



EUROPEAN WEB SITE ON INTEGRATION

INTEGRATION DOSSIER N° 1

Using public procurement as an element of diversity and equality policies

Introduction

In contrast to EWSI Special Features which link an integration issue highlighted in current news with EWSI content, Integration Dossiers use the inflow of information on the EWSI to identify emerging policy or practice trends.

Focus of the present Dossier

The present Integration Dossier on *public* procurement draws attention to another role of government than that of policy-maker, namely that of social entity that can promote economic integration through its own functioning.

1. What is the link between public procurement and integration?

Defining public procurement

The UK Office of Government Commerce provides a [thorough definition of public procurement](#):

“Public procurement is the process whereby public sector organisations acquire goods, services and works from third parties.

It includes much that supports the work of government and ranges from routine items (e.g. stationery, temporary office staff, furniture or printed forms), to complex spend areas (e.g. construction, (...) aircraft carriers or support to major change initiatives).

It also includes a growing spend where the private and third sectors provide key services directly to citizens in areas such as welfare-to-work, further education, social care and health.”

Using the purchasing power of public actors to promote integration

[A concept paper on European immigrant integration modules recently commissioned by the Belgian EU Presidency](#) argues that since public administrations buy goods and services just like any other organisation, their buying power can serve as an instrument for promoting the integration of migrants – whether or not their purpose relate directly to integration.

In fact, there are three different ways to use public procurement as a diversity and equality instrument. The first is to remove obstacles to the participation of under-represented businesses, including migrant-owned businesses – this is what is being meant by ‘supplier diversity’. The second is to reserve a proportion of jobs within the company to which the contract is awarded for people with a disadvantaged position on the labour market – including migrants – usually through the use of social clauses. The third is to promote diversity policies and equal employment practices to contractors down the supply chain.



Therefore, mapping the pool of existing suppliers should provide any administration with an understanding of:

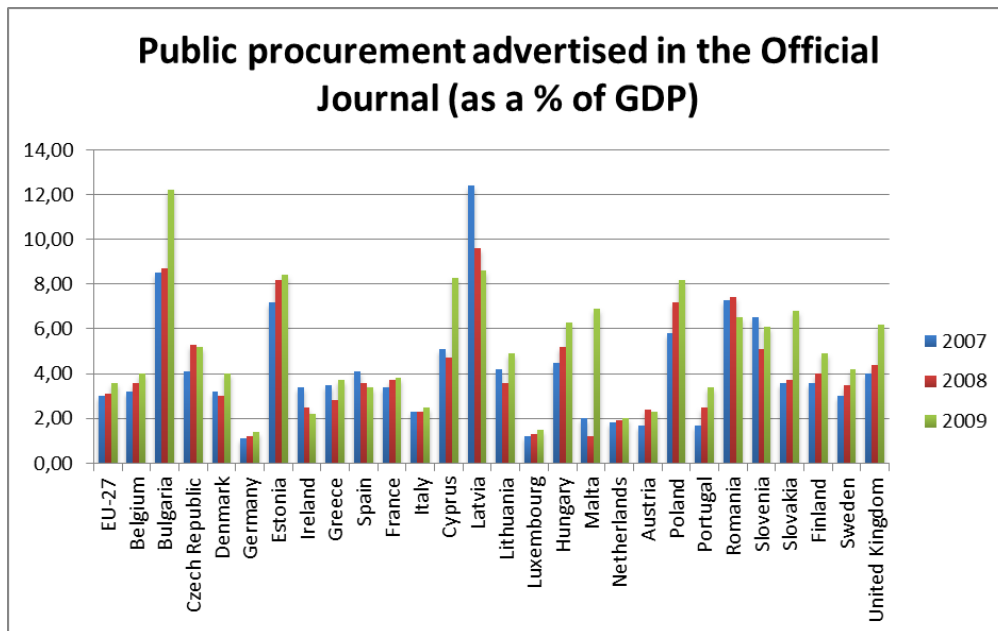
- How many migrant-owned businesses are part of the pool of suppliers, and the obstacles these businesses may encounter at each stage of the procurement cycle
- The benefits and added value that migrant-owned businesses may provide to the administration
- The number of companies in the pool of suppliers that have adopted diversity and equality policies in their employment practices
- The human resources and equality and diversity policies of suppliers

Mapping the weight of public procurement in the EU

The European Commission estimates that [public procurement globally accounts for about 17% of EU gross domestic product - a sum equivalent to half the GDP of Germany.](#)

EU Directives 2004/17 and 2004/18 specify [value thresholds](#) above which public procurement opportunities must be advertised in the EU Official Journal.

