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CECOP's position on the revision of EU public procurement rules

Cooperatives are people-centred enterprises owned, controlled and run by and for their members, who share equal voting rights and reinvest the profit generated in the enterprise. Cooperatives are locally rooted and are protected by specific mechanisms against delocalisation. They support, serve, and play a significant role in retaining wealth in their local communities, making them the ideal partners in ensuring European preference when allocating public funds.

CECOP represents around 43,000 cooperative enterprises active in industry and services across 16 European countries. A significant number of cooperatives in CECOP's network provide goods or services for public authorities, such as in construction, energy, social services, transport, waste management, education, care, and more. Therefore, industrial and service cooperatives are a key ally in strategic public procurement, however, under the current public procurement rules, they often face exclusion.

While the 2014 revision of the public procurement Directive (Directive 2014/24/EU) brought significant improvements to public procurement rules – such as awarding contracts to the Most Economically Advantageous Tender, the possibility to divide the contract into lots, the possibility of including social and environmental award criteria, and reserved contract – in practice, issues persist. From the perspective of industrial and service cooperatives, which apply higher social standards in terms of working conditions, trainings, and more, one of the key challenges remains the continued emphasis on the lowest price in public tenders, rather than qualitative criteria. Additionally, administrative requirements also pose challenges; particularly small and medium-sized cooperatives are disproportionately affected by them while having fewer resources and less capacity than large enterprises.

To this end, it is imperative that the upcoming revision ensures that future public procurement embraces the principles of environmentally friendly and socially responsible public procurement and creates a level playing field for cooperatives. To ensure this, we ask the European Commission to take into account the points elaborated below, aligned with the specific objectives of the revision.

I. Making public investment more efficient

As the [Letta report](#) points out, SMEs often find it difficult to participate in public tenders. The 2014 Directive included some positive provisions to avoid the exclusion of SMEs, such as the division of contracts into lots (Article 46), which should be maintained in the revised Directive. However, other challenges persist that require further amendments. Indeed, under the current rules on EU public procurement, cooperatives, particularly small and medium-sized cooperatives, often struggle with the amount of administrative requirements as well a legal uncertainty. Furthermore, the Letta report also recommends using public procurement to increase both the impact and market presence of the social economy, the wider family which cooperatives are a part of. It is essential that the new

rules level the playing field for small and medium cooperatives and incentivise their participation based on the below recommendations.

1. Lower administrative burden to create a level playing field for small and medium cooperatives

The bureaucratic burden in public procurement is substantial, leading to SMEs being discouraged and not bidding due to concerns about potential losses. Small and medium cooperatives, which make up the majority of the cooperatives affiliated with CECOP members, face the same challenges. As a result, these opportunities frequently favour large enterprises that possess the administrative capabilities to satisfy these requirements. The procurement directives must be revised in a manner that promotes good governance and transparency while also simplifying processes to encourage broader participation. In particular, SMEs, including small and medium cooperatives, should find it simpler to bid, win, and manage contracts profitably, for instance by:

- ⇒ Harmonising and systematically providing templates for the requested documents
- ⇒ Develop user-friendly and accessible digital tools and platforms for public tenders, as well as for guiding documents and relevant resources to increase the digitalisation of procurement processes, whilst ensuring that the use of these does not lead to the exclusion of candidates
- ⇒ Research the obstacles SMEs, including small and medium cooperatives face when bidding for public contracts

2. Encourage the participation of small and medium-sized cooperatives via business consortia

In order to promote the participation of SMEs, the revised rules should encourage the possibility to set up business consortia. Based on the Italian example, where a specific law was adopted to allow their creation, business consortia of cooperatives can bring together micro, small and medium-sized cooperatives, thus promoting their market access, growth, and engender more competition among economic operators on the public procurement market. By allowing micro, small and medium cooperatives to bid together as a consortium, these enterprises, which often struggle with disproportionate administrative requirements, are better positioned both to win and manage tenders.

3. Clarify the rules of grounds for exclusion (Article 57) to avoid uncertainty

The current Article 57 on exclusion grounds – and especially the rule of the “grave professional misconduct” (Art. 57(4)(c)) – despite its importance, is very vague and thus has contributed to great uncertainty and a lot of litigation. For instance, in Italy, the majority of litigation in the context of public contracts is disputes over the grounds for exclusion. Therefore, a clearer and more unambiguous regulation would be needed, with a view to legal certainty and interpretive clarity.

