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**MINISTERO DEL LAVORO
E DELLA PREVIDENZA SOCIALE**
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PREF ACE

Many factors over the last few years have caused conflicts in the relationship between those bidding for tender and procurers – especially public procurement purchasers – and the worlds of co-operation and social inclusion. This has, of course, does not reflect the wishes of the parties concerned.

In the specific case of Macerata *Zona Territoriale* 9, which I represent and so know close-up, this conflicting relationship has often translated into difficulty in reconciling market interests (usually profit-oriented) with individual one-off interests of service users.

On one hand, there has been a steady increase in public demand for improvements in health, in treatment and in social assistance and healthcare in terms of both operations and services. There has also been demand for work placement for less advantaged categories.

On the other hand, locally-rooted Cooperatives and other Tertiary Sector enterprises which have been commissioned to work with ASUR in providing the services demanded by the public see that the effectiveness and efficiency of their own actions are limited by the failure to apply an accreditation and quality certification system.

This is the somewhat disconnected area in which this project's action has courageously been directed. Its declared aim is to open a new route for action creating the conditions for recognizing the value of cooperatives' social action. An attempt has therefore been made "to make them bankable" by placing greater emphasis on that very value in assessment criteria, both in tendering procedures and in public procurement.

As it has unfolded, "Equality: Quality and Social Responsibility", has taken on the characteristics of a study and comparison between the realities of different countries, such as Spain and Poland. This

has provided a cross-border view of issues which are important to many EU member states, leading to the drawing up of a proposal which both takes account of differences and is relevant at a European level.

This is one of the plus points of the valuable partnership, both local and transnational, which has gone hand-in-hand with the project as it has developed and for which I am extremely grateful.

This has therefore been both an experiment and at the same time, a challenge aimed at designing a model which comes out of a concrete, every day reality - allowing the different strands of procurement, not-for-profit and for-profit to come closer together, fully recognizing their own individual areas of competence.

Out of this comes the work "Tendering, Social Sustainability and Competition", and I would like to thank all those whose contributions have allowed us to start on this journey.

Piero Ciccarelli
Director ASUR *Zona Territoriale 9*
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INTRO DU CTION

When a project is coming to a close, “team members” look forward to establishing an end point and defining work done in terms of statistics and objectives, quantifying it and drawing conclusions. First of all, this publication represents the concretization on paper of what has been achieved over the past three years and describes the visible contribution it has made to our everyday work.

It is, however, much more than this. This publication means to go a little further: it needs and it must be a tool which is “open” and “interactive” (not in all senses of the word). It is a book with blank pages yet to be written, to which other experiences and considerations may be added in future years.

We are, in other words, looking from this point towards the future and towards our project’s sustainability.

The reader needs, however, a brief outline of how and why the idea of the “Equality: Quality and Social Responsibility” project came about.

To this end, it would be ungenerous not to start from ASUR – *Zona Territoriale 9* Macerata, the leading body and promoter of this initiative. *Zona 9* has, in fact, always stressed the importance of social healthcare integration. This is an area where we have constructed an extensive effective therapeutic network. This network is able to welcome the user and direct him or her through the various stages, fully respecting his or her individuality, towards the important goal of into (or back into) work.

The realization that Type B Cooperatives in this area need to come to terms with the need and responsibility to place disadvantaged individuals in work in their organizations at the same time as maintaining and/or increasing their competitiveness, has led to the view that the two needs (the Public Body’s needs and the social enterprises’ needs) should find common ground where they can work together and cooperate. There has been both the desire

and the capacity to increase entrepreneurialism in the Tertiary Sector, making it better-equipped and more prepared to deal with market competition. The ambitious final aim was to overcome the prejudiced view that 'cooperative = disadvantaged individual' and to put the individual back at the centre of things. On the other hand, the growing presence of social cooperation in the entrepreneurial system has undoubtedly acted in favour of work placement for less-advantaged individuals, and allowed them to become active participants in a quality working context. It has also favoured the expansion of the solidarity principle by spreading best practices which have been tried and tested by Cooperatives in the local area.

In the first part of the book, the reader will find an exact description of the context in which the project has taken place, its aims and basic characteristics. The reader will also find references to the way the partnership worked, the macro-stages of the project, the innovative aspects of the operation and the viewpoints of the certifying boards. There are references throughout to Quality and setting up quality certification schemes for public and private concerns, or with reference to home-helps and other professionals.

Explanation of these points will lead to the final discussion, to considerations which come from making theory practice, to personal evaluation of opportunities and future challenges. The second part of the publication is actually entitled "Towards models of Equality: including social considerations in public procurement". Here results of the research and experiments into the system of public procurement are reported and analyzed, with the aim being to improve quality and arrive at models which are able to include social factors and safeguard the principles of equal treatment, non-discrimination, transparency

and proportionalism in public procurement. The work on recognition, analysis and discussion carried out by the partners of EQUALITY has allowed us to outline the principles and the basic elements of this type of model, in other words: to promote knowledge of existing EC principles and regulations regarding social relevance; preferring linear solutions; re-organization around users; updating, innovating and constant dialogue between suppliers and demand.

In conclusion, I would also define this publication as input designed to make us reflect, a contribution to allow us to improve, to change, to discuss and to refine our work, a means of proposing innovative tools to bring about the change which is desirable. Our intention has been to open debate, to stimulate those concerned whether directly or indirectly (from legislators through to civil society as a whole), to kick start a process of change, not only in laws, but also in the way we understand the reality of the for-profit and not-for-profit worlds and how they interact with Public Administration.

To this end, a video (downloadable from www.equalita.eu) has also been made and the immediacy of its images provides a direct statement of our intentions and the questions which are still very much open.

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"Equality: Quality and Social Responsibility"

EQUALITY QUALITY AND SOCIAL RESPONSIBILITY

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1. THE PRO JECT

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1. THE NATIONAL PROJECT

1.1 Project partnership and context of reference

The EU Equal Initiative aims to promote new ways of struggling against all forms of discrimination and inequality in the labour market. A.S.U.R. *Zona Territoriale 9* of Macerata participated in the EU Equal Initiative with a project named "Equality: Quality and Social Responsibility". Partners in the project were: Macerata Public Administration, Macerata Social Cooperative 'Meridiana', Social Cooperative 'La Talea' from Treia in the Province of Macerata, Social Cooperative 'Il Sentiero from Montecassiano in the Province of Macerata, 'Klink' a company from Empoli and 'Euroconsulting', a company from Florence.

Zona territoriale 9, project leader is an institution concerned with integration of social and healthcare services and networks the Local Public Administrations in its area of competence with the relevant social and healthcare services. This integration also concerns social and work placement procedures for less advantaged individuals. The placement project is actually coordinated with healthcare services which are involved with the user (e.g. Mental Health Department for those with mental disabilities, Drug Addiction for those with drug addiction problems, etc.) and the Local Authority Social Services for the area where the user lives.

Beyond these institutional obligations, it should be noted that *Zona Territoriale 9* has been working for some time in the area of social and work integration together with the Macerata Local Authority. This cooperation started in 1995 with the type B Social Cooperative 'Meridiana'.

These organizations are also two of the most important procurers of services from Social Cooperatives; on the other hand, type B social Cooperatives operating in the area represented by Macerata healthcare services 'Meridiana', 'Il Sentiero' and 'La Talea' are counterparts of Public Administration (in that they are service providers), as well as some of the main 'receivers' of disadvantaged workers.

Euroconsulting, the company which guides organizations towards certification, has already had experience with UNI EN ISO 9001:2000 and SA 8000 certificates with Social Cooperatives, particularly certification with the SA 8000 standard which is still little used despite its noteworthy social and ethical impact.

Finally, as far as the project planning is concerned, the availability of a tested model validated for its inclusion of factors relating to social responsibility and quality in the local system of public procurement is of basic importance for sustainability of the system. To this end, the company 'Klink' - Progetto Sistemi Sostenibili s.r.l. has been involved. Klink and its team-workers have ten years' experience in the field of public procurement systems (calls to tender) and are also experienced in the Marche regional system. They have focused partners' attention on aiming for sustainability in results by means of mainstreaming quality and social responsibility factors in public procurement processes.

This project concerns the following factors:

- the tertiary sector is not always able to hold market positions effectively, take full advantage of synergy or act in a manner which is not dependent on Public Bodies;
- the social enterprise is the weak link in a free-market economy because a system of accreditation and quality certification is not applied;

- Public Bodies have difficulty developing and coordinating synergies across the board where local not-for-profit organizations are concerned;
- critical points in the relationship between for-profit and not-for profit organizations on the basis of free, proper competition.

These economic and social limitations mean that innovative research and experimentation are needed in order to guarantee practicable solutions and valid alternatives at a European level.

Structural and cultural renewal are needed and the Social Economy (Tertiary Sector) needs to be strengthened so it can express its greatest possible employment potential. By creating the best conditions, it is actually possible to imagine a situation where harmonious development of the tertiary sector's entrepreneurial spirit could take place, adding value to initiatives and businesses which often already exist without the back-up and support they need to evolve as enterprises.

As far as workers involved in the project are concerned, the following problems have been identified:

- a) disadvantaged workers are victims of exclusion because of the clear difficulties they face (physical, mental and learning difficulties);
- b) non-disadvantaged workers in Social Cooperatives resent discontinuities in professional development, which is often levelled at the needs of the disadvantaged, and the habit of living in an assisted economy where spin-offs are limited;
- c) both categories are at risk of unemployment because of discontinuity in contract-awarding;
- d) the home-help sector is underdeveloped (this is a potential area of operations for social cooperatives) because of the low professional profile of operators currently on the market.

1.2 Partnership intervention methods

The PS has aimed to solve the problems of discrimination and/or exclusion described above by setting up system action which has involved both service suppliers and users and which has produced changes in quality of the final product which, as a consequence, has strengthened the enterprise and the workers.

This approach has been innovative for the reason that no other experiments on quality certifications (UNI EN ISO 9001: 2000) have been made to date, which act on a parallel level between tenderers and bidders. Neither have any internationally recognized regulations regarding quality in working conditions (SA8000) been accredited, as far as Social Enterprises are concerned.

The UNI EN ISO 9001:2000 certification, the Quality System which guarantees to the customer that the company produces exactly what it says it produces, has been applied to two services offered by *Zona territoriale 9* (the Quality, Marketing and Training Service and the Project Management Service) and to the Social Services operated by the Macerata Local Administration, solely for activities related to work placement.

This choice in project set-up was made on the basis that specific training in quality would help these Services with the process of recognizing quality standards which products from outside suppliers must achieve.

The Social Enterprises, on the other hand, followed a dual track towards quality certification. The first, UNI EN ISO 9001:2000 concerned quality in services and products the organization supplies, while the second, SA 8000, is decidedly more person-centred. This approach was made necessary by the main aims of the institutions, namely pursuing the community's general interests, promoting the human being and social integration.

The problems related to the exclusion of the beneficiaries reduced sharply. Following the certification of the social enterprises and because of the quality standards they obtained, they achieved greater standards of professionalism and their value in the labour market increased, as a consequence.

1.3 Objectives and Stages of the Project

Pursuit of sustainability in results has also been a priority of Equality in terms of improving quality in the system of local public procurement (bids for tender). In the area of mainstreaming, particular importance has been given to setting up a model which allows the local public procurement system to include social factors in bidding procedures.

The project ensured that the development partnership, thanks to its internal competences, was able to offer methodological support to the entire process, once it had pinpointed the following specific objectives:

- 1) public bodies applying a certifiable quality system to their services. This had to have a great impact on processes and products;
- 2) social Cooperatives in the area of *Zona 9* implementing a qualifications system to regulate their activities, processes and products and to improve their competitiveness;
- 3) setting up quality-system oriented training for carers, disadvantaged and/or non-disadvantaged workers from the Social Cooperatives involved, so as to promote professional development leading to greater value on the labour market;
- 4) creating a network of public and private concerns which shared concepts and processes of quality and social responsibility and which, therefore, was the right sort of environment for testing which models were effective for qualification and work placement.

Five micro-stages were proposed in the intervention model:

1. ACTIVATING QUALITY CERTIFICATION IN PUBLIC BODIES (UNI EN ISO 9001:2000).

During this micro-stage, experiments in Quality System processes were started in some sectors of the public bodies concerned; to be more precise, certification was obtained by: a segment of Social Services from Macerata Public Administration regarding work placement for disadvantaged individuals;

- the Project Management Service from Macerata ASUR *Zona Territoriale 9* in its entirety;
- the Quality Marketing and Training Service from Macerata ASUR *Zona Territoriale 9* in its entirety.

During this process, each Organization worked towards drawing up and applying a manual related to quality, procedures, operating instructions and registration documentation.

2. ACTIVATING QUALITY CERTIFICATION FOR CARERS AND HOME HELPS

During this stage, a process of orientation towards quality in working methods and interpersonal skills needed for help and care activities was defined and tested. This process trained professionals who are now able to integrate and interact both within hospital structures and, in a complementary fashion, in the elderly person's or in the carer's home.

3. ACTIVATING QUALITY CERTIFICATION FOR SOCIAL COOPERATIVES (accompanying quality certification UNI EN ISO 9000:2000 and ethical certification SA 8000).

During this process, every Cooperative worked, under the supervision of the partner Euroconsulting s.r.l., towards drawing up and applying a manual related to quality, procedures, operating instructions and registration documentation.

Before the procedures were laid down, the staff involved in the “Towards Quality” process were informed of the reasoning behind it.

The work towards certifications took place through a series of periodic meetings between the managers of the Social Cooperatives and the other staff involved; focus groups and other tools were used to involve disadvantaged and non-disadvantaged workers in the processes of development of quality and ethical responsibility systems.

4. THE TRANSNATIONAL FACTOR

The EC Equal Initiative also involves setting up transnational activities.

The aim of transnational initiatives is to promote the exchange of know-how between the Member States of the European Union and the integration of experiments carried out by the PS at a national level with transnational cooperation activities. The transnational partners in the “Equality” project were the Spanish PS ‘Nexus rede’ and the Polish PS ‘We can do more’.

The transnational partnership operated on several different levels:

- a) exchanging information and experiences from working contexts;
- b) communication and spread of best practices related to quality and social responsibility systems in the field of work placement;
- c) comparing results from the application of quality and social responsibility systems in different countries and contexts.

The transnational level was guaranteed by periodic meetings of the Steering Committee which was made up of representatives of the different parties.

5. COMPILING AND SHARING THE RESULTS

Once the data relating to the project had been collected and compiled, systems were set up to ensure that the results reached the widest possible

audience, especially those in the public and private sectors who intend to activate quality and social responsibility systems.

1.4 Innovation

This project is innovative because it has been able to introduce the quality system UNI EN ISO 9001:2000 and the social responsibility system SA 8000 into different contexts which interact in the field of work placement.

Besides being innovative in terms of the project proposal, it has also been innovative in the development partnership which was undertaken. This saw the involvement of public bodies, private for-profit organisms and not-for-profit organizations in synergic action. The process of enacting the project has been hallmarked by the mix of different experiences all of which are aimed at promoting actions useful for improving the project initiative. The involvement of the Social Cooperatives has been a fundamental factor in this.

1.4.1 Innovation Aimed at Objectives

Innovation related to objectives came from proposing a certification process which was aimed at reinforcing and consolidating the experiences and the markets of the social enterprises in question. This meant creating the conditions which allowed them to develop and achieve their potential, ensuring stability and consolidation at work for their members, whether disadvantaged or not.

1.4.2 Innovation Aimed at the Context

The context of reference, although it has great potential, is still to be discovered, valued and especially pushed towards that “social for social’s sake culture”, meaning an integrated system of public, private and social private services which

are so important for making an area not simply 'attractive', but 'welcoming' and able to generate 'wellbeing'.

2. THE CERT FIED ORGA NIZA TIONS

2. FROM THE CERTIFIED ORGANISATIONS' VIEWPOINT

2.1 The Social Cooperatives

The main aim of the Social Cooperatives is to pursue the general interests of the community through promoting the human and citizens' social integration. This occurs through management of healthcare and educational services and through various business activities such as farming, industry and trade or through services.

Social Cooperatives are social enterprises inasmuch as:

- they are based on entrepreneurial projects which are born out of analysis of the needs and resources of the community and of individual citizens;
- they are an economically autonomous reality and they are productive and competitive on the market;
- they seek a balance between the entrepreneurial aspect and the spirit of participation, mutual concern and solidarity;
- they provide a link between the needs of the local community and public and private institutions. They create and enhance the potential of relationships;
- they aim to achieve high quality standards in every project so they can satisfy both the procurer and the user;
- they are active and cooperative partners with qualified staff.

2.1.1 Social Cooperative 'La Talea'

At the initial stages of the project, the Cooperative's board of directors debated long and hard about whether to set up the EQUAL project, as they were not all convinced of the value of the certification process. This was partly due to the costs related to

following it through both in strictly economic terms and in terms of the human resources required. The Cooperative had not been operating for long and there was the danger of bureaucratic, administrative and financial concerns weighing too heavily.

In this context, pursuit of Quality, in the widest possible meaning of the word and improvement in services was on the other hand quite an important objective and one which would be of use to its own associates and the local community, which needed to be offered a quality service which could be improved over time. In substance, achieving certification in terms of ISO 9001: 2000 has allowed:

- rationalization in administration;
- standardization of administration procedures, assessment processes and document storage;
- identification of weak points by looking for 'non-conformity';
- better work planning and better training of the workforce;
- promoting the company's image.

Although there is ample room for the Cooperative to improve in business and in quality, achieving certification has certainly made it easier for the enterprise to grow and broaden the services it offers, and this is reflected in improvements in turnover. As far as SA 8000 certification is concerned, one of the greatest benefits has been the reduction of conflict between employees, and between employees and management.

It should be pointed out that the increase in tenders awarded to the Cooperative has allowed it to place a greater number of disadvantaged individuals in a protected workplace with short-term contracts and/or work scholarships.

2.1.2 Social Cooperative 'Meridiana'

The Quality Management System was planned in a

way which was commensurate with the Cooperative's reality, making sure that all the staff participated in the system and that they were all able to contribute to the real improvement of company procedures. In fact, people at all levels make up the essence of the organization and their total involvement allows them to place their abilities at the organization's disposal. The system which was implemented supplied the necessary infrastructure to monitor and improve the services offered by the Cooperative and allowed it to pinpoint internal inefficiencies, especially at the implementation stage. These inefficiencies were often due to practices which had developed over time and which had never been analyzed in a critical way.

Applying a quality system within the Cooperative has made it possible to gather information about individuals' assets allowing growth in the company's intellectual assets and an increase in competitiveness.

The market is increasingly selective and demands ever greater quality in both products, services and response times. As a result, a quality system which is planned and applied with the real needs of the company in mind, allows it to improve its own performance and rationalize activities and costs.

Progressive improvement in the Cooperative's efficiency and competitiveness as a whole has been achieved, as applying a Quality Management System has had a positive effect on credibility where customers are concerned, on optimizing business management and on equipping the company with tools for handling any mistakes, problems and complaints.

The real value of Quality Certification is not, in fact, exclusively commercial. It is rather a truly successful strategic factor which permits rationalization, added value and reliability.

2.1.3 Social Cooperative 'Il Sentiero'

The certification process has shown how important the choice of suppliers is for the quality system and in consequence, the value of constant quality control of goods and components.

In addition, the customers' contribution in terms of reporting any reasons for dissatisfaction has been of great importance. These reasons are then analyzed by company management so that the causes can be identified and then corrected. This stage is central to the constant improvement of the quality system, as it becomes a new starting point on which to base a quality system which is as compatible as possible with customers' needs.

We can safely say that the efforts we have made to conform to quality certification standards have been repaid in terms of the improvements which have been made in management organization and in the quality of production and customer service.

Obviously, we have seen that an organization which is run according to the principles of these regulations, is made more competitive on the market because of improvements in planning, efficiency and quality.

In addition, SA 8000 certification has allowed the Cooperative's history to be re-written, along with the experiences of its operators.

The critical areas uncovered during the certification process are:

- a. 'red tape', in other words, everything which is done must be documented and put on paper.
- b. workers and the organization finding it difficult to enter into the mentality and the culture of the need to document everything.
- c. the cost of gaining and maintaining certification, which is not inconsiderable for small concerns.

These critical points are gradually addressed when the positive company results from applying a Quality System become obvious.

2.2 Public Administration

2.2.1 Macerata Local Administration Social Services

In the context of the “Equality: Quality and Social Responsibility” the struggle against discrimination and social exclusion is also played out in the field of work placement. Educational-rehabilitation to improve the individual’s quality of life is important as it allows that individual to acquire professional competences to make him or her autonomous in the working world and to consolidate the positive outcomes of the therapy carried out by the local healthcare provider.

Macerata Local Administration Social Services plans and manages work placement with work scholarships for individuals with chronic addictions and/or mental disorders. These are integrated with commissioning healthcare services (Local Service for Chronic Addictions and the Department of Mental Health, *Zona Territoriale 9*) and with those who will ‘host’ the worker – mainly type B social cooperatives. This is a delicate, demanding task of information-sharing and integration and has led, over the years, to the construction of an ‘informal’ network of relationships based more on direct knowledge and reciprocal trust than on defined and standardized processes.

It is easy to imagine how strong the impact of vocabulary and tools related to quality has been: in the first place, it was not so much simply a case of intervening on operating practices as it was of defining them. Replacing the word ‘user’ with ‘customer’ and defining cooperatives and organizations who welcome individuals on work scholarships as ‘suppliers’ means acquiring concepts which are worlds away from social services: concepts more related to industry and production processes.

Once the theoretical framework was laid out, it was time to move on to 'process' and 'product' in relation to the activities needed for planning and putting the work placement service into action.

The third step was concerned with drawing up the forms and worksheets which were important in reconstructing steps of the process.

The complexity of the task of reorganizing the quality management system is obvious from some of the 'operating' procedures carried out in compliance with the ISO 9001 regulations.

The procedures for 'planning work placement operations' (one for individuals with mental difficulties and the other for those with chronic addictions) define the operating systems via which Macerata Local Administration Social Services works with *Zona Territoriale 9* Local Service for Chronic Addictions and/or with the Department of Mental Health on work placement issues. Simply by formalizing this process, the areas of interaction between the Local Administration Social Services and commissioning healthcare providers were identified and the fields of reciprocal competences were redrawn; the 'mini-Work Placement team' was where integration and comparison between the different realities took place.

Promotion of synergy between the different bodies involved in 'customer procedures management' was even more effective. This concerned the two targets previously mentioned: the service can be activated directly via the Local Administration Social Services or via the *Zona 9* Local Service for Chronic Addictions and/or the Department of Mental Health and follow a series of consecutive steps. The stages described above were often duplicated or confused before the quality procedures training. Today, they are systematic and they are formalized with a series of communications and forms which

make up the formalized 'process'. This is of vital importance for evaluating not only the outcomes of the individual placements, but also the process of interaction between the different bodies and, in the future, this will allow operations and system actions to be re-designed. The 'process management' logic involves concerns which are wider than the social and healthcare services, namely the Cooperatives/Associations/Enterprises which effectively become Local Administration suppliers.

Finally, the qualification and monitoring of suppliers relating to work placement of individuals with chronic addictions and or mental health difficulties', formalizes the methods used by Local Administration to select suppliers who are able to place individuals in work. Three criteria were identified as qualifying the Social Cooperative, Association or Enterprise as suppliers and are now required as necessary conditions for placing disadvantaged individuals. They are: the capacity of the enterprise/organization/association/cooperative to receive the individual with chronic addiction, the capacity to promote that individual's personal and professional autonomy and awareness of dynamics which could arise in the workplace and fast interaction with the tutor should it be necessary. These criteria have been put into action and have been transformed into indicators which are monitored periodically with appropriate paperwork. As a result, they act as a true filter for admission and confirmation as a Registered Supplier.