The graph below¹, which shows public procurement advertised in the EU Official Journal as a percentage of GDP, clearly illustrates that public procurement increases regularly in most EU Member States.



Source: Eurostat (2011)

¹ Only these opportunities are taken into account in the graph. This explains the difference between *all* public procurement opportunities accounting for 17% of EU GDP, and public procurement opportunities *advertised in the EU Official Journal* accounting for 3.60% of EU GDP. It is estimated that the latter count for roughly 16% of the total public procurement market in the EU.



Which economic actors are affected by this spending? A [recent study made at the request of the European Commission](#) indicates that Small and Medium Enterprises (SMEs) only get 34% of the value of contracts as defined by the EU Directives and that no progress has been made since 2005. Although specific statistics are not available, empirical research² suggests that migrant-owned SMEs are particularly under-represented among suppliers of public actors.

To what extent are social aspects considered in this spending? No statistics exist at EU level, but in France, for instance, [only 1.9% of all public contracts signed in 2009 contained social clauses](#). Most of them have a social inclusion purpose and oblige contractors to hire people who are in a disadvantaged position on the labour market.

Why is public procurement rarely used in support of social inclusion?

Recent research³ indicates that two factors help to explain why public procurement is rarely used to stimulate diversity and equality policies: (1) the legal complexity of public procurement legislation, which acts as a break to innovative approaches, with public actors tending to stay on the 'safe side'; (2) the belief that eliminating obstacles faced by migrant-owned businesses (positive action) is akin to giving them preferential treatment (positive discrimination) and is therefore illegal.

2. What does the information on the EWSI tell us about current trends in using social considerations in procurement?

Public procurement is understandably a category for which only a relatively low amount of content is currently available on the EWSI, reflecting the fact that using social considerations in procurement is only at its beginnings. However, the growing inflow of information (good practices, documents, news, links, etc) on this topic in the last year makes the following trend assessment possible.

Removing obstacles to the participation of under-represented businesses, including migrant-owned businesses

In order to identify obstacles that migrant-owned businesses may encounter, public administrations can undertake opinions surveys of existing suppliers and tenderers who failed to get a contract. For instance, as shown in the [DIVE project report](#), the city of Leeds in the UK developed an Equal Opportunities survey among its suppliers, which helped the City Council to assess how open and transparent its procurement practice was⁴. In addition, such surveys provide a clearer picture of the characteristics of migrant-owned business, such as the size of companies and the sectors in which they work.

² In the framework of the [INTI-Cities](#) and [DIVE](#) projects, interview officials reported that none or very few migrant-owned SMEs supplied local authorities with goods and/or services.

³ See the [INTI-Cities](#) and [DIVE](#) project report.

⁴ Under the Equality Act 2010, all public bodies in the UK "must have due regard to equality considerations in order to meet (their) obligations under the duty. In order to comply with procurement law, when doing this (they) must consider the extent to which equality considerations are relevant and proportionate to the subject matter of the contract". For instance, as a minimum, public bodies must "include contract conditions which: (1) Prohibit the contractor from unlawfully discriminating under the Equality Act; (2) Require them to take all reasonable steps to ensure that staff, suppliers and subcontractors meet their obligations under the Equality Act.". See *The Essential Guide to the Public Sector Equality Duty*, (London: Equality and Human Rights Commission, 2011).



