

Reader

Clean Clothes Communities (Ethical Public Procurement of Work Wear)

Experience of European Clean Clothes Campaigns



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Introduction

Work wear purchasers around the world – unite!

Each year, communities spend a huge amount of money on uniforms and other work wear for municipal services such as the fire department, cleaning and public transportation services. Clean Clothes Communities projects are aimed at local and regional authorities which adopt a resolution in order to ensure that only work wear made under good labour conditions is purchased. That means formulating an ethical procurement policy and developing a plan of action so that within a specified period of time buying "clean" uniforms becomes a reality. Before getting started, communities are expected to determine who will be responsible for the purchases, who their suppliers are, which labour criteria will be taken into account, where the uniforms are actually produced, what is known about the labour conditions, and so on.

But before all this is possible, a lot of work must be done. This reader aims to provide helpful starting points and ideas for follow up activities.

In some CCC countries – the Netherlands, Belgium North, Belgium South, France and Germany – the Clean Clothes Communities project has been running for a while. There, proposals were written, resolutions formulated and policies developed. In order to spread the project to other Clean Clothes Campaigns or interested organisations, and give them the opportunity to learn from previous experiences, this reader was compiled. It gathers country specific documents – and therefore the documents are ordered according to nationality – that are meant as examples of what can be done.

Each national section starts with a short introduction to the campaign and is followed by documents provided by that country's Clean Clothes Communities Coordinator. Contact information is provided, so that you can contact the coordinator with any questions or comments.

As the project keeps growing, so does this Reader. An effort will be made to update it in case of significant developments (for example if new countries take up the project) or the publication of relevant material. In the meantime we hope that you find inspiration in the reading that these pages provide.

Amsterdam, February 2004

Clean Clothes Campaign

Clean Clothes Communities and Model Resolution

Clean Clothes Communities

A city or municipal authority that wants to become a 'Clean Clothes Community' should first adopt a resolution that says that only work wear made under good labour conditions will be purchased. They then have to formulate an ethical procurement policy and develop a plan of action so that within a specified period of time buying 'clean' work wear become a reality.

Before they start, they need to determine exactly who is responsible for the purchases, who their suppliers are, where their current uniforms are actually produced, what is known about the working conditions there, and which labour criteria they now want to take into account.

The Clean Clothes Campaigns from across Europe held a meeting in October, 2003, Paris at which the following model resolution was developed.

Clean Clothes Community Model Resolution

Communities should:

- ? Demand that suppliers accept and implement the CCC model code of conduct.
- ? Demonstrate compliance with the CCC Code.
- ? Publicly disclose any efforts made and results achieved to comply with the code.
- ? Publicly disclose where they are sourcing where products are sourced and in what circumstances (optional: disclose a list of suppliers).
- ? Form an accountable task group that is responsible for the development of implementation.
- ? Support the creation of a European Fair Wear Foundation.
- ? Act to promote the labour rights of garment workers (through lobbying at national and European level).

Belgium North

We started the 'Clean Clothes Communities Campaign' in Belgium North in Spring 2002. Our aims in terms of results were to convince communities to adopt a motion in the first stage and to adapt buying practices in the second; and our aims in terms of campaigning was to reach and involve new target groups (local politicians and civil servants on the one hand, companies that produce or sell work wear on the other) and to run activities at the local community level which is something very different from, let's say, organising a national CCC event. These are some elements of our strategy. We're meeting these aims slowly.

We found ACW (Christian Workers' Movement), an organisation with a large number of local groups, strong infrastructure and staff, a broad network and links with politicians, ready to take the lead. Other organisations joined, depending on the local situation. We put a lot of emphasis on the need to get broad local support for these activities and we gave as much national support as possible to local activities. The idea behind this is that local campaigners know the situation very well and have good contacts but for a long term commitment there is also a need for a national framework and co-ordination. Over the past 2 years several training sessions have been organised because the need for information is considerable. And twice a year we send around an electronic newsletter.

