing them together in two annexes, II A and II B, according to the regime to which they are subject. As regards services in Annex II B, the relevant provisions of this Directive should be without prejudice to the application of Community rules specific to the services in question."<sup>7</sup>

(28) "Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute to integration in society. In this context, sheltered workshops and sheltered employment programmes contribute efficiently towards the integration or reintegration of people with disabilities in the labour market. However, such workshops might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide that member states may reserve the right to participate in award procedures for public contracts to such workshops or reserve performance of contracts to the context of sheltered employment programmes."

According to the above, the possibility to "reserve" procurement process to non-profit enterprises seems to be recognised.

(33) "Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment. For instance, mention may be made, amongst other things, of the requirements – applicable during performance of the contract – to recruit long-term

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<sup>7</sup> In Annex II B are indicated, *inter alia*, the following services: hotel and catering services, support and subsidiary services for the transportation sector, employment and personnel recruitment services, education and vocational training services, health, social, leisure, cultural and sport services.

job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation."

The above stresses the possibility to introduce social requirements in assessment criteria for procurement in favour of the recruitment and training of socially excluded subjects for EU over-threshold tenders.

(46) (...) "In order to guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting authority to meet the needs of the public concerned, as expressed in the specifications of the contract. Under the same conditions, a contracting authority may use criteria aiming to meet social requirements, in response in particular to the needs – defined in the specifications of the contract – of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong."

Dealing with the articles of the directive, some of them require careful analysis:

#### Article 1, paragraph 4

"'Service concession' is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment."<sup>8</sup>

#### Article 17

"Without prejudice to the application of Article 3, this Directive shall not apply to service concessions as defined in Article 1(4)."

#### Article 21

"Contracts which have as their object services listed in Annex II B shall be subject solely to Article 23 and Article 35(4)."<sup>9</sup>

#### Article 26

"Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations."

#### Article 19

"Member states may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be performed in

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<sup>8</sup> See also the "Interpretive Communication of the European Commission on service concession in European Law", 12 April 2000.

<sup>9</sup> Article 23: Technical specifications; article 35, paragraph 4 "notice on the result of the award of a public contract or of a framework agreement."

the context of sheltered employment programmes where most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.”

This article seems to consider the possibility, after the application of the directive, to use reserved procedures for over-threshold tenders in the context of sheltered employment programmes or sheltered workshops.

However, it is important to understand correctly what the EU means by “sheltered workshops” and “sheltered employment programmes”, since the sentence: “may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes” is likely to give different meanings to the two definitions. As the correct comprehension of Community terminology is essential when we talk about “sheltered employment”, we refer to Commission regulation (EC) 2204/2002 of 12 December 2002. Regarding the application of articles 87 and 88 of the EC treaty on state funds in favour of employment, article 2 – Definitions (h) – defines “sheltered employment” as an employment in a plant where at least 50% of the employees are handicapped people who are not able to work in the open labour market. The correct definition of “sheltered workshops” must be clarified, given that is not present in the above regulation.

Another definition to consider is “handicapped”. Regulation 2204/2002 (article 2 – Definitions (g)) defines “handicapped worker” as:

- any person who is recognised as handicapped according to the national legislation, or
- any person who is suffering from a serious physical, mental or psychic handicap;

Now, unless the definition of sheltered work is clearly understood, it seems that over-threshold tenders for reserved participation in public contract award procedures are appropriate only for employments which aim to recruit 50% or more of handicapped people, and not just disadvantaged people.

This peculiarity involves the risk of regression, with regard to what has been achieved over the years by the social economy, for example in Italy, where the special treatment allowed to B-type social co-ops by law 381/91 makes Italy the European pioneer of using public procurement as a tool for social and work integration. This is because it provides a typology of services for non-profit organisations, which creates the risk that workshops will be set up simply to recruit “handicapped workers”, generally considered as being unable to carry out a “professional activity in normal conditions”, instead of enhancing the workshops’ role as entrepreneurial instruments that, thanks to their specific features, assert the right to work for the weakest segments of society in “normal condition” in the market.

It should be borne in mind, however, that the specific purpose of the distinction between the notions of “disability” and “disadvantage” defined in the above-mentioned European Regulation is to avoid the granting of state aid in all cases not linked to objective situations that justify the failure to comply with the fundamental principles of the Treaty (in particular the principles of non-discrimination and freedom of movement).

In this case – that refers to the legitimacy of reserved contracts and does not concern the principles mentioned, but only that of competition – probably it would be necessary to establish a proper procedure to adopt a notion of “disability” wider than the one described in the EC Regulation on state aid when the use of the notion of “sheltered workshops” or of “sheltered employment programmes” is legitimate (this is to say that the Commission should refer to a notion of “disability” including at least the most serious situations of social disadvantage listed in the regulation on state aid).

*A possible model: the logical process leading to the application of procedures regulating the relation between public authorities and social enterprises cannot be exclusively based upon administrative procedures.*

The object of this reflection must be the *values to promote*, the needs to fulfil and the targets to achieve.

The normative/administrative aspect of the specific procedures must be interpreted within the wider context which is characterised by the so-called best administration principle and can be systematically “read”, considering the specific norms which tend to characterise the procedure in accordance with the purpose of the administration.

The steps of this concept can be summarised in the following phases:

|  |
|--|
| 1) VALUE – What is the value to promote? What is the problem requiring a response? What is the target to achieve?  |
| 2) CONTEXT – What is the preferred kind of response? What is the real action to express the above-mentioned value? What is the practical action to be performed to achieve the target?   |
| 3) GENERAL PROJECT – Not considering the norms currently regulating the relationship between public authorities and social enterprises, what is the best process to promote this value and to give a response to this problem? Actors, resources, competence, who is doing what, how this will be done, all these aspects must be established. |
| 4) WHAT KIND OF LEGAL RELATIONSHIP – MAIN ASPECTS OF THE RELATIONSHIP  |
| 5) THE ADMINISTRATIVE PROCEDURE AND ITS PROBLEMS   |

The distinction between the 4th and the 5th phase, that is to say between substantial aspects of the relations and procedural problems, is particularly complex and needs clarification. We can explain the difference between these two aspects in the following way:

|  |  |
|--|--|
| Substantial aspects of the relationship<br>↓   | Procedural problems<br>↓   |
| Consist of the practical contents of the relation, that is to say, the mutual obligations of the parties | Consist of the procedure that identifies the winning bidder, if more than one bidder aims (or would aim, if properly informed and suitable) to win the |

|  |          |
|--|----------|
|  | contract |
|--|----------|

The substantial aspect deals with the contents and the legal relationship between public authorities and social enterprises. It could be, for example, a relationship made up of mutual obligations regarding the signing of a contractual agreement to provide services, a contract, or a kind of relationship where the project carried out by a social enterprise, which has itself defined the project, is the condition to access public support, including financial support.

According to the logical part of the question, conferring the proper legal form on a legal relationship should be the result of the definition of substantial elements; nevertheless, the (possibly) necessary procedures to identify the possible winner among the competitors should be established after considering and solving the problems regarding the nature of the relationship and its legal form.

## 4 Public procurement for social enterprises: the Italian experience

### 4.1 Introduction

The introduction of Italian law 381/9 was a crucial event. This law not only legitimated and defined the characteristics of B-type social cooperatives, but also set out administrative procedures that, if systematically applied in the various territorial contexts, can play a pivotal role in spreading and developing B-type social cooperatives.

The law represents a wonderful instrument for B-type social cooperatives because it allows public authorities to award contracts for services directly (or through a public evidence procedure applicable to B-type social cooperatives only), when their value, in compliance with the European Community regulation, is under the relevant threshold.

Moreover, it is worth pointing out that, compared to the main commodity categories at the centre of the work carried out by B-type social cooperatives, there are wide opportunities within the “under-threshold” types of agreement, as foreseen by art. 5 paragraph 1 of Italian law 381/91, especially in terms of service outsourcing accomplished by small and medium-sized public authorities.

Considering the regulative framework concerning social services and the most recent legal literature and authoritative interpretations of the law, the evident complexity in the relations between public bodies affects relations between public authorities and social cooperatives.

If, for instance, we consider the participation of private bodies in the management of public services, it is important not to confuse the two levels, both related to the horizontal subsidiarity concept, which must be kept separate:

|   |
|---|
| <b>First level</b>  |
| Participation of social cooperatives in defining, planning and delivering one or more services/projects with a public authority.  |
| <b>Second level</b>   |
| Participation of social cooperatives in the planning process of the system of interventions, expressing their own interpretation of the need for community and social services. |

The regulations ratify the role of B-type co-ops at both levels, however still reserving (in the case at least of Italian law 328/2000) to the public authority the right to manage the “public function” when by this is meant the right of the municipalities (singly or together) to plan social services at the local level. Efforts should thus be made to achieve a cultural change allowing the stakeholders to understand the

potential of the legal instruments that were enacted some years ago (e.g. Italian law 381/91). As applied to date, these have had varied results in the field of B-type social cooperation, and should be implemented in real terms.

The substantial aspects concern the content and the legal nature of the relationship between public authorities and social cooperatives. It could for example be the case of a relationship consisting in mutual obligations concerning the performance of a services supply contract awarded by tender, or a work contract, or a relationship where the accomplishment of a project by a social cooperative (maybe following a public co-planning inquiry) represents the condition for the delivery of public support, including financial support.