Obstacles often include a lack of information regarding available contract opportunities, but also a low knowledge of how the procurement cycle actually works. Administrations can therefore organise targeted [‘meet-the-buyer’ events](#) via appropriate partners such as chambers of commerce, taxation offices and other [community-oriented SME support providers](#). Training and support activities can also be developed so as to equip migrant-owned businesses with the skills to bid for public tenders.

Other steps can be taken in order to simplify the public procurement process and to make it more transparent. For example, the authority in charge of preparing the London 2012 Olympic Games established CompeteFor, a single internet portal acting as a brokerage service between London 2012 buyers and potential suppliers. A [2008 report](#) established that a number of ‘diverse’, local, businesses – including migrant-owned businesses – had already won contracts through the CompeteFor system.

However, a [recent study on supplier diversity](#) adds a word of caution, warning that levelling the playing field can only work to some extent, and that positive action measures may be necessary to truly enable migrant-owned businesses to have an equal chance to bid for contracts. As an example, the study cites the work of [ADIVE](#), a French organisation, and [Supplier Diversity Europe](#), which establish relationships between large purchasing organisations and under-represented businesses, particularly from immigrant backgrounds.

Finally, the supplier diversity efforts above should be seen in the framework of the general policy of making public procurement opportunities available to SMEs. Such a policy is supported at [European level](#), including through the [Small Business Act for Europe](#).

Using social clauses in public contracts to promote the employment of people who are excluded from the labour market, including immigrants

Another way to combine an administration’s purchasing power to social inclusion goals is to use social clauses in public contracts. Such clauses usually require contractors to hire people who are unemployed in order to perform the contract. While such clauses do not target migrants explicitly, in practice they are often beneficiaries since people with a migrant background usually experience higher unemployment rates.

Recent examples of using such clauses have featured on the EWSI. [In April 2011](#), the Spanish Ministry of Defence announced that social clauses for disabled people would be included in all contracts from now on, and that clauses for promoting the employment of people at risk on the labour market would be gradually introduced.

[One of ENAR’s latest reports](#) mentions social considerations in procurement from an anti-racist perspective and cites the example of the town of Avilés (Spain), which contracted in 2009 a non-profit foundation for the maintenance of public parks and playgrounds in local schools. The foundation, which promotes the social inclusion of Roma people, was under obligation to hire socially excluded or at risk persons, in addition to providing adequate and continuous training to them, including on equal opportunities.

In the Netherlands, the city of Amsterdam introduced the ‘Social Return’ initiative in 2008, by which the municipality sets out social conditions on its purchase of goods and services, in view of promoting the employment of people at risk on the labour market. [In the city’s southeast district – which counts more than 60% of foreigners – the municipality has contracted a major construction](#)



[company for urban development work](#). The municipality and the contractor agreed yearly targets for traineeships given to local youngsters, number of jobs created for local unemployed residents but also on the contractor's turnover with local businesses. Both actors used a common scorecard system to record the results – in its first year of operation, this local Social Return initiative has resulted in 12 traineeships and 7 employment positions for people with a migrant background. The Social Return initiative is used in other Dutch cities too, such as [Maastricht](#) and [Gouda](#).

As reported in a [2007-study commissioned by the European Commission](#), Denmark issued an action for social considerations in public procurement as early as 1995. In 2000, the Danish government created an [internet portal on the use of social clauses in procurement](#). The portal gives [an example of a social clause specifically directed at promoting the equal treatment of people with a migration background](#). The clause requests suppliers to have developed a written equal treatment policy for recruitment, termination, transfer of job, training and promotion; and grants the contracting authority the right to request detailed explanations of such policy. As an example, [such a clause has been used by the municipality of Kolding for contracting out the management of a residential home](#). The tender specifications obliged the contractor to reserve 5% of the positions required for performing the contract to *“employees from distinct groups such as long-term unemployed and people with reduced working ability”*. It also requested the contractor to have a written personnel policy for these positions that ensured *“equality and integration”*.

[In a document released in December 2010 by the French Ministry of Economy](#), it is stated that the State is considering diversity management and non-discrimination audits of suppliers for contracts of over 1 million euros. Similarly, the French State has set itself a 2012 target of using social clauses in at least 10 per cent of the public contracts for which 50 per cent or more of the budget is spent on staff-related costs.