We started with communities where we could expect success. Halfway through 2004 about 60 communities out of 300 (20%) had adopted a motion and a number of them began to include social standards in their tenders. The major companies have reacted to this pressure. We found it difficult to keep track of all these actions and the results. The activities were largely covered by local media. The local groups were glad with this action model. It's very specific and results can easily be measured. Some local actions were really very successful: 900 signatures in 2 hours! However, the absence of a verification system is sometimes de-motivating because campaigners, local politicians and civil servants all feel the need to have more guarantees about the companies complying with international labour standards.

The document 'From Good Intentions to Good Practices' that follows this introduction lays out the basic principles and steps of the campaign 'Clean Clothes Communities'. We provide two model texts: a motion to be adopted by the municipality and a so-called gentlemen's agreement for suppliers. The last 2 documents explain the legal background and procedure for public procurement.

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✂ From good intentions to good practice

Note: for 'authority' please read 'governmental or municipal body, government or municipal agency'.

1. Introduction

1.1 Sustainable development

Sustainable development involves giving attention to the following issues: improvements in quality of life and social justice; equitable conditions of trade; no exploitation of the environment; careful management of resources; and active popular participation. Municipalities and provinces have many opportunities to promote sustainable patterns of production and consumption. This can be done in a direct way by means of solidarity with the South or indirectly via a sustainability policy. Without passing judgement we present an overview of how this could look: formulation of a policy memorandum and, linked to this, the required operational instruments; appointment of an administrator; raising awareness of the public; stimulation of global education; project funding; organisation or support of (big) joint events. In this document, we will concentrate on the implementation of a sustainable procurement policy.

In Belgium, consumers and local and provincial government increasingly buy ethical products. 'Max Havelaar' fair trade labelled coffee, chocolate and bananas are widely known. Awareness of ethical production and consumption is not restricted to foods; in recent years clothing has entered the picture as well.

1.2 Clean Clothes Communities

The campaign for 'Clean Clothes Communities' began in 2002. The Clean Clothes Campaign focused on the purchase of work wear for municipal employees, work wear and uniforms for various municipal services such as the fire brigade, gardeners, the sanitation department, and the like. The demand of the campaign was that considerations leading to such purchases should include social criteria regarding the conditions under which work wear is manufactured.

2. Legal framework

2.1 International labour standards

The standards usually applied in the areas of labour are based on universal human rights and the internationally recognised labour rights based on the conventions of the ILO (International Labour Organisation). Accordingly, these standards are not set so high that poor countries are hard put to meet them; rather, they are minimal requirements. They include:

- Freedom of Association and Right to Organise (ILO Convention 87)
- Right to Organise and Right to Collective Bargaining (ILO Convention 98)
- No Forced Labour (ILO Conventions 29, 105)
- No Discrimination (ILO Conventions 100, 111)
- Gradual Elimination of Child Labour (ILO Convention 138)
- Elimination of the Worst Forms of Child Labour (ILO Convention 182)
- Payment of living wages (ILO Conventions 26, 131)
- Prohibition of Excessive Working Hours (ILO Convention 1)
- Occupational Health and Safety (ILO Convention 155).

2.2 Public Authority Procurement [provincial and municipal]

Social criteria

The Belgian 'Programme Law' of 8 April 2003 contains an amendment to the law of 24 December 1993 concerning public procurement. The amendment relates to award criteria and conditions of execution. With respect to award criteria there is explicit mention of 'social and ethical considerations'. In relation to the conditions of execution it is explicitly stated that the contracting authority can, among other things, take into account (the degree of) conformation to the basic ILO conventions. Belgian legislation on social criteria in public procurement then, is certainly not bad.

2.3 Gentleman's Agreement

As a rule the tender or contract specifications document consists of four sections:

- An administrative section. This section contains special contract conditions.
- A technical section. This section contains objective statements of all technical stipulations describing the work, delivery or service.
- An inventory.
- The quotation document. This is the applicant's formal declaration to execute the governmental commission in accordance with the specified conditions and the quoted price.