From a logical standpoint, the attribution of an appropriate *nomen iuris* to a certain legal relationship should follow the definition of the relevant substantial elements; on the other hand, the procedures necessary to select one contractor from among several should be defined only after having examined and solved the problems concerning the content of the relationship and its legal classification.

Unfortunately, even though it may seem paradoxical, in the relationship between public authorities and the social economy, in particular social cooperatives, the opposite very often happens: procedures are obsessively examined without even considering the (legal) nature of the relationship, following to the logic of procedures that have already been "tested" and more or less "adapted" to the situation. The consequence is that often low profile relationships are set up, which give less value to the overall efficiency and quality of the service delivered.

#### **4.2 Consolidated forms in the award of services supply contracts**

In the light of the subsidiarity principle and its application in the integrated system of social interventions and services defined by Italian law 328/2000, it should be noted that contracting with a non-profit organisation is a necessary requirement for the "award of a service", which can be interpreted in two ways:

- a. Mere purchase of goods and services by a public authority;
- b. Sharing, by the private organisation, of the public responsibilities related to the pursuit of the (social) values whose care the law attributes to the public body.

In the second case, agreements concerning forms of support, partnership or credit are adopted.

It may be appropriate to begin by focusing on problems derived from the award of contracts by tender, for four good reasons:

1. The correct way for the development of the subsidiary relation between public administration and type B social cooperatives is represented by Italian law 381/91;
2. Contracts for services will remain by far the most used instrument, until other types of administrative procedure are more extensively tested in the field and more widely approved by administrators and technicians;

3. Even in the traditional sector of contracts it is possible to improve tenders and procedures remarkably, so as to exploit all the opportunities offered by the regulations (including those at the EU level) in order to model instruments on the specificity of services;
4. The study of substantial and procedural models specific to service contracts can turn out to be a useful reference point for defining the related advertising models.

Concerning this, the legal system defines quite precisely the subjective elements to assess so as to “trust” the private organisation aspiring to be a supplier to the public authority.

There are “qualification requirements”, which the current regulations (Legislative Decree 157/1995 on the award of service contracts and Legislative Decree 358/1992 on the supply of goods) identify as conditions for participation in tenders. They are “subjective” elements, which thus concern the intrinsic qualities of the subject; it is obvious for the law that the regulations indicate them only by way of example, so that each authority can identify the assessment elements that best suit the real case, i.e.

- nature of the subjects;
- kind of service;
- other significant circumstances.

This seems particularly important in the case of services entailing the work integration of disadvantaged people, given their peculiarity that requires the consideration of qualification elements.

The identification of indicators for the definition of the procedures related to the award of services entailing the work integration of disadvantaged people should be carefully based on a precise typology of instruments given the specific object of the tender.

In relation to Directive 2004/18/EC, the issue of social clauses should be introduced during the proceedings because it is determinant in the qualification of the competitors for the award above the EU threshold and does not tackle services aimed at the work integration of the disadvantaged. In this sense, by social clauses is meant those included in Recital 33 of Directive 2004/18/EC.

So far as objective assessment aspects are concerned, as it was for subjective elements, the law allows the authorities to determine them freely. Authorities will thus be able to choose and “measure” assessment elements in the most appropriate way; it is common knowledge that for the award of social services contracts appraisal based solely on price is forbidden, and it is necessary to appraise also quality elements, both when the competitor is involved in the design and when the design is already established.

This interpretation can probably be extended to non specifically social services (in the reference commodity category) entailing the work integration of disadvantaged people.

Amongst the various elements to be taken into account by the public authority during a contract award so as to set the conditions for an efficient and effective service, and guarantee the continuity of the added value of the interventions (in this case, work integration), is the length of the contract (3 to 4 years at least).

A crucial point that is common to all forms of award is represented by the price factor. With this regard, it may be interesting to consider the criterion established in the Italian prime ministerial decree 117/1999, which defines the award criteria applied to the most economically advantageous tender for cleaning services. In this decree, the established formula for the price evaluation compares the value of the offer and not the discount. This entails a homogenous evaluation of the score attributed to the price and the score attributed to the design.

The formula is as follows:

$$X = P_i * C / P_o$$

$P_i$  = Lowest price (starting price minus discount)

$P_o$  = Price offered by the competitor

$C$  = value coefficient assigned to the price (in decree 117/1999, it ranges from 40 to 60 points out of 100)

In case of abnormally low tenders, reference can be made to paragraph 3 art. 25 of Legislative Decree 57/95, under whose provisions "all tenders displaying a downturn abatement percentage higher than one fifth of the arithmetic sum of the discounts in the accepted tenders, such arithmetic sum calculated without considering the upward tenders, shall be subject to verification as provided for by paragraphs 1 and 2".

It is necessary to underline that this check concerns not only tenders awarded on the basis of lowest price, but also those awarded using the principle of the most economically advantageous offer (which is important in our instance): it would be useless to establish, among the operating clauses, some social values-related conditions (such as the work inclusion of disadvantaged people) if it would be impossible to achieve them because of particular economic characteristics, even if they are consistent with the main goods and services supply. In fact, the work inclusion of disadvantaged people imposes some burdens additional to the conditions of supply of the related good or service, even without taking into consideration the "social clauses".

In this case, Italian law 327/00 and its relevant tables published in the Official Journal are important. The work cost values defined in these tables shall be observed and not reduced during the awarding phase. In such case tenders are considered abnormal even though the downturn percentage is lower than the above-mentioned one fifth, and are anyway subject to a suitability verification and, in case of negative outcome, they are excluded.

### **4.3 A useful tool to promote social economy and work integration of disadvantaged people: direct award to social cooperatives as an exception to the rules governing public administration contracts**

*“Public authorities may, even though this departs from the normal regulation of contracts of the public administration, sign agreements with social cooperatives carrying out activities defined in article 1, paragraph 1, indent b), regarding the supply of goods and services other than social, health care and educational services, in order to create employment opportunities for disadvantaged people defined in article 4, paragraph 1.”*

The above paragraph of article 5 of Italian law 381/91 represents an extremely interesting instrument for B-type social cooperatives because it allows public authorities to perform direct and/or reserved awards of services supply contracts where their value is below the EU threshold.

It should be clarified that direct awards may not be used indiscriminately in all situations, but correctly used, should play an instrumental role starting from value sharing, as was explained in the previous paragraphs.

Direct agreements (provided in art. 5 of law 381/91) are the “first choice”, the most “politically” advanced choice that can be made by the public authorities.

This legitimate choice, which is provided for by the law, entails the sharing of a collaboration project between local bodies and B-type social cooperatives aimed at reaching targets of work integration of disadvantaged people who are otherwise hard to employ.

They are a consolidated procedure in several regions. They are broadly integrated with local social services projects and programmes, and are geographically related to the territory and to the social services of the local bodies (municipalities, their consortia and local health authorities).

B-type social cooperatives take part in social inclusion or territorial programmes as active agents of territorial employability programmes and participate in territorial programmes concerning the development of employment, in particular for the disadvantaged.

Awareness-raising can be very important, particularly as regards the value of synergies with B-type social cooperatives, especially in those areas where little progress has yet been made as far as inclusion is concerned. At the regional level, attention should be paid to the implementation of the EU directive. And where the regional authority foresees the application of regulations for contracts whose values are lower than the EU threshold, it would be necessary to point out the need to maintain such a threshold envisaging the possibility of making direct agreements with the social cooperatives.

Furthermore, it should be noted that paragraph 1, art. 5 of Italian law 381/91 does not prevent the contracting public authority from making the award to the social cooperative through a public evidence procedure (exclusively for B-type social cooperatives).

It should not be forgotten that the so-called "direct contracts", even for amounts lower than the European threshold, and even if they derogate from the law on public administration contracts, have to comply with the EU legal framework, as well as with the national rules. It seems to be clear enough that in these cases the fundamental principles of transparency, equality, feasibility, finalisation and good administration must be respected, and the choice of a particular B-type cooperative must be clear, transparent and of public evidence. "Public evidence procedure" generally means a transparent administrative procedure whose rules have been clarified before the beginning of the procedure itself and whose verification is possible during and at the end of the process.

What is really interesting to notice in these particular procedures is that the public evidence principle does not impose a competitive procedure in order to reach the best solution (as in traditional tenders). On the contrary, the logic which lays down this kind of procedure must be of synergetic kind, with public administrations and social cooperatives (active in the same territory) working together to realise their shared social aims (work inclusion of disadvantaged people) through the creation of a real "solidarity network".

On the other hand, art. 11, par 2 and par 2 bis of the national law on administrative procedures provides that: *"Accepting comments and propositions according to art. 10, the proceeding administration can sign, without prejudging third parties' rights and aiming at the public interest, agreements to determine the discretionary content of final measures or as a replacement of them. To allow the conclusion of agreements according to par.1, the procedure manager can arrange meetings and invite, jointly or separately, the procedure's recipient and/or other interested parties"*.

Consequently, it is right to consider that the best administrative practices can include some consensual instruments and that – as in this case – the consensual procedure can be the best way to put together public interests (institutional or not) aimed at the promotion of the work inclusion of disadvantaged people.

The process of developing area plans (piani di zona) for services and social interventions, as foreseen by national law 328/2000 and by various regions in their own regional and provincial laws, can be useful not only as a social programming instrument, but also as a road map to ease the relations between public and private actors who want to engage themselves in activities related to the public social function. In addition, this elaboration process can be preferable to other kinds of joint programming and project management activities aimed at reaching an agreement about the supply of goods and services whose amount is lower than the European threshold.