Obtaining the certification, the internal inspections and the quality manager's periodic reports have shown that the management system is able to guarantee effective organization and monitoring of processes and adequate quality of services, despite its 'youth' and the fact that there is still some room for improvement. Standardization of procedures and

communications, now up and running, guarantees good integration with both the social services and the Cooperatives/Associations/Enterprises which welcome individuals in work placement. The paperwork used to formalize the process described above has proved so versatile that it has been adopted for work placement projects with target groups other than the two for which it was designed.

The continual improvement which hallmarks the system stipulates that the data computerization should follow the formalization of procedures and tools. This could make operations and processes even more efficient and lead to drawing up a plan to evaluate the efficiency of services and quality as perceived by the end user of the procedure, a constant reference for all work carried out and one which is needed.

2.2.2 ASUR Zona Territoriale 9

Macerata *Zona Territoriale 9* is concerned with projects in the socio-healthcare sphere. It takes part, through the medium of the Project Management Service (P.M.S.), in budget negotiations on a general level whenever projects are at the discussion stage. It suggests sources of finance from public tendering, national or E.U. funds for social and healthcare matters.

Company procedures were identified as the quality system was being implemented, and these were later described and organized into ten procedures set down in the quality manual and quality policy – with relevant attachments. In addition, responsibility for easy key procedure was identified and roles were assigned.

The quality management system has led to the following improvements in the areas listed below:

– Human Resources

An organigram was drawn up for human resources

and the competences needed for each of the various professional figures were defined for the first time. A training plan was set up to improve human resources.

– Planning

The various activities involved in planning were redefined: from studying the notification of tender to re-examining the internal validation of the project proposal. All activities are recorded in the appropriate documents, meaning that every stage is traceable.

– Procurement

The parameters for monitoring and constant evaluation of service suppliers (divided into partners and collaborators) were defined.

– Customer satisfaction

A service satisfaction questionnaire has been designed and will be given annually to service customers, identified in Zone 9 Responsibility Centres. This is an important tool for improvement in that it allows important feedback.

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3. THE TRANSNATIONAL PROJECT 'EQUALITY'

3.1 Transnational Partnership

The transnational partnership of the project has seen the participation of two groups from Spain (Galicia) and Poland.

The PS NEXUS REDE (Spain) is made up of different public and private not-for-profit organizations which are involved in promoting and supporting the cooperative system in different strategic economic sectors. All the partners have taken part in European and national or regional programmes to improve and consolidate the social and cooperative economy and combat social and workplace exclusion. The Development Partner NEXUS REDE has contributed to greater development of the transnational objectives and expected results, by passing on the knowledge gleaned from its experience.

In Poland, the social economy sector is developing. The Development Partnership 'We can do more' is made up of organizations with experience in the social sphere: public services for citizens, education, local development and the struggle against unemployment.

FSLD MISTiA, the Polish partner group leader, has experience of, among other things, projects aimed at solving social problems of communities threatened by social exclusion and compromised by discrimination (unemployment, women and youth). In addition, FSLD MISTiA activities are aimed, in the widest sense, at supporting and promoting entrepreneurial behaviour. It organizes training for start-up and for private entrepreneurs. An important part of its work is promotion and development of Quality Management Systems based on the ISO.

3.2 Project Objectives

The transnational project had the following aims:

- to identify organizational strategies and quality models to apply to cooperative enterprises in order to develop their competitiveness and adaptability in the market;
- to develop methods for stability, consolidation and quality improvement;
- in workplaces in cooperative enterprises. Particular attention is to be paid to working conditions for disadvantaged individuals and women;
- to spread and strengthen the cooperative culture amongst individuals in the public/private sector who are already customers or potential customers of social and non-social cooperatives;
- to develop best practices on a social, entrepreneurial and institutional level and relative mainstreaming;
- to promote the exchange of best practices, by analyzing the results of the activities developed by transnational partners, exchange and mainstreaming.

TENDERING, SOCIAL SUSTAINABILITY AND COMPETITION

Towards models of Equality:
notes on including social considerations in public procurement.

Edited by Anna Rodeghiero and Paolo Santinello (Klink Srl)



EQUALITÀ

qualità e responsabilità sociale

IT-G2-MAR-008

1. Introduction

These notes report the main points of discussion between members of the Development Partnership EQUALITY (EQUAL IT-G2-MAR-008) which got underway in 2005 to address issues related to the inclusion of social considerations in public procurement.

The project unfolded at the same time as important developments and debates were happening in this field nationwide and within the EU. It is well worthwhile citing the following:

- the progress of EU directives on tendering in national legislation;
- the new discipline of the social enterprise;
- the clash of competences between regional and national governments where tendering is concerned;
- the difficult debate at EU level on business and social responsibility;
- the constant progress towards clarification from the Court of Justice, the State Council and Administrative Tribunals;
- new regulation of industrial activities concerning public law organisms.

In practice, work progressed against the background of continual change and with parameters which needed constant reinterpretation.

The EQUALITY partners started by examining stakeholders, their interests and their problems, and by involving them in the consultation which led to an early definition of the issues in question. All those who took part, whether directly or indirectly, were extremely transparent when it came to declaring their interests, any conflicts, different viewpoints, their expectations and the extent of their knowledge of the issue. This made for clear constant debate which, in turn, led to an increased

awareness of the other parties and ever greater improvements in the quality of contributions.

The final result exceeded all expectations: instead of the usual final document there are the 'starting points' for a network workshop which will continue to work to refine issues, understand things further and do more things better.

The resulting model provides a route to follow in search of successful convergence in this difficult area – in the collective interest. Motivations as diverse as those of social enterprises, for-profit concerns, local bodies, voluntary organizations and both centralized national and EU institutions are addressed.

In presenting these notes on the work done, it is vital to stress that they are, by necessity, incomplete and limited: it could never be otherwise given the size, complexity and the dynamics of the issues which were addressed.

The terminology, which is sometimes different, reflects the real state of affairs. An attempt has, however, been made to clarify matters. Often the expression 'public procurement' has been preferred, meaning all public contracts (unless otherwise specified), whether they are relevant at an EU level or not, whether there are competition procedures or not and whether there is public evidence or not.

A great deal of literature has been consulted, but we have preferred only to quote material to which direct reference has been made in the bibliography.

We trust that, besides being a useful pause for thought, these notes will also be a tool, albeit unrefined, for extending the implementation of forms of EQUALITY, meaning quality and social responsibility, making effective use of public procurement as a lever.

2. The initial debate

As stated in the introduction, examining the possibility of including social considerations in public procurement began with an analysis of the positions, mandates, interests and viewpoints of stakeholders. The expression 'social responsibility' was initially used, but was replaced after the first analyses with the formula 'to include social considerations', since the latter expressed the intention more clearly. The first discussion stage produced the following considerations which directed later work.

2.1 Procurement purchasers, special customers

Procurement purchasers (awarding administrations, public law organizations, public companies) are the main suppliers of public services and goods.

These organizations are also important consumers of private services and goods.

The fact that they are public concerns is made clear throughout the chain, since their objective function (their mandate) is to provide public services and goods at the lowest possible cost to society.

This means that public purchasers' procurement costs include external factors as well as than mere financial costs.

These factors are defined as going beyond the mere economic aspects of a transaction, although they interfere with the transaction as a whole. For example, the level of trust between a buyer and a seller cannot be expressed directly in terms of money, although it may alter the times, costs and complexity of a purchase – and this alteration may sometimes be decisive.

Public procurers, therefore, are not completely equivalent to private purchasers.

Behaviour of public purchasers can be expressed in terms of two different models, i.e.

- as public limited companies;
- as *primus inter pares*

2.2 The public purchaser as a public limited company

The public purchaser must justify its own actions to its shareholders (contributors) in the same way as the board of directors of a public limited company must.

In this model, the objective function of the public purchaser is to obtain the best possible return (net benefits) on all its services, i.e. the best possible relationship between the cost of input (procuring necessary resources) and the actual service, respecting only legal requirements. In this model, the public procurer aims for the greatest net return on all the services it provides, meaning that the service must be as cheap as possible.

The underlying assumption in this model is that the only procurement 'preferences' besides price and functional suitability are covered by legislation (and this includes environmental and social concerns).

The fact that public procurers respect the law is, therefore, both a necessary and an adequate condition and the only one which needs to be considered apart from the principle of economy in the strictest sense of the word.

Advocates of this approach hold the view that this model can make public services efficient by taking them out of the hands of politicians, shortening timescales, streamlining procedures and reducing the need to tender out for services.

Opponents object that politics are taken out of the equation with the creation of enterprises which are substantially private, where the public nature of the concern is only important as a way of managing competition-free public services, meaning that they are at an advantage when they enter into competition with private companies, since they can count on public money.

2.3 The public customer as *primus inter pares*

The public procurer is part of the political spending plan, therefore, it must always weigh up the overall

benefit for society as a whole and rather than the economic advantage of each action. This is for the reason that, in supplying public services or goods, there are external factors as well as financial costs.

In this model, there is consideration of the fact that, whether directly or indirectly, a public organization belongs to the law-making subject: it must, therefore, respect the spirit as well as the letter of the law, i.e. it must consider all the relevant external factors.

The government (including all branches through to the public enterprise) is responsible for safeguarding the social fabric, the interests of the weakest members of society and vulnerable groups as well as the interests of future generations.

As a result, a public procurer must take on board all the relevant external factors (it pays more than any old customer as it buys or expects added value).

Advocates of this approach state that the managers of public affairs have a mandate which is primarily concerned with factors beyond the economic system (social cohesion, health, education etc.) and that economic factors are simply a tool. Therefore, there is no sense in managing economic transactions without dealing with external factors: only by including these external factors is it possible to obtain effective, efficient procurement.

Detractors object, stating that this means losing all transparency and that any economic relationship becomes discretionary, as judgement of external factors is not subject to objective measurement.

2.4 Market shapers

Public procurement is the largest-scale purchaser to act on the market with coordinated purchasing policies. What are the consequences? Is it reasonable for the public purchaser to use its purchasing power to shape the market?

Some considerations may be useful.

- (a) Any purchaser in a dominant market position shapes the market if it acts using coordinated policies. This is evident from the purchasing groups in large-scale distribution networks although they are quite a degree smaller than the public procurer as a whole.
- (b) Outcomes on the free market show how difficult it is for logics which are not immediately translatable into monetary terms to make headway. One only needs look at the examples of the environment and social responsibility, for example fair trade, green products and environmentally-sustained construction which are still relegated to an elitist position.
- (c) For socially and environmentally sustainable products and services to be successful, it is necessary for them to achieve economies of scale which make them competitive. The rules of public procurement can create a sufficiently important block, provided that they are applied effectively. Public procurement can, in fact, stimulate demand and reduce costs for the rest of the market as well.
- (d) Whilst it is quite easy to check that products meet regulations and standards, this is not the case for procedures. It is difficult to apply regulations and guidelines related to public procurement and this has led to an increasing number of monitoring and controlling activities being delegated to independent third parties. This has also caused proliferation in the systems of accreditation and certification which exist alongside government regulation (ISO, SA, OSHA, AA, Ecolabel, EMAS, SOA, FIDIC, etc.).
- (e) Faith in the face value of certification and accreditation (sometimes seen as an extension from the field of education where the word originated) mainly comes from those already in the club. It

is in their interests to formulate standards to help optimize – and in some cases protect – their businesses. It also comes, at a more local level, from suppliers of certification services who are seeking to become part of the public administration sector; this partly supports the system as it means responsibility is removed from purchasing choices (the supplier's work was not up to standard, but they were certified, so where's my responsibility in this choice?).

- (f) The certification and accreditation system has shown itself to be vulnerable and contradictory. Vulnerable because in generating a market for certification and accreditation services, those organizations which are more flexible in applying standards are at an advantage and the system has quickly been tainted and has lost credibility. Contradictory because the standards establish rigid points of reference which are stable over time (it could not be otherwise if uniformity of application is to be guaranteed) and because they block or fail to recognize innovation (e.g. organizational innovation) and differentiation (which is often a strength of a group or a geographical area).
- (g) The impact of social and environmental standards on some external factors is neither obvious nor is it automatic. For example:
 - in economic contexts made up mainly of small and micro-enterprises, certification systems can introduce additional rigidity and make the enterprise lose its competitive edge;
 - regional accreditation which limits mobility and market access reduces the spread of best practices and increases the distance between regions of excellence and those with a lower profile (it is worthwhile noting that the United States and the United Kingdom are

two countries with a high level of innovation, but where there is little use made of generic certifications).

- (h) Creation of reserved public procurement for overt social enterprises produces a double market, with differentiated rules of competition.
- (i) For some social and environmental external factors, the impact of public procurement choices is felt over the long term, while for others (such as local economic development and employment) the consequences can even be felt in the short term.

Public procurers, as large-scale consumers of public services and goods, have direct influence over the market, over competition between enterprises, over management orientation and over organizational and production choices over the whole of the economy. Choosing whether to move en masse towards specific requirements from products/services (e.g. environmental friendliness, social responsibility or GM-free; or, on the other hand considering only legal obligations) will contribute to supporting one entrepreneurial idea over the others.

Whether they prefer requirements which are directly connected to the individual procurement for which they are responsible in selecting suppliers or whether they delegate as far as possible to formal external criteria, public procurers have an impact on the organizational direction companies take. (The organizational implication for an enterprise could be, for example, the choice between a good range of certifications and accreditations or investment in excellence in their own offices, tendering procedures and planning).

The decision to create a separate corridor of public procurement for overt social enterprises implies that the public procurer is prepared to take control of the destiny of a portion of the economy and one of the possible effects is a partial loss of the enterprise's

decision-making autonomy and suppliers' reliance on the contracts being awarded.

Taking account of external factors implies adding to the competition between economic values. It implies adding social and environmental competition too, as those which need to have preferential treatment. In conclusion: the more procurement purchasers include social and environmental responsibility factors in procurement, the weaker the demarcation line which separates them from suppliers will be and the greater their involvement and responsibility will be in procedures and in competitiveness of enterprises and the economic system.

On the other hand, if the procurement purchasers concentrate on value for money, without adding other factors except those stipulated by law, their decisions will be oriented towards 'what' to buy (in terms of services as well) rather than 'who' to buy from.

This will be a voluntary choice and it is the task of the enterprises to find ways of transforming social responsibility into competitiveness (with, for example, the advantages of branding).

2.5 Social enterprises: special suppliers

In a pure market system, social enterprises are an 'anomaly' as they introduce a degree of distortion into the economic transaction. The same product (service) is no longer on the market with its values encapsulated in terms of performance and price, but also with the value of its history: 'how' and 'by whom' it is made or offered.

A greater weight is placed on these external values when they are in harmony with the social conventions of the time.

In most cases, the external values of social and environmental responsibility include a greater cost

or a surcharge: they are, therefore, less competitive than an equivalent product or service with the same performance but with a different history. This poses no problem as long as the economic transaction of purchasing products or services with external values is voluntary. The citizen who chooses to have trees in his or her garden pruned by an enterprise which employs differently-able staff and who pays a higher price than he or she would have paid for the same service carried out by an enterprise which employs only able-bodied people is making a free choice based on individual principles and is spending money without being called to account.

If purchases are made by a procurement purchaser using tax-payers' money, the decision about whether to pay a higher price in order to respect a principle which is not enshrined in law should be taken with the tax payer (by means of political intervention in democratic systems).

The issue is complicated, however, when the higher price related only to a single transaction, but when it is no longer a higher price when all the factors of a transaction are considered.

Let's take the example of a procurement purchaser with a department purchasing services for maintaining public gardens as well as services for work placement for disadvantaged individuals.

Should the garden maintenance supplier's bid be considered overpriced if a third of the company's staff is made up of people with work placement difficulties?

The answer is probably no, only in the cases where

- the overspend is at least equal to the spending requirement for work placement services for individuals with difficulties,
- the funding comes from the same budget and the budget is provided by the same tax payers.

The social enterprise is that special supplier which aims to integrate those who are kept out of the market (price-led) logic and from the separation of policies. This special supplier puts back together at a 'lower level' that which is not dealt with coherently at a 'higher level'.

As this is its function, the social enterprise claims:

- recognition of its status as an enterprise as distinct from a voluntary organization (the latter does not usually operate according to the rules of the market);
- that the higher price of the product/service it supplies should be considered as a reduction in the cost of other services which are not strictly correlated.

The status of these special suppliers is recognized in Italian law (and in that of many European countries) with concessions (usually tax breaks) in proportion to the competitive handicap they face. In some cases, this is with reserved quotas in public procurement.

The social enterprise is a special supplier to the system of public procurement for the additional reason that two thirds of its business comes from public contracts and the public system counts on the existence of social enterprises in order to provide some of its services.

Today, this special supplier is being asked to stand on its own two feet, in other words to find the main share of its turnover on the market in competition (both private and public).

The response of the social enterprise is to ask for selection criteria which take account of added social value to be applied to all public procurement so as to allow the social enterprise to compete equally with enterprises without an expressed social purpose.

However, an increasing number of for-profit enterprises without an expressed social purpose are adhering to social responsibility standards: how are they different?

3. The public purchasing market

As we have seen, the initial debate extended the boundaries of the issue, making it necessary to look at the wider picture.

For this to happen, it is important to analyze the market where all these tensions are felt. This investigation needs to look at the structural elements of the market as well as issues related to international, EC and national regulation.

3.1 The influence of public purchasing on the market

Differences in the supply and demand structure regarding goods and services in the public market.

There are substantial differences in the supply and demand structure regarding goods and services which are reflected to a certain degree in the fragmented nature of public procurement. The organizational structures of public bodies are actually very different from each other: for example, local bodies are apt to be organized along functional lines depending on the different professional disciplines: social services, public works etc.

Only recently, and only in certain countries have changes been put in place to organize service provision in terms of groups of users rather than terms of the function structure.

Demand structure

In general, demand is structured:

- a) by function: traditionally, public organisms tend to group services in functional units (e.g. social services, public works, environmental services etc.). Typical subsets of these units (such as street lighting, rubbish collection or services for the individual) are the interface for the demand.
- b) across areas: recently – in a few European countries

some public bodies have begun to organize differently. For example, by the needs of a particular group of service users, such as children.

Supply structure

The supply structure does not faithfully reflect demand: this does not necessarily mean that the demand structure should change, but those who are charged with public procurement should keep this in mind when they are purchasing.

We can group suppliers into two broad categories: the private sector and the so-called Tertiary Sector.

Using the principle categories of public contract adjudication as a criterion, the private sector can be further divided:

- professional services: especially consultancy, external management, planning etc.;
- construction: house-building, public works, street lighting, but excluding ordinary maintenance services etc.
- management services: back and front-office services such as rubbish collection and waste disposal, or system maintenance, etc.;
- consumables: products used during normal workaday activities (such as stationery or some ICT components)
- ICT services: development services which require a significant amount of ICT components such as e-government, e-procurement, telecommunications, management and network support.

These sectors are quite homogenous as a group, although sometimes they overlap. Within this classification of private sector suppliers a further three subdivisions can be made:

- niche suppliers, who concentrate on a particular sub-sector or also on a specific segment of supply. An example can be found in organizations which

specialize in conference management, or the software houses which specialize in applications for the management of social services;

- sector suppliers, which offer a vast range of services, but limit themselves to a particular sector. For example, the large construction companies which work both in public works and in road-building;
- cross market suppliers which aim at the whole public administration market and offer services in many areas. These enterprises are often connected with further specialist suppliers.

The Tertiary Sector is an increasingly important supplier of local bodies.

The Tertiary Sector has not been exhaustively defined. As far as public sector supply is concerned, however, it can be considered as a group of organizations which occupy the space between the State and the private sector. In its midst there are voluntary groups, small and large-scale registered associations, foundations, social enterprises and cooperatives.

These organizations have shared goals of social environmental or cultural usefulness, are independent of government and are not-for-profit organizations (any surplus is reinvested for use in pursuing their stated objectives).

The importance of the Tertiary Sector in providing local services has been evident for some time, although this role is expanding and it is increasingly common to hear talk of the Tertiary Sector substituting others in public services.

The fact that Tertiary Sector organizations operate on the market (and therefore with the language of the market) does not take away from the fact that they were started in order to answer people's needs (for example associations which support particular vulnerable groups), to answer needs related to place

(for example organizations which restore derelict areas of town or reclaim parklands) or to address specific issues (for example the children's rights, improvement in public transport or transparency in public information services).

The features of effective competition

Some determining factors of effective competition can be pinpointed and they are all necessary if the best results are to be obtained; absence of any of these could prevent objectives being reached.

- **Strategic management of the market:** at a local level, many markets can be positively influenced by politics, but an effective strategic perspective is needed to avoid distortion. For this reason, local decision-makers and those from central administrations must work together to manage markets actively.
- **Effective procurement procedures:** rigid contract systems, complicated procedures and consequent high supply costs can have a negative effect and reduce participation.
- **Entry and exit barriers:** performance improvement is also linked to the entry and exit cycle and although some barriers are necessary (for example, the duration of contracts to ensure that services operate well), local authorities should carefully consider when and where barriers are really necessary in order to reach priority goals.
- **Neutrality:** it is vital to have a level playing field for all suppliers whether private, Tertiary Sector or in-house.
- **Political and cultural factors:** in general, they are the most relevant. All the conditions listed above can have an effect on the market, but cultural and political factors can weigh heavily

and have a great impact on what happens on the ground.

There are many observations in the literature regarding the relationship between public procurement and competition. It is worthwhile noting the following:

- There is a strong theoretical basis and evidence from practice to suggest that the existence of effective supply markets contributes to improving performance both in the community of external suppliers and in terms of in-house service suppliers;
- Achieving the benefits of competition is greatly influenced by many conditions, including high quality in order processes, development of market capacity (creating and shaping the market) and supply orientation which favours the user's free choice (e.g. with the use of vouchers);
- At different times, in different situations, increasing competition can produce both opportunities and disadvantages. Although competition is largely positive in most procurement markets, tactical decisions (e.g. involving too many suppliers in competition) can lead to negative consequences such as high procurement costs, tacit market collusion and excessive burdens for enterprises in preparing the bid;
- Contractual aggregation (e.g. with agreements between local bodies for the acquisition of shared services) presents both benefits and risks. Risk management (such as, for example, the advantage of inclusion or exclusion of SMEs) can make the difference between successful long-term aggregation and one which brings rapid positive results but misses out on the possible long-term benefits;
- Although it is reliable in some circumstances,

the main impact of internal procurement is that of limiting competition: this factor should always be kept in mind before making an in-house choice.

The impact of public procurement on competition

Public procurement has a short-term effect on competition (competition in single bids for tender) and long-term effects on the structure and competitiveness of the public sector market, as well as on the private sector markets.

The short and long-term effects sometimes work in opposite directions: the push towards competition between suppliers can reduce long-term competition or can discourage innovation and investment.

In addition, public procurement uses tools such as in-house supply and amalgamation (procurement centres, planning agreements) which have a significant effect on competition especially as far as small-scale bidders are concerned.

Short-term impacts on competition between potential suppliers manifest themselves in intensity of competition (number of bidders) in any given tendering procedure. They are also manifested in similarity between bidders and the incentives and skills of the bidders to practise tacit collusion.