The criteria included in the specifications must be measurable. A recognised label or recognised certification of social standards are ways of responding to this.

At the present time a number of verification initiatives (Social Label for Responsible Manufacture, SA8000, Fair Wear Foundation) are being developed. The process is slow but the situation evolves steadily.

Actually, one indirect objective of the campaign 'Clean Clothes Communities' is to give impetus to the debate on this and to ensure that the systems now being developed provide sufficient quality.

In the current transitional phase a 'gentlemen's agreement' is juridically acceptable. Accordingly, we propose the incorporation of verification in the gentlemen's agreement -- in a manner broad enough so that the future can indicate which verification system is the most suitable.

See Appendices for more information.

3. From good intentions to good practice

3.1 Good intentions: Decisions by local councils

By September 2005, 72 municipalities have adopted a motion stipulating social and ethical procurement criteria. In making this decision these cities and towns have demonstrated that they consider it important that clothing be manufactured in socially responsible conditions.

In the provinces of Flemish-Brabant, West-Flanders and East-Flanders the issue was introduced and a motion passed.

3.2 Good practice

Gent was the first municipality to adopt a council decision on the purchase of work wear in line with social norms (May 2002), and during the council meeting of September 2003 new specifications for the procurement of work wear were approved. These specifications, art. 7, clause 9, referring to the information required of candidate suppliers, stipulate presentation of 'the completed declaration of intent relating to social criteria or a facsimile of a label as prescribed in the Law for the stimulation of socially responsible production (BS 26/03/02), or some other recognised label of similar nature and the same guarantees'. In other words, potential suppliers who wish to compete for a tender must meet the conditions set out under clause 9.

East-Flanders was the first province to actually take this step.

4. Appendices

4.1 Model Text for a Municipal Council decision

Moved by the _____ political party

THE MUNICIPAL COUNCIL of (name of municipality)

Whereas

- municipality X frequently purchases work wear, and
- one task of municipality X is to stimulate sustainable patterns of production and consumption, and
- in its local North--South policy municipality X must fulfil the task of raising awareness of the population, and
- municipality X has a local Agenda 21 in effect, and
- also, a Clean Clothes Campaign exists in Belgium, and
- on 29 November 2001 the House of Representatives passed the law on the Belgian Label,

the Municipal Council,
in due observance of Municipal legislation and
upon the Motion submitted by the _____ political party,

decide

Article 1: To agree to the principle that, in the context of sustainable policy in the procurement of work wear for municipality employees, attention will also be paid to the working conditions involved in the production of such work wear.

Article 2: To establish a task force of administrators in the various departments involved in the procurement policy for work wear (facility management, the Health and Safety department, environment, North--South cooperation, personnel management, etc.) which will specify the aspects in the area of criteria, standards and verification. To this end use can be made of the expertise of the Clean Clothes Campaign.

4.2 Model text: 'Gentlemen's Agreement' for suppliers of work wear

I, the undersigned, Mr X/Ms X, representing company y, do solemnly state and make known upon my honour that the products offered are obtained from companies that observe or stipulate for their branches, contracting parties and sub-contractors the criteria listed below:

- Freedom of Association and Right to Organise (ILO Convention 87)
- Right to Organise and Right to Collective Bargaining (ILO Convention 98)
- No Forced Labour (ILO Conventions 29, 105)
- No Discrimination (ILO Conventions 100, 111)
- Gradual Elimination of Child Labour (ILO Convention 138)
- Elimination of the Worst Forms of Child Labour (ILO Convention 182)
- Payment of living wages (ILO Conventions 26, 131)
- Prohibition of Excessive Working Hours (ILO Convention 1)
- Occupational Health and Safety (ILO Convention 155).

In the event that I am advised that these criteria are not observed, I will attempt to take all measures required to correct the situation or to acquire the goods elsewhere.

I accept that the purchaser or the purchaser's representative can consult upon request my company's records