#### 4.4 Tenders above the EU threshold

A specific analysis needs to be made of tenders above the EU threshold at which direct awards or special tender procedures addressed to B-type social cooperatives cannot be performed.

Concerning this, by examining some experiences that are particularly important at the national level, a situation emerges where certain award procedures for services, starting from the so-called “most economically advantageous tender”, introduce clauses rewarding “social” aspects in the scoring.

Normally, they are tenders notified according to Legislative Decree 157/95.

It is possible that this “broadmindedness” of the public authorities relies also on European indications. Directive 18/2004/EC *Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement* encourages this – where, anyway, “social aspects” means not only work integration but also other aspects related to the management of services such as contractual positions, protection at work, and social and political reflections.

The variety of examples that was examined is wide. Some contract notices envisage the possibility of assigning a certain score percentage to social interventions that could be defined as “corporate social responsibility”, generally indicating the employment of “disadvantaged people” as the score rewarding object.

A risk is run (and it already happened) where social cooperatives are used for their “social value”, especially in those cases where it is possible for groups of enterprises to present tenders. In practice, social cooperatives can be included purely to score extra points, and thus to win the tender.

But even if it were not so, there is still a further problem of verification: who checks on the commitment that is undertaken? (For instance, the commitment to hire a certain number or percentage of disadvantaged people. That is why it can be useful to include in tenders a B-type social cooperative that can already prove to have the numbers.) Moreover, it is necessary to consider not only how many people are employed but also how.

This is not only a criticism. Taking a look backwards, B-type social cooperatives have always viewed their intervention in work inclusion as non-exclusive; on the contrary they have encouraged all employers to contribute to the work integration of disadvantaged people. A cornerstone in terms of social clauses is the evaluation of inclusion projects and, even more, the indicators for the assessment of inclusion processes and their results.

Concerning this, a helpful example is given by the Municipality of Turin (resolution 50 of 31/03/05), which provides for a constant monitoring of the people employed, by indicating in the contract documents, amongst other categories defined in article 4 of law 381/91, those benefiting from special interventions, in order to:

- a) ensure that a balanced integration of the different categories of disadvantaged and disabled people is achieved annually in all types of enterprises;
- b) offer adequate responses to specific situations of unemployment;
- c) ensure, in cooperation with the social services assisting the person, that the tasks to be carried out match the current projects for the people to be included.

#### **4.5 A possible model administrative process for the regulation of the relationship between the public authorities and WISEs (work integration social enterprises)**

In the light of what has previously been examined, it seems to us that, starting from the experiences analysed at the national level, it is possible to synthesise an interesting model administrative process for the regulation of the relationship between the public authorities and B-type social cooperatives, as follows:

A value (work inclusion of the disadvantaged) shared by the public authority and the B-type social cooperative, to implement through decisions taken by the authority and aimed at recognising the important collaborative role of B-type social cooperatives, enforcing law 381/1991 and other regional reference laws.

In these decisions, the public authority lays down a target of at least x%<sup>10</sup> of the total amount of goods or services supply to be distributed according to three types of administrative procedures:

- 1- *Goods and services supply contracts with work inclusion aims;*
- 2- *Goods and services supply contracts (lower than the amounts defined in the EU directives concerning public procurement and agreements) with social cooperatives under art. 5, paragraph 1 of law 381/1991;*
- 3- *Agreements under art. 5, paragraph 4 of law 381/1991 (as amended by art. 20 of law 52/96)*

The procedure of objective-setting shared between the public authority and the B-type social cooperative is translated into practice with the implementation of law 381/1991 and the statement of the need for specific social clauses in above-threshold contracts. Moreover, it would be appropriate to consider as the beneficiaries of work inclusion those people defined in article 2, indent k) of Legislative Decree 276 of 10 September 2003, and more precisely:

- a) people defined in article 4 of law 381/1991;

people defined in article 2, indents f) and g) of EU Regulation (EC) 2204/2002 of 5 December 2002. The people to be integrated should be identified on the basis of lists drawn up by social welfare services, employment agencies and local health authorities.

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<sup>10</sup> The percentage is to be determined according to the size of the contracting public authority and the overall size of the works.

#### 4.5.1 Type 1: goods and services supply contracts with work inclusion aims

Goods and services supply contracts with work inclusion aims are awarded through public tenders, pursuant to national or European laws (according to their value), and are awarded according to the criterion of the most economically advantageous tender.

Bidders shall certify, through a declaration that can be subsequently verified, that they comply with the general regulations on employers' liability.

In compliance with the social project, the tender documents state the percentage of disadvantaged subjects to be employed, which shall not be lower than 30% of the total number of workers employed for the delivery of services (this percentage refers to the tender in case of a services supply contract, while it refers to the whole enterprise in case of a goods supply contract). The tender documents also define the specific types of people to be employed, as previously indicated.

As for goods and services supply contracts that were previously awarded to social cooperatives defined in article 5, paragraph 1 of law 381/1991, the percentage of disadvantaged subjects to be employed is no lower than 30% of the total number of workers. In this case the contractor is compelled to employ the disadvantaged people who were already employed by the social cooperatives, by guaranteeing the continuity of work inclusion projects and the maintenance of the most favourable contractual conditions.

The contract is concluded with the enterprise that presented the best tender from the technical-economical point of view, taking into account the following elements, to be indicated in the contract notice:

- 1) when the presentation of a technical project is not required:
  - social project
  - potential for social integration offered by the enterprise
  - price
- 2) when the presentation of a technical project is required:
  - technical project
  - social project
  - potential for social integration offered by the enterprise
  - price

The social project can be evaluated on the basis of the following elements:

- a) occupational incidence with reference to disadvantaged people
- b) work inclusion project
- c) labour organisation and human resources management system

The potential for social integration offered by the enterprise can be evaluated on the basis of the following elements:

- a) previous experience in work integration proven by declarations provided by the welfare and health services for the other bodies responsible for the people involved
- b) opportunities for social integration offered to the people employed

As far as the price is concerned, the highest score is awarded to the lowest priced tender, which represents a parameter for the proportional evaluation of the remaining tenders according to the following equation:

*Score = (price score) \* A/B, where A = most economically advantageous tender and B = examined tender.*

The contracting public authority foresees a constant monitoring of the people employed and verifies the fulfilment of the obligations related to work inclusion, including through interviews at work with the people involved. Any violation of the obligation to employ the agreed percentage of disadvantaged people or people belonging to weak groups in the labour market will entail the cancellation of the contract. A contractual grade and remuneration according to the National Collective Labour Agreement for Social Cooperatives or the reference category of the commodity category, agreed with the most representative trade unions at the national level, will have to be guaranteed to disadvantaged and disabled workers, whether members or not.

This type seems to us to be consistent with that implemented in recital 33 of Directive 2004/18/EC.

#### 4.5.2 Type 2: agreements with social cooperatives under article 5, paragraph 1, law 381/1991

The public authority receives and evaluates proposals from social cooperatives indicating the scope for the above mentioned agreements, and assesses their feasibility with the Central Services, Departments and Districts involved.

Goods supply contracts can be awarded to social cooperatives for goods of any kind.

Services supply contracts can be awarded to social cooperatives for services having one of the following characteristics:

- a) possibility to foster high manpower incidence;
- b) tasks and/or labour characteristics suitable for some categories of disadvantaged people, even as far as possibilities of professional qualification are concerned;
- c) commitment to promote the development and the presence in the market of the contracting social cooperative.

Goods and services supply contracts that were previously awarded in compliance with the authority's common regulation on contracts can be awarded to social cooperatives only if the stipulation of agreements under article 5, paragraph 1 of law 381/1991 does not entail a decrease in occupational levels by the former contracting enterprises.

Pursuant to the text of art. 5 of law 381/1991, the public authority can contract a single social cooperative where there are conditions or unique aspects related to the service supplier or to the service itself, in particular with reference to the work inclusion of disadvantaged people. Even in the light of past and current experience, we can quote among the “requirements” the territoriality of the cooperative, the current inclusion projects between the cooperative and the municipal social service (and specialist territorial services, including S.I.L. – i.e. Work Inclusion Service), aspects of continuity with the overall inclusion project, the participation of a single cooperative (or consortium) in the *piani di zona* (area plans) for the elaboration of active policies in the field of employment and re-employment of disadvantaged people.

Likewise, the public authority can send, as an alternative to the above, invitations to tender, when it is possible, to at least three social cooperatives having the following characteristics:

- a) being listed in the regional register and/or other registers of social cooperatives
- b) having experience in delivering the services in the agreement
- c) having experience in the sector of work inclusion of disadvantaged people under art. 4 of law 381/91
- d) having their operating seat in the municipality issuing the tender or in neighbouring municipalities specifically indicated in the invitation to tender

In compliance with the social project, tenders contain the indications defined in the previous type.

In order to evaluate the social project and the operating potential of the cooperative, the contracting public authority makes use of an expert in work inclusion.

As far as the contractual grade of the people employed is concerned, the cooperative can employ them as working partners, as recommended by law 381/91 itself, provided that its constitution or the regulation provide for pay and social security conditions that comply with the national agreement applied to employees (at any rate, the normative, salary and social security conditions cannot be worse than those provided for by the national agreement for social cooperatives); beneficiaries of work inclusion grants, trainees, and apprentice students, conscientious objectors, volunteers or those working for the cooperative or the institution unpaid are to be considered as a support and not as a replacement of the workers employed for the service.

