



# Application of Social Clauses

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# Agenda

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# Not just.....



# My focus - Procurement

P<sub>3</sub> U<sub>1</sub> B<sub>3</sub> L<sub>1</sub> I<sub>1</sub> C<sub>3</sub>

P<sub>3</sub> R<sub>1</sub> O<sub>1</sub> C<sub>3</sub> U<sub>1</sub> R<sub>1</sub> E<sub>1</sub> M<sub>3</sub> E<sub>1</sub> N<sub>1</sub> T<sub>1</sub>



# Why?

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It is important to understand why an organisation is interested in tackling these issues?

- Commitment to actively supporting / promoting change
- Recognition of the positive benefits

OR

- To be seen to do something.....

# What's going on in this space.....

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# CSR – what is Corporate Social Responsibility

Lots happening in the procurement arena on social

Corporate Social Responsibility (CSR) is defined by the European Commission as “the responsibility of enterprises for their impacts on society”. To fully meet this responsibility, the Commission states that, in addition to respect for applicable legislation and collective agreements between social partners, enterprises “should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of maximising the creation of shared value for their owners/shareholders, other stakeholders and society at large, and identifying, preventing and mitigating their possible adverse impacts”.

*.... to integrate social, environmental, ethical, human rights and consumer concerns into their business operations .....*

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***The United Nations Global Compact is a United Nations initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation***



# 12,365 members – 18 from Ireland



## Our Participants

TYPE INITIATIVE COUNTRY SECTOR STATUS

Active Filters: COUNTRY Ireland x Clear All

18 results

10 per page ▾

NAME	TYPE	SECTOR	COUNTRY	JOINED ON
<a href="#">C&amp;F Tooling Ltd</a>	Company	Electronic & Electrical Equipment	Ireland	2009-03-16
<a href="#">Musgrave Limited</a>	Company	General Retailers	Ireland	2004-05-26
<a href="#">Smurfit Kappa Group plc</a>	Company	Forestry & Paper	Ireland	2010-05-26
<a href="#">An Post</a>	Company	Support Services	Ireland	2010-08-04
<a href="#">PCH</a>	Company	Technology Hardware & Equipment	Ireland	2012-04-12
<a href="#">University of Limerick</a>	Academic	Not Applicable	Ireland	2012-04-24
<a href="#">Dublin City University Business School</a>	Academic	Not Applicable	Ireland	2013-06-19
<a href="#">OpenSparkz LP</a>	Small or Medium-sized Enterprise	Equity Investment Instruments	Ireland	2015-04-15
<a href="#">Isles International University</a>	Academic	Not Applicable	Ireland	2016-04-07
<a href="#">Property Button</a>	Small or Medium-sized Enterprise	Software & Computer Services	Ireland	2016-05-25

◀ 1 2 ▶



# Our Participants

Search Participants

TYPE INITIATIVE COUNTRY SECTOR STATUS

Active Filters: COUNTRY Ireland x Clear All

18 results 10 per page

NAME	TYPE	SECTOR	COUNTRY	JOINED ON
<a href="#">Reprographic Systems Ltd</a>	Small or Medium-sized Enterprise	General Industrials	Ireland	2016-06-02
<a href="#">Truform Laser Dies</a>	Small or Medium-sized Enterprise	General Industrials	Ireland	2016-07-19
<a href="#">Institute of Technology Tralee, UNESCO Chair</a>	Academic	Not Applicable	Ireland	2016-09-22
<a href="#">Lionheart Management Consultants</a>	Small or Medium-sized Enterprise	Support Services	Ireland	2016-10-19
<a href="#">Synergy Security Solutions</a>	Company	Support Services	Ireland	2017-03-31
<a href="#">Barracuda FX</a>	Small or Medium-sized Enterprise	Software & Computer Services	Ireland	2017-08-11
<a href="#">Ryanair DAC</a>	Company	Aerospace & Defense	Ireland	2017-09-11
<a href="#">Chieftain Fabrics</a>	Small or Medium-sized Enterprise	Construction & Materials	Ireland	2017-11-02

# Lots happening in the procurement arena on social



**ISO 20400 uses a holistic definition of sustainability, rather than solely focusing on environmental attributes.**

There is often an equivocation between “sustainable purchasing” and “green purchasing.” The former includes, however, two other pillars that the latter lacks: social sustainability and economic sustainability. This matters in how an organization’s leaders will frame the risks and opportunities of sustainability improvements.

**New standard on**  
***Sustainable Procurement***  
***Just published 24<sup>th</sup> April 2017***

# Lots happening in the procurement arena on social

## ✔ Conflict Minerals Regulation - Trade - European Commission

ec.europa.eu › European Commission › Trade › Policy ▼

Mar 16, 2017 - Read about a new EU regulation to help end the trade in conflict minerals.