A greater number of bidders in response to a notification has the consequence of greater competition and results in lower prices and, generally, better quality of services.

Procurement procedures which are designed to make sure that the participants are as similar as possible to each other tend to result in increased competition, although there are also good reasons for limiting numbers:

- containing supply costs, especially when the requirements are complex;

- when it is difficult to give exact contract specifications and therefore there is an effort to limit the number of bidders on the basis of reputation and proven capacity;
- when the increase in the number of bidders could lead them to put in low bids as a precaution (known as the 'curse of the winner', where the bidder has made too low an offer and risks losing out from the contract);
- when there are likely to be a high number of weak or casual bidders.

As far as SMEs are concerned, it has been observed that they are disadvantaged (and they will probably be excluded) when requirements are influenced (implicitly) by pronounced economies of scale or when size or reputation are of great importance to the procurer.

Effects on market competitiveness, structure and capacity

Long-term effects of public procurement on the market as a whole affect more than competitiveness. They influence the structure and the number of suppliers in a market.

This can have an impact on the degree of competition and on the price of future contracts.

Public procurement does not only have a long-term influence on the number of bidders. It can also (prevalently) have an effect on competitiveness by widening the gap between market leaders and the other suppliers and creating positioning advantages for current suppliers.

These advantages discourage participation and weaken competition: when an enterprise assumes that there is an advantage of this type it might change its pricing policy anomalously (by over-reducing its price to get a foothold or by not lowering it if it feels that it is at a disadvantage).

Where public procurers focus on short-term advantages (perhaps also in terms of value for money) there could be a risk of price being the only determining factor (an analogous effect occurs with the approach of excessively stringent specific techniques) with the consequent effect of discouraging innovation.

The importance of public procurement strategy

The need for a global procurement strategy is felt in the sector, but there are still some issues which need to be addressed:

- perceived lack of leadership in global procurement strategy;
- lack of coordination between the procurement system and the strategic objectives of authorities, especially at a local level;
- inadequate rigour in transforming users' needs into suppliers' commitment;
- inadequate capacity in defining details based on expected outcomes;
- excessive barriers to entry in the shape of high bidding costs and overlong procedures;
- lack of contract standardization;
- insufficient competences in contract management.

Many public authorities at all levels are working to meet these challenges and to correct their weaknesses in exploiting the market as a lever; in general, they are looking at remedies alone or with limited coordination and little networking with other organizations.

From documentation of their activities it becomes clear that the most frequent objectives for developing a global procurement strategy can be summarized as follows

- building capacity in procurement strategies, in particular developing strong leadership in the functions;
- defining directions (e.g. geographical scale,

scope and size) to distinguish clearly between tendering and other methods of procurement (e.g. partnerships or grants);

- developing innovative procurement contests between organizations which can lead towards new forms of service;
- taking a vast range of procurement solutions into consideration (procurement has been historically based on the structure and organizational functions of demand), including models which are directed towards user choices and partnerships;
- supplying more direct forms of accountability to users in order to evaluate the supplier's performance;
- managing the markets actively in an advisory capacity to create better understanding of the supply chain;
- supplying proven best practices as a reference to better define the expected outcomes in the specifications.

Developing and shaping the market

Because of its size, public procurement has a significant impact on the way markets develop and on its characteristics.

In this context, public procurement can operate actively, with awareness, to shape the market, thus going beyond simple procurement and setting up active dialogue (which is often beneficial) with the market.

This type of approach (the decision to plan actions to develop and shape the market or market segments) may be central to an authority's global procurement strategy, especially at a local level. It is based on three main elements:

- *market intelligence*, referring to systematic accessibility to market data (current market num-

bers, current and potential suppliers, trends and future opportunities) at local, regional and national levels. This provides information relevant to procurers in terms of strategic planning, but at the same time gives strategic indications to suppliers. Availability of market intelligence is then immediately useful for individual purchasing processes.

The quality of market intelligence currently available to procurers is heterogeneous and, furthermore, procurers do not always consider the cumulative impact of their purchasing decisions on market structure, nor do they bear in mind the lever they have at their disposal.

Providing more, better information for suppliers about future trends in demand in key sectors of public procurement allows them to develop and improve their planning capabilities and make decisions about investment.

A more formal, regular accessible information flow for public purchasers on quantity and quality of suppliers in key sectors also improves planning capacity relative to time, for example, compensating for seasonal factors is to the advantage of both demand and supply.

- *market dialogue*, particularly in terms of quality and frequency of interactions between stakeholders in terms of both supply and demand. Interpretation and discussion of data and developments in the short, medium and long term as regards supply to public authorities, especially locally. performance, efficiency and value for money can be improved by means of a community of suppliers which is diverse and competitive. In particular, further developments in procurement capacities and project management can be used to improve internal capacity and ensure that the

authority continues to raise its sights in contract organization and management, thus guaranteeing true competition and gaining value from its own supply base.

On the other hand, private concerns and the Tertiary Sector are not yet fully aware of the role they could play in stimulating effective competition and in supporting planning capabilities. This role could be exploited effectively if there were a more pro-active involvement with procurers so that needs can be understood.

Suppliers of public services and those who represent them have many areas where they could commit themselves pragmatically to the future development of services for local authorities. By occupying these spaces, they could enhance their chances of developing both their own base and the public service.

- *shaping the market*, in other words, the cooperative (not discriminating) intervention between public authorities and suppliers to develop markets to back up achievement of strategic policy objectives both at a local and at a national level.

Central and local authorities can work together to adopt active approaches of idea-sharing and, when necessary, act to shape the market – especially where local public services are concerned, as these markets are strategically important both centrally and locally and as they do not always work effectively.

A strategic dialogue between politics, procurement bodies and communities of suppliers about the structure and development of markets in the public sector (beyond the confines and limitations of individual contracts) allows all interested parties to express their views openly.

A good capacity for marketing intelligence and

market-shaping also improves the capacity for intervening on how particular sectors affect the market as a whole.

In terms of the current debate in Italy and the European Union on the influence of public procurement in developing and shaping the market, there are some recurrent themes and observations. The following seem to be the most relevant here.

There is still ample room for stressing the importance of procurement functions by the procurement purchasers. This could be done so as to include a strategic perspective to allow authorities to play a higher-profile role in 'shaping', particularly at a local level. In concrete terms, this means that all services should be planned and provided with a global viewpoint of procurement in mind, both strategically and at an operational level. This would integrate consideration of users' needs, strategic planning, prioritizing and managing resource allocation, as well as selecting sources and managing procurement.

Adoption of organic frameworks of procurement does not seem to be widespread in local authorities. They are a point of reference both for those involved in policy development as well as purchasing functions and for suppliers.

The need for greater investment in development of competences and skills connected to procurement is expressed, especially at a local level. They could be of basic importance in preparing for qualified future management.

A certain 'presumption of knowledge' of implementation of key services seems still to be prevalent. In order to challenge habitual models of service and get the best from each sector (public, private, voluntary and social enterprise) it could be useful to provide the incentives to challenge obsolete models.

To guarantee neutrality between different types of suppliers, it is necessary to work constantly on updating information.

Situations change rapidly and this change is not always obvious, in terms of either public procurement or supply. In particular, the advantages of position can become artificial barriers to entry and discourage new entrants.

The hunt for a balance between aggregation and localism in service purchase is difficult, but greater understanding of the concept of efficiency could be promoted, giving equal weight to effectiveness and the economic issue. For these purposes, marketing intelligence, cooperation between authorities and dialogue with the market are useful, as this could lead to establishing sector benchmarks which are constantly updated. Benchmarks of this type would help the public purchaser as they would reward the most innovative suppliers and would stimulate the others. It would also be difficult to contest as are a result of dialogue with the market.

Constant investment in updating information helps in making the right decisions. This is often difficult as each sector has different pressures, features and supply chains.

Effects on barriers to participation and costs of participation

Judgment of what is economic may be easily distorted by the fact that the administrative costs of procurement are more visible than savings as a result of broader competition: costs are immediately visible, savings can only be calculated in the medium and long term.

Procurement purchasers are also less inclined to take risks and therefore tend to favour well-known, solid suppliers over new entrants. These barriers are visible from over-stringent pre-qualification criteria or those which place excessive emphasis on previous experience or the size of the enterprise.

Another important barrier to entry of new (or small) bidders is the trend towards aggregating tendering. Although the other extreme could be the temptation

to fragment tendering in order to stay under the EC threshold which call for more regulation in procedures, aggregation is much more relevant from the point of view of mass contracting which is the push towards grouping procurers' needs into large tendering procedures.

The purchasers operate in this way: they exploit purchasing power to squeeze the price by taking advantage of economies of scale, thus they reduce both the costs of tendering and managing the contract.

On the other hand, the advantages they obtain have negative consequences for competition including:

- potential exclusion of smaller bidders who are not able to respond to all the requirements of large-scale tendering;
- reduction in the capacity to quantify the supplier's value and performance;
- increasing potential risk of a preferential position.

Aggregating purchases also runs the risk of creating hidden restrictions for suppliers; if this technique is used aggressively, it can create a real block in the flow of the negotiation process.

It can also lead to tacit collusion between the bidders to exclude new suppliers.

The positive and negative effects of aggregating tendering are complex and in some cases contradictory: the principal considerations remain:

- balance of procurement administrative costs:
- potential for economies of scale,
- maintaining competition.

However, administrative costs are generally emphasized, while the costs of maintaining competition over the long term tend to be undervalued.

The effects of internal supply and in-house procurement

Internal supply and in-house procurement are important in public procurement.

Internal supply can be a credible option when prices are over-inflated or when it is necessary to establish a benchmark with market conditions, but it is generally a constraint on competition for other purchasers as it reduces the market in size and, as a consequence, it reduces the number of suppliers which the market is able to sustain.

Its use for setting a benchmark is rare (cost simulation is usually carried out).

Another negative influence on the market which can even distort it occurs when in-house supply is inefficient and costs more than the current market prices. This disadvantages external suppliers.

Finally, it is important to note that internal supply and in-house supply can sometimes exceed the limits in area where negative advantages could directly or indirectly alter the competition.

3.2 International regulation of tendering

The share of GDP represented by public procurement is important. Today, it stands at 10-15% of GDP of countries belonging to the World Trade Organization (WTO) although it was greater during post-war reconstruction. This means that governments have been using it for a long time to back up the politics of the time in various areas such as national industrial policy, employment and working conditions, support for small enterprises, local development etc.

This widespread use for internal political reasons (and in some cases external) lies behind the exclusion of public procurement tendering from international regulations on opening international commerce: in GATT (General Agreement on Tariffs and Trade), which was first negotiated in 1947 (Tokyo Round), public procurement was expressly excluded from basic obligations.

The growing evidence that discriminatory policies

closing the public tendering market to competition from foreign operators could compromise freedom of exchange quite considerably has led governments to begin a slow process of liberalization of the sector. This is true at an EU level and internationally, and aims at bringing public tendering procedures under the umbrella of international regulation and agreements, both bi- and multi-laterally.

The first general agreement on public procurement was signed within the WTO in 1979 and came into force in 1981: the agreement was also amended in 1988, but remained limited in terms of scope and sector.

Parallel to the Uruguay Round, signatories to the first agreement held negotiations on extending its scope, arriving at the current Agreement on Government Procurement (AGP) signed in Marrakesh in 1994. This was a multilateral agreement attached to the WTO charter and has been in force since 1996. The fact that it involves these parties means that it is only binding to the signatories, not to all WTO members. Later attempts were made to extend the agreement to new parties by extending its range of action, although the multilateral nature of the AGP has always fed doubts that it would be effective in liberalizing the sector.

The guiding principles of the AGP and non-discrimination and transparency

The AGP establishes an agreed set of rights and obligations for the adhering Parties in terms of their national laws, regulations, procedures and practices in public procurement.

On the basis on non-discrimination, the Parties must afford treatment of products, services and suppliers which is 'not less favourable' to that afforded to internal products, services and suppliers. They also agree not to behave in any way or adopt any procedures which

discriminate against products, services and suppliers from other Parties. Every Party must ensure that its organizations do not treat internal suppliers differently on the basis of a greater or lesser degree of foreign affiliation or shareholding and every Party also ensures that its own organisms do not discriminate against their internal suppliers on the grounds that their goods or services are produced in the country of another Party. The use of compensation to encourage local development or to improve the balance of payments through requirements which are domestic in terms of intellectual content or technologies, or in terms of investments, requirements for counter-trade or any other similar activity is banned by the AGP.

Only developing countries can negotiate, when they initially sign up to the agreement, conditions for the use of compensation, provided that it is only used for qualification criteria (to participate in the process of public procurement), and not as adjudicating criteria. To ensure that the basic principle of non-discrimination is adhered to and that public procurement is accessible to foreign products, services and suppliers, the agreement places particular emphasis on procedures for making legislation transparent along with regulations, procedures and practices inherent to it. A general requirement regards publicizing laws, regulations, judicial and administrative decisions which are generally applicable alongside any procedure regarding public procurement which is covered by the agreement.

As a further aid to transparency, every Party must collect statistics related to its own public procurement and supply them to the others.

The European Union is one of the key players in the WTO, as it has a common commercial policy, meaning that the European Commission can negotiate for the 27 member states of the Union.

The European Union is currently involved in negotiations relating to the Doha Agenda (Doha Development Agenda, DDA) about enlargement to include new members and the commitments needed to integrate developing countries: in fact, the main aim of the DDA is to place development at the centre of the world trading system so that it can help these countries to overcome poverty.

3.3 EU tendering regulations

At European level, competition policies aim to ensure a wider choice for the consumer, technological innovation and effective competition on prices. The end goal is to obtain a higher standard of consumer wellbeing and to guarantee strong competition within European industry. Competition is, therefore, obligatory for all enterprises and individuals operating on the market, to guarantee that all are starting off from a position of equality.

To summarize the history of this policy, there was no explicit reference in the original version of the constituting Treaty of the EU (although in articles 132 and 133 there is a reference to the relationship between Member States and overseas territories and the defence sector).

In the 1990s, the Single Europe Act introduced article 130 P into the Treaty and this later became part of article 163 of the treaty, the second paragraph of which specifies that one of the aims of the community is that of allowing enterprises to exploit the potential of the internal market fully due to the opening of national public tendering procedures and definition of common regulations leading to eliminating judicial and fiscal obstacles.

In legal terms, the directives on public tendering have the aim of freeing the provision of services and the right to free movement which refer respectively to the

possibility of economic operators to carry out their business or professional activity outside their own territory and the freedom to do this in any member state through an established organization.

The ultimate goal is setting up the internal market. This is defined as 'a space without frontiers with the freedom to offer services and the freedom of establishment as per articles 43 and 49 of the Treaty'.

This objective is achieved via the abolition of protectionist barriers to internal markets which had been imposed by Member States as well as uniformity in regulating adjudicating procedures.

Regulation of tendering procedures is therefore a tool for implementing the idea of 'effective competition' in the internal market

The concept of competition takes on the dual meanings of competition in the market and competition for the market in European law.

The first meaning refers to sectors where a competitive market is already in place and where EU intervention aims at preventing and punishing entrepreneurial conduct which restricts competition, allows price cartels, monopolies and abuses of a dominant position (articles 81 and 82 of the Treaty).

In the second, relevant to public tendering directives, the principle of free competition is once again connected to the aim of opening market sectors previously not available or limited by Member States by means of protectionism. This is to guarantee free access by economic operators to other Member States (articles 43, 49 and 95 of the Treaty).

The essence of the concept of effective competition lies in the guarantee that potential bidders operating within the European Union can access public procurement markets on equal terms and it also adds:

- taking into consideration the relationship between companies, whether in competition or bidding,

imposing competition with relation to purchasing requirements;

- codifying the relationship between adjudicating administrations and bidding enterprises;
- ensuring that the guaranteed safeguard of European law is the same as that laid down in the national laws which regulate adjudication procedures and the tools available for legal proceedings.

On the other hand, the interests to be safeguarded rather than the power to regulate are central to European administrative law (and these safeguards become limits on the national law's power to regulate and for that of European law too).

In the latest directives on tendering (European Parliament and Council of Europe Directives CE/18/2004 and CE/17/2004 for the coordination of public tendering adjudicating procedures for work, supplies and services) there are references to values which do not strictly coincide with market interests. These are references to protecting the environment, and social interests which the administration must reconcile in adjudication procedures.

Public contracts are therefore seen as a management tool for the area of interest related to EC law. The administrations invite individual – people and companies – to work together to meet targets they set and which, in each case, require an effective response.

The need to carry out tendering procedures to select the most suitable candidate to supply the services required by the administration is connected to the goal of removing obstacles to free competition.

In terms of European law, the effectiveness of the notion of competition is tempered by the general canons of vertical subsidiarity and proportionality and can no longer be extended to areas excluded from competition or when the administration decides

not to turn to the market to obtain any particular goods or services.

In addition, as we observed above, the European Union negotiates commercial policies internationally and it therefore imposes on Member States the international commitments it has taken on, on their behalf.

Although the directives are applied only to tendering procedures where the value is above the relevant levels established by the directives and periodically updated, the Court of Justice has set down that the Treaty principles of equal treatment, transparency, free circulation of goods, freedom of movement and freedom to supply services are also applicable to contracts below these levels.

The Interpretative Communication from the Commission related to EC law as applicable to tendering adjudications which are not, or not fully covered by the directives 'public tendering' (2006/C 179/02), states that 'the European Court of Justice (ECJ) has developed a set of basic standards for the award of public contracts which are derived directly from the rules and principles of the EC Treaty. The principles of equal treatment and non-discrimination on the grounds of nationality imply an obligation of transparency which, according to the ECJ case law 'consists in ensuring, for the benefit or any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of the procedures to be reviewed'. These standards apply to the award of services concessions, to contracts below the thresholds and to contracts for services listed in Annex II B to Directive 2004/18/EC and in Annex XVII B to Directive 2004/17/EC in respect of issues not dealt with by these Directives. The ECJ stated explicitly that 'although certain contracts are excluded from the scope of the Community directives in the field of public procurement, the contracting authorities which

conclude them are nevertheless bound to comply with the fundamental rules of the Treaty’.

3.4 Transposing EC regulations into Italian legislation

Directives 2004/17/CE and 2004/18/CE entered into Italian law with the Legislative Decree 12th April 2006, 163 ‘Code for public contracts on works, services and supplies activating directives 2004/17/CE and 2004/18/CE’ (*Gazzetta Ufficiale* no.100 2nd May 2006). This is also known as the ‘Code for public contracts’ and it was later integrated with the Legislative Decree 31st July 2007, no. 113 and later adopted into the Regulation of the Code of public contracts and then definitively approved by the Council of Ministers on 21st December 2007 and signed by the President of the Republic (it is still awaiting publication in the *Gazzetta Ufficiale* as we go to press). It replaces the Law no. 554/1999 and the Law no. 34/2000 on qualification of enterprises.

At a national level, the substantial spirit of EU regulations on competition is reaffirmed. This states competition is a ‘dynamic concept which comes from creating conditions which favour market development’.

It might be useful, in order to understand the trend towards multiplying regulations, to note the tendency of national regulations to associate the EU principle of free competition with the need to increase administrative action models.

Enshrining EU regulations into national law threw up an immediate conflict of competences between the State and the Regions which was particularly important as far as social and environmental issues are concerned.

In brief, some regions legislated by adding, amongst

other things, additional prescriptions related to the environment, social security, subcontracting and the set up of regional registers of professionals.

The case of the Tuscany Region is emblematic. Regional Law, 13th July 2007, no. 38 ‘Regulations regarding public contracts and measures concerning safety and continuity at work’ introduced strong social clauses. The Regional Law was challenged by the government.

Tuscany, Veneto, Piedmont, Lazio and Abruzzo Regions and the Autonomous Province of Trento appealed against the President of the Council of Ministers with 74 measures of censure, mainly concentrating on complaints that the Legislative Decree 163/2006 went beyond the limits of State competence and invaded regional competences as recognized in the new article 117 of the Constitution.

At the centre of the debate lay article 4, paragraph 3 of the Code of Contracts which states that ‘the Regions, respecting article 117, paragraph 2 of the Constitution, cannot make provisions related to: the qualification and selection of bidders; selection procedures, except those relating to administrative organization; adjudication procedures; sub-contracting; powers of market vigilance related to tendering in the competence of the Authority which oversees public works, services and supply contracts; planning activities and safety plans; stipulation and execution of contracts including executive direction, works direction and accounting and inspection excepting organizational and administrative accounting profiles or litigation. It remains the exclusive competence of the State to regulate contracts relating to safeguarding cultural heritage, defence contracts, segregated contracts or those which require particular measures relating to work, services and supply’.

Sentence no. 401 of November 2007 of the

Constitutional Court almost completely denied the Regional positions (only two marginal aspects were upheld by the judges and the Regions retain only exclusive competence on administrative organization).

The Constitutional Court sentence, unanimously states that:

- the State dictates uniform regulations to establish the methods of tendering and inspecting anomalous bids in adjudication criteria;
- regions cannot establish a method of tendering which is different from that prescribed by the State and local measures which give more weight to private negotiations are, therefore, unlawful;
- subcontracting is a matter for the State insofar as the limits to subcontracting regard the contract on one hand and competition on the other;
- in tendering which is below the threshold, the Regions cannot dictate their own rules as a non-uniform discipline for tendering is not justified and they must all be open to all operators.

The Constitutional Court intervened again on the subject with the sentence 431/2007, stating that in the public tendering sector, tendering procedures, more specifically regulation of qualification and selection of bidders, awarding procedures and adjudication criteria aim to guarantee that tendering procedures respect the rules of competition and EU principles of the free circulation of goods, the freedom to exercise one's profession and the freedom of establishment as well as constitutional principles of transparency and equality (as already stated in sentence no. 401 of 2007).

The Regions cannot, therefore, legislate in any way which is different from the Code on subjects which regard competition and as a result qualification of bidders, in procedures of awarding, subcontracting, safety plans, planning and contracts.

The transversal nature of the safeguards of competition (sentences no. 401 of 2007, no. 272 of 2004) imply that, as its subject is regulating the reference market of economic activities, it can also have an effect on matters in the jurisdiction whether, competitive or residual, of the Regions and holds sway over all the areas to which it applies, without placing an unreasonable or disproportionate limitation on any area of regional competence. (Sentence no. 430 of 2007.)

Regional competences have not been denied, but the implication is that even regional regulations on this subject have effects on competition and that these effects, connected to specifics in these regulated sectors are indirect and marginal and do not conflict with objectives covered by State regulation which safeguard and promote competition (Sentence no. 430, 2007).

Another useful aspect within the realm of this analysis regards technical specifications (article 68 of the Code of public contracts), which states:

1. Technical specifications defined in point 1 of appendix VIII, figure in the contract documents, including tendering publications, list of obligations or complementary documents. Whenever possible, the aforementioned technical specifications must be defined so as to take account of accessibility criteria for disabled individuals, adequate planning for all users and environmental protection.
2. The technical specifications must allow for equal access to all bidders and must not lead to the creation of unjustified obstacles to the opening of public contracts to competition.
3. Except for obligatory national technical regulations, and insofar as they are compatible with EU regulations, technical specifications are formulated in one of the following ways:
 - a) Referring to technical specifications defined in Appendix VIII, and, in order of preference, respecting

national regulations which reflect European regulations, respecting European technical ratifications, shared technical specifications, international regulations, other technical reference systems adopted by European regulatory bodies or, in the absence of these, respecting national technical ratifications or national technical specifications as regards planning, calculations, execution of work and production. Each reference mentions 'or equivalent';

- b) in terms of services or functional requirements, which can include environmental issues. They must, however, be sufficiently exact as to allow the bidders to determine the object up for tender and the procurement bodies which will judge the tendering award;
- c) in terms of services or functional requirements in letter b), with reference to specifications cited in letter a), presuming conformity to these services or these stated requirements;
- d) by means of reference to the specifications in letter a) for certain characteristics, and to the services or functional requirements in letter b) for the other characteristics.