#### 4.5.3 Typology 3: agreements under art. 5, paragraph 4, law 381/1991, as amended by art. 20 of law 52/1996

In the case of goods and services supply contracts whose estimated value net of VAT is equal to or higher than the amounts established by the EU directives concerning public procurement, the public authorities can include in the contract notice and tender documents, amongst other execution conditions, the obligation for the tenderer to perform the contract by employing disadvantaged people, as previously described.

The special tender documents state the percentage of people to be included that shall not be lower than x%<sup>11</sup> (anyway the percentage must be higher than that provided for by law 68/99) of the total number of workers employed for the performance of the contract. As for goods and services supply contracts that were previously awarded to social cooperatives defined in article 5, paragraph 1 of law 381/1991, the percentage of disadvantaged people to be employed is no lower than 30% of the total number of workers.

The winning enterprise presents a social project as illustrated in types 1 and 2. As far as the monitoring of employment is concerned, what is provided in type I shall be applied.

According to a specific recommendation contained in the tender documents, the above indications can also be applied to the execution of works of any value.

#### **4.6 The basis of public social partnership in Italy: *piani di zona* (area plans)**

Generally, by the enactment of law 328/00, the social economy is recognised as playing a role that goes well beyond the design and management of services, and makes it a full actor in the planning, design, and achievement of the system of integrated services.

It is worth underlining that the prime ministerial decree of 30/03/2001 – *Governing and coordination act concerning the award systems of social services* – also recommends restrained and negotiated awarding methods.

A very important element introduced by law 328/00 is the process known as “**co-planning**”. This element has not yet been fully tested, but already represents an interesting procedure. In fact, this method of awarding a contract for a social welfare service introduces the possibility for social enterprises to implement a plan with objectives related to the territory and designed within synergies established with local services.

In fact, the area plan (*piano di zona*) reformulates the relationship between public administration, social enterprises and citizens, changing it from a relationship where the citizen, even though he or she was the customer, did not have the chance to comment on the quality of the service nor on its usability, to a relationship that can be compared to a partnership, with an attribution of different responsibilities allowing citizens to intervene directly in outcomes (services) and enterprises to plan their intervention.

The area plan gives local communities the chance to guide and decide their own development and helps the functioning of the general development plans for social services. In detail, the area plan is preferred by various institutional and community actors in order to:

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<sup>11</sup> In city council resolution 50 of 31/03/05, the Municipality of Turin defines the percentage of inclusion as no lower than 20% of the total number of employees.

- analyse the population's needs and problems from the qualitative and quantitative points of view;
- identify and mobilise professional resources as well as personal, structural, economic (private or public, profit and non-profit) and volunteer ones;
- define objectives and priorities for all three years of the plan, in order to better allocate the available resources;
- identify service providers and their organisational shapes, according to regulations and the characteristics of local communities;
- establish management methods able to guarantee integrated approaches;
- devise systems, conditions, responsibilities and schedules for verifying and evaluating programmes and services.

The increased interaction between the different actors, according to their roles and particular functions, can guarantee a higher level of protection for persons, in particular for the weakest ones who are often unable either to autonomously satisfy their primary needs, or to ask effectively for services. The area plan can be an effective tool to give a strategic answer to the need to transform a welfare culture of services supply to disadvantaged people to an active policy of services in favour of the local community.

Art. 19 of law 328/00 globally deals with meanings, contents, strategic functions, ways of approving the instrument and the actors entitled to implement it. Reading this article, it is possible to identify four objectives which implicitly promote local partnership models:

- The creation of local systems of intervention based on services and supplies, which must fulfil the criteria of efficiency, effectiveness, unity, complementarity and flexibility. We can affirm that the area plan is conceived as a tool able to improve forms of active citizenship and promote rights and duties as specified in articles 2 and 3 of the Italian Constitution.
- The qualification of the expenses and the activation of resources resulting from the local plan. We can say that the qualification of the expenses can be the result of different strategies: public financial support to guarantee the essential level of social supplies, delivered as goods and services; plus additional resources necessary to provide essential welfare services. These resources can come from public, private or local actors.
- The allocation of expenses between municipalities covering the same territory and other programme partners, necessary to adopt the area plan.
- The definition of training and updating activities.

The area plan contents are related to:

- the strategic objectives and the priorities for intervention;
- the organisational schemes for services, resources and quality requirements;
- the local information system;
- ways to guarantee integration between services and suppliers;
- ways to coordinate work with the peripheral state bodies;
- provision for collaboration between services and actors involved in different forms of social solidarity;
- agreements with the local health system, together with other actors involved, to guarantee integration between social and health services at local level.

Through the choice of the objectives and priorities for intervention it is possible to specify the type, quality and size of the promotion and protection system which is intended to be guaranteed at local level.

The other elements of the area plan – such as coordination and collaboration activities – are useful to describe in detail the characteristics and size of the local welfare mix.

The bodies responsible for the area plan are municipalities associated in territorial areas identified by the Regions. Concretely, the municipalities will adopt the programme jointly with the local health service, in order to plan the so-called high integration areas. This approach must be realised through a sort of integration between two different planning tools: the Area Plan for Social Services as provided for by art. 19 of law 328/2000 and the Programme for Territorial Activities as provided for by art. 3-quater, Legislative Decree 229/1999.

These two instruments are managed by individual competent bodies – the municipalities for social services and the Local Health Service for health services – and they must be considered as being managed by several bodies when dealing with integrated services. Regions have the task of defining, through formal acts, ways to share the responsibilities, so that these two instruments are approved at the same time.

The instrument chosen by the legislator to approve the area plan is the so-called “programme agreement” as provided for by Art. 27 of law 142/1990, as subsequently amended. The bodies involved in this kind of agreement are municipalities, the local health service, other local institutional bodies as well as private subjects who participate, through their own resources and specific forms of agreement, in the realisation of the integrated system of interventions and social services as foreseen by the area plan.

## **5 Public Procurement for social enterprises: the UK experience**

### **5.1 The legislative and policy framework in the UK**

The legislative and policy context for suppliers in the UK is focused on promoting equal treatment.

The UK regulations which give effect to the EU competition policy rules laid down by the Treaty of Rome – based on principles of equality of treatment, transparency, proportionality and mutual recognition – apply to certain contracts awarded by public organisations.

Obligations arising from the EU Treaty also apply, irrespective of the nature of the procurement. These include, in particular, a requirement that contractors should not be discriminated against on unlawful grounds; this rules out positive discrimination and affirmative action across the EU, including in the UK.

Although affirmative action is illegal in the EU, discrimination and social exclusion are of increasing concern to both the EU and UK governments, and European procurement legislation is being reviewed in order to widen its scope so that organisations can pursue equality of opportunity in their public procurement more effectively.

Following the passing of the Scotland Act in 1998, the responsibility for the development and application of public procurement policy and best practice in Scotland was devolved to the Scottish Executive, along with responsibilities in health, education and economic development. While the Scottish Executive must still adhere to European procurement legislation, it has the opportunity to develop an innovative and tailored approach to procurement and supplier diversity in Scotland, different from that in England and Wales.

### **5.2 The policy framework for procurement**

Under the UK procurement guidelines a public body is free to determine what it wishes to purchase as opposed to how, provided that:

- the purpose is within its statutory powers, its constitution and its agreed policy framework, for example the community strategy;
- the requirements are needed, are cost-effective and are affordable.

The government's procurement policy defines value for money as:

*“the optimum combination of whole life costs and quality (or fitness for purpose) to meet the user's requirements”.*

There is consistent support in a range of government publications for taking a wide view of what can be achieved in procurement by effective competition which ensures that the best range of bids are submitted. In setting requirements, departments have considerable scope to decide how they draw up their specifications and can choose to procure to reflect their social policy aims, their own policies and objectives, or those of the government.

The inclusion of community benefits must be justified as part of the core purpose of the procurement, rather than them being a secondary element that cannot be formally evaluated.

In October 2003 the Office of Government Commerce and Department for Environment, Food and Rural Affairs published a *Joint Note on Environmental Considerations in Purchasing* that includes a section on social issues in procurement. Its reference to opportunities for the consideration of social issues seems to recognise that in principle there is nothing wrong with seeking social and community benefits through procurement, as long as they are relevant to the product or service being procured and consideration of these issues is made at the appropriate stages of the procurement process.

In the same month the Office of the Deputy Prime Minister (ODPM) published the *National Procurement Strategy for Local Government*. Section 6 is entitled *Stimulating markets and achieving community benefits*, and includes the following statement:

*"Under the Local Government Act 2000, councils are required to prepare a community plan ... and have powers to promote economic, social and environmental well-being of their communities. Provided that there is compliance with EC public procurement regulations and Best Value, councils can work with suppliers to realise 'community benefits' of this kind through their procurement activities."*

The National Strategy states that by 2004 all corporate procurement strategies for local government should address: the relationship of procurement to the community plan, workforce issues, diversity, equality, sustainability, and how the council concerned will encourage a diverse and competitive supply market, including small firms, social enterprises, ethnic minority businesses and voluntary and community sector suppliers.

By 2005 every local authority was required to include in invitations to tender or negotiate for partnership projects a requirement to submit optional, priced proposals for "delivery of specified community benefits that are relevant to the contract and add value to the community plan".