4. Make price-revision clauses mandatory

In terms of modification of contracts (Article 72), price-revision clauses are crucial, particularly in the face of inflation. However, currently there is no obligation in the Directives for Member States to provide price-revision mechanisms for public contracts. Recent experience – the COVID-19 crisis and the Russian invasion of Ukraine – has taught that the absence of price-revision clauses constitutes a serious problem as it can lead to the erosion of profit margins or to the need to suspend performance in order to avoid providing services at a loss. In certain countries, these have been added to national legislation, e.g., Italy, which added indexation clauses, or France. However, it would be essential to make these mandatory across the EU and thus increase the participation of small and medium enterprises which otherwise might not even participate in order to avoid potential losses. To ensure that price revision clauses are effective and efficient, they must consider cost changes that result from modifications in the labour law and collective agreements.

II. Designing tools to strengthen economic security and sovereignty

As European Commission President Ursula von der Leyen mentioned in her State of the Union speech, the European Commission is planning to introduce a “made in Europe” criteria in public procurement in order to strengthen economic security and sovereignty. The IMCO committee’s [own-initiative report](#) also mentions that “contracting authorities in the EU should be allowed to give preference to bids that include a significant proportion of added value produced within the EU.” By introducing this criterion, public procurement could be used strategically to ensure that it strengthens the EU’s strategic autonomy, decrease dependence on third countries, boosts its competitiveness and retain benefits and value created. Cooperatives, by nature, are well-positioned to contribute to these goals.

5. Introduce the “Made in EU” concept and include cooperatives in it

Cooperatives are deeply embedded in the local economy and contribute significantly to economic resilience. Through their democratic decision-making processes, which give each member an equal voice within the enterprise, and by prioritising the retention and reinvestment of surpluses over short-term profit distribution, cooperatives strengthen their capacity for resilience and long-term continuity. They are therefore more inclined to pursue long-term economic strategies and can offer a more reliable and sustained supply of goods and services. Their ownership and governance structures are designed to ensure that the economic value generated is retained and reinvested within the local economy. Their inner “asset-lock mechanisms” guarantee that they cannot delocalise and even in case of closure, that the possible remaining value feeds mutualistic cooperative or social economy funds designed to help other cooperatives to emerge or grow. As cooperative members typically live or work in the community, capital is less likely to be exported elsewhere. In this context, the

public procurement rules should acknowledge the strategic importance of cooperatives and explicitly include them in the “Made in EU” concept.

6. **Provide extra points in the selection criteria for enterprises that retain the value created in the EU**

In addition to ensuring that production is performed in Europe and that the local community benefits from quality jobs and services provided by the enterprise, cooperatives also guarantee that the value created remains in the community, in Europe due to their inner characteristics requiring to reinvest the surpluses in the enterprise. Indeed, unlike profit-maximising multinational corporations where external shareholders have a legal claim over surpluses via dividends, cooperatives are structured to prioritise their members and reinvestment into the enterprise and the local economy. This is a structural guarantee that the public money spent remains in the local community and territory, which makes cooperatives reliable, long-term partners for boosting Europe’s strategic autonomy. Therefore, the revised rules should allow for the provision of extra points for those enterprises that not only guarantee EU production but also retain the value created in the EU.

III. **Aligning public procurement policy with EU strategic policies and objectives**

As the recently published [evaluation report](#) points out, the implementation of strategic procurement across Member States is uneven, but “green, innovative and social procurement continue to be strategic priorities, as underlined in the Clean Industrial Deal and the Competitiveness Compass”. Indeed, as EU public procurement accounts for around 15% of EU GDP, it is essential to spend it strategically by modernising and enhancing its effectiveness to avoid race-to-the-bottom bidding and to contribute to the uptake of socially responsible public procurement. The [Letta report](#) also calls for leveraging public procurement as an instrument to promote social value and facilitating social and environmental progress.

7. **Strengthen the Most Economically Advantageous Tender (MEAT) criterion**

While Directive 2014/24/EU on public procurement improved rules on selection criteria, there are still fundamental issues with the methodology for awarding contracts. Price-only awarding is still used across the EU, and even where the Most Economically Advantageous Tender (MEAT) criteria is used, there remains an overwhelming weight on price when awarding these contracts. Although MEAT is supposed to appreciate quality, according to our members¹, it does not happen in practice as the Directive does not regulate the weighting of the criteria. As such, price remains important, and often is the decisive criterion in tenders.