The extensive nature of EU regulation on eliminating prescriptions (of qualification or adjudication) which impose limits on the protection of competition was underlined at a

national level when the 2004 directives on tendering entered into national law and were later clarified by the Circular of 1st March 2007 from the President of the Council of Ministers. This contained stipulations for procurement purchasers in the choice of selection and adjudication criteria in public service tendering - *Gazzetta Ufficiale* 15th May 2007 no.111 signed by the minister Emma Bonino.

The relevant passages are quoted below.

'As far as, in particular, adjudication of service tendering is concerned, the problem addressed relates to use, evaluation of the most economically advantageous bid, elements related to experience or professional qualification and, in general, to technical, economic or financial ability of the applicant (e.g. Curriculum Vitae, licences or quality certifications or the provision of similar services in the past). Such elements, inasmuch as they refer to the applicant's ability to provide the services required in the tender, can only be used for the purposes of selecting bidders.

It is at the selection stage, in fact, that the adjudicating administration includes the criteria it deems necessary in order to ascertain the capacity of the bidder to provide the service in question. Therefore, the experience, the competence, references, previous work and resources available are elements which may be used as selection criteria and must not be taken into consideration while the bid is being assessed.

The offer must, in contrast, be assessed on the basis of criteria which are directly connected to the object of the tendering procedure and which are used to measure the value, a fact which excludes reference to subjective qualities of the bidder.

Therefore, if adjudication is made on the basis of the criterion of the most economically advantageous offer, the quality and technical value of the bid can be determined by considering elements such as the method and organization of work or the composition of the proposed team which will provide the service.

At this stage of the proceedings, however, it is no longer possible to assess the capacity of the bidder, only the methods by which the supplier expects to provide the service.

It should be noted that the European Commission has already intervened several times with regard to the Italian government. It has been critical of the behaviour

of several procurement purchasers who have published tendering notices for public procurement tendering procedures which clearly contravened EU law.

As any repetition by procurement purchasers of similar behaviour which is unlawful because it violates European regulations could lead to the condemnation of the Italian State under article 228 of the EC Treaty with consequent applications of pecuniary sanctions by the European Union, all procurement purchasers are invited to adhere scrupulously to the operating instructions in the present circular. Be warned that, if these obligations are not observed, administrative responsibility will be incurred for damages to the treasury, with consequent procedures against the public officials who caused the said damages.'

A final general consideration regards the power of contractual prescriptions established by adjudicating bodies.

After EU regulations were adopted locally regarding public contracts in which public administration did not hold a position of diversity from other subjects, there was a generalized rethinking in law about the intrinsic position of power deriving per se from the use of public evidence. An example is to be found in the unilateral predisposition by a public body of clauses in the tendering procedure notification or in its stated paragraphs. The law has affirmed that this power can no longer take on the significance of a preventive renunciation of jurisdictional actions by the participating enterprises. It is interpreted as an abuse of a dominant position by the public body which violate their right to self-determination.

After this necessary examination of the more general and essential problems arising from the enshrinement of EU regulations into national law, we can finally look at the details regarding the issues of social and environmental sustainability.

The second paragraph of article 2 of the Code of public contracts states:

'The principle of economic value may be subordinate, within the limits expressly allowed by current legislation and the present Code, to criteria, published in the tender notification, which arise from social needs, as well as safeguarding health and the environment and promoting sustainable development.'

Its application must obviously take account of the aforementioned considerations.

In addition, on this subject, article 52 of the Code of contracts for 'reserved tendering' is relevant. This comes from article 19 of the 2004/18 and 28 and 2004/17 directives which regulates 'protected workshops' in procurement procedures, alongside the existing regulations regarding social cooperatives and social enterprises on a national level and a regional level. (See Law 381 of 8th November 1991 'Regulation of Social Cooperatives'.)

'Except for current regulations for social cooperatives and social enterprises, procurement purchasers can reserve participation in adjudication procedures for public procurement in individual tendering procedures or reserve execution in the context of protected work programmes when the majority of the workers in question are made up of disabled people, who because of the nature and seriousness of their difficulty, cannot carry out professional activities under normal conditions. The notification of tender will state this disposition.'

Herein is the concept that social potential of the Tertiary Sector cannot be used as a discriminating factor when the social enterprises (or the admissible voluntary body) participate in the same area of the market: in that case all enterprises are equal, but the possibility given by reserved tendering procedures is the way of separating the field of play both subjectively (by reserving the

tendering procedure for protected laboratories) and objectively (by reserving the execution in the context of protected work programmes).

Reserved tendering procedures are justified by the fact that disabled individuals cannot work under normal conditions. This confirms the EU principle of guaranteeing equal access for all economic operators to the public tendering market.

The general principles of protecting disadvantaged categories are particularly aimed at social enterprises which qualify as unusual enterprises for the very reason that they aim to safeguard work and access to work for disadvantaged and disabled individuals.

In Italian law, neither protected laboratories nor protected work programmes as such are stipulated. To clarify the question, the Authority for overseeing public contracts for work, services and supplies (the AVCP) intervened with the Ruling no. 2 of 23rd January 'Operating guidelines for reserved tendering procedures', article 52 of the Legislative Decree of 12th April 2006, no. 163 and later modifications. (*Gazzetta Ufficiale* no. 42 of 19.2.2008 – no. 38)

The AVCP stated that 'both protected laboratories and protected programmes are not recognized as institutions under current law.

Both appeared for the first time, at a European level, in the European Parliament Report on the directive proposal relating to coordinating public procurement tendering adjudication procedures regarding supplies, services and works (29.10.01). On the basis of this later European measures were taken. They both state that the workforce should be made up, by at least half, of disabled people. 'Disabled' does not include other categories of worker who are disadvantaged for reasons other than disability.'

Clarifying 'In Italy, taking account of the current lack of legislation, it is necessary to define the

objective conditions needed to identify protected laboratories.

To this end, it is held that, while regulation remains a simple statement and it is applied effectively, the following requirements should all be met by the subject intending to be recognized as a protected laboratory according to article 52:

- a. it must be a legal organization, set up respecting current legislation, which exercises an organized economic activity as its main, stable concern;
- b. in its legal documents, the organization must state its aim as being that of work placement for disabled people;
- c. it must have a majority of disabled people in its workplace and they will be individuals who are unable to carry out professional activities under normal conditions because of the nature or gravity of their disability.

As far as the requirement in c) is concerned, 'disabled' refers to people of working age who are affected by physical, mental or sensory difficulties, people with learning difficulties, the visually impaired and those with hearing/speech impairment (Law 12th March 1999, no. 68).

As far as coordination with the current legislation on social cooperative and social enterprises is concerned, the protection clause at the beginning of article 52 ('Except for current regulations for social cooperatives and social enterprises') indicates that the two legislative measures (article 52 of the Legislative Decree no. 163/2006 and Law no. 381/91 and later modifications) regard different spheres.'

The Ruling finishes:

'The Council, on the subject of reserved tendering procedures (article 52) is of the opinion that:

- a. Under Article 52 of the Legislative Decree no. 163/2006 and later modifications, the subjects

which meet all of the following requirements can be recognized as protected laboratories:

1. it must be a legal organization, set up respecting current legislation, which exercises an organized economic activity as its main, stable concern;
 2. in its legal documents, the organization must state its aim as being that of work placement for disabled people;
 3. it must have a majority of disabled people in its workplace and they will be individuals who are unable to carry out professional activities under normal conditions because of the nature or gravity of their disability;
- b. Legal subjects other than protected laboratories can take advantage of protected work programmes if they employ a majority of disabled people in executing the specific contract. They must be individuals who are unable to carry out professional activities under normal conditions. This can be agreed with subjects operating in the social sector;
- c. the procedures in article 52 of the Code requires that:
1. the notification of tender is published with its aims so that the tendering process is made known to interested parties;
- d. prevision of participation requirements (general and special) is carried out in the same way as is the case for non-reserved tendering procedures, respecting the principle of proportionalism.

Looking through the Code of public contracts, it is also useful to highlight article 69. This lists the particular conditions for the execution of contracts in the notification or invitation to tender (article 26, Directive 2004/18; article 38, directive 2004/17):

1. Procurement purchasers can demand particular conditions in contract execution, provided they are compatible with EU law and, amongst other things,

with principles of equality, non-discrimination, transparency, proportionality, and provided they are clearly expressed in the published call for tender, or in the invitation to tender in the case of procedures where publication is not called for, or in the list of obligations.

2. The said conditions may, in particular, relate to social or environmental needs.
3. The procurement purchaser who stipulates such particular conditions may communicate them to the Authority, which will rule within thirty days on their compatibility with EC law. At the end of that period of time, the call for tender may be published and invitations may be sent.
4. In their bid, economic operators declare that they will accept the particular conditions, should they be awarded the contract.

Article 184 is equally important. It contains assessment of environmental impact (article 19, Legislative Decree no. 190/2002) for the role given to the planning and project stage.

1. Environmental impact assessment pinpoints the direct and indirect effects of a project and the main alternatives to it, including zero alternative. It looks at the impact on man, fauna, flora, earth, surface and underground water, air, climate, landscape and on interaction with these factors, as well as on material goods and on cultural, social and environmental heritage and assesses the conditions for setting up and carrying out works and systems.

4. The Tertiary Sector and the public market

4.1 The different identities within the Tertiary Sector and the implications for market participation

Some academics hold the view that the definition not-

for-profit – an Americanism – is not adequate as public bodies make up part of this field. This is the reason why many authors prefer the term Tertiary Sector. This distinguishes it from the Primary Sector (the State) and the Secondary Sector (the Market).

This definition does not please everyone either: some authors object, saying that there is no primary sector as the State is not a sector, and Tertiary Sector diminishes the field since it makes one think of an extra, residual category.

Transatlantic researchers are more precise when they write of the non-profit-sector in a three sector economy. In the United States, not-for-profit is a separate legal category and organizations are not subject to tax.

In Europe and in Italy, not-for-profit is a wider grouping which includes relatively heterogeneous organizations ranging from associations or cooperatives to foundations and religious bodies which are not set up for profit.

Some authors cite the following characteristics of not-for-profit organizations:

- they are formally constituted;
- they are legally private;
- they are self-governing;
- they is no profit-distribution mechanism;
- there is some voluntary work.

If these criteria were strictly applied in Italy, we would have to exclude many bodies from the not-for-profit umbrella even though they play an important role in their operating sector: we would have to exclude church aid organizations and social cooperatives: the former because they are not self-governing (their management is not usually elected), and the latter because they do not always apply the binding clause of non-distribution of surpluses.

Other authors add further criteria, for example:

- independence;

- democratic management;
- socially useful production.

There are other classifications which try to a greater or lesser degree to complete lists which allow definitions of which organizations are fully not-for-profit.

A completely different classification, which is also useful statistically, is used internationally. It includes the ICNPO operating areas:

- culture and leisure;
- education and development;
- health;
- social assistance;
- environmentalism;
- promoting local community development;
- promoting the protection of civil liberties;
- philanthropists and promotion of voluntary work;
- international activities;
- entrepreneurial, professional and union organizations.

In Italian regulation for qualification as an ONLUS (not-for-profit organization) democratic structure and production which is socially useful are cited as qualifying elements.

Law 7th December 2000, No. 383 defines associations for social promotion in the following way 'associations of social promotion are defined as associations whether recognized or non-recognized, movements, groups, their associations and federations set up in order to carry out socially useful activities on behalf of members or third parties, which are not-for-profit and which act with complete respect for the freedom and dignity of their associates'.

Political parties, union organizations, employers' associations, professional and sector organizations or any organizations which has the sole aim of protecting its associates/economic interests cannot be considered associations for social promotion.

Associations for social promotion earn the economic resources which are necessary for them to function and to carry out their activities from proceeds from the provision of goods and services to associates and third parties. This can also be through economic activities such as commercial, artisan or farming activities as auxiliaries and subsidiaries which still aims at achieving institutional objectives.

The social enterprise par excellence is the social cooperative. It has been defined and regulated since its origin by a Law of 8th November 1991, no. 381 'Regulation of Social Cooperatives', (*Gazzetta Ufficiale* 3rd December 1991, no. 283).

Article 1. Definition.

1. Social cooperatives aim to pursue the general interests of the community in promoting the human and social integration of citizens via:
 - a) managing welfare and healthcare and education services;
 - b) through various activities – farming, industrial or services – which provide work placement services for disadvantaged people;
2. Social cooperatives are subject to regulations of the sector in which they operate, provided that they are compatible with current legislation.
3. The company name, however it is formed, must contain the indication 'social cooperative'.

The regulation of social enterprises was further organized by the Legislative Decree 24.03.2006 no. 155. This stipulated social enterprise status can be given to all private organizations, including bodies in book V of the civil code, which exercise an established main economic activity which is organized to produce or exchange socially-useful goods or services, which serve the general interest, which are not public administrations, and whose statutes do not

limit – whether directly or indirectly – the provision of goods and services to their own associates, members or participants. Added to this group are ecclesiastical bodies and religious organizations with which the State has entered into pacts, agreements or understandings limited to production or exchange of socially-useful goods or services, which serve the general interest.

There is the additional requirement of reinvesting all gains or surplus from management in the statutory activity or increasing the organization's assets. Sharing of profits is not allowed.

Speaking about this vast range of different identities, the president of the ONLUS Agency, Professor Stefano Zamagni observed that

'... to the origins and development of not-for-profit organizations, it is possible to pinpoint, within this wide range of Social Organizations there is a multiplicity of different models of identity which lead to different functional logics. It is important to keep this in mind, especially with reference to the relationships those in the Tertiary Sector have with the other spheres of society. Three particular models of identity can be identified:

- I) the oldest model sees the not-for-profit organization as a direct expression of civil society, i.e. as a free grouping of people around a project which they work on together for the common good although it is not universal. Behind this model, we find the horizontal subsidiary principle, as affirmed during the period of humanism (15th century) and later formalized by Ugo Grozio.
- II) the model which sees the not-for-profit organization as emanating from and supporting the public sphere (which should not be confused with the political sphere). The not-for-profit organizations created by collectives and institutionalized categories are in this grouping (e.g. the union which creates social

cooperatives, the local bodies which promote the start-up of not-for-profit organizations, benefits agencies which are converted into foundations etc.). The regulation principle of this model is decentralization, or a vertical subsidiary nature. 'Let the State not do that which lower levels of government and individuals in civil society can do'. The difference is clear: while horizontal subsidiary organization cedes a degree of sovereignty, vertical subsidiary organization sees sovereignty shared.

- III) the most recent model sees the Tertiary Sector as a direct expression of the non-profit sector. In this sector we have recently seen the widespread practice of creating not-for-profit organizations – especially enterprise foundations – by for-profit enterprises. This is corporate philanthropy which is now spreading in Italy. The principle behind this model is one of 'giving back' a part of company profits to society, since they were obtained from society offering of its own to the enterprise.

The historical analysis of the hybrid dynamic of the three models evidences, on one hand, contamination between the three models and, on the other, a need to understand the meaning, in other words, the direction of the movement. EU legislation has been taking on an increasingly vital role in the development and spread of the not-for-profit organization in recent years. It limits opportunities for growth and adds inevitable organizational constraints which have an impact – sometimes great – on the organization's identity. It is urgent to address the crucial question of whether we want the different models to be in conflict with each other so that only one model will exist in the end, or whether they can all coexist.

It is not difficult to understand the implications of the two alternatives. Choosing the first means, de facto, supporting the long-term success of the third model.

Today, those who believe – and those who write – that there are good reasons against this outcome must come out in favour of the second alternative. What are these good reasons however? I will list two.

The first is that a not-for-profit organization which is set up like a drive belt for a for-profit organization would not alter the existing order and would not therefore constitute a significant improvement in our situation. The role of the not-for-profit organization would be additional, it would certainly be useful, but it would be performing well below its potential. The truly original role of organizations in civil society is that they are emerging, which implies that the appearance of not-for-profit organizations puts all pre-existing relationships between individuals in civil society and the State up for discussion. This does not mean adding relationships to those which already exist, but changing their actual nature.

The second reason concerns the justification for not-for-profit organizations. As we have seen, the *raison d'être* of these organizations is that of creating value both instrumental – with respect to the aims society considers priorities – and expressive – the not-for-profit organization allows expression of values citizens believe in through actions. The instrumental value of the not-for-profit organization is measured in terms of the results it produces – emphasis on performance and managerial organization. The expressive (or symbolic) value of the not-for-profit organization is, on the other hand, measured in terms of the degree to which they are able to produce relational goods and, definitively, social cohesion.

So, wherever the third identity model is affirmed as a hegemony, it is clear that the expressive value of the not-for-profit organization would be sacrificed to the instrumental value. But a not-for-profit organization overbalancing towards efficiency (in allocation) alone

does not seem to be greatly needed – especially in the present age. The position I favour, therefore is that of pluralism in the non-profit sector, within which the three identity models I have described can live together freely, leaving the subjects in civil society to choose the model they feel is most adequate.

As we can see, the organizational challenge the social cooperative organizations need to meet (and win) is that of making sure that the instrumental value and the expressive value can live together in harmony.

Zamagni takes up the issues raised by the Court of Justice sentence in trial C-119/06, which places all organizations acting economically on the market on an equal footing and those raised by the Lazio Regional Administrative Court with its sentence 5993/2006 stating that it is lawful to entrust a typically-market service to a group made up of a not-for-profit organization (members of the Chamber of Commerce), as group leader and a limited company.

For their part, the Chambers of Commerce have recognized that there was a certain delay in fully ‘taking on board’ not-for-profit organizations as economic operators and they have now moved rapidly to draw up new services for social enterprises to make managers of social enterprises more ‘business-like’ (Project QUASAR EQUAL ETG2- EXA-03m-v3-EN-Quasar).

We can therefore see full legitimate coexistence of for-profit and not-for-profit organizations on the market (and in terms of the public-private partnerships which act on the market as a public arm).

The potential of the Tertiary Sector in local public services

The Tertiary Sector has always played an active role in some key public services such as social assistance

and training. However, interest is growing both from the public sector and within the Tertiary Sector in the potential for future expansion. There is a strong perception amongst stakeholders, in terms of both demand and suppliers, that the Tertiary Sector has the potential to contribute more in many other local services.

For the Tertiary Sector to be able to play a more important role, some challenges must be overcome including:

- cultural resistance and some structural problems in procurement procedures which could put potential entrants from the Tertiary Sector at a disadvantage;
- lack of capacity allowing small organizations from the Tertiary Sector to respond to tendering procedures and to monitor the requirements they make;
- the sector’s difficulty in accessing financial resources needed for expansion due to risk aversion by credit institutions and uncertainty in the flow of business which could come from local public procurement;
- poor marketing intelligence contributing to a lack of awareness not only by the purchasers in local bodies concerning what the Tertiary Sector could offer in some specific areas, but also by potential suppliers in terms of the opportunities they present.

In many sectors of the market (for public procurement) there is potential space for an increase in market share for Tertiary Sector suppliers, which could lead to significant potential benefits in terms of improving innovation, greater adaptation of services to local needs and an increase in the capacity to respond to users’ requirements of choice between different options.

The difficult relationship between social enterprises and public tendering procedures

As we have seen, the limitations of some public services have been addressed by using privately-run enterprises, but which act, by statute, in the collective interest and not-for-profit.

Both 381/91 (social cooperatives 'pursue the community's general interests in promoting the human and social integration of citizens') and recent laws (118/2005 and 155/2006) on social enterprises (which are defined as 'private not-for-profit organizations which operate a stable main economic activity of production or exchange of goods or services which are socially-useful, aimed at acting in the general interest') define social enterprises as those which undertake public functions and which are concerned with the common good.

Within the social enterprise we find two concepts which are potentially in conflict: that of the enterprise and that of solidarity.

In the face of financial cuts and reviews of the social state which have led to the de-nationalization of welfare systems, the social cooperative is an expression of the will of the local community which takes on board its own needs and intervenes with adequate responses.

The social enterprise has more than a determining role in the process of transformation of welfare. It offers services which integrate equal opportunities and supports work for those who are disadvantaged and discriminated against. It is also able to respond to citizens' requirements of access to goods and services which are produced with fair working processes.

Economic data show that this second aspect represents still represent a limited amount of turnover and that social enterprises mainly work with Public Bodies.

Over the last ten years, social entrepreneurialism has developed rapidly, and this has not always

coincided with improvements in the capacity to respond adequately to the needs of the territory where it works.

Of the difficulties faced, there is certainly the difficulty of the relationship with local administrations, where social entrepreneurialism is often considered simply as a support more than a resource which could share in strategic and operational choices.

The methods used to allocate public services are also called into question.

The following observation comes from the example of social cooperation within the Marche region:

'the tendering process is actually the main tool a social enterprise uses to arrive at the point at which it manages a service. This was also shown by a quantitative questionnaire which Marche social cooperatives answered: there remains a method which greatly limits fulfilment of the aims expressed in the aforementioned law and objectively gives substance to the debate over whether awarding contracts through tendering procedures is simply a question of supplying work. This means a great deal, both practically (e.g. the demand for temping agencies to be able to take part in tendering procedures, sometimes with greater legal right than the social cooperatives themselves), and in terms of concept (e.g. the risk of categorizing participation in the social services system in terms of 'management' alone) in that public ownership of the service is not transferred to the social enterprise, a basic element if we are to arrive at concrete subsidiarity, which is not simple privatization or dismantling of public services.'

and further

'the minute dimensions of small-medium social cooperatives is not necessarily negative, as localization can be synonymous with meaningful 'expert' presence on the ground. However, if we cannot find a way of

awarding contracts which fully allows the essential quality of social enterprises to show through, (concern for the common good and participation in social planning) there is a risk that the entire system will be weakened by navigating by sight so that it is not always possible to avoid rocks: viz. the arrival of large cooperatives or service companies from other Regions which operate purely on management logics and which are perfectly at home in entering tendering procedures: this cannot be avoided except by force – e.g. discounts on operating tariffs. Marche social operators risk having to play catch-up permanently and they will only be able to catch up if there is an overall policy (an additional one) of innovation and transformation.'

Some of the options which have been positively assessed are:

'the Regional Social Services Plan and the transformation of Areas as management subjects;

– law 328/00, which, although it has been handicapped by being frozen, provides for social services being awarded on the basis of joint planning and, in connection to this, albeit with greater potential, a social cooperative accreditation institute;

– overcoming the logic of tendering procedures in a process which brings the social enterprise into a relationship with the Public Body, in which the principles of transparency, public evidence and value for money are maintained, but which allows for public functions to be shared;

– full activation of the social function of the enterprise in its diverse expressions: planning, projects, project activation ('management') and assessment, in terms of application and definition of the rules: joint promotion becomes essential therefore, by the system of social enterprises of a different awarding procedure which obviously allows the social enterprises to overcome

'private' methods of interacting with the Public Body in order to play their true public role globally.'

These observations, which could at first reading make one think of a request for discrimination in their own favour at the expense of competition, are actually a testimonial of the need to set up public procurement models which include social aspects.

As we will see in the final notes towards models of EQUALITY, just such a route is practicable with the all the players taking part.