The National Procurement Strategy for Local Government (ODPM) identifies social enterprises, along with small businesses, black and ethnic minority business, and voluntary and community organisations as potential service providers. It confirms that by widening local supply markets, they bring benefits to public procurement:

*"Our objective is that by 2006 all councils will be ... confidently operating a mixed economy of service provision, with ready access to a diverse, competitive*

*range of suppliers providing quality services, including small firms, social enterprises, minority businesses and voluntary and community sector groups."*

The national strategy also requires local authorities to approve their own procurement strategy. This describes their individual approach to procurement.

### **5.3 The legal framework for procurement**

The two different legal frameworks that apply in the UK create some complexity and confusion when interpreted in an organisation's internal standing orders.

- The EU procurement regulations aim to create an open market for the purchase of goods and services across the whole of the EU;
- UK guidance aims to ensure that procurement achieves best value, and is underpinned by the view that this will be achieved by open and well-developed markets.

Current directives implemented in the UK through statutory instruments require contracts that are covered by the directive to be let:

- across the whole of the EU, by placing advertisements in the Official Journal of the European Union; and
- by the process described in the directives.

Much local authority procurement falls within the exemptions allowed by the EU directive; however it is becoming increasingly common for authorities to use processes required by the full EU procurement regime, even when they are not required to do so by the regulations.

But under both UK and EU rules, community benefits can be incorporated into the procurement process. In principle, councils and NHS trusts are free to determine what they wish to purchase, as opposed to how:

- The 'well-being' power enables authorities to take a holistic approach to procurement, including the promotion of community benefits;
- Even where a procurement is subject to the EU procurement regime, community benefits can form part of the core requirements of the contract, as long as they are relevant to the subject of the contract, comply with equal opportunities, are able to be evaluated, add to the achievement of value for money, and do not disadvantage non-local firms;
- The inclusion of such benefits will be strengthened by reference to the Corporate Plan, Best Value Performance Plan or other strategic policies of the council, as long as those strategies mention the benefits in question;
- From 2005 local authorities had to include a request for priced proposals to deliver community benefits relevant to the contract that add value to the Community Plan; and;

- The EU consolidated procurement directive, as implemented in the UK, clarifies how and when social and environmental considerations relevant to a contract can be included.

Local authorities and other public bodies cannot give unfair advantage to social enterprises during the procurement process, however, they can do much to ensure that they have the capacity and opportunity to take part, including:

- Taking initiatives to develop the supply base through general support to the social enterprise sector, as long as no individual enterprise gains advantage for a specific contract;
- Developing procurement strategies that make a direct link between the Community Plan and other strategic objects and contract specifications, ensuring that community benefits can be fully integrated into the procurement process;
- Consulting with the sector on its capacity, the benefits it can bring, the packaging of contracts and its ability to take part in the process;
- Developing appropriate procurement processes, specifications, thresholds, pre-tender questionnaires and other requirements;
- Promoting tender opportunities widely, including through social enterprise sector networks; and
- Developing opportunities for social enterprises to be sub-contractors in the supply chain.

To obtain some of the benefits of social enterprise provision, councils may also consider alternatives to procurement, which may in particular instances be a better route to best value, including:

- Providing grant aid rather than procuring through a service contract;
- Establishing in-house provision with independence and accountability, perhaps as a development route for genuine social enterprise; and
- Establishing a local authority company, using the 'well-being powers', or clause 96 of the Local Government Act 2003

#### **5.4 Social enterprises and public procurement**

The nature of social enterprise, trading with social objectives, provides the potential to deliver a range of benefits, both for individual services or procurement actions and for the achievement of broader public goals. Many of these benefits are recognised by government in:

- *Social enterprise: a strategy for success*; DTI Social Enterprise Unit, 2002
- *The National Procurement Strategy for Local Government*, ODPM (2003)
- *Think Smart Think Voluntary Sector – Good Practice Guidance on the Procurement of Services from the Voluntary and Community Sector*, OGC and Home Office
- Locally – some city councils have promoted procuring from social enterprises in local initiatives or plans.

There is general recognition that widening the supply base to include social enterprise can increase procurement effectiveness and the achievement of value for money. There are a number of specific benefits that social enterprises may bring to an individual procurement action, and these stem from the combination of the entrepreneurialism of the commercial sector, a public sector ethos and close relationships with key stakeholders, staff, service users and communities.

These include:

### **Community and users**

Social enterprises are often organisations that have grown out of communities and retain close links to them. They can draw on resources, knowledge and sensitivity to community needs and aspirations. They may encourage people from disadvantaged or excluded communities into active citizenship.

### **Independence**

The structure of social enterprises gives them operational independence. They provide a practical accountability structure in which management can get on with the task of ensuring day-to-day high quality service delivery and innovation.

### **Specialist knowledge and expertise**

Social enterprises frequently have high levels of specialist knowledge and expertise in specific service areas or niche markets.

### **Profitability**

Social enterprises are predominantly non-profit distributing, all surpluses being reinvested in the services or their social objectives.

### **Innovation and efficiency**

Social enterprises are often innovative in delivering new working practices or delivery methods.

### **Sensitivity to customers**

Social enterprises can be an excellent vehicle for user-led services, and are able to provide a highly sensitive and responsive service to the changing needs of their customers.

### **Stakeholder engagement**

By engaging stakeholders in the delivery and development of services, social enterprises can fundamentally change the relationship between service and contract commissioners and stakeholders and between different groups of stakeholders.

### **Labour market**

As staff are often members of social enterprises with an ownership stake, they can have a significant impact on labour market issues. In-house staff may be more likely to accept pay rates that match those in the public sector. Investment in training and development, flexible working practices, a better quality of work life, family friendly employment practices, and a reduction in staff turnover are possible benefits from social enterprises.

### **Economic impact**

Social enterprises tend to keep economic benefits within a community, often owing to their location and recruitment patterns. They tend to train and recruit local staff, they may bring individuals who are disadvantaged in the labour market back into employment, who will subsequently spend wages locally, any surpluses being reinvested in local communities.

### **Creation of social capital**

Social enterprises and their members can contribute to creating and sustaining social capital, by their participation in local community activity and networks, creating and sustaining neighbourhood connections, friendship and work relationships, building trust and tolerance of diversity.

### **Wider policy objectives**

Because of their social objectives, commitment to communities and sensitivity to stakeholders, social enterprises can often contribute to the achievement of wider social goals providing a practical joined-up contribution. These can include:

- active citizenship
- environmental sustainability
- regeneration
- anti-poverty
- social inclusion
- community cohesion
- health
- community safety

Local authorities have the opportunity to consider these benefits in a procurement process. This means that the supply base can be legitimately widened. The legal framework must be clearly understood, appropriate procurement strategies adopted (working within government guidance and the EU rules) and appropriate support offered.

In the award of contracts a public authority must consider: community cohesion, diversity and equality, fair employment, risk management, health and safety, sustainability, financial, legal, policy, personnel, anti-poverty, human rights, Agenda 21, asset management and other relevant implications. It is clear that the benefits of trading with social enterprises fit closely with many councils' considerations.

## **5.5 Internal financial regulations**

Public bodies have internal financial regulations that lay out the rules for purchasing. Typically, these specify a range of procedures applied to contracts of different values. Councils can suspend these internal standing orders in certain circumstances, if they choose to do so. Under mostly County Councils' Contract Standing Orders, where other regulations do not prescribe the tender process, one of three approaches can be used:

- a standing list – where invitations to tender are limited to a previously compiled list of selected contractors;
- selective tendering – where there is no standing list but the Executive Director compiles a list of three contractors and asks them to tender;
- open tendering – where advertisements are placed in one local newspaper and an appropriate trade journal inviting tenders.

There is no requirement for a tendering process for:

- welfare services not exceeding £30,000
- works on buildings not exceeding £25,000
- for grants
- for all other contracts under £15,000

## 5.6 Community benefits

It is now generally accepted that local authorities can include community benefits in specifications for contracts. They can do this even when the contract is let under the EU procurement regulations. A number of conditions must be met, and in particular the community benefits must:

- be a core part of the procurement
- be relevant to the rest of the contract specification
- be capable of being evaluated in the selection process
- comply with equal opportunities
- add to the achievement of value for money
- not disadvantage non-local firms

The inclusion of community benefits is strengthened by reference to the community strategy or other high-level strategic objective. The ODPM National Procurement Strategy for Local Government says:

*“Under the Local Government Act 2000, councils are required to prepare a community plan [...] and have powers to promote economic, social and environmental well-being of their communities. Provided that there is compliance with EC public procurement regulations and Best Value, councils can work with suppliers to realise “community benefits” of this kind through their procurement activities.”*

The procurement of community benefits is important for developing the social enterprise supply market, and for ensuring that procurement contributes to the achievement of real joined-up working, and the authorities’ overarching corporate strategies or objectives. Achieving social goals is an inherent characteristic of a social enterprise. If its social goals match the community benefits required in a particular procurement action, then the social enterprise will be well placed to deliver the specification.

If procurement is to contribute to the achievement of corporate goals, then there must be a connection between the community strategy, the contents of specifications, and the selection of contracts to deliver those specifications.

## 5.7 Some examples

Councils have adopted a number of approaches. Sheffield City Council asks everyone tendering for housing and neighbour investment contracts how:

- they will contribute towards the council's overall objectives
- they intend to work in partnership with local social enterprises
- social enterprise could be integrated into their supply chains
- they might support the business development of the social enterprises with which they work.

