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# Deep Dive Parallel Sessions

## Buy Social: Discovering the enabler for a just transition



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## Deep Dive Parallel Sessions

Buy Social: Discovering the enabler for a just transition



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# EU Public Procurement 2024

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# Social and labor law requirements in public procurement



# In the beginning...

In the 90's...

Selection and award criteria must have a strong connection to the subject matter of the procurement.

EU Commission - doubtful if allowed to take environmental considerations at all. Social requirements probably not possible, not sufficient connection to the object.

Such requirements could constitute unnecessary restrictions on the free movement of goods and services within the EU.

# EU Court of Justice

- Judgment of 20 September 1988, **Beentjes**, 31/87, EU:C:1988:422
- Judgment of the EU Court of 17 September 2002, **Concordia Bus Finland**, C-513/99, EU:C:2002:495
- Judgment of 4 December 2003, **EVN and Wienstrom**, C-448/01, EU:C:2003:651
- Judgment of 10 May 2012, **Dutch Coffee Case**, C-368/10, EU:C:2012:284

# Today – CSR in all EU public procurements

“Public procurement plays a key role in the Europe 2020 strategy --- as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the public procurement rules --- should be revised and modernised in order to increase the efficiency of public spending --- and to enable procurers to make better use of public procurement in support of common societal goals.

*Directive 2014/24/EU, recital 2*

# However – when it rains it pours!

- Growing concern in the EU amongst contracting authorities and interested parties – more and more obligatory considerations proposed in other EU legislation, not connected to the EU Public Procurement Directives!
- EU politicians and Member States push different environmental, social and labor considerations to be adopted without anyone having “the big picture” when it comes to the regulatory framework for public procurement.
- How will it be possible for contracting authorities to follow, or even be aware of, all these new obligatory demands?



# Some recent examples - proposals

1. Proposals that include obligatory exclusions in case of non-compliance by the contractor:
  - Proposal for a Regulation on deforestation-free products (31 May 2023).
  - Proposal for a Directive on Green Claims (22 March 2023).
  - Proposal for a Directive on the protection of the environment through criminal law (15 November 2023).

# Some recent examples – adopted provisions

## 2. Already adopted provisions:

- EU Directive 2023/970 of 10 May 2023 equal pay for equal work or work of equal value between men and women, art. 24, 2.
- “Member States shall consider requiring contracting authorities to introduce, as appropriate, penalties and termination conditions ensuring compliance with the principle of equal pay in the performance of public contracts and concessions.”

# Bullet points for discussion

- How should social and labor law requirements in public procurements be regulated so that procuring authorities can apply them?
- How should environmental, social and labor law requirements in public procurements be weight against the purpose of the EU Directives on public procurement.
- Should we simply regulate all social and labor provisions in separate legislation and make it obligatory for contracting authorities to follow?

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Thank you for listening!

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