¹ National federations of industrial and service cooperatives

Emphasis on price, in turn, negatively impacts the work conditions or the quality of the services offered under the tender. In addition, using the lowest price criterion may also lead to follow-up costs for the contracting authority due to inadequate quality of the goods or services procured. It is therefore essential to move away from focusing on the “lowest price” and make the Most Economically Advantageous Tender (MEAT) the default criterion.

8. Introduce mandatory social and environmental considerations

The 2014 Directive provided a framework for the use of qualitative criteria, particularly environmental and social aspects, albeit only on a voluntary basis. However, public authorities are reluctant to apply these, citing bureaucratic burdens associated with incorporating environmental and social criteria into procurement processes, and even when applied, they are often used as on/off criteria, i.e., aspects that are either in the tender or not. This leads to the diminished value of these criteria, and, once again, making price the decisive factor when awarding the contracts.

As long as the decisive criterion is price, cooperatives are essentially excluded from tenders by default, as these enterprises, that prioritise the protection of jobs over the creation of profit, face higher upfront costs compared to businesses that are profit oriented. It is, therefore, necessary that the revised Directive introduces mandatory non-price criteria – social and environmental – in order to achieve the EU’s environmental and social objectives through procurement and strengthen the European social model and the green transition

9. Maintain the option to reserve contracts (Article 20) and thus facilitate the work integration of disadvantaged persons

Reserved contracts (Article 20 in the current Directive) are key for work integration enterprises whose core mission is the work integration of vulnerable workers, with at least 30% of their employees being disabled or disadvantaged. This also includes social cooperatives, which represent one of the most effective models for integrating disadvantaged workers into the workforce, that are also service providers for their local communities, combining high quality services and social responsibility with participatory governance. Reserved contracts often make it possible for these enterprises to provide these services. As such, it is essential to maintain the use of reserved contracts.

10. Improve the terms of reserved contracts for certain services to ensure continuity of services (Article 77)

Public procurement, particularly reserved contracts for certain services, are key for providers of social services. However, the current provisions put unnecessary limits on them, even disturbing the continuity of service provision. One of the key issues in terms of reserved contracts for certain services is that the maximum duration of contracts under Article 77 can only be three years, therefore, extending this period would be beneficial for cooperatives.

Another problem is that an enterprise that is awarded a contract cannot have been awarded a contract for the same services in the previous three years. This poses an issue particularly for cooperatives operating in the areas of childcare and elderly assistance, and it is antithetical to Article 76, which states that “Member States shall ensure that contracting authorities may take into account the need to ensure [...] *continuity* [...] of the services”. The scope of the current Article is also too restrictive; it would be necessary to broaden the scope of reservations, and thus, provide further access to social economy enterprises to public contracts. However, the threshold of EUR 750 000, as defined in Article 4 of the 2014 Directive, should be maintained.

11. Provide training for contracting authorities on the social economy

As one of the challenges cooperatives, part of the wider social economy family, face in terms of accessing public procurement is contracting authorities’ lack of knowledge of these enterprises and their added value, training courses and guidance should be developed to promote the involvement of cooperatives and the uptake of social and environmental considerations and thus the better use of strategic public procurement across the EU.

12. Develop a robust and transparent monitoring system

Currently, there is a lack of available data on the use of public procurement, especially in terms of its strategic use. However, in order to be able to measure and evaluate the impact of public procurement, it would be necessary to set up a transparent data collection and monitoring system at EU level. Key indicators should include the uptake of social and environmental considerations, and the share of social economy enterprises, including cooperatives that bid for and win tenders. Better monitoring of the impact of public procurement would increase accountability over public spending and it would incentivise contracting authorities to apply higher social and environmental standards in public procurement. Furthermore, it would help both the contracting authorities and the EU to verify that public spending is used to fulfil strategic objectives.

The revision of the public procurement rules is a critical initiative. While the 2014 revision made great strides towards ensuring better procurement practices, there is a need to further improve them and guarantee environmentally friendly and socially responsible procurement. By emphasising quality over price, the revised rules will enhance social economy enterprises’, including cooperatives’, access to public procurement.

CECOP is the European Confederation of Industrial and Service Cooperatives, representing approximately 43,000 cooperatives, employing over 1.3 million workers, across 15 EU countries and the UK. The majority of cooperatives affiliated to CECOP's members are worker cooperatives (72%), which are democratically managed and owned by the workers, and social cooperatives (27%), which, in addition to workers, often include other types of members, such as service beneficiaries or public authorities. Social cooperatives primarily provide services of general interest and many of them contribute to the work integration of disadvantaged and marginalised people. The remaining cooperatives represented by CECOP (1%) are composed of self-employed workers.