Nottingham City Council is advanced in the use of social clauses in its construction contracts, arguing that they support the principles of Best Value, build on the council's commitment to Agenda 21, and reflect the government's own commitment to sustainable development. It applies the general power of "well-being" and the changes to the non-commercial considerations regulations, to take into account workforce issues, in the formation of its Approved Contractors lists.

The London Borough of Tower Hamlets, as well as adopting a social enterprise strategy, was proactive in encouraging social enterprises to be involved in the procurement process for the externalisation and development of its youth services. To support this process, it established a web-based arena in which organisations could identify supply chain opportunities, negotiate with subcontractors, build partnerships to strengthen their tendering capacity, and match the packaging of units in the tender process.

Another approach is to let two separate contracts alongside each other, with separate procurement processes. The classic example is the arrangement between Liverpool City Council and Bulky Bob's. The council issued separate contracts to collect large items of furniture, and to support people into employment. The benefits for the council and for the social enterprise derive from the fact that it won, and is delivering both tenders together.

## 5.8 Increasing local social enterprise involvement in the public sector

The assumption is that the relationship between social enterprise and the public sector is complex, and that good procurement is not just about buying goods and services, but is part of an organisation's achieving its strategic objectives through purchasing and contracting. In theory, the procurement process doesn't start with the intention to buy, but with high level corporate strategies or objectives.

Moreover, the variety in relationships between the public sector and social enterprises is complex. Social enterprises may:

- sell goods or "back-office" support services to public bodies;
- be contracted to delivery core services on behalf of a public body;
- receive a grant to achieve a public policy objective or social good, to which output targets may be linked;
- deliver a programme or project on behalf of a public body;

- be a partner with a public body in planning, commissioning or delivering services.

The UK government's wish to see voluntary and community organisations take on the opportunities offered by contracting has created further complexity as public bodies make this transition, often developing a half-way house between grants and contracts. This has resulted in emerging social enterprises and voluntary or community organisations that are starting to develop the characteristics of social enterprise, but are not yet dependent on trading income. The discussion of the process must reflect the six ways that social enterprises may achieve or develop a role in the public sector:

- through the conversion or development of voluntary or community organisations;
- through the conversion or direct externalisation of an in-house service;
- by the establishment or facilitation of a completely new social enterprise to take on a role identified by a public body;
- by invitation into partnership;
- by negotiation (where guidance and regulation allows);
- by formal tendering.

## 6 Future perspectives

### 6.1 Public Social Partnership

The capacity of social enterprises to generate new opportunities for society has been highlighted in several scientific studies and public reports. One of the most visible and important roles of the social economy in Europe has probably been that of contributing to social inclusion in a context of growing exclusion. This role will tend to increase in the coming years.

The social economy:

- contributes to endogenous economic development and territorial autonomy, objectives which are increasingly valued within a context of globalisation and territorial vulnerability;
- has revealed a significant ability to correct deficits in social welfare services;
- has demonstrated considerable ability to increase the level of social cohesion within a territory, making social participation and democratic culture more dynamic and correcting imbalances in the capacity of various interest groups to negotiate and exert pressure during the process of drawing up and applying public policies, especially those formulated at regional and local level;
- owing to its genuine operational model, the social economy offers a capacity for distributing and redistributing income and wealth in a fairer way than traditional companies;
- finally, has shown its ability to correct various imbalances in the job market.

For over two decades, the European institutions (Parliament, Commission and Economic and Social Committee) have recognised the social economy's capacity for correcting significant social and economic imbalances and helping to achieve various objectives of general interest. Recently, the European Parliament identified the social economy as a fundamental pillar and keystone of the European social model. As a result, even more than before, the member countries and the European Commission must undertake concrete commitments to make the social economy not only an effective instrument to achieve particular public policy objectives in the general interest but also, in itself (i.e. cooperative movement, mutualism, association and general interest initiatives by civil society), an objective in its own right, indispensable for the consolidation of a developed society and the values associated with the European social model.

Within the countries the role of the social economy varies greatly and the policies that have been implemented to foster the social economy present a varied catalogue of types. The added value of interregional cooperation through Europe lies in the possibility of benchmarking and exchanging experiences and points of view among public authorities and social economy organisations of countries where the social economy sector enjoys widespread social recognition and a long tradition, is economically dynamic and is capable of dialoguing with the authorities, and countries where the political 'discovery' of this institutional sector has only been taking place recently.

In a context of great social and economic transformations, the social economy is also providing answers to the new forms of exclusion related to access to services and activities, such as financial exclusion and consumer exclusion.

Partnerships between social economy organisations and governments are increasingly considered by European governments to be an efficient way of tackling social exclusion. Public Social Partnership (PSP) is a new approach to public service delivery. The most successful examples of PSP are founded upon a co-planning approach, whereby partners from the public sector and the social economy sector share responsibility for service design, in order to optimise outcomes for service users. The governments of many member states (for instance the UK, Italy, Denmark, Ireland and Sweden) have recognised the valuable role that social enterprises and social economy organisations in general play in the delivery of public services.

In specific cases governments have emphasised that, for the public sector, the social economy sector's proven ability to innovate and its experience in working with particular client groups can provide the opportunity for wider social benefit when the two work together to deliver public services. These wider social benefits represent social added value for the public sector, and have the potential to contribute to the attainment of Best Value.

During the development of the activities of the EQUAL Initiative, many Development Partnerships (DPs) had the possibility to provide funding and support to PSP pilots. The approach adopted was influenced by ongoing development work in PSP and the experiences of co-planning in other European countries, particularly Italy.

As early as the year 2000, the Ministers of Social Affairs of Denmark, the Netherlands, the United Kingdom and Ireland established an informal network to initiate an ongoing discussion between the four European governments and the European business community on the furthering of partnerships to address societal problems. The intention was to broaden the network on both political and organisational levels and involve more governments in the process. The declaration *Government as Partners – Fostering Public-Private Partnerships for an Inclusive Europe* speaks of "recognising the need for European governments to develop enabling frameworks for effective public-private partnerships to emerge, develop and grow as well as initiatives to scale-up and transfer experience on successful partnerships in Europe." As part of this development, *the European Centre for Social Welfare Policy and Research* was commissioned by the Dutch Minister of Health, Welfare and Sport (Directorate of Social Policy) to conduct the study *Building Bridges for New Social Partnership*.

In the same year 2000 the Italian Government approved law 328/00 (social services reform) whose article 1 states that *"The programming and the organising of the system, according to the principles of subsidiarity, are the task of the local and national public authority that must facilitate non-profit organisations. These, together with public and private organisations manage and supply the services. Social solidarity has to be promoted, increasing the value of the initiatives of persons, families, self-help and mutuality"*.

This law – as specified in the section on *piani di zona* – clearly establishes that public authorities have to work with social economy organisations through local committees

composed of representatives of the local authorities, social economy organisations and trade unions to draft social policy at the district level (co-planning); the same subjects have to implement the services for the clients (co-programming).

As often happens with many key-words (especially in the social economy field), the term *Public-Social Partnership* has various meanings in different countries and social contexts, and is therefore often unclear or even misleading. The Copenhagen Centre – which is playing an important role to promote *PSP* on a European level – defines it as follows:

*“People and organisations from some combination of public, business and civil constituencies who engage in voluntary, mutually beneficial, innovative relationships to address common societal aims through combining their resources and competencies.”*

*PSP* aims to achieve societal benefits through joint voluntary action between the public, the business and the non-profit sectors. Some examples:

- Businesses, social enterprises and local government bodies join forces to re-integrate the long-term unemployed into work and society.
- Social enterprises and local government bodies join forces to find an adequate answer to the demand for community services.
- Businesses work with schools to build more effective bridges for students to the workplace.
- National governments encourage businesses to come together with NGOs and trade unions to improve labour standards in global supply chains.
- Volunteers from business work to build the strength of, and learn from, community organisations.”

On the political agenda, we have to demarcate two closely related terms. *Public-private partnerships* refer to a contracting relationship between the public and the private sectors for the provision of a public service. They do not necessarily address common societal aims. *Corporate Social Responsibility*, as another catchword closely related to the partnership-approach of *New Social Partnerships*, puts its focus on the role of the companies. It is understood to be the expression of a company's commitment to and acceptance of its role in society. Important issues are e.g. ethical behaviour of the company, measures on equal opportunities for employees, ethical investment and, as one issue among many, *New Social Partnerships*.

In many European countries partnerships that involve the public sector, the business community and civil society are not a new phenomenon. What is new is not the emergence of such partnerships, but the political will in a growing number of countries, regions and policy areas to actively support them. Governments have become increasingly active in supporting *New Social Partnerships* because of their belief that social challenges have become too complex and interdependent to tackle them alone. Not the top-down approach, where governments act as keeper of the system, but an interactive policy is seen increasingly as a promising approach to tackling social exclusion. Governments thus follow a trend in public management, which assumes working in partnerships as inherently advantageous. They are searching for a new balance of their roles, responsibilities, accountabilities and capabilities.

Based on that assumption, in recent years some European countries (UK, Netherlands, Denmark, Ireland, Italy etc.) started to set up governmental structures on the national, regional and local levels to support Public Social Partnerships. Their focus is on various policy fields, such as employment, education and equal opportunities. Other countries, such as Spain and Germany, are following this development, but are focusing on one key issue, which is to combat (long-term) unemployment. Based on the experiences already gained, these countries are trying to develop a more efficient delivery of partnerships, to mainstream the use of partnerships at all levels of public services and ensure that partnerships are inclusive, which means involving all relevant players in the field from the community, business, voluntary sector and local governments.