**Effective January  
2021**

**Impacts on items  
such as mobile  
phones, cars,  
jewellery**

**\* Will impact on  
supply chain**

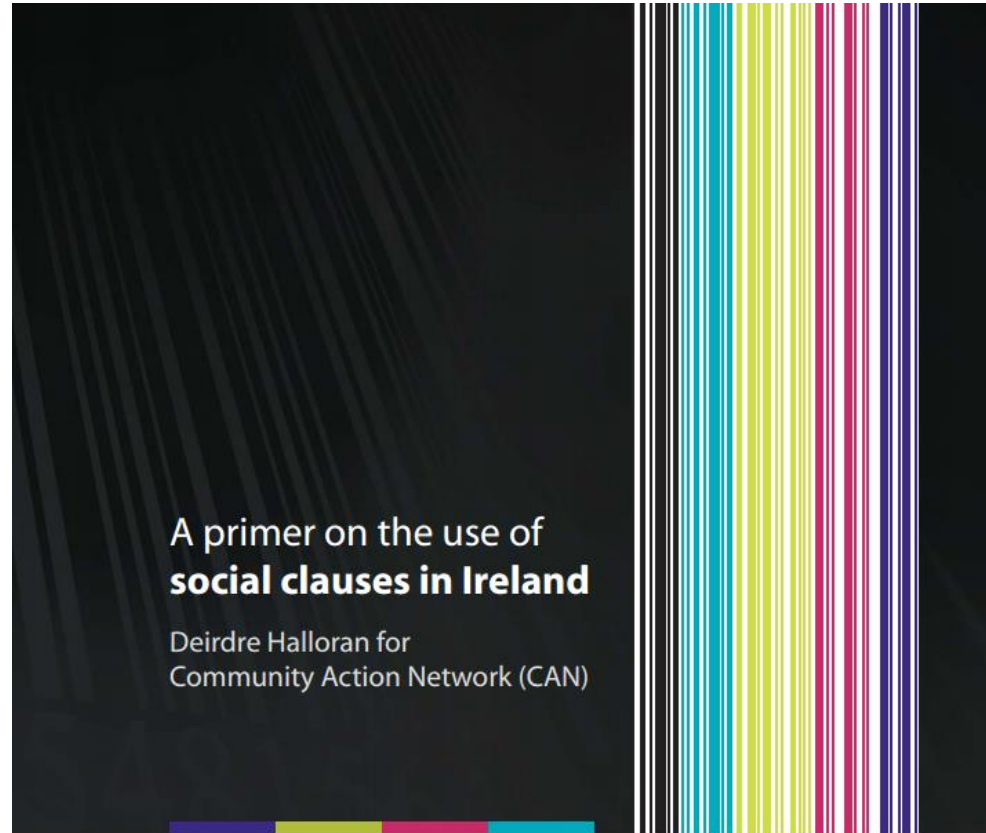
The screenshot shows the European Commission Trade Policy website. The main heading is "COMBATTING CONFLICT MINERALS" with an illustration of a smartphone, a car, and mineral rocks. The page content includes:

- In focus:** New trade strategy, Comprehensive Economic and Trade Agreement (CETA), **Conflict Minerals Regulation**, The regulation explained, Help for your business, Legal texts and documents, Trade in Services Agreement (TiSA).
- Policy making:** EU position in world trade, EU and WTO, Countries and regions, Accessing markets, Import and export rules, Trade policy and you.
- Text:** "In politically unstable areas, armed groups often use forced labour to mine minerals. They then sell those minerals to fund their activities, for example to buy weapons. These so-called 'conflict minerals', such as tin, tantalum, tungsten and gold, can find their way into our mobile phones, cars and jewellery."
- Section:** "A new EU law to stem the trade in conflict minerals".
- Text:** "So the EU is expected to pass a new regulation in May 2017 to stop: conflict minerals and metals from being exported to the EU, global and EU smelters and refiners from using conflict minerals, mine workers from being abused".
- Text:** "The law will also support the development of local communities. It requires EU companies to ensure they import these minerals and metals from responsible sources only. It will start on 1 January 2021 so companies have time to adapt to it."
- Section:** "About the EU's new conflict minerals law".

# Lots happening in the procurement arena on social

CAN – NGO  
dedicated to social  
justice

A report based  
on 2004  
Directives, but  
relevant under  
2014 Directives



# Lots happening in the procurement arena on social

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Procurement Directive  
2014/24/EU

Range of  
Initiatives

# Enablers Specifically from the Directive

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Article 57 – regarding Exclusion Criteria

Mandatory exclusion includes:

*child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council (7).*

*Personal Situation Declaration / ESPD*

# Enablers Specifically from the Directive

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## Annex XII – Means of Proof of Selection Criteria

*an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract*

*What minimum rules might be included?*

*Will it relate to ethical, sustainable sourcing?*



# Enablers Specifically from the Directive

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## Recital 76

*For all procurement intended for use by persons, whether general public or staff of the contracting authority, it is necessary for contracting authorities to lay down technical **specifications** so as to take into account **accessibility criteria for people with disabilities or design for all users**, except in duly justified cases.*

# Enablers Specifically from the Directive

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## Recital 36 – Sheltered Workshops

Employment and occupation contribute to integration in society and are key elements in guaranteeing equal opportunities for all. In this context, sheltered workshops can play a significant role. The same is true for other social businesses whose main aim is to support the social and professional integration or reintegration of disabled and disadvantaged persons, such as the unemployed, members of disadvantaged minorities or otherwise socially marginalised groups. However, such workshops or businesses might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide that Member States should be able to reserve the right to participate in award procedures for public contracts or for certain lots thereof to such workshops or businesses or reserve performance of contracts to the context of sheltered employment programmes.