In this perspective, the Ministry of Education and the Ministry of Ecology and Housing [announced in June 2011](#) that social clauses would gradually be introduced in their contracts, starting with services contracted by their general secretariats.

Furthermore, all urban renewal projects implemented by the French National Agency for Urban Renewal (ANRU) must contain social clauses designed to promote the employment of people living in 'Urban Sensitive Zones' (ZUS) – these neighbourhoods often have a high density of people with a migrant background. [In a recent evaluation](#), the ANRU concluded that over 12,000 ZUS residents had benefited from work through these public contracts.

However, the ANRU evaluation report also points to the side effects of such clauses. For instance, since a majority of contracts are related to constructions work, the vast majority of beneficiaries are men. In addition to that, clauses are limited to the implementation of contracts. As such, they offer short-term temporary work, with little follow-up.

Nevertheless, social clauses still provide the most effective way for linking the purchasing power of public authorities to a social inclusion impact, in addition to strict economic interests. It is therefore no coincidence that, in [its response to the European Commission's recent consultation on the modernisation of EU public procurement policy](#), the Platform of European Social NGOs pressed for giving a greater role to social criteria in selecting and awarding tenders by *“contributing to the provision of effective active inclusion approaches (...) as well as decreasing unemployment especially for those who are the furthest from the labour market (single parents, long-term unemployed, people with disabilities, migrants, ethnic minorities,...), (...) combating discrimination and promoting equality”*.



Using non-discrimination clauses in public contracts to ensure compliance with anti-discrimination legislation

Since 2006, [Sweden uses non-discrimination clauses in public procurement contracts](#). These clauses, which apply to contracts for a minimum of eight months and above a value of 750,000.00 SEK (circa 85,000.00 EUR) applies to 30 of the largest public authorities. Upon signing the contract, the supplier is required to provide a detailed equality plan to the contracting authority. The Office of the Ombudsman against Discrimination is responsible for evaluating the equality plans. Contracting authorities are then required to monitor the implementation of the plan and apply sanctions if necessary. While a 2007 evaluation pointed to failures in applying contract conditions and using sanctions, the clauses' legal framework "*provides a stimulus for action on discrimination by supplier organisations*".

Promoting diversity and equality policies to suppliers

Another aspect of socially-responsible public procurement that seems to be growing is the responsibility – and the power – administrations have of promoting diversity and equality policies to their suppliers, and then down the supply chain to contractors of suppliers.

An example of the growing recognition of this responsibility is the recently-adopted [Eurocities Charter on Integrating Cities](#), in which signatory cities commit themselves to "*apply principles of equality and diversity in procurement and tendering; promote principles of equality and diversity amongst our contractors; promote the development of a diverse supplier-base*".

Other cities do not stand still. For instance, the city of Paris – which has a procurement volume of 4,500 contracts per year, amounting to more than one billion euro – [announced in July 2011](#) that all tenderers would need from now to complete a detailed questionnaire on their equal treatment policies. A monitoring tool will be set-up by the municipality, and contractors will be under the obligation to provide a report on the changes implemented in their policies and practices 6 months before the end of the contract. Good practices identified in the reports will be disseminated to future tenderers.

3. Conclusion

Supplier diversity among public actors is still at its beginnings, mainly due to the legal complexity of social clauses in procurement and to the belief that positive action towards migrant-owned businesses is akin to giving them preferential treatment, and therefore discriminatory towards other businesses.

However, the inflow of supplier diversity information on the EWSI clearly points to growing trend in terms of awareness and will by public administrations. Administrations are now aware of their responsibility to use their purchasing power beyond the best (economic) -value criterion and to include social inclusion goals. Going a step further, administrations now start to use procurement as a mainstreaming tool: mainstreaming migrant-owned businesses in 'normal' business operations, thereby increasing entrepreneurship among migrants; and mainstreaming diversity and equal treatment policies among all contractors.