It is important to consider also the open question of including the debate on Public Social Partnership in the more general one on Public Private Partnership as defined by the European Parliament resolution on public-private partnerships and community law on public procurement and concessions (2006/2043(INI)). Reading the resolution it is possible to understand that there is an important connection between the existing rules on the topic and the orientations followed by the European Court of Justice.

The added value is evident, since it pays attention –in a transversal way – to the different ways to create alliances between public and private sector. It is evidently a delicate issue, which becomes even more delicate when these alliances concern services related to citizens' rights; consequently it is necessary to take into account the different national experiences as well as the different models which are the core of this relationship system and organisational model.

As far as community services are concerned, every outsourcing and collaboration with private bodies must have a tenet: responsibility for essential services must be held by qualified bodies; the need for savings cannot prevail, neither on the quality of services nor on the safeguarding of the rights of service providers. Similarly it is necessary that the quest for efficiency and innovation must be bound to the principles of accessibility, transparency and non-discrimination.

It is also necessary to support public administrators in governing these partnerships with an efficient and unitary system of rules. That is the reason why the European Parliament asked the Commission for a stable reference framework for local authorities' choices and to include these rules in the general European legal framework.

## **6.2 Some examples – partnerships in some key areas**

### a. Employment creation

Without any doubt, employment creation has been at the centre of partnership initiatives so far. Partnership-led local employment initiatives are a cornerstone of the European Employment Strategy and an increasing share of public funds is channelled out into local initiatives via EU programmes.

Partnership-led employment initiatives are seen as a measure to improve the employment opportunities of the most vulnerable groups, such as people with disabilities, persons with a low educational level and migrants. A recently published report on *New Employment Partnerships in Europe* puts the advantages of the local partnership-approach as follows:

- The partnership form has a highly convincing ability to create efficient pathways between systems and – for the individual – to the labour market;
- In partnerships, people who have an insight into the local area's human capital meet people who know how to run a business and are in touch with the movements on the local labour market;
- Local partnerships have the ability to maintain personal involvement and commitment, and thereby overcome the lack of commitment which is often the problem of large-scale partnership initiatives.

### **The Lisalmi Partnership (Finland)**

#### *History / Background*

Lisalmi partnership is situated in the rural northern part of East Finland. The region is characterised by an unemployment rate of 20% of the workforce, a high emigration rate of young people and a low general education level of the population.

The founding members were three municipalities that set up a local consortium to join in fighting unemployment and social exclusion.

#### *Activities / Aims*

The partnership has sparked off a variety of service related activities such as provision of care for school children, the disabled, war veterans, provision of domestic services as well as the production of open air theatre and the like. It has in general supported the establishment of small and medium sized enterprises including a business incubator unit focused on information technology. It has set up the Kehpaja Development Cooperation Workshop run by Lisalmi Youth Aid with the objective of providing social support, training and work experience to young people threatened with delinquency and other psycho-social problems.

#### *Partners involved*

The local consortium consists of 50 key local actors from the public, private and community sectors. It has developed in an informal way since people sitting on committees and partnership groups are recruited in their personal capacity and not as representatives of their organisations.

#### *Results*

The partnership managed to create over 100 permanent jobs and 377 temporary jobs within three years and established about 28 new enterprises. One of the most important results of the partnership is that the unemployed and socially excluded who have been members of the steering and other partnership committees have gained a forum to influence policies, schemes and activities concerning them. The Lisalmi partnership has had a substantial input on the formulation of local and regional policy and strategies with a particular focus on their likely impact on those who are affected by unemployment and social exclusion.

## b. Health

Workplace conditions and stress problems are increasingly seen as possible factors that have a negative impact on employees' health, including alcohol and drug use. In recent years, companies have been increasingly getting involved in health promotion and prevention programmes to improve the health and well being of their work forces as well as their families. Health promotion and prevention programmes are in more and more cases carried out in partnership with companies, community organisations and public health services. The programme described below relates to a model programme of drug and alcohol abuse prevention among workers and their families that was developed by the ILO, WHO and UNDCP.

### **The Sundsvall experience (Sweden)**

#### *History*

A programme on drug and alcohol abuse prevention among workers and their families has existed in Sundsvall, Sweden since 1989. It is the result of the concern and social engagement of some entrepreneurs with respect to the negative effects of substance (alcohol, drugs) abuse in the population. Eight larger firms participated as a result of a networking process, i.e. nearly half of the working population of Sundsvall (more than 15,000 people) participated in the programme in one way or another.

#### *Activities / Aims*

The programme has developed in the direction of company-specific health promotion oriented alcohol and drugs prevention programmes on the basis of the notion "*Drop the abuse – not the employee*". Key parts of the programme include the role extension of workers (foremen supervising not only production but also the well-being of the workers) and the awareness-raising role of former drug addicts. The promotion of activities outside the companies, e.g. prevention at schools, the training of social workers and establishing co-operation with the police and customs on the one hand, and the obligations for subcontractors to agree to the policies on drug abuse stipulated by the companies on the other, have become additional key elements in Sundsvall.

#### *Partners involved*

Managers of several larger firms, assembled on the basis of the ARMADA concept (Association of Resource Managers Against Drug and Alcohol), are the driving force behind the programme and are assisted by unions, occupational health and welfare services and drug experts and trainers.

## c. Older people

Social issues concerning older people are age discrimination, early retirement and/or forced retirement, unemployment for those over 50, health problems and the delivery of social care services just to name a few. Partnerships can be very effective in combating age discrimination with respect to employment or helping older workers cope with the transition from work to retirement. Also, by using the partnership approach, one of governments' main aims is to involve the target-groups of their policies. In order to meet older people's needs, there are a number of initiatives that aim to work directly with older people mainly at the local level.

## **The Better Government for Older People Programme (UK)**

### *History*

The *Better Government for Older People Programme (BGOP)* was launched in 1998, with support of central and local government and older people's organisations. It was part of the UK's Modernising Government Agenda, and aimed to improve public services for older people by better meeting their needs, listening to their views, and encouraging and recognising their contribution.

### *Partners involved*

*BGOP* is a partnership between central government, local government, voluntary organisations, the private sector and community groups. An Older People's Advisory Group was set up to ensure that older people had a say in every stage of the programme. In addition, forums, panels and other vehicles for consultation were set up at a local level. All in all, over 300 organisations were involved.

### *Activities / Results*

Between 1998 and 2000, 28 pilot projects in local authorities throughout the United Kingdom covered a broad range of issues, such as health and social services, safety, lifelong learning and volunteering. Although each project was uniquely designed, they had the following aims in common: to provide older people with:

- clearer and more accessible information
- simpler access to services
- improved linkage between service providers
- more say in the type of service they require

The programme has helped to identify pitfalls and gaps in services, helped to focus resources where they are most needed, and resulted in tailor-made services that meet the requirements of local communities better than other programmes do.

## **Renfrewshire Alternative Procurement Project (lead partner: RCVS)**

In Renfrewshire a public-social partnership has been established to deliver a 'Befriending Service' to the elderly. The project aims to:

- reach lonely, isolated people
- create companionship and social interaction
- provide service advice
- raise awareness of 'health care issues'

Two steering groups have been established to serve operational requirements:

- Corporate Steering Group: RCVS, Forth Sector, SCVO-Equal, Economic Dev. RC, WRVS, Volunteer Centre, RSEP, Scottish Enterprise, Communities Scotland, Paisley Partnership Regeneration Co.
- Operational Group: Social Work Dept RC, Economic Dev RC, RCVS, WRVS, RCA Trust, Volunteer Centre, Renfrewshire Carers, Contact the Elderly, RAMH, Paisley University

The pilot has so far delivered a range of activities

- E-communication 'commsgroup; system established to benefit communications between groupings
- Researching of demographics, published work and other supporting 'evidence of need'
- Meetings with partners and service users
- Research with various partners within local authority regarding procurement systems, practices and regulations including European legislation and directives

- Formal launch of project to social economy in Renfrewshire
- Development of marketing material in support of project
- Continued meetings to firm up aspects of delivery design
- Negotiations under way with social work department re funding arrangements
- Meetings held with potential services providers re standards and provision of specific services
- Ongoing research on further partnership opportunities
- Ran legal framework day to identify consortium development options
- Project branding now complete and project will be called ROAR – Reaching Older Adults in Renfrewshire – and will be accompanied by a lion logo.
- Service design proposal considered by the Social Work Department. Part of the services will be funded from both the local authority Social Work Department and Greater Glasgow & Clyde Health Board. Service design group has reconfigured into Implementation Working Group. A timeline is in place for each service element being produced, researching additional funding.

#### d. New services

##### **Public-Social Partnership Recycling Initiative (lead partner: CRNS)**

This public-social partnership is looking at public-social partnerships in the thematic context of community recycling, through the development of new services. This pilot is led by Community Recycling Network Scotland.

The first area being piloted is North Lanarkshire where a public-social partnership has been established to pilot three services that have been identified by the Housing Department. Two groups, a Steering group and a Service Design Group, will deliver the work.