The Voluntary Sector, the market and tendering procedures

The issue of involving the Voluntary Sector in market operations in general and in public procurement in particular has been a matter of intense (and bitter) debate (and still is from viewpoints other than those of the law).

Here, we are limited to the subject of EQUALITY i.e. the participation of the Voluntary Sector in public procurement as a bidder.

The issue has been clearly defined by the European Court of Justice, sentence 29/11/2007 C119/06 which established that voluntary associations are enterprises in terms of regulations regarding public tendering procedures and must be allowed to compete with other market operators.

To stress the relevance of the subject and object in question it is worthwhile reporting the parts of the sentence which are most pertinent to this work.

Note that the sentence regards the clash between the European Commission and the Republic of Italy, called to question for not having censured the Tuscany Region which entered into a framework agreement with a voluntary association without the process of public evidence.

'First of all, the Republic of Italy holds that the said

agreement constitutes a public service tendering procedure as per article 1 subsection a) of the relevant directive, in that the associations concerned are not commercial operators as they carry out their activities outside the market and out of the realm of competition. This argument is based on the fact that the aforementioned organizations are not-for-profit organizations and that their membership is made up of people motivated by considerations of social solidarity.

Without denying the social importance of voluntary activities, we must necessarily state that this argument cannot hold. The absence of profit-making as a goal does not exclude these organizations from exercising an economic activity or from being enterprises under the terms of the Treaty in the sections relevant to competition (viz., in this sense, sentence 16th November 1995, case C-244/94, *Fédération française des sociétés d'assurance et al.*, Pag. I-4013, point 21; 12th September 2000, cases grouped in C-180/98 to C-184/98, *Pavlov at al.*, Pag. I-6451, point 117, as well as 16th March 2004, cases grouped in C-264/01, C-306/01, C-354/01 and C-355/01, *AOK Bundesverband et al.*, Pag. I-2493, point 49).

It is important to remember that the Court holds the view that entities such as healthcare organizations which guarantee to supply emergency transport services and transportation services for the sick must be qualified enterprises in terms of the competition regulations set out in the Treaty (sentence 25th October 2001, case C-475/99, *Ambulanz Glöckner*, Pag. I-8089, points 21 e 22).

It follows that the associations concerned can exercise economic activity in competition with other operators. The circumstance where, since their team workers act as volunteers, these associations can present bids which as considerably lower in price than other bidders does

not prevent them from participating in public tendering adjudication procedures as per directive 92/50 (viz., in this sense, sentence 7 December 2000, case C-94/99, *ARGE*, Pag. I-11037, points 32 e 38).

It follows that the agreement of 2004 is not excluded from the notion of 'service public tendering' as per article 1 subsection a) of the directive 92/50 for the reason that the associations concerned are not-for-profit organizations.

The Republic of Italy also states that the 2004 agreement only outlines the general scheme of services and reimbursement which are set down in other specific contracts. This Member State holds the view that no health transportation operation and no reimbursement would be effected in execution of the 2004 agreement per se. This argument is equivalent to stating that the framework agreement in question is not a contract in the sense of the aforementioned art. 1 subs. a).

In this respect, it is important to remember that in order to define the field in which directives are applied in terms of tendering procedures, the Court has given extensive interpretations of the notion of public tendering procedures which includes framework agreements. In the Court's opinion, a framework agreement must be considered 'public tendering' and in terms of the present directive in the limits in which it confers units to the various specific tendering procedures it regulated (viz., in this sense, sentence 4 May 1995, case C-79/94, *Commission/Greece*, Pag. I-1071, point 15).

As a result of the latter sentence, such an extensive interpretation of the notion of public tendering procedure, which includes framework agreement, is imposed to prevent operators from avoiding the obligations which are fixed by the directives on the subject of public tendering procedures. This is also confirmed for public tendering procedures for works,

supplies and services as set down in the directive 2004/18. Articles 1, 5 and 32 of the said directive contain specific rulings related to framework agreement which are based on the principle that the latter come into the ambit of application of EU regulations on public tendering procedures.

It follows that the 2004 agreement must be considered a contract in terms of art. 1 subs a) of directive 92/50.

Finally, the Italian government contests that this agreement was binding in that the healthcare transportation operations were carried out by voluntary associations which received only their expenses.

Neither can this argument be held up. It is important to observe that the binding nature of a contract refers to the service provided by the public authority concerned because of the provision of services which are subject to contract and of which the said authority is beneficiary (viz., in this sense, referring to directive 93/37, sentence 12th July 2001, case C-399/98, Ordine degli Architetti et al., Pag. I-5409, point 77).

In the case in point, if it is true that the work of the individuals who carry out the healthcare transportation in question is unpaid, there are nonetheless elements put before the Court that payments made by the public authorities concerned are over and beyond reimbursement of expenses incurred in supplying the said healthcare transportation services. These amounts are fixed in advance at a flat rate, on the basis of tables attached to the 2004 agreement. The system described in these tables provides for payment of a fixed sum to place a vehicle for intervention on 'stand-by', a fixed sum for transport of less than 25km and additional fees for each extra kilometre.

The Italian government has confirmed to the Court that this method of payment and the sums laid down in the attachment to the 2004 agreement allow national

authorities to subsidize the associations which provide the healthcare transportation service in question.

In the precise circumstances of the case, the method of payment in the 2004 framework agreement constitutes more than a simple reimbursement of expenses. Within these limits, it is important to state that such an agreement was entered into on a quid pro quo basis for healthcare transport services contemplated by them.

As a result, the 2004 agreement must be considered binding in the sense of art. 1, subs a) of directive 92/50.

From what goes before, it follows that the said framework agreement constitutes a service public tendering procedure in the terms of this disposition.'

We hold that there is nothing to add to the clarification made by the Court.

5. Social responsibility and public purchasing

After analyzing the structure and features of the public procurement market as well as the main elements which characterize supply and demand, we intend to introduce the specific concepts attached to the notion of social responsibility starting from a historical and conceptual overview.

As we have already stated, EQUALITY started from the hypothesis that use of corporate social responsibility could provide a push towards excellence.

At the planning stage, this tool was at the centre of EC and national attention, as some Italian Regions (Tuscany and Umbria) were already considering its use as an accreditation criterion.

For this reason, the CSR was subject to a serious internal debate and a detailed enquiry.

This analysis and the EC (and international) evolution have contributed to directing the inclusion of social considerations in public procurement towards greater

regulation, although this takes nothing away from the potential contribution corporate social responsibility can offer in the creation of virtuous circles.

Corporate social responsibility could, however, also be useful in applying protected work programmes to for-profit enterprises. In each case, it acts as an example for the social enterprise and for subjects connected to the Tertiary Sector in general.

5.1 Corporate Social Responsibility (CSR)

In the 1970s there were significant developments in terms of the environment and social issues related to CSR.

The WWF was founded in 1961 and 1971 saw the foundation of Friends of the Earth and Greenpeace. For the next thirty years, these and other NGOs played a significant role in Europe and North America, in particular as far as development of legislation and standards for social and environmental issues was concerned.

At this time local groups also began to emerge and spread, while the main NGOs branched out further and further.

The Stockholm Declaration of the United Nations on The Human Environment was signed in 1972. The UNEP (UN Environment Programme) was charged with putting its recommendations into effect.

In terms of humans rights, investors pressurized South Africa to abolish apartheid. Some enterprises acted by supporting initiatives such as the 'Sullivan Principles' which promoted notions of racial and gender equality.

Newly independent countries began to be alarmed at the threat the power of large multinationals had on their sovereignty, causing the first attempt at a code of conduct (UN Code of Conduct for Transnational Corporations) which was then abandoned.

This is the era of the promulgation of OCSE guidelines for multinationals (adopted for the first time in 1986) which were developed in the context of making foreign investment easier. The guidelines reflect the agreement of all OSCE member states on what is meant by responsible behaviour in business. Adoption was fully supported by the worker representation and employers' organizations which were consultants to the OSCE. When they were revised in 2000, there was explicit reference to the fact that enterprises were to apply the guidelines anywhere they operated – not only in the OSCE area. It is interesting to note that the first of the eleven titles in the chapter related to General Policies regards sustainable development.

The ILO (International Labour Organization) Tripartite Declaration on multinationals and social policy was adopted in 1977 and is the first international tool of its kind to be universally applicable and dedicated to social responsibility in business.

In the sense that it is a 'Declaration' it is not an international treaty or convention – it is more of a part of international 'soft law'.

One of the most significant elements of the ILO Tripartite Declaration was the understanding that although ILO conventions and recommendations were addressed to the behaviour of the governments which ratified it, the principles behind many of these tools could be applied to other parts of society including economic operators.

The 1980s saw constant developments on many fronts relevant to CSR.

In terms of the environment, in 1982 the United Nations Charter for Nature was approved. Amongst other things, it stated that 'States and, to the extent they are able, other public authorities, international organizations, individuals, groups and corporations shall co-operate in the task of conserving nature

through common activities and other relevant actions, including information exchange and consultations and establish standards for products and manufacturing processes that may have adverse effects on nature, as well as agreed methodologies for assessing these effects’.

In 1984, a chemical factory belonging to Union Carbide exploded in Bhopal killing 4,000 people and causing questions to be asked about the multinationals operating in developing countries using standards which were different from those adopted in developed countries.

In 1987, 24 countries signed the United Nations Montreal Protocol to phase out the use of substances which damaged the ozone layer. Private sector research investment was crucial in the development of substitutes for the many CFCs which had been identified as a main cause of the destruction of the ozone layer. Many public-private partnerships were set up to research alternative solutions to CFCs, previously unthinkable.

In 1981, UNEP, IUCN and WWF published the World Conservation Strategy which established the main principles and the first guidelines for nature conservation and sustainable development.

The report of the United Nations Brundtland Commission popularized the concept of sustainable development as the type of development which satisfies the need of the current generations without compromising those of future generations.

The report highlighted three basic components of sustainable development:

- environmental protection;
- economic growth;
- social equality.

Its prescriptions were as relevant to companies as they were to governments and other organizations.

In 1989 the UNEP Basel Convention was adopted. It was concerned with cross-border movement of dangerous waste.

In the same year, the environmental tragedy of the Exxon Valdez led to consumer boycotts and to the development of the ‘Valdez Principles’, an environmental code of conduct adopted by companies as an environmental or ethical mission. The ‘Valdez Principles’ were supported by a group of investors and pension funds allied with environmental movements (CERES Coalition) which renamed the principles the ‘CERES principles’.

Company activity outside the environmental context attracted international public attention in the same way. In 1984, Nestlé met with organizers of a consumer boycott against the advertising of a prepared baby milk. This was one of the first times an international movement of people was able to persuade a company to change its behaviour on a social issue. Nestlé agreed to adhere to a World Health Organization market code for breast milk substitutes, although pressure groups maintain that the violations continue as does the boycott.

During the 1990s, issues such as direct foreign investment and its connection with globalization began to attract increasing public attention. Many governments adopted growth models which were connected to exports and tried actively to attract direct foreign investment. The World Bank and other international financial institutions encouraged developed and developing countries to put privatization, deregulation and economic liberalization policies into practice. These policies simplified business in the private transnational sector and, as a consequence, attracted attention to what role enterprises could play in making sure that their activities were conducted in a socially responsible manner.

At this time, we began to see public concern about - and the response of business to -issues regarding the impact of the private sector on worker, the community, the environment and other issues of entrepreneurial ethics being treated differently. These included notions of adherence to regulations, management and best practice where customers were concerned and had previously attracted attention as isolated issues, now they were beginning to be treated as a unitary whole. A growing number of enterprises began to make shared efforts to give testimonials to consumers, communities, workers, investors and NGOs to publicize the socially responsible activities they were putting in place.

In 1992 the United Nations Earth Summit took place in Rio de Janeiro, Brazil. It was set up around the issue of sustainable development and led to the declaration of the same name, to the framework convention on climate change, to the framework convention on biodiversity, to the United Nations convention to combat desertification, to the creation of the World Bank Environmental Grants Arm and to the drawing up of an agenda for action.

Although the governments (especially those from developed countries) took the lead in suggesting methods of reducing poverty and minimizing the environmental impact of business, the agenda underlined that all the parties could play a role in overcoming non-sustainable practices. Through the creation of the Business Council for Sustainable Development, the business community recognized that it was responsible for contributing to the dialogue about environmental, economic and social issues. At Rio an 'Earth Charter' was launched with strong support from Mikhail Gorbachev and Ruud Lubbers (Prime Minister of the Netherlands). Its aim was to 'Lead rapidly to a global sustainable society based on

respect for nature, universal human rights, economic justice and the culture of peace'.

At this time, the United Nations set up world meetings on the main social issues. In 1995, the United Nations World Summit for Social Development took place in Copenhagen. It strengthened the connection between economic and social development and pushed governments into working towards full employment, with quality jobs which respected the main ILO conventions. Both the world conference against racism (Durban 2001) and the fourth world conference on women which took place in Beijing in 1995 adopted declarations and action plans which called on businesses to face specific social problems.

Since 1992, following the adoption by Levi Strauss of guidelines on global supply, companies involved in production or marketing of branded products by mean of international outsourcing began to adopt direct codes of working practice which were applied to their suppliers and subcontractors. These companies were trying to respond to negative publicity from investigations which exposed inhuman hours of work, subsistence wages, unhealthy unsafe working conditions and child labour in the production of clothes, footwear and toys and in other labour-intensive sectors.

During the 1990s and beyond, there was a proliferation of these codes. They produced a great deal of controversy and started many arguments about the measures adopted, how they could be implemented and how complaints about their effective application could be verified.

In addition to the many codes which were unilaterally adopted by businesses, industrial associations and multi-stakeholder initiatives produced their recommendations, involving NGOs and unions in their production.

Implementation and the challenges connected to verification of code of supply adoption gave rise to a new commercial sector which offered private services of certification and inspection, including some form of accreditation based on private standards. These developments had a significant influence on the concept of corporate social responsibility. Some of the better-known organizations responding to these issues were created at the end of the nineties and include Ethical Trading Initiative, the Fair Labor Association, and Social Accountability International (SAI)¹.

Similar questions of implementation, verification and certification were faced by various fair trade organizations as they tried to solve the problem of the commercial relationship between small producers of goods (especially agricultural) in developing countries and consumers in developed countries via the use of labelling policies for fair trade. The Fair Trade Labeling Organization (FLO) was founded in 1997 as an umbrella organization for these initiatives in order to promote fair trade standards within numerous national organizations.

In 1996, ISO introduced its series of environmental standards ISO 14000. This series came out of the Uruguay round of GATT negotiations and the Rio Summit on the Environment. Whilst GATT was concerned with the need to remove non-tariff trade barriers, the Rio Summit generated a commitment to protect the environment worldwide.

The environment has seen strong growth in the number of national and regional standards. After rapid acceptance of ISO 9000 standards, and the worldwide increase in environmental standards, ISO assessed the need for international environmental management standards. In 1991, the Strategic Advisory Group on the Environment (SAGE) was founded to assess whether these standards could be useful in:

- promoting a common approach to environmental management similar to that of quality management;
- strengthening organizations' capacity of adhering to and measuring improvements in environmental performance;
- facilitating commerce and removing barriers.

In 1992, SAGE recommendations led to the creation of a new ISO technical committee – TC 207 – for international environmental management standards.

The committees and its members were made up of representatives from industry, standard organizations, governmental and environmental organizations from numerous countries. The new series of ISO 14000 standards is destined to cover environmental management systems, environmental audits, environmental performance assessment, environmental labelling, lifecycle evaluation and environmental concerns in product standards. Today, almost 50,000 companies worldwide have obtained ISO 14000 certification alongside another 500,000 who have obtained ISO 9001 certification.

Another area for standard definition emerged in the late nineties. It concerned social and sustainability issues. In response to the demand for greater transparency and accountability, companies began to publish social and sustainability accounts. Documents of this nature were taken up by investors worried about the growing importance being given to non-financial aspects of business which are often intangible, such as reputation, which can have an impact on the value of a company. Many investors were also worried about questions relating to risk management in terms of legally relevant responsibilities of enterprises. In response to this demand, some businesses, together with industrial and financial organizations began to promote the idea of international standards in this area. The most

¹ Founded in 1997: <http://www.cepaa.org/>

significant development was the Global Reporting Initiative (GRI) which was instituted to develop and disseminate the Sustainability Reporting Guidelines to produce audits on the economic, environmental and social dimension of activities, products or services.

The GRI is a multi-stakeholder organization which defines standards which reflect many internationally recognized environmental and social standards. The GRI started as a project from the American environmental organization CERES (see above) with support from the UN environmental programme. In 1992, the GRI became independent and entered into official cooperation with UNEP. Today, more than 400 enterprises in more than 40 countries use the GRI Guidelines. A private standard regarding accountability assurance for sustainable reporting and for stakeholder involvement has been set up.

In 2002, the United National world summit on sustainable development took place in Johannesburg. The fundamental role of the private sector in contributing to sustainable development was emphasized on numerous occasions. The declaration states:

we agree that, in pursuing its own legitimate activities, the private sector whether large or small enterprises must contribute to the evolution of fair sustainable communities and societies. We agree that there is the need for private enterprises to improve company accountability. This should take place within a stable transparent regulatory environment.

ISO and the Global Reporting Initiative are explicitly mentioned in exhorting nations to:

'Strengthen social environmental responsibility and accountability. This should include actions at all levels to encourage the enterprise to improve its social and environmental performance by means of voluntary initiatives, including environmental management systems, codes of conduct, certifications and public

accounts on social and environmental issues, taking initiatives such as ISO standards and GRI sustainability guidelines into account, keeping in mind Principle 11 of the Rio Declaration on the environment and development [...] and encouraging dialogue between enterprises and the communities within which they operate and the other stakeholders.'

A further factor which has had a great influence on the everyday debate on corporate social responsibility has been the high number of illegal activities and scandals worldwide: from Enron and WorldCom in the USA, Parmalat in Europe to Snow Brand in Japan. Although issues concerned with company governance have received critical attention since the 1920s, these questions re-emerged in the 1990s through initiatives such as the Cadbury Report in the United Kingdom and have increased in importance due to recent events.

Keeping this background in mind, an analysis can be made of the actual concept of CSR.

It appears clear that the current form of CSR emerged in the 1990s and represents a convergence of ideas and developments, many of which are relatively recent. These ideas and developments do not come from the same source. Many of the most important changes and influences on the current concept of CSR can be summed up as follows:

- globalization;
- liberalization of trade, regulatory reform;
- environmental/sustainable development;
- the labour market, the supply chain, codes of conduct;
- acceleration of environmental degradation (despite the many initiatives undertaken);
- marginalization of a wide section of society as a by-product of development.

We will now look at these issues in greater detail.

5.2 Globalization, trade liberalization and entrepreneurial justification for the adoption of CSR practices

One reason why corporate social responsibility has become relevant is the convergence of factors concerned with globalization. Globalization can be seen as a complex process of interdependence or convergence as a result of the constant and extraordinary changes in goods, information, services and capital. In his famous speech to the World Economic Forum in 1999, the UN Secretary General Kofi Annan underlined the disparity between the benefits of globalization, its fragility and the need to give globalization a human face.

NGOs representing consumer groups, environmental associations, human rights organizations or religious groups have taken on an increasingly important role in promoting the concept of corporate social responsibility and sustainability, particularly by means of their efforts to develop standards and certification programmes. Advances in technology and telecommunications mean that it is now possible to trace bad behaviour by companies wherever it happens and immediately communicate the information to the whole world. Corporate social responsibility can therefore be seen as one of the many responses to famous incidents and bad practices such as Shell in Nigeria, Exxon Valdez in Alaska, the Snow Brand scandal in Japan, Enron in the United States, or the issue of child labour in the production of trainers, clothing and other products worldwide.

Another important influence on the current concept of corporate social responsibility is the consequence of trade and investment liberalization, the reform of regulatory systems and governments' privatization policies over the last twenty years. The UN conference on trade and development (UNCTAD) observed:

privatization, deregulation and liberalization create more space for firms to pursue their corporate objectives. Should this expansion of action, space and rights be accompanied by an increase in corporate responsibilities? In the international context, this question attracts particular attention because transnational corporations are one of the principal drivers of globalization. They are also seen to be the most important beneficiaries if the liberalization of investment and trade regimes, with rising influence of the development of the world economy and its constituent parts. The concept of 'social responsibility' captures the search for an answer to this question. It implies that firms have obligations that go beyond what countries require individually and agreements prescribe internationally. The assumption of greater social responsibility by TNCs would be particularly important in the light of the economic and social disruptions that accompany the globalization process, which – if not tackled – could threaten the very framework within which firms build their international production systems.

CSR contributes to strengthening government initiatives in the attempt to support conventions for regulatory approaches such as for example the commitment to public-private partnerships and the use of NGOs as suppliers of services. However, these developments are not always seen in a positive light by those who feel that neither NGOs nor enterprises can replace the government in this task.

The modern phenomenon of CSR seems to have come out of the apparent failure by many governments to offer efficient social services and to strengthen their laws (especially in countries with low economic development). Many observers agree that a key element behind many recent CSR initiatives has been civil society's frustration with governments' capacity

to solve the growing problems in the world whether social or environmental. Increasingly, some sectors of civil society (especially in developing countries) are expressing concern about the need to ensure a fairer distribution of economic benefits of liberalization of commerce and of globalization.

In this challenging environment, many businesses have undertaken CSR initiatives on a voluntary basis. They aim to show citizens, consumers, workers, communities, partners in the supply chain, governments etc. their commitment to respecting legislation and society by means of positive social contributions. CSR often involves companies which commit to the environment and society by setting up programmes which go beyond legal requirements. Governments are also showing increasing interest in supporting initiatives of self-regulation and partnership which can further support public policy priorities.

When companies take the initiative in demonstrating publicly that their activities fulfil or go beyond legal requirements and social norms, they are in a stronger position when it comes to communicating to interested parties that they are committed to systematic risk management approaches and they therefore protect their reputations, potentially opening the door to new commercial opportunities.

Corporate social responsibility has been described as the 'corporate contribution to sustainable development'.

The social dimension initially received less attention than the environmental and it is only in recent years that the social aspects have become more relevant to the debate about sustainability. Social dimensions are often more difficult to quantify than the environmental and rare sustainable initiatives are able to integrate social, environmental and economic indicators. There is also potential confusion between company

sustainability (in terms of CSR) and sustainability in terms of the company's ability to stay in business over the long term and make profits. Many CSR supporters state that in order to remain in business for the duration and to make constant profits for future generations and shareholders, entrepreneurs need to implement policies which are in tune with the interests of society and the environment in which it is placed.

An underlying idea of CSR is that there is a 'business case' which justifies choosing corporate social responsibility connected to the idea that adopting measures which are positive for the environment and which safeguard other social interests enhances the financial performance of a company. For example, there are savings which can be made by greater energy efficiency. The notion that 'doing good can bring economic benefits' has largely come out of the environmental context. For example, savings can be made by having a better environmental policy and this influences the CSR agenda. In particular, the belief that the non-financial performance of an enterprise can be objectively managed, measured, documented, verified and certified in a way which is similar to the management, measurement, documentation, verification and certification of other aspects of business and can also respect financial performance of a company testifies to the fact that there is a development in indices of financial sustainability such as Domini and rating of non-financial performance.

This thought seems connected to the rapid widespread acceptance of the expression 'triple bottom line' which connects the financial, environmental and social performance of companies.

Another aspect of environmental influence has been the ecological approach to social issues represented by the concept of the stakeholder. The concept of the stakeholder is widely discussed elsewhere.