# Enablers Specifically from the Directive

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## Article 20 – Sheltered Workshops

Member States may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that **at least 30 % of the employees** of those workshops, economic operators or programmes are disabled or disadvantaged workers.

**How many such contracts in Ireland?**

# Enablers Specifically from the Directive

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## Article 74 - Award of contracts for social and other specific services

Public contracts for social and other specific services listed in Annex XIV shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in point (d) of Article 4

Title III

LOCAL AUTHORITIES – this is €750,000

***Light Touch Regime*** means flexibility, but still adherence to competitive tendering and best practice

# Title III services

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**Health, social and related services**

**Administrative social, educational, healthcare and cultural services**

**Compulsory social security services<sup>1</sup>**

**Benefit services**

**Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services**

**Religious services**

**Hotel and restaurant services**

**Legal services, to the extent not excluded pursuant to point (d) of Article 10**

**Other administrative services and government services**

**Provision of services to the community**

**Prison related services, public security and rescue services to the extent not excluded pursuant to point (h) of Article 10**

**Investigation and security services**

**International services**

**Postal services**

**Miscellaneous services**

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# Enablers Specifically from the Directive

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## Article 77 – Reserved contracts for certain services

Member States may provide that contracting authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in Article 74, which are covered by CPV codes .....

May reserve for organisations whose objective is the pursuit of a public service mission linked to the delivery of the services ....  
Profits reinvested ..... employee ownership

If reserving, maximum duration is **3 years**

If not reserving to such companies, no limit on contract duration

# Enablers Specifically from the Directive

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## Recital 98 – re award criteria

It is essential that **award criteria or contract performance conditions concerning social aspects of the production process** .....should not be chosen or applied in a way that discriminates directly or indirectly against economic operators from other Member States or from third countries parties to the GPA or to Free Trade Agreements to which the Union is party. Thus, requirements ....., such as **minimum rates of pay**, should remain at the level set by national legislation or by collective agreements .....

## Contract Award Criteria

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Art. 67.2(a) states

quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, **social, environmental and innovative characteristics and trading** and its conditions;



# Award Criteria – critical requirements

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- “Must be linked to the subject matter of the contract”

This is an essential element of every **award criterion** and every criterion for **performance of a contract**

Art. 67.3

Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and **at any stage of their life cycle**, including factors involved in:

- (a) the specific process of production, provision or trading of those works, supplies or services; or*
- (b) a specific process for another stage of their life cycle,*

even where such factors do not form part of their material substance.

# Award Criteria – critical requirements

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- Example:

- “Housing scheme and community benefit project”
- As an example the documentation could include the possibility of variants which enable tenderers to offer their own special **community support initiatives** as an award criterion,
- together with a contract performance condition which include the employment of a minimum proportion of long term unemployed in the construction phase

•The “community benefit” must be capable of being objectively assessed during the tender evaluation stage.

Ref: *A primer on the use of social clauses in Ireland*

# Award Criteria – critical requirements

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- Award criteria cannot :
  - Breach the EU Treaty which includes the fundamental freedoms (establishment and freedom to provide services)
  - Breach the EU principles of equal treatment and non-discrimination by nationality, proportionality, transparency and mutual recognition

# Enablers Specifically from the Directive

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## Article 70 - Conditions for performance of contracts

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of Article 67(3) and indicated in the call for competition or in the procurement documents. Those *conditions may include economic, innovation-related, environmental, social or employment-related considerations.*

# Using Art. 70

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Contract performance conditions can be implemented requiring

“must ensure 10% employed on site are sourced from the long term unemployed”

- Advice sought from Department of Social Protection on how to achieve this, assuming an Irish company wins

Could use a variant to look at proposals to build on this condition, e.g.

- “X number of apprenticeships offered – duration of apprenticeship (duration of contract or longer term)”
- “Scholarship / improved access to education”
- “Apprenticeship programmes”

## To summarise

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- There is great opportunity now to do something positive in this area, it is a matter of working through the options and developing a working policy.
- Might be a good idea to hold some open days for discussion with market prior to implementing contract award procedures to see what initiatives might be a runner!
- But before you outsource the obligation, make sure that you have a proactive internal policy and are seen to lead by example through your own initiatives.



# Thank you

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