Three furniture projects – RECAP, Beulah Scotland and St Patrick's Furniture Project – are all keen to be involved although they will need support to build capacity. The CRNS and the Social Economy Support Team at the Business Gateway will help them do this.

The Service Design group will be chaired by Development Officer from CRNS and will have representatives from the three furniture projects.

This pilot has now delivered a range of activities:

- Service specifications have been designed for all three services with input from service users, furniture projects and North Lanarkshire Council. These are more efficient, user friendly services which differ significantly from existing services.
- Service design, including costs and specifications now agreed for the furniture storage service and the emergency furniture packs. The service design process has involved service users, the six Tenancy Support Teams, the three furniture projects, the ACCESS Project and a number of other furniture projects in UK. The projects are finalising the service design for the permanent pack service. The PSP services will be known as HOMEREACH.
- Development staff continues to give capacity building support to participating organisations especially in relation to developing consortium bids for funding.
- Three workshops delivered on PSP for delegates at the CRNS annual conference.
- Met with six North Lanarkshire Tenancy support teams to discuss PSP.
- PSP Launch attended by 40 delegates

- Delivered presentation on PSP to Forth Valley Waste Strategy
- The pilots commenced across North Lanarkshire. The social enterprises are now the sole providers of the three services which are being piloted through PSP.
- The Council brought together a team of people to start developing the tender. The Procurement Manager at North Lanarkshire Council is overseeing the process and is seeking advice from the Scottish Executive Procurement Directorate on the weighting that can be given to the community benefit clause.
- Organised and chaired one Steering Group meeting and one Design Committee meeting
- Arranged and attended three meetings between the social enterprises involved in the pilot
- Attended an event (through another EQUAL programme) on service user involvement
- Met with North Lanarkshire Council at the end of March to discuss how well the pilots are progressing.
- The service users and the teams within the Council that are using the services are very positive about the services that are being delivered.
- Advised on the development of a possible PSP in Edinburgh which will see three large social enterprises come together to pilot the bulky waste service.
- Carried out a survey of Homelessness Strategy Officers in Scotland to allow us to benchmark the success of the North Lanarkshire model
- Provided support to two of the social enterprises involved to carry out an LM3 calculation on both the pilots and their individual organisations

### 6.3 Green procurement

Green Public Procurement (GPP) has been defined as: “the approach by which public authorities integrate environmental criteria into all stages of their procurement process, thus encouraging the spread of environmental technologies and the development of environmentally sound products, by seeking and choosing outcomes and solutions that have the least possible impact on the environment throughout their whole life-cycle”. Hence, the concept of Green procurement covers situations in which the purchasing authority has the intention to buy a ‘green’ product (by stipulating for example environmental award criteria), without this guaranteeing also in all cases a ‘green’ outcome of the procurement procedure (if the environmental award criterion is not sufficiently important it may indeed be that a ‘neutral’ offer wins the contract).

The European Commission has set up a wide range of activities to enhance Green Public Procurement, from the production of a Handbook on Green Public Procurement, to monitoring the uptake of GPP in member states (an interim report and a final report have been made public on <http://ec.europa.eu/environment/gpp>). The Environment DG, at the stakeholders meeting on 25 June 2007, presented possible new measures and actions in the field of Green Public Procurement.

The new handbook explains in clear, non-technical terms how public purchasers, such as schools, hospitals and national and local administrations, can take the environment into account when buying goods, services and works.

If public authorities opt for environmentally sound goods, services and works, they will help the EU achieve sustainable development. Green purchasing increases demand for green goods, encourages green production and helps environmentally friendly technologies conquer the market. It also considers the efficient use of energy and resources as well as waste prevention, thus contributing to saving taxpayers' money. The new handbook gives best practice examples and provides advice throughout the steps of a procurement procedure.

The EU's study of green procurement highlighted that there are seven countries – Austria, Denmark, Finland, Germany, Netherlands, Sweden and UK – the “Green-7” – that consistently have more tenders with green criteria than the other members. These “Green-7” exhibit some or all of the following traits:

- Strong political drivers, national guidelines and programmes for GPP
- Public information resources via websites and eco-labels
- Use of innovative tools like life cycle thinking and green contract variants in procurement procedures
- Frequent implementation of environmental management systems by purchasing authorities

Barriers: The results regarding the four main barriers to GPP are:

1. Green products would be more expensive
2. Lack of environmental knowledge
3. Lack of managerial and political support
4. Lack of tools and information
5. Lack of training

From the point of view of entrepreneurial organisations it seems important that when defining the subject matter of a contract, contracting authorities have great freedom to choose what they wish to procure. This allows scope for including – if wished – environmental considerations, provided that this is done without distorting the market. This also means the setting of any targets has to be done by the politically responsible bodies at European, national, regional or local level for their public procurers.

Voluntary initiatives for green public procurement have to be supported as long as the “greening” is related to the procured product or service. This means that organisations representing enterprises (including social enterprises) warn – for competition reasons – against criteria that are related to the general activities of a company. Every company that acts legally in the market should have the right to participate in a given tender as long as it fulfils the requirements set out for the specific subject of a tender. If environment requirements go beyond the specific subject of a tender and are related to the production processes in general or the life-cycle assessment of certain products or services, the risk of excluding companies, especially SMEs, from the whole procurement procedure is very high.

In fact SMEs do not often have the resources or possibilities to provide complex and costly life-cycle calculations or expensive certificates, even if their products and services would have less impact on the environment (local production and provision) than those of large enterprises, which can easily effort such additional requirements. Thus, there may be possible conflicts between the interest of achieving “greener” public procurement and the interest of SMEs to participate in public procurement, especially if the proof of “being greener” creates serious bureaucratic and administrative burdens. This is a possible risk that is important to consider in the work on GPP, especially since there is also an ongoing discussion – both at EU and national level – on how to increase SMEs’ participation in public procurement.

*Concerning environmental award criteria* in addition to environmental (minimum) technical specifications or where no such criteria exist, the Commission would recommend purchasers to assess the main environmental impacts of the relevant product and formulate one or more environmental award criteria by reference to these impacts. The Commission proposes that additional points should be given for example to bids which score best in the field of energy efficiency, minimised use of natural resources throughout their life cycle, less pollutant emissions during production and least possible impact on biodiversity.

Practical experiences with such advanced award criteria have shown that they bear the risk of giving room for the manipulation of award procedures. Therefore, such criteria have to be as simple and as clear as possible and the concrete weight of each such criterion has to be predefined in the tender. Such tendering procedures are however often very complicated for SMEs to participate in. SMEs have normally not enough resources to provide the necessary information and to invest in often expensive certificates. It should also be noted that such requirements demand very skilled staff in the purchasing authority, in order to be able to make accurate decisions and evaluations of such criteria. Therefore, it would be crucial to recommend in general the use of technical specifications instead of environmental award criteria as the Commission is proposing itself in its background document.

## 7 Conclusions

For many years – even if to different degrees – the national legal systems of the EU member states have been modernising the objectives and the ways of working of the supply of public services, a process progressively promoted by EU recommendations and communications. For example in the Italian, and also in the English and French, legal systems there have been an important change concerning the relationship between public institutions and citizens in the field of the exercise of public functions. This process began in Italy as well as in other countries immediately after the Second World War. In Italy it started when the Constitution of the Republic came into force and is clearly stated in Article 2 which establishes that: “The Republic recognises and guarantees the inviolable human rights, for the man as individual as well as in the social groups in which he acts”, and also that the Republic “asks for the fulfilment of binding duties such as social, political and economic solidarity”.

This article was followed, during the 1990s, by the approval of important laws on social policies such as law 381/1991 on social cooperatives and law 265/1999 which establishes that: “Municipalities and Provinces carry on their functions also through the autonomous initiatives of their citizens as well as their social groups”. In 2001, Article 118 of the Italian Constitution finally establishes that: “The State, the Regions, the metropolitan Cities, the Provinces and the Municipalities promote the autonomous initiative of their citizens, on an individual or associated base, for carrying on general interest activities, on the basis of the subsidiarity principle”. Nowadays it is possible to say that in Italy the legal system recognises that public functions are carried on not only by the Institutions (which remain responsible for these functions), but also by individual citizens and by their social formations.

Public Institutions must recognise this role of the private sector and promote its engagement. To this end, it is useful to recall two important documents of the European Commission, the Communication of 26th April 2006 (COM 2006/177) on “social services of general interest in the European Union” and the Commission decision (referred to in this EC Communication) of 28th November 2005 (2005/842/CE) concerning the application of Art. 86, par. 2 of the EC Treaty on state aid by way of trade-offs for obligations of public service granted to particular undertakings entrusted with the operation of services of general economic interest.

The Decision mentioned above, thanks to its clear reference to the Communication of 26th April 2006, represents an extremely important instrument which should be applied not only to redressing the burdens taken by enterprises in charge of managing public services of general economic interest (in the Italian legal system: provision of local public services of general economic interest) but also to supporting cooperatives’ commitment in the social public function according to Article 118 of the Italian Constitution, also thanks to special agreements under public law.

For the procedures, please refer to the description of contracting with work integration social enterprises and to the importance, for those relationships based on the subsidiarity principle, of creating strategic local alliances which provide the “right”

context in which they can develop themselves according to national and Community law.

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Among the texts’ authors are: people working for the project, people working in social economy initiatives, people from various other disciplines who are interested in the social economy. All materials published in the series are available on the website: [www.ekonomiaspoleczna.pl](http://www.ekonomiaspoleczna.pl)



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