In its widest sense, the stakeholder can be considered whoever is touched by a company's activities or whose activities affect a company. The introduction of principles such as 'the polluter pays' and the 'precaution principle' have both been influenced by CSR and have been promoted by NGOs. It should be underlined that the 'triple bottom line' is not per se an assurance of good behaviour. Stakeholders often expect companies to approach social issues identifying the impact of their activities in the way that an environmentalist expects companies to identify the social impact (the footprint) of their activities on the environment. Further pressures to change have emerged from insurance companies and from worries which come from the imminent implementation of the Kyoto Protocol.

Another influence on the current concept of CSR comes from the development of ideas about the development of human resources regarding safeguarding employment or forming a workforce.

Existing theory and practice in this field adapt well to CSR concepts. Enterprises state that their human resources policies are part of their social responsibility to their 'worker-stakeholders'. Industrial relations and collective bargaining are rarely mentioned, even when the subject is the company's relationship with its employees. It is worthwhile pointing out that safeguarding employment is a minor problem for businesses which outsource most of their work. In addition, this type of human resource policy does not play an essential role in environments where basic human rights are not respected.

In conclusion, CSR has had a growth in profile since the 1990s, but its roots lie further back in the past.

Although the early forms of what we call social responsibility were often religious, paternalistic and philanthropic, the modern concept of SR is more

concentrated on daily practices and their impact on a certain number of stakeholders.

A number of intergovernmental tools in 'soft law' such as the ILO Tripartite Declaration, the UN Global Compact, the OCSE guidelines for multinationals address corporate behaviour directly. CSR in its modern form seems also to reflect a greater public desire to ensure that enterprises behave in a socially responsible manner in all areas where they do business and that their behaviour is publicly documented.

In some ways, the development and implementation of policies and strategies in these areas have become part of what is generally considered good management. The concept of corporate social responsibility integrates these complex activities into a single framework which supports company objectives, promotes dialogue with key players and takes the social public agenda further.

5.3 Dimensions in the relationship between sustainable development and social responsibility

The current concept of SR is heavily influenced by the concept of sustainable development. As we have already underlined, it is often divided into three dimensions: economic, environmental and social (or it is described by some as 'profit, planet or people'). These dimensions are a range of levels which ensure that the social responsibility field is extremely vast.

SR can include many different subjects and issues which can be considered components or aspects. On the basis of different tools and regulations of SR, the literature relating to sustainable development and other sources, it is possible to develop a broad, non-exhaustive list of these components or aspects.

This list should include adherence to regulations, environmental protection, consumer protection, wor-

king practices and industrial relations, human rights, health and safety, ethics and anti-corruption, community relations and philanthropy.

One point of view is that SR's complexity can be sufficiently understood simply taking account of:

- what components belong to SR and what do not
- how they can be standardized and how they cannot
- what the relationships are between one component and the other

at what level each component should be applied (international, regional, national, industrial – for example textile, steel – local –e.g. city – or with respect to each worker).

Some observers suggest that the issues regarding SR can be understood more effectively at a local, organizational level. Others believe that what SR means is relative or can only be determined by an individual enterprise or by that enterprise in connection with stakeholders it decides to involve. There are CSR initiatives which have developed requirements which were generally applicable and which have been broken down regionally and interpreted via processes of consultation with stakeholders. Those who think like this believe that regionalization and measuring efficiency standards should always take place locally while standards which aim at improving more pressing environmental and social situations at a world level could benefit from globally applicable principles and criteria.

The concept of social responsibility in turn includes other concepts. For example, the idea of 'stakeholder' understanding the difference between responsibility and accountability and business justification for organizations which are involved in activities connected to social responsibility. Some difficulties connected to these concepts are underlined below and should be taken into consideration.

5.3.1 Stakeholders

The idea that enterprises are not only responsible to their shareholders (owners), but also to a greater number of stakeholders is one of the key ideas connected to the CSR concept.

CSR could be described as an ethical entrepreneurial form which is based on identification and consideration of the impact of business on others.

Most issues relevant to social responsibility are concerned with how management can identify and involve stakeholders and how it can determine, measure and document the impact its activities have on them. In an ideal version of the concept of social responsibility, there is a connection between these activities and the financial performance of a company. Keeping others' interests in mind, businesses can reduce the number of problems they face and which could have a negative impact on profits, and can potentially identify new commercial opportunities.

In social responsibility fields, NGOs are often considered spokespersons for civil society. But there are significant differences between NGOs and not all non-governmental organizations are part of civil society. In addition, many of the most important organizations in civil society are often not NGOs. For example, depending on the area, religious organizations and political parties are key players in civil society.

In concept, civil society regards more the relationship between individual members or sectors of society rather than the relationship between the individual and the state. Genuine civil societies insist that laws are observed, but also have a vast number of institutional agreements which protect the individual and also permit them to join together to solve shared problems, to promote their own interests and to protect themselves from abuses of power. Many of these institutions are connected to civil rights and politics and include,

amongst others, institutions such as the independent press and collective bargaining. Some hold the view that the presence of NGOs derives from the failure of institutions of civil society and that they come out of the will to create or use a substitute. Thus visibility of NGOs can be greater where civil institutions are not working well or where they are weak.

The expression stakeholder should, however, be distinct both from the term NGO and from the phrase 'organization of civil society'.

In the concept of CSR, the word stakeholder refers to whoever is involved in/by a company's activities. This could include organizations and individuals who cannot be considered either 'organizations of civil society' not NGOs. For example, other enterprises (suppliers, customers, partners, competitors, investors) but also governments and different definitions of community.

There are also some conceptual difficulties with the idea of stakeholders. One is that not all stakeholders are equal in terms of their impact and importance to the different enterprises. Another is that not all stakeholders can have legitimate expectations of an enterprise. There may be no link between the number of identifiable stakeholders and the degree of responsibility a company has. We should also consider situations such as outsourcing: in this case the number of stakeholders increases, but the company's responsibility does not change or can diminish.

The concept of CSR means companies must identify their stakeholders and involve them. However, some problems can emerge when there is inappropriate contact with stakeholders, for example when the organizations are not really interested parties. Inappropriate stakeholders can take on the form of organizations which have been created or are supported by enterprises and are not really

independent. Some organizations are not stakeholders but are in reality suppliers. Other organizations have structures which are not sufficiently representative to be considered appropriate interlocutors.

5.3.2 Accountability

If CSR is interpreted as a voluntary concept then it is necessary to distinguish it from other concepts connected to the relationship between enterprise and society. Currently the expression 'company accountability' is widely used to refer to the binding obligations which make company management accountable to shareholders and other subjects. Some state that accountability can also refer to the moral obligation to explain or to respond to something. In every case, there is the need to distinguish between voluntary regulatory concepts. Some feel that SR activities which do not concern entrepreneurial activities should be subject to legally and institutionally binding regulations as the issue can be legitimately raised only by governments and through political procedures. It is widely accepted that the regulatory framework and governance of enterprises models entrepreneurial behaviour more than principles and practice of social responsibility. One of the catalysts of SR is therefore the demand for greater company accountability in a regulatory sense. However, voluntary initiatives and regulatory approaches can be recognized as complementary ways of strengthening both: the former aim to inspire innovative practical solutions and the latter are usually concerned with concentrating on ensuring conformity to minimum standards.

5.3.3 Economic justification for adopting CSR in companies

There are some different schools of thought on whether there are justifications for companies committing to SR

related activities. Some state that there is a need to justify it on a financial plane for a company to be involved in this type of activity, meaning that SR or no SR is not necessary or not ethical. On this basis, SR is not necessary if there is a financial justification for a company's deciding to launch social responsibility activities, as, if the market is working well and if it possesses all the necessary information, the company would undertake these activities the same if they were advantageous financially. If, however, there is no financial justification, these activities could be an inappropriate use of company money.

Another school of thought takes the view that the financial justification for becoming involved in SR activities rarely applies to most of the most important social issues. On the basis of this thinking, 'doing the right thing' could put an enterprise at a competitive disadvantage, even in the short term. This means that competition between the enterprise and other interests within society make sure that many social issues can only be resolved effectively via regulatory mechanisms and institutions which are not dependent on voluntary behaviour. Another view is that there is a justification for companies being involved in social responsibility activities if they look at the issue from a long-term point of view. It is clear that a unitary vision has not yet emerged, although it may emerge, for example, through references to public and private standards in purchasing and investment policy.

5.4 Applicability of SR to other organizations

A much debated issue on the subject is whether SR applies only to companies or whether it can also apply to other organizations. Some believe that including the word 'corporate' could limit the type of user to whom the standard could apply. For this reason they state that the wider expression 'organizational social

responsibility' (OSR) is more appropriate. Others feel that 'corporate social responsibility' is widely accepted and that it regards company behaviour and that to modify the area of reference would effectively change the subject and characteristics of any standard. Before addressing this issue, it is necessary to make a distinction between the two types of organization.

- for-profit organizations;
- not-for-profit organizations.

The former can be described as business organizations (irrespective of their shape: SMEs, sole traders, large corporations, etc.) which operate over a vast range of activities in different economic sectors. Enterprises can be owned not only by private individuals but also by public enterprises: government agencies, political and party organizations, NGOs, religious organizations and other private organizations, clubs or societies created for non-commercial and non-profit reasons.

Public goods and services are defined differently in the different contexts and can include activities which in some cases can be undertaken for profit (some local administration services, financial services, utilities) or organized in such a way that they recoup only their costs.

Some researchers consider the difference between the activities undertaken by the government in its role as State (production of public goods such as the justice system and national defence) and other activities which do not generally fall into the category of roles which are typically considered public. This distinction is even more important in that the nature of responsibility is qualitatively different for governments when they are compared to any other type of organization. For example, although all organizations and individuals should respect human rights, only the State has the obligation and the capacity to create the formal institutional which allows them to be strengthened and protected.

One criticism of the adoption of standards which cover all types of organization is that they should concentrate on the nature of the activities which are undertaken rather than on the type of organization which undertakes them. Whilst the impact of enterprises on society is clear, other organizations can have an equally important impact. The focus should be on whether the impact is positive or negative. A criticism of this position is that economic activities which have a greater impact on society are those which are profit-oriented and that their impact is both qualitatively and quantitatively different depending on their wealth and power.

Recently, growing interest has been expressed in transparency and governance in NGOs. This is particularly concerned with those who are involved in high-profile political policies. Many NGOs find that they are involved in the demand from companies to be more socially responsible and concerns have been raised about the nature of their financing, how representative they actually are and their governing structures.

Although the origins and catalysts for socially responsible behaviour reveal that the concept has been developed in the context of profit-making organizations, extending SR to include non-entrepreneurial organizations may significantly aid efforts towards improving both human rights and the quality of life for a large number of people.

5.5 Problems in defining social sustainability

Although 'corporate social responsibility' seems to be the most commonly used term, a large number of other definitions can be found in literature on the subject.

These include 'corporate responsibility', 'corporate citizenship' and 'corporate integrity'.

Each of these expressions places a slightly different

degree of emphasis on one aspect or another of corporate social responsibility.

Some prefer 'corporate responsibility' on the grounds that the word 'social' seems to exclude the environment, although others suggest that social responsibility includes environmental issues.

'Corporate citizenship' is sometimes used to underline the idea that an enterprise should be understood as a set of individuals in the sense that it has both rights and responsibilities and to indicate that responsibilities extend beyond social and environmental concerns. However, others object that a company cannot be treated as a set of citizens.

Many prefer the terms 'organizational responsibility' and 'social responsibility' as they identify no particular type of organization.

As stated above, the origins and evolution of CSR concepts indicate that its focus is on the company and not on other types of organization, in the light of the significant impact enterprises have had and continue to have on society in terms of wealth creation.

The true nature of sustainable development is much wider than what we normally mean by CSR. For example, sustainable development typically concerns both voluntary and non-voluntary approaches and implies activities and policies which can be undertaken by governments or intergovernmental organizations. It should also be highlighted that 'social' is used in its two meanings in most discussions about sustainability and corporate social responsibility.

'Social' is sometimes in opposition to 'environmental' and 'financial' and in this sense it groups together responsibilities for issues such as human rights, work, community and consumer protection. 'Social' is also used with a wider meaning in reference to society in general and should therefore include responsibility in areas such as the economy, the environment and

in other areas which are typically considered social. CSR for our purposes is intended to refer to society and includes, among other things, responsibility for the environment. The United Nations conference on Trade and Development uses this definition of social responsibility:

'social responsibility is concerned with how enterprises relate to and impact on social needs and objectives. All social groups should play roles and undertake functions which should change over time as society evolves. Expectations connected to company activities and in particular to TNCs are seeing unusually rapid change because of the increasingly important role they play in organized society. Debates about social responsibility standards within TNCs are an important component of the efforts to develop a stable, prosperous and fair society.'

Another term used in the debate is Organizational Social Responsibility (OSR)

OSR covers a balanced approach for organizations to economic, social and environmental concerns so that they bring direct benefits to people, communities and society. We can list a series of OSR characteristics and guiding principles (this list is not exhaustive and neither is it in any particular order):

- adherence to laws and regulations;
- including voluntary commitments;
- including principles of inclusion and commitment towards the interested parties;
- accountability;
- transparency;
- ethical behaviour;
- flexibility to reflect diversity and needs;
- starting from sustainability/sustainable development.

OSR covers the areas:

- of human rights (universal declaration of human rights, ILO conventions);

- of the labour market and employment issues (including health and safety);
- of bad entrepreneurial practices such as corruption, extortion and anti-competition practices;
- of organizational governance;
- of environmental issues;
- of issues regarding consumer markets;
- of community involvement;
- of social development.

While the terms and the definitions used to describe the phenomenon of corporate social responsibility can change, basic elements seem to recur.

CSR:

- concerns the role of enterprises in society and the expectations of the enterprises which are concerned about the society in which they live;
- is a voluntary concept and relates to activities which provide for or include respect for regulations and activities which bring benefits beyond those of mere respect for laws;
- concerns managing social impact and management systems;
- is based around the impact of entrepreneurial activities and on the results of this impact on society, whether negative or positive;
- concerns daily activities of the company and is not connected to philanthropic activities;
- concerns control, measurement and improvement of performance in the socio-environmental and economic spheres and can contribute to reaching the objective of sustainable development;
- concerns identifying commitment and documenting performance to those who are touched by company activities.

However, there is no agreement on the fact that company activities must be subject to universally applied regulations. Some hold the view that CSR

activities must be defined in consideration of local contexts, in agreement with local stakeholders. With this approach, prioritizing issues, activities and responsibilities cannot take place without reference to the context. Although applications at a local level are diverse, the issue does not differ from analogous situations for example in the field of environmental protection where the exact nature of obligations varies from company to company, sector to sector, country to country and from region to region, but every enterprise generates a plan for managing and operating its own environmental policies.

Other observers take a different viewpoint. Local habits and territorial contexts can be inconsistent with universally applicable norms. It is particularly difficult and controversial to depend only on local organizations to interpret the meaning of human rights in countries where the government suppresses such rights. In addition, many stakeholders can have commercial interests in redefining or interpreting social responsibility. Others, particularly affected by negative reflexes in particular company activities, may be ignored. Finally, many of these regulations, including all the ILO conventions and recommendations are tied to procedures which interpret their meaning in different situations. It has been pointed out that one of the basic social and environmental issues is the need to measure the real effects of internal management systems or generalized behaviour rather than their mere existence. This is often critical for local communities and requires close involvement of stakeholders to define key issues, measures and responsibility.

The way in which a company is organized to respond to social responsibility issues is influenced by its history, culture, philosophy, clientele, ownership, business sector and by the laws and regulations of the country in which it operates. These factors have

led many enterprises to adopt a wide range of approaches.

Implications of a definition which has not been agreed

Some observers hold the view that agreement on a definition of CSR is a prerequisite for the imposition of any standards. Others believe that, at least a common set of elements which should be included in the CSR concept must be agreed. These points of view reflect the idea that the definition of standards requires references and where they are not limited to an issue all is possible but nothing is particularly significant. The absence of a definition which has been agreed by the parties could be an obstacle to parties being able to communicate and interact with each other.

Others disagree with these concerns. Definitions of difficult, ambiguous concepts such as 'quality' or 'health and safety in the workplace' and 'the environment' have all been developed already for international standards. In each instance, the definitions are very basic (for example, quality is defined as 'suitable for its purpose' and safety is defined as 'the absence of danger'). While these definitions are not free from ambiguity, they have been fundamental starting points for developing and drawing up standards. At the same time, although an agreed definition may be possible, it could prove too wide to be of use.

5.6 Standards defining SR: the issue of proliferation

Social responsibility standards can be subdivided into two main categories:

- *government and intergovernmental standards* which are developed through representative processes and which define the meaning of SR in terms of universally applicable standards, guidelines or requirements.

At intergovernmental levels, tools such as ILO conventions, the Universal Declaration of Human Rights, the UN convention on biological diversity and OSCE Guidelines for TNCs come into play.

As we have seen, some of these tools have been developed to be put in place via the creation of national institutions and the adoption of national regulatory frameworks. This is the case for most ILO and UN conventions on economic, environmental and social issues. Other tools such as the OSCE Guidelines are based on existing national regulations but highlight a series of expectations which are shared by different countries.

Probably the most important to SR of these is the Tripartite Declaration of Principles: this was agreed with wide consensus by the ILO Executive (where governments, employers and workers are equally represented). The Declaration defines universal social expectations which are directly applicable to companies. It is also useful to note here that the ILO is the only intergovernmental institution which has been specifically created to develop international standards relating to work.

– *private standards* developed by non-governmental organizations which define SR expectations equally. They can be based on existing governmental and intergovernmental standards to a greater or lesser extent.

In many cases, these private standards prioritize a selective group of existing standards which are applicable to a specific sector or to a group of activities. In other cases, priority is given to guidelines and requirements which go beyond existing standards or which complete them such as, for example, the ICC Business Charter for Sustainable Development.

Sometimes they redefine or reinterpret standards to make them less stringent or make adherence easier. Some of these types of standard are generally direct

suggestions for application and adoption by standard development organizations; others are destined to define socially responsible expectations for other organizations. This is the case for the many codes regulating the supply chain such as, for example, FSC, SA8000 and FLA.

The latter includes certification and accreditation procedures and some standards integrate the requirements of management systems similar to the existing ISO 9000 and 14000 standards.

In some cases, the standards are used to give a point of reference for different types of commercially important decisions: examples of these are the criteria on which the Dow Jones Sustainability Index or the FTSE4 Good Index are based.

A second broad category of social responsibility standards includes those which have been developed in response to specific problems. There is a high degree of overlapping between these categories of standard and the private initiatives described above. Some of the problems faced by social responsibility standards are very specific (for example, Fair Trade labelling concerns supply chains and tries to ensure that producers in developing countries receive a fair price for their products).

In other cases, the specific problem the standard is addressing is the SR credibility of an organization. For example, the standard SA8000 was developed parallel to certification and accreditation processes to help organizations show how socially responsible they are and how socially responsible their suppliers are, so that the process can be made credible for consumers and stakeholders.

AA1000 and AS standards have also been developed to address issues of accountability and credibility.

Although, on one hand, the view is often expressed that international standardization of SR should be

avoided if it produces weaker or less regulation, there are others who hold the view that the costs and benefits of international standardization of social responsibility should be assessed.

Some feel the assessment should be analogous to that of any other type of international standardization. Others feel that SR is a political issue and, as such, the opportunities and threats posed by international standardization should be considered a general political objective.

When the need for international standardization of SR is assessed, it must be stressed that there are different perspectives: from the standard policy point of view, the benefit of an international standard should be obvious in a situation where there is proliferation of regional (and other) regulations and when this proliferation creates more costs than benefits.

From the public policy perspective, the benefit of an international SR standard is linked to the value of promoting the biggest and the best voluntary actions, including helping organizations to be involved in social responsibility actions more easily and creating links between these actions and economic incentives. Another two issues need to be assessed.

Many believe that international standardization is not the only way to reduce proliferation costs. Equivalent technical agreements, although they are rarely negotiated, are another mechanism for promoting harmonization and reducing proliferation costs. Detractors from this hypothesis suggest that, given the failure of technical equivalence agreements (at least up until now), this is not a practicable solution.

Some researchers have noted that social responsibility initiatives do not all have the same approach or aim. They feel that it is necessary to adopt more subtle approaches and make a distinction between different types of initiatives in relation to proliferation. They

state that, while 100 separate social responsibility initiatives cannot per se suggest that there is a problem of proliferation, 100 separate social responsibility initiatives which address forestry issues could probably suggest that there is a problem.

Social responsibility initiatives can therefore be distinguished on the basis of:

- their direction and/or requirements;
- their focus;
- their aim.

They are not exclusive strategies, and many social responsibility initiatives present a combination of characteristics of each type.

The first distinction is made on the nature of their direction or the requirements contained in the initiatives.

Many initiatives exist along a continuum between these two poles. On one hand, there are initiatives which try to define 'substantial requirements' and which can contain a combination of general guidelines (often in the form of principles) and specific requirements, criteria and indicators which must be observed. While they tend to include requirements are based on processes, this type of initiative generally concentrates more on performance.

On the other side of the divide, there are initiatives which develop 'tools' to help organizations implement guidelines or requirements (such as, for example, reporting, stakeholder consultation or management systems). An extreme would be having no guidelines or requirements linked to 'ethical standards'. ISO 14001 provides a good example of this type of initiative.

In reality, most social responsibility initiatives are placed between these two poles and contain both 'substantial requirements' and 'tools'. Whilst many social responsibility initiatives are limited in tools, more or less all initiatives contain substantial requirements.

A second distinction is based on the focus of the initiatives.

At least four different focuses can be defined:

- state or non-state focus;
- geographical focus;
- sector focus;
- issue focus.

There are many international tools which look at social responsibility related to public players. They are designed to guide national policy development or national regulatory frameworks. Some international regulations address all the social parties including private and non state players (for example, the Declaration of Human Rights). Some researchers note that international agreements do not impose obligations in themselves, but they operate through a national legislative process which often offers a degree of flexibility to allow adaptation to national economic, environmental or social characteristics.

It has been observed that the application of many specific SR initiatives is not limited in terms of geography, even when they have been developed in a particular country or region. In contrast, the limit of application is defined by the commercial relationship which integrates the SR initiatives. An example of this type comes from the requirements of the supply chain. Some researchers stress the need to ensure that the standards are appropriate to the context to which they will be applied and have suggested that social responsibility requirements developed in OCSE countries are not necessarily appropriate for application in countries outside the organization.

The third distinguishing characteristic is the aim of SR initiatives. The main aim of these initiatives remains that of improving social and environmental performance. From this point of view, it is possible to identify two general categories of initiative:

- those which define some terms of commercial relationships,
- those which aim to build internal capacities to enhance social responsibility management

Some social responsibility initiatives seem also to be linked to supporting the parties which are involved in commercial activities (for example, purchasing, the sale of goods, contract negotiation).

There is widespread recognition of standards and this is particularly true of international ones. ISO standards, for example, on paper sizing, make it easier for purchasers to communicate relevant compatible specifications for photocopier, fax and printer producers. From the social responsibility point of view, a growing number of commercial relationships have been defined by issues related to social responsibility. Examples of this type of commercial relationship include public procurement policies, supply chain requirements, requirements wanted by private institutional investors, criteria demanded by investment organizations or insurance companies.

An aim which is central to many of these initiatives is that of promoting consumer awareness of choice on the market.

The most pervasive of these is the use of codes of conduct as a tool for market segmentation (the final user) or in supply chain requirements (for example public and private procurement policies). A central question is, therefore: does proliferation of social responsibility codes create barriers to entry into the market in the same way as technical standards do?

The second category of initiatives is generally subdivided into two categories:

- management tools,
- direct tools for development and awareness-raising.

The former include reporting and management systems,

performance rating tools and audits and they can help organizations to implement their SR concepts although they do not normally supply substantial requirements or guidelines.

Direct tools for development and increasing awareness, on the other hand, try to inform and educate organizations about social responsibility including prioritizing skills.

In all, there is no agreement as to whether proliferation is a problem or not, although it seems that there is a commonly held view that each adjudication process should be more subtle and that it is necessary to distinguish, amongst other things, on the basis of the nature of the requirements, the focus and on the aims of existing initiatives.

5.7 Benefits of international standardization

The costs and benefits of international standardization can be assessed both from the point of view of standardization policy and from the point of view of public policy. As far as the standardization perspective is concerned, it is desirable if SR facilitates trade, in particular via harmonization of unnecessary proliferation and overlapping between national, regional and other initiatives.

From the public policy perspective, social responsibility standardization could be desirable if it helped to:

- lead to the development of better regulation of social responsibility;
- support the organization in implementing social responsibility more easily;
- create economic incentives to support social responsibility actions.

It is difficult to separate the need for internationally-recognized standardization from the reality of globalization, including trade and investment liberalization and the spread of suppliers of production

companies all over the world. Some observers believe that the fact that workers' organizations, consumers, suppliers and investors are spread out all over the world and the fact that they are individually and collectively interested in SR issues suggest that there is a need for internationally recognized initiatives. They state that the only way to develop social responsibility initiatives which are internationally recognized is via international standards. Others believe that there are other approaches which should be kept in mind and that the market will decide which are recognized and which are not.

Potential benefits of international standardization include:

- common understanding of the issues of social responsibility on a global basis, so creating a common point of reference which is appropriate, comprehensible and acceptable, and which can be spread worldwide;
- the possibility of giving a voice to those who are marginalized via a platform where they can take part in developing the requirements which are in their own best interest is a factor. This is particularly important for countries with a lesser degree of economic development which are not heavily involved in developing existing SR initiatives. As a result of this, they are unable to ensure that their priorities and their worries are taken into consideration in a satisfactory manner;
- definition of a global debating arena, not only for companies, but also for developed and developing countries and for the different types of stakeholder;
- extension and sharing of experiences which can lead to adoption of best practices and technological transfer;
- reduction of transaction costs and improvements

in communication and trade at an international level.

Many types of initiative seem to be encouraged by cross-border trade relationships. Independently of the fact that a country is more or less involved in development of ISO 14000, OHS18000 or SA8000 standards, it is probable that some enterprises operating in that country will have to conform to their requirements.

5.8 CSR in an EC framework

In 2001, the Commission published its Green Paper entitled "Promoting a European framework for corporate social responsibility". The document's main aim was to open discussion on the concept of corporate social responsibility, and, at the same time, define the tools and methods needed to start up a partnership for developing a European structure to promote the concept.

CSR is defined as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis".

The Green Paper suggested the following objectives:

- spreading CSR culture and the exchange of best practices;
- guaranteeing that social commitment communicated by enterprises is effective;
- developing a set of simple indicators – standards – which are easy to use which companies can adopt on a voluntary basis to assess their own performance in CSR;
- supporting SMEs as they develop CSR policies and strategies;
- promoting the exchange of experiences between different countries so as to identify best practices at an international level.

In 2002, the Commission put out a Communication entitled "Corporate social responsibility: corporate contribution to sustainable development" which contains the results of consultations rising out of the Green Paper. In this document, the definition of CSR does not change in concept. A few changes in language were made: the Communication defines CSR as "the voluntary integration of environmental and social considerations into business operations and company relationships with their stakeholders".

In October 2002, the Commission set up its European Multi-Stakeholder Forum on CSR.

In March 2006, the Commission published a second communication in which it clarifies that by 'corporate social responsibility' it means the voluntary integration of corporate social and environmental concerns as regard their commercial activities and their relationship with stakeholders. Companies are socially responsible if they decide to go beyond the minimum prescriptions and legal obligations which arise from collective contracts in order to respond to society's needs. In choosing to go down the route of corporate social responsibility, companies of all sizes can contribute, together with their partners to conciliating economic, social and ecological ambitions better. For this reason, the concept of CSR has become increasingly important in the EU and in the debate about globalization, competitiveness and sustainability. The promotion of CSR in Europe reflects the need to defend common values and increase the sense of solidarity and cohesion.'

After this communication, the European Parliament decided to adopt a resolution on CSR.

Since the Green Paper was published, the European debate has mainly concentrated on the alternatives

of the voluntary approach and the prescriptive-regulatory approach.

Industry (representatives of for-profit enterprises) has stressed that adopting voluntary principles for CSR would allow each enterprise to find the right solution for its own culture and needs.

On the other hand, many NGOs and research groups have been clear in their opposition to the current voluntary approach, stating that procedures such as social accounting, auditing and labelling are inefficient and lose their credibility if they are not standardized or monitored independently.

The 2006 Communication provoked an irritated response from organizations in civil society and unions, which were angry at being largely left out of the CSR Alliance which the Commission set up to run the Multi-Stakeholder Forum. The CSR Alliance is made up of the Commission and enterprises.

It is, however, possible to read things differently and take account of the nature and history of European legislation and the way it is shaped.

Even before the 2004 directives on tendering, EU legislation allowed national authorities and procurement purchasers to establish a link between social and environmental issues and public procurement (see the ECJ sentence of 20/09/88, case C-31/87 *Beentjess/The Netherlands*), although EC legislation does not prescribe that this relationship must be established.

Diversity of national initiatives in this regard can be interpreted as a sign that the EU is averse to acting as a regulator in this area, but can also be seen as successful subsidiarity in a field where cultural, environmental and social diversities require that specific adaptation both in translating directives into national law and in applying options outlined in the directives locally.

5.9 Competition policies and CSR

CSR is a non-obligatory principle, unlike competition policies. It is, therefore, left to the mere discretion of individual enterprises. The reason can be traced back to the fact that pursuing a company policy which considers social and ecological issues leads to an increase in costs, which would lead to European enterprises being less competitive on the world stage. In its Interpretative Communication on EU public tendering procedures and the possibility of integrating social considerations in to public tendering procedures (COM/2001/0566 def.), the Commission states:

‘Where the tendering procedure demands particular competence in ‘social’ issues, specific experience can legitimately be required as a criterion of capacity and technical knowledge, as it can show candidates’ suitability.’

For example, specific experience in managing a pre-school or in training services for the long-term unemployed.

The testing methods authorized by directives on public tendering allow tendering procedures to take account of the ‘social capacity’ of the enterprise (sometimes defined as ‘social responsibility’) only insofar as they attest to the technical suitability of the enterprise, as we have already clarified, to fulfil a particular contract.

The expressions ‘responsibility’ or ‘social capacity’ are indicative of an increasing tendency for companies to integrate a growing number of social, ethical (and environmental) issues into their corporate mission or investment plan. This sometimes goes beyond observance of social legislation. Approaches to corporate social responsibility vary considerably depending on the sector and national cultural diversity and, at times, regional diversity. In the Green Paper “Promoting a European framework for corporate social responsibility” COM(2001) 366 of 18.7.2001,

the Commission stressed the importance of corporate social responsibility, in that it is able to contribute positively to achieving the strategic objective of Lisbon (cf. Paragraph 6 of the Green Paper). Through the Green Paper, the Commission intended to open up a widely-ranging debate about the ways in which the EU could promote corporate social responsibility within Europe and internationally (paragraph 7). On the other hand, various voluntary 'social labels' are appearing on the market. In the Green Paper, the Commission defined the concept of 'social labelling' as 'a word or symbol placed on a product so that it can influence the consumer's purchasing decision and supply a guarantee about the social and ethical impact of a commercial process on the stakeholders'. Adjudicating administrations can constitute a tool for encouraging enterprises to pursue social goals mainly at the execution stage of the contract, in other words, directly after it has been awarded. They have the option, in fact, of insisting that the contract holder observe contractual clauses which regulate contract execution and which are compatible with EU law. These clauses can include measures in favour of some categories of people and positive employment action.

Directives on public tendering procedures offer various possibilities of including social terms related to the product or service, which can be taken into consideration in various ways, during the adjudication process. This mainly happens while technical specifications and selection criteria are being defined.

As far as tendering procedures not subject to directives are concerned, public procurement purchasers are free to pursue social objectives in public tendering procedures, within the limits of the law and general principles of the EU Treaty. It is left to Member States to decide whether the administrative adjudicators may

or must pursue these objectives by means of public tendering procedures.

It is important, however, to bear in mind that Interpretative Communications are not binding – their purpose is to clarify – and so they can be labelled 'soft law', since the Commission is not able to make changes to the current legislation and interpretation of EU law is in the exclusive competence of the Court of Justice.

5.9.1 Relationship between public procurement and CSR

The EQUALITY project set itself the task of researching the relationship between public procurement and CSR, checking:

- Whether public procurement could be a lever towards consolidating corporate social responsibility;
- to what extent and how far public procurement and corporate social responsibility could influence corporate organization and behaviour;
- what conflicts arise as a consequence of public action in relation to CSR in procurement.

The EQUAL planning document already showed up clear evidence of tensions on the free market, between not-for-profit and for-profit enterprises with high level of social responsibility, when social commitment clashed with organizational capacities and the entrepreneurial dimension;

1. in public procurement, between the need to guarantee value for money where taxpayers' money is concerned, and the option of including a social cost in the price;
2. between the need to free social enterprises, and social cooperatives in particular, from total dependence on public procurement and from the

fact that they can be less competitive, so that they can maintain their positions on the market.

3. The issue of including corporate levels of social responsibility in public procurement is probably the flash point where these tensions all clash.

5.9.2 CSR and public procurement: the tensions

The European Commission Green Paper 'Promoting a European framework for corporate social responsibility' defines CSR as 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis'.

The same Green Paper stresses the fact that CSR can translate into long-lasting commercial success and can contribute to growth and to macro-economic development.

On the other hand, the Treaty terms on competition policy and the single market forbid the introduction of any elements which could distort competition or damage equal treatment.

The assumption is that open market policies and free market competition – where the rules of the game ensure all enterprises have the same chances of success – can generate the greatest possible benefit for consumers and for society as a whole.

If we follow this logic, the best possible degree of corporate competitiveness is the only effective tool able to guarantee the growth needed to create an enterprise and, therefore, provide stable, permanent jobs and social cohesion.

But what can some enterprises do, if their statutes declare that they are to work in social or environmental affairs, meaning that they cannot compete against others' whose sole statutory requirement is economic success (profit and capital remuneration)?

Now, if the customer is any old customer – another enterprise or a citizen – it will be his/her/its free choice whether to consider only the most advantageous offer in terms of price, or whether to go for the one which is most advantageous from an economic point of view (price-quality ratio), or the one which is most sustainable.

It is no coincidence that all the viewpoints, from the European Commission to the Parliament, to the ISO Advisory Group on SCR emphasize the voluntary nature of CSR.

If the customer is a public institution or an organization of public law within the EU, for which pursuing sustainability is a duty – irrespective of the territorial position it is in or how far away it is from elective organs. What criteria should this body-customer apply to respect the rules of the open market and free competition as well as social and environmental sustainability?

Taking account of the fact that these 'special purchasers' account for some 16-20% of purchases on the market (excluding private small-scale negotiations, in-house awards which are distributed to public enterprises in control chains which are often very long and public procurement they undertake behaving in a very similar way to those from private enterprises), is it possible to ignore the lever they could employ in favour of one or the other criterion, to the advantage of one policy or the other?

In concrete terms, can a local territorial body, perhaps at NUTS level 3 or 4 (extending over a territorial area which is similar to an Italian *comune*), create preferential channels for companies which offer a social or environmental advantage, but when the bid is less advantageous in terms of price or performance? And how can we communicate to citizens that their money has been awarded to a more expensive bid,

offering a service which may be less effective than its competitors, but which employs socially fragile individuals or technologies which are less effective but less harmful to the environment? And how will the excluded enterprises react? Will they threaten social ramifications – for example, shedding workers? This is the crux of the issue addressed by the EQUALITY project. And this is a fundamental question.

5.9.3 The EQUAL initiative and CSR

The EC initiative EQUAL programme aims to promote equal access to the workplace for all, reducing and dismantling the barriers which weaker groups find along their way.

The second stage (2003-2006) of EQUAL placed the aim of 'mainstreaming' at the centre of the debate. This is defined as the need for best practices to become an integral part of governance processes.

Corporate social responsibility is a cornerstone for the Employment and Social Affairs Committee of the European Commission. It operates the EQUAL initiative.

It has frequently underlined how CSR is a favoured tool of mainstreaming equal access to the labour market for all. The European employment policy mission framework states 'more work and better jobs for all' and the wider and more politically important Lisbon and Göteborg Objectives state the need to make the European Union the most competitive society the world has ever known before 2010, and to guarantee that development does not compromise resources for future generations.

These processes cannot ignore a wider social partnership, where the public sector plays an important role both in forming shared policies and in using the lever effect and in acting by example. The EQUAL aim of mainstreaming provides a political framework for these factors and leaves each member state to set

priorities associated with its own National Action Plan for Employment.

The Italian Planning Document and CSR

In the Italian *Docup* (planning document) for the second stage of EQUAL, the social economy and CSR are given a prominent position.

In the same document the following observation is made 'as a whole, Italian not-for-profit institutions declare almost 38 billion Euros in income and more than 35 billion in outgoings. 60% of total income is concentrated in three sectors – social assistance, healthcare and culture, sport and recreation'.

Great attention is being paid, by many parties, to corporate social responsibility (it was also under discussion during the Italian Presidency of the EU).

It notes that 'this turnover mainly comes from Contracting-Out from local administrations, which keep control over the service and finance it, but are freed from the task of managing it directly. Almost all Italian Regions have their own tendering legislation and some give significant preferential treatment to social cooperatives'. The *Docup* observes that the 'demarcation line between profit and not-for-profit is narrowing. For-profit organizations are paying more attention to socially-responsible behaviour than they did in the past, as well as social accounting, and experimenting with management models which aim to involve stakeholders in the widest sense of the word in their decision-making.

Data such as this make it clear that a network logic is needed: the option of linking up with other groupings in the sector or other production realities appears motivated mainly by the possibility of: exploiting the advantages of networking; organizing production activities more effectively; gaining a better market position. The entrepreneurial mission of companies

which work in the not-for-profit sector also seems evident from the increasing emphasis being placed on quality: 46% accredited; 32.9% certified.'

Both the concern and the will to intervene positively on the social economy's capacity to coexist with a profit economy are evident although the latter's use of CSR in its own policies is increasing making it less distinguishable from the Tertiary Sector.

Furthermore, as has been seen, the public sector awards the majority of the not-for-profit sector's contracts, and it is obliged to treat concerns equally.

'The role of the social economy as an entrepreneurial tool for additional job creation is strictly connected to its capacity to stand up to the market. The high staff turnover rate of social enterprises and the presence of enterprises which are 'assisted' by the public sector demonstrate how difficult this social/market relationship can be. As production capacity increases, there does not seem to be a corresponding adequate increase in the demand for services, which still comes almost exclusively from the public sector.

[...]

In the realm of the social economy this would mean extending to other sectors of public service as has occurred in the social assistance sector (viz. for example, the legal framework on social assistance).

Increase and diversification of demands require greater diversification and better quality in the services provided, and this should be verifiable by means of adopting quality criteria which provide a guarantee for the user.'

Finally, stress is on the fact that 'standing in the way of entrepreneurial development in Type B cooperatives are the limits to commercialization of corporate products. This difficulty arises from cultural limits

rather than weaknesses in marketing strategies. Individuals at a disadvantage are considered less productive than the so-called 'normal' individuals on the basis of standard parameters employed in for-profit businesses and the product of their work is often not measured up against market exchange criteria, as it is viewed as assistance. It is, therefore, important to rebuild productiveness criteria which take account of the 'social' factor.

'Social costs' are burdens which most traditional for-profit companies do not take on, as this means giving up a part of profits which could be reinvested.'

5.9.4 CSR in Italy

Corporate social responsibility has rapidly become a strategic point on the political agenda for both the central government and many Regions, as they have taken on board the definition of CSR and the objectives of the Green Paper and communication from the European Commission.

In most cases, this involves two main courses of action:

- a) aid and subsidies to promote adoption and certification of quality, social responsibility and environmental sustainability systems;
- b) introduction of regulations which reward certified organizations in terms of their relationship with public administration.

A demarcation line has also been drawn between social cooperatives and 'other' enterprises: the aim was to favour social enterprises and a separate area of relationship with public administrations has been created in practice. This area is governed by regulations relating to social cooperation and – when it exists, as is the case in the Marche Region – by quotas of public procurement which are set aside for social enterprises.

A special case is what is known as green procurement which is worthwhile mentioning as it is forging the way ahead as procurement systems evolve.

6 Existing experiences

As screening progressed, the EQUALITY partners discovered a ever wider bank of experiences which accompanied their own as an adequate model was developed.

One reason was immediately clear: Member States have welcomed the opportunities presented by the directives on tendering to extend their rules and regulations to include social and environmental issues. This has meant a rapid increase in the number of cases.

The second reason, equally understandable, was that as implications began to be understood, along with options and areas where they could be applied, there was also an improvement in the capacity to see potential usefulness in a greater number of cases.

A problems of divergence remained: it was as if there was no possibility of collecting experiences from coherent groups.

The problem was eventually solved - it sprang up for two reasons:

- the substantial difference between soft law and voluntary approaches and those based on stimulating virtual circles and the approach of strong mainstreaming (such as the English approach) which has brought consideration of social issues into tendering by including it in national law;
- the basic subsidiarity nature of the approach creates deep differences between different local areas, which are often non-transferable unless they are generally inspired in another context.

For this reason, only the framework of the Compendium on national public policies on CSR in the

European Union has been reported here as it is recent and provides a synopsis, and more especially because it allows us to see when positive actions in social or environmental affairs are connected to public procurement. The framework has been integrated with notes on mainstreaming where they are available.

We wanted, however, to use the example of the Scottish firm Raploch because it demonstrates unequivocally, in our opinion, how action involving all public and private stakeholders in civil society can produce courageous interventions which have a great impact on society.

Some documents are cited as we have worked on them and as they report cases which may be useful beyond those chosen in the EQUALITY model.

The Ministry of Trade and Industry in the United Kingdom commissioned an enquiry and its results were published in 2006. 'The scope for using social clauses in UK procurement to benefit the UK manufacturing sector' constitutes an excellent catalogue of cases regarding both large-scale industry and SMEs.

The European Commission Director General for social affairs commissioned an analysis of national CSR policies via a tendering procedure. It supported exchange of information on CSR policies and national initiatives. The outcome of the enquiry which covered 24 Member States was published in October 2007 as 'Sustainable public procurement in EU Member States: Overview of government initiatives and selected cases. Final report to the EU High-Level Group on CSR'.

'CARPE guide to responsible procurement' edited by Silke Moschitz (EUROCITIES Secretariat) is a basic tool for working out a coordinated policy of local administration public procurement, and it was published in 2005 by EUROCITIES.

The Marche Region launched the project SIRM – Responsible Corporate System for the Marche Region and the Sisma Project – social enterprises, which joined representatives of the social enterprises around the topic of awarding social services.

Many other useful catalogues of good examples and innovative methods of adding social considerations to tendering procedures are constantly being added, showing that the route has opened up.

EQUALITY is one of these.

6.1 The experience of inserting the environmental and social dimensions in other European countries

The Compendium on national public policies on CSR in the European Union (2007) is a good reference point for screening actions in Europe which add environmental, social and corporate social responsibility clauses to public procurement procedures.

A rapid overview of some of the main interventions in public procurement cited in the report is given in this chapter, together with information gleaned from other sources.

Belgium

In November 2001, the Belgian government introduced a social clause for some public federal contracts (with a minimum value of 10 million Belgian Francs and a minimum duration of 60 working days), which required a group of disadvantaged individuals to be included (for example, 5% of the total value of the contract to be used to take on the long-term unemployed). Besides price, service or product quality or environmental criteria can become part of selection criteria.

As the directives on tendering were being revised, Belgium supported the European Parliament line which intended to consider the extent to which bid-

ders respected the eight founding ILO conventions as an explicit selection criterion for awarding public procurement contracts.

In 2005, a working group of the Interdepartmental Commission was established for sustainable development to supervise the introduction of new legislation related to public procurement and to draw up a national action plan for sustainable public procurement. This initiative took the route taken by the European Commission in 2003 on integrated product policies which required Member States to draw up a national action plan before 2006.

A website entitled Guide to Sustainable Procurement contains a great deal of information and many suggestions for purchasers. A list of recommendations has already been published (<http://www.guidedesachatsdurables.be>).

Government structures responsible for CSR

The reference framework for CSR in Belgium is an initiative undertaken by the Federal Government coordinated by the interdepartmental Commission for Sustainable Development where all administrations and federal departments are represented.

Initiatives to involve stakeholders (part of the process of policy shaping)

The reference framework for CSR in Belgium arose out of a written consultation process which involved a large number of stakeholders from various sectors, NGOs, unions, universities etc. Stakeholders were asked not only to reflect on the framework as a document, but also to express their own ideas to the government about ways of promoting and developing social responsibility principles further in Belgium.

Alongside the definitive adoption of the reference framework for CSR (approved by the Council of Ministers, 28th April 2006), the interdepartmental Commission for sustainable development decided to

extend dialogue with the stakeholders by organizing Forum Days on CSR in April 2006. The government was not involved in these 'two days' of interactive group work to ensure greater freedom for the players who were involved. On the basis of the input supplied by the stakeholders, the working group later published the First CSR Action Plan for consultation by the main consultative organisms in the country.

The Czech Republic

In Regulation no. 240/2004 on the management systems for electronic tendering and methods of assessing the lowest bids, some advantage factors were listed (including environmental factors) which may be considered criteria for adjudicating contracts.

Denmark

In 2001, the Danish Parliament enacted provisions to allow public authorities to establish some social obligations for companies which provide services for public bodies or which receive public subsidies.

The Danish laws which protect the environment establish that Danish public authorities must act with full respect for the spirit of the regulation in, for example, public procurement. This obligation was specified in a 1995 circular which involved all institutions of central government.

A 2005 circular obliged the State to use energy-efficient public procurement with the introduction of specific guidelines.

Ireland

The national regulations which govern public procurement oblige procurement purchasers to require bidders to respect work legislation and collective national contracts as far as the minimum wage is concerned.

The national social agreement of 2007 'Towards 2016' contains a clause which is applicable in tendering procedures: contractual conditions in the

construction sector must respect labour laws in general and the procurement purchasers are obliged to obtain periodic compliance certificates.

Spain

The aim of public procurement policy is mainly that of applying basic regulations so that transparency in corporate social responsibility is assured. This element is repeated in various government initiatives in Spain. In practice, many public bodies, particularly as far as local administrations (ayuntamientos) are concerned have begun to include some social clauses in their public procurement tendering procedures. They are generally related to work placement for disadvantaged individuals or those at risk of social exclusion.

Specific social criteria in conventions and contracts are also enforced by Autonomous Communities (such as Galicia or Catalonia).

At the same time, some public companies such as ADIGISA(Catalonia) and SOGAMA (Galicia) have pushed for the introduction of social criteria in procurement procedures (particularly related to the environment) stressing the importance of sustainable purchasing.

The main conclusions of the second edition of the Communication 'opinion y valoración de los ciudadanos sobre la Responsabilidad Social de la empresa en España', issued by The Consumers and Users' Confederation (CECU) together with the Observatory of Corporate Social Responsibility read as follows: 'The hope is that the Administration will become more involved in promoting CSR. In more concrete terms, we support the application of incentive policies such as the inclusion of social or environmental clauses in public contracts and the development of a law which will oblige companies to supply information about their social and/or environmental impact and the policies they have in place to offset the impact.'

There are some difficulties in the way of applying these principles. They take the form of appeals by enterprises which have been excluded from tendering procedures and have invoked the principle of free competition.

Initiatives to involve stakeholders (part of the process of policy shaping)

In April 2005, the parliamentary sub-commission on Social Dialogue and the Ministry of Labour and Social Affairs started up the Spanish Forum on CSR. The Forum is made up of representatives of central government, the business community, consumers' organizations, environmental groups, human rights activists and the Academy.

The Forum has agreed on the Spanish definition of CSR as well as the field and the boundaries of social responsibility activities. In the second half of 2006, the Forum made its first assessment of the state of CSR and made some suggestions to the executive about future developments.

France

When it transposed tendering directives into its own national code in 2006, France added a certain number of legal tools which allow for sustainable development clauses to be taken into consideration in public procurement.

In March 2007, the government adopted a national plan for sustainable public procurement which includes an assessment of the current situation as far as sustainable procurement is concerned from the regulatory point of view and offers guidelines for public purchasers (technical and legal guidelines, specialist training and exchange networks of best practices).

This plan also defines the objectives for the next three years and its main aim is to encourage public procurers towards sustainable public procurement.

In compliance with the tendering directives, the code

states that the public procurement purchaser can define technical specifications concerning Ecolabel labelling systems. The purchaser may also require certifications from suppliers concerning their capacity to satisfy requirements. Certificates relating to the supply of goods or services which require environmental management measures are based on EMAS or on European or international environmental management services.

The purchaser can reserve a quota of procurement for enterprises which respect regulations on employment for disabled people, or for other equivalent organizations.

The public purchaser can also prescribe social or environmental elements in contract clauses. These could be, for example, employing the long-term unemployed or individuals who are marginalized from the labour market. Public procurement purchasers are strongly urged to integrate social or environmental requirements in their purchasing schemes.

These requirements must have a direct link with the aim of the contract as it is not possible for public procurement purchasers to ask enterprises to undertake socially responsible procurement. The public purchaser cannot intervene specifically in the internal operations of the supplier's organization.

However, the public purchaser can influence enterprises' behaviour by means of environmental and social requirements (at the moment when specifications are defined and during the supplier selection process).

Italy

In the Tuscany Region, SA 8000 certification is one of the adjudication criteria in some public tendering procedures (for example, in the case of public transport).

The Umbria Region enacted a regional law in 2002,

which set up a register of enterprises certified with the SA 8000 standard: inclusion in this register implies preferential treatment concerning public contracts from the finance point of view, training and certification support, simplification of administrative procedures and financial incentives.

In February 2003, the Province of Chieti in the Abruzzo Region presented a proposal for a regional law to ensure that enterprises certified with the SA 8000, EMAS, ISO 14000 and OHSAS 18001 standards received preferential treatment in public contracts, as well as financial support for training and certification, simplification of administrative procedures and financial incentives.

Government structures responsible for CSR

The leading role and coordinating function regarding CSR governance policies has been undertaken at a national level by the Ministry for Work and Social Affairs. However, the policies concerning environmental protection have been developed separately by the Environment Ministry. The Ministry for Trade and Industry, The Ministry for Foreign Affairs and the Ministry for Public Affairs have been equally involved in these activities.

Initiatives to involve stakeholders (part of the process of policy shaping)

Starting from 2004, the Ministry for Work and Social Affairs created a multi-stakeholder national Forum as a mirror organization to the European Union body.

Malta

The Ministry for Investments, Industry and IT is working towards use of existing best practices in CSR.

Guidelines and standards are being prepared to allow public sector operators to pursue these goals.

The initiative is based on five key principles:

- constant consideration of the particular needs of individuals with disabilities;

- consultation of workers and their families in decision-making processes;
- considering NGOs as partners;
- the best possible reduction of environmental impact;
- efforts towards contributing, when possible, to a better environment, taking the needs of minorities into consideration.

The Netherlands

The Dutch government has set the aim of a 100%-sustainable procurement policy for central government and 50% sustainability for local administrations. Obviously, the government's task is to set a good example. For this reason, the institutions of Dutch government are paying increasing attention to the conditions and production processes as far as goods they purchase are concerned. By 2010, all purchases made by the Dutch state must be sustainable. This will encourage enterprises to produce goods and services in a sustainable way.

The Dutch foundation for environmental labelling (Stichting Milieukeur) has set out criteria for production of food and non-food agricultural goods and for the sustainable soil management and green labelling of greenhouses. Different ministries have worked together to set out guidelines to promote the purchase and use of sustainable wood. These guidelines were completed in 2006 and have produced a set of criteria for labelling wood which are now used by the government for its own procurement.

The Dutch government is also participating in the development process of the new ISO 26000 Certificates on CSR which should be launched in 2009.

Slovenia

In 2007, two regulations for public procurement were adopted which enshrine EC directives in national law.

New legislation includes the non-binding parts of the directives as far as social and environmental aspects are concerned. These must be considered in procurement purchasing and quotas are available for SMEs.

In addition, non-discrimination and equal opportunities must be guaranteed. In the case of parity between bidders, preference will be given to those who can show that they take social and environmental issues into consideration.

Their gradual introduction into procurement aims to exploit the public sector's purchasing power in selecting goods and services which respect the environment. Green procurement will be a priority in the national plan for the protection of the environment and the national energy programme.

In this way, the government is setting an example to enterprises and citizens.

In introducing Green procurement, Slovenia is expecting an increase in the offer of eco-compatible products, better prices for these products, an increase in the availability of green energy and other services, and last but not least, acceleration in energy and environmental technologies.

Organic farmers are given priority in tendering for access to public funds as notified by the Ministry of Agriculture, Forestry and Food.

Sweden

Through the partnership for global responsibility which started from the Ministry for Foreign Affairs, Sweden encourages Swedish enterprises to adhere to OSCE guidelines for TNCs and to the ten UN Global Compact principles on human rights, labour rights, anti-corruption measures and environmental issues. An extensive network works to spread awareness of the guidelines and the principles of global responsibility. Experiences are exchanged between the commercial

and industrial sectors, unions, the Tertiary Sector and the government to encourage practical solutions for CSR in the field of human rights, the environment, anti-corruption measures and social and economic conditions which allow dignity to human beings.

Global Responsibility organized workshops on a vast range of specific issues with speakers and trainers on CSR and connected issues.

Through the Swedish Development Agency, *Sida*, Sweden supports many activities which aim to create the essential conditions for change, sustainable development and global responsibility.

Sida encourages enterprises to take social and environmental responsibility in working conditions, to fight poverty and assess how far CSR is taken into consideration in public procurement.

One of the most important activities in 2006 was the finance of the Clean Clothes network, which aimed to improve working conditions in the clothing and footwear industries.

The *Folke Bernadotte Academy* is a Swedish governmental agency which aims to improve quality and efficiency in crisis and international conflict management. The Academy provides a platform for cooperation between Swedish partners and their international partners.

In 2007, the Academy set up a consultation project between the government, enterprises and investors which aims to strengthen trade and the entrepreneurial spirit in conflict and crisis areas to support peace and create job opportunities.

The United Kingdom

The United Kingdom and the American government launched an agreement in December 2000 entitled Voluntary Principles on Security and Human Rights.

The Principles are aimed at enterprises and offer consultancy and practical technical help to extractive

companies which are trying to ensure that respect for human rights is central to their operations as well as protection of their workforce in areas of conflict.

The Extractive Industries Transparency Initiative (EITI) was launched by the Prime Minister Tony Blair at the Johannesburg summit in September 2002: it aims to increase transparency regarding payments made by companies and on government income from extractive industries.

The government is now working with its partners to apply lessons it learnt to other sectors, including health, construction and defence.

The Medicines Transparency Alliance promotes accountability in pharmaceutical procurement and in the supply chain of countries which take part in the initiative to improve access to pharmaceuticals.

The Construction Sector Transparency Initiative aims to fight corruption in construction, the most corrupt sector worldwide.

The government also helped set up the Ethical Trading Initiative in 1998 and has supported it since then: this initiative covers three sectors, enterprises, unions and NGOs, and aims to improve working conditions in the supply chain in industry. The working standards adopted by ETI members are taken from the ILO Core Conventions. ETI members visit their suppliers, identify conditions which do not comply with the ETI Base Code, planning improvements in agreement with their suppliers.

On 5th March 2007, the British government presented an action package aimed at accelerating effort to ensure that the whole supply chain and public services reduce their carbon footprint progressively as well as the quantity of refuse they produce and that they respect biodiversity and adopt more sustainable development objectives.

The British government's Sustainable Procurement

Action Plan should be crucial in achieving the aim of saving more than a million tonnes of CO₂ before 2020. (Cf. <http://www.sustainable-development.gov.uk/publications/pdf/SustainableProcurementActionPlan.pdf>).

The Sustainable Procurement Task Force was set up in May 2005 to develop an action plan to change public procurement in the radically, making the United Kingdom an EU leader in sustainability objectives by 2009. (Cf. <http://www.sustainable-development.gov.uk/government/task-forces/procurement/index.htm>). Government structures responsible for CSR.

In the United Kingdom, the Department for Trade and Industry leads public CSR activities through the Ministry for CSR. There is no single public policy on CSR, but more than 12 government agencies implement various CSR programmes depending on their expertise.

Poland

Initial adoption of CSR practices in Poland was stimulated by initiatives from private enterprises, often TNCs which were expanding their activities in Poland and basing CSR on their strategic interests.

The Polish government welcomed these voluntary movements in which the main enterprises adopted CSR criteria under pressure from the market and without the need for a specific legal framework to expand or promote the principles.

Sensitivity to the issue is, however, quite developed as the various initiatives since 2002 show. An example comes from the Danzig Institute for the Market Economy which produced a White Paper on Enterprise Governance.

The Ministry for Work and Social Policies took part in various EC initiatives on CSR. The Polish Chamber of Commerce has set up numerous projects which are aimed at increasing sensitivity to this issue, particularly as far as SMEs are concerned.

An important role in disseminating information on CSR is undertaken by the Forum on Responsible Enterprise (an NGO created in 2000 as an initiative from entrepreneurs and universities ([http:// www.fob.org.pl](http://www.fob.org.pl))).

Many activities aimed at supporting the development of ethical and environmentally-sustainable entrepreneurial initiatives have been set up and codes of ethical conduct have been established.

Some of the enterprises which operate on the Polish market have set up social accounting and reports which are aimed at their stakeholders.

As far as the environment is concerned, after ratification of the 2002 Kyoto Protocol, Poland undertook numerous initiatives which were concerned with energy policies and sustainable models of production and consumption which have involved other ministries such as the Ministry for the Economy.

On the social front, some important steps have been taken towards initiatives connected to training at work and encouraging employment of people with disabilities.

6.2 Examples of inserting social aspects into tendering procedures

Lessons from Scotland: Community Benefit Clauses in tendering

Raploch, a Scottish mixed capital enterprise, has set up a plan to renew council houses it manages. In 10 years, with an investment of £120 million, 450 of the 1,550 dwellings must be demolished. The plan provides for 900 new houses to be built alongside new roads and gardens aiming to increase the population from 4,000 to 6,000.

The enterprise decided that the investment could act as a lever for social inclusion and development.

As a start, Raploch decided that 10% of jobs should go to the long-term unemployed or people at a disadvantage on the labour market. This meant that the contractors must provide 5 apprenticeships, 10 semi-skilled jobs and 10 trainee positions annually and these clauses were contractually binding.

Lawyer Michael Cook, whose task was to ensure that these procedures were compatible with EC law stated: “you can say in a contract that x% of jobs must go to the long-term unemployed, or new entrants to the labour market, or people needing vocational training. But you can’t say that jobs must go to local people’ even though the majority of those employed will be local in the end.

7. Towards models of EQUALITY

The recognition, analysis and discussion work undertaken by the EQUALITY partners and reported above in this document has highlighted some opportunities which could constitute models for including social consideration in public procurement. Before passing on to describing them, it is important to underline the principles which have inspired the ideas behind the EQUALITY models, i.e. methods of public procurement which include social considerations and quality in the results.

It is probably impossible to define a single unifying model for including social considerations in public contracting, because of the intrinsic diversity and the constant evolution of the very notion of ‘social considerations’.

1. Different practices and approaches can co-exist at different levels for different groupings and they could potentially strengthen each other.
2. The unifying principle EQUALITY has at its centre is satisfying users’ needs.
3. However, a model for EQUALITY can be set up

in practice which unites and does not overlap, by working on the common areas of agreement to extend them.

4. If models of EQUALITY are to work and be long-lasting, they should be based on the knowledge, by all players of the needs which are to be satisfied, the resources available (financial, human, material, etc.), the practicable solutions and associated risks, the limitations and procedural options.
5. A model of EQUALITY presupposes and requires active participation and proposals for solutions.

Even though models of EQUALITY come from within public procurement, they should also aim to influence the private procurement sector.

7.1 Using existing options

The first element in an EQUALITY model should be promotion of awareness of the existing regulations of social importance and their applicability to public procurement.

Priority social considerations are included, in robust form, in legislation on tendering in most Member States.

The Code of Public Contracts in Italy and regulations related to it have strengthened the tools at our disposal and the issue seems now to be one of effective controls on its application.

7.2 Preference for more linear solutions

The second element: when there are direct tools, they should be used (those and not others).

Some social regulations are not designed to respond to well-defined needs. When these needs are evident those regulations should be used, and not twisted for other purposes.

For example, in the case of reserved tendering covered by article 52 of the Code of Contracts.

Determination 2 of 23rd January 2008 'Operating guidelines for Reserved Tendering' (*Gazzetta Ufficiale* no. 42 of 19.2.2008 – supplementation no.38), The Authority for Control of Public Contracts clarified the application terms which promote integration and re-integration of individuals with disabilities in the labour market.

Pursuit of a social objective by means of public tendering procedures happens in this case by means of the creation of a reserved operating quota which is both subjective (protected laboratories) and objective (protected programmes), in both cases characterized by the employment of a majority of individuals with disabilities.

Models of EQUALITY are, therefore, for the integration and reintegration of individuals with disabilities into the labour market and reserved tendering should be used in the call for bids (above or below the threshold) and a systematic effort should be made to extend its use to public enterprises and to promote protected programmes in which for-profit enterprises could also participate.

7.3 Reorganizing around users

The third element of an EQUALITY model is reorganization around users.

This obviously does not mean changing the structure of public bodies or profit or not-for-profit enterprises (a voluntary organization is usually organized around users).

The suggestion is that in a model of EQUALITY procurement purchasers and social enterprises (for profit and not for profit) make up a transversal working group set up by function and organized around a group of users in order to:

- agree on the public procurement activities which are in the interests of the users, encouraging

examination of common options for including social considerations;

- develop a system for listening to the more organic needs of the user;
- develop a system which can satisfy all the needs beyond execution of individual contracts;
- collect proposals for innovative solutions and improve knowledge of the capabilities of suppliers.

These working groups (which are assured of the institutional support of the bodies) could also cooperate with each other to harmonize environmental and social considerations in tendering procedures, so developing internal standards, encouraging internal exchange of good examples, increasing knowledge of the issues and the opportunities outside the sector.

The natural stages for including social considerations are planning and execution of the contract and not pinpointing the contract. Everything becomes more difficult if the inclusion of social considerations is used to make up for a deficit in planning. The working groups could contribute to including social aspects in the programming stage which are then easier to apply. They could also design clauses for contractual execution which are harmonized from one tendering procedure to another for each group of users.

7.4 Updates and innovation

EQUALITY models should encourage, welcome and promote innovation.

On the basis of experience in other Member States and judicial interpretations from the European Court of Justice, it is possible to include concrete social considerations in tendering procedures whilst still safeguarding the basic principles of freedom of establishment and freedom to provide services, transparency, equal treatment, proportionalism and mutual recognition.

Any reduction in these opportunities for proceeding requires innovation in the way procurement is considered.

The capacity to innovate is indispensable if new solutions are to be designed or new methods of procurement are to be found (for example co-production with users or using multi-service vouchers).

At the same time it is also indispensable from the bidders point of view, when procurement purchasers concentrate on 'what', leaving bidders to themselves when planning 'how'.

Training and professional development for operators is an essential condition for developing an environment which encourages innovation.

Training of the Tertiary Sector and SMEs in public tendering procedures could strengthen their capacities when it comes to participation and prepare the way for dialogue.

Models of EQUALITY should, therefore, include training, professional development and innovation in an integrated fashion.

7.5 Dialogue

Dialogue between demand and supply should be constant in EQUALITY models.

Perhaps the most pervasive way of introducing social considerations in tendering is to act implicitly modelling the market in an equal and transparent way.

For this to happen, the public sector should know the capabilities of the bidder very well and listen to their proposals; the bidder should be willing to invest in finding cheaper solutions to the needs they understand well and provide planned funding and suggestions.

In this manner, barriers to entry and exit will be removed, so encouraging participation from SMEs and competition.

These are the main reasons for systematic dialogue

between procurement purchasers, the private sector and the tertiary sector which are contained in EQUALITY models.

8. Open questions and future work: EQUALITY 2020

During the process of planning inclusion of social considerations in public tendering procedures some important questions have remained open and they lead us to continue network activities and suggest an experimentation workshop.

Examples of some of them follow:

- the influence of users and private buyers in the spread of socially responsible purchasing practices (e.g. the influence of parents in drawing up tendering procedures for school meals and in their children's eating habits);
- ways of introducing local mainstreaming in successful procedures and ways of ensuring that they are developed;

- possible relationships between social considerations in public procurement and alternative economies (e.g. bartering or free software sharing); spreading social responsibility along the supply chain by means of lock-in mechanisms;
- the effects of public procurement on the multiplication of social and environmental certification which sometimes overlap or which are sometimes weaker than existing laws;
- the impact of detachment of workers in other countries;
- ...

For this reason, some members of the EQUALITY partnership have suggested following the route opened by the EQUAL IT-G2-MAR-008 project, setting up a network workshop for research, testing, promotion and spread of good examples and extending sustainability in public procurement.

EQUALITY 2020 starts here.

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Glossary

ACCOUNTABILITY: *accountability* includes the notion of responsibility of those who use public resources (administrators, officials, beneficiaries of aid and subsidies), as well as the notion of being accountable to others (by means of demonstration and documentation) in using public funds. It goes beyond regular reliable accounting and requires verifiable evidence of economicity, efficiency and effectiveness in management.

AYUNTAMIENTOS: municipalities or local administrations in Spain.

BENCHMARK (SECTOR): a *benchmark* is generally a point of reference when things are being measured. The expression is also used to indicate comparison between performance in different areas (economic, social, financial etc.) of a concern and the reference point values of the sector in question.

BEST PRACTICE: the most significant procedures or those which have given the best results and which can be repeated.

BRANDING: creation, management and development of a brand name. Branding aims to increase the perceived value of a product or service by means of the implicit "promise" of quality associated with the brand.

CARBON FOOTPRINT: the impact which each of us makes on the environment by means of individual activities or consumption which increases greenhouse gas emissions. In general terms this refers to the impact each of us has on the environment.

Doc.U.P.: this is the *Documento Unico di Programmazione* or planning document through which the Regions in Italy used European funding to develop the economic and production fabric from 2000-2006.

E.M.A.S.: Eco-Management and Audit Scheme. This is a voluntary tool created by the European Union for assessing and improving environmental performance and supplying information to the public and other interested parties about environmental management. Companies and public bodies can sign up to the scheme.

E.T.I.: Ethical Trading Initiative. This is an association of enterprises, non-governmental organizations (NGOs) and unions which has been set up to promote and improve company ethical codes on working conditions throughout the whole supply chain to respect and outperform international standards on working conditions.

ECOLABEL: Ecolabel (Regulation CE no. 1980/2000) is the European brand of ecological quality which distinguishes products and services with a lesser environmental impact. The Ecolabel symbol is a flower.

GREEN PROCUREMENT: (green purchasing) denotes the system of purchasing goods and services which are environmentally preferable, i.e. "those goods and services which have a lesser, or reduced, effect on human health and the environment when compared with other products and services used for the same purpose". In Italy, the CIPE deliberation no. 57 of 2nd August 2002 establishes that "at least 30% of the goods purchased must fulfil ecological requirements; 30-40% of durables must have reduced electricity consumption, taking account of replacement and using part-exchange". The decree of 8th March 2003 np.203 from the Ministry for the Environment and Protection of the Territory pinpointed "rules and definitions for the regions to adopt which are aimed at public bodies, public limited companies and service management which guarantee that products and goods made using recycled material account for at least 30% of annual production".

I.C.N.P.O.: International Classification of Non Profit Organisations.
ICT: Information and Communication Technologies.

I.L.O.: International Labour Organization.

IMPRESA SOCIALE (SOCIAL ENTERPRISE): includes all private companies, including cooperatives, where the main economic activity of the top company is permanent and has the stated objective of production and exchange of goods and services which are socially useful and in the general interest.

MAINSTREAMING: The concept refers to the process through which innovations tested in a particular area (social, economic or institutional) are introduced into the system. This is a process of acquisition, by policies and local, national and EC regulations of best practices which are tested at pilot project level or of innovations which have been proven effective.

MARKET INTELLIGENCE: market analysis, assessment, procurement filtering make up market intelligence. These are all activities which tend to stimulate new production and entrepreneurial activities which are proposed by and enacted by the procurement system. They aim at added value and advantages which allow the enterprise to be as competitive as possible.

O.C.S.E, O.E.C.D.: Organization for Economic Cooperation and Development

O.N.L.U.S.: Not-for profit organizations which are socially useful.

OSC: Organizations in Civil Society

P.M.I. (S.M.E): Small and Medium-sized enterprises

R.S.I. (C.S.R.): Corporate Social Responsibility

SCREENING Blanket research.

SOFT- LAW: refers to a series of regulations concerning production which are not directly binding. Soft Law is in contrast therefore with traditional regulatory tools which are emanated using set procedures by those in authority and which produce binding regulations.

STAKEHOLDER: those with an 'interest' in a particular economic, political or social initiative. They can be groups of people, individuals, bodies and organisms, in short, all those who will be advantaged or harmed by an initiative or who are interested in an initiative being supported or hindered.

SUPPLY CHAIN: meaning all the steps involved in supply (including subcontracting and component supply).

THREE SECTOR ECONOMY: the classification (mainly American) of economic sectors into private, public and tertiary.

U.N. GLOBAL COMPACT: an initiative to encourage enterprises worldwide to adopt socially and environmentally responsible policies and to implement them. It includes enterprises, United Nations agencies and organizations from civil society. The Global Compact was officially launched in 2000.

U.N.E.P.: United Nations Environment Programme

VALUE FOR MONEY: the expression used for assessing whether an organism is able to obtain the maximum benefit from the goods or services it purchases (or supplies) with respect to the financial resources available for that end. It refers to more than just price. There are a set of factors such as quality, cost, use of resources, appropriacy of use, timescale and convenience. In general, it refers to the three parameters of efficiency, effectiveness and economicity

VOUCHER (MULTISERVICE): vouchers for purchase (usually supplies by public organisms) which can be spent by the beneficiary on buying different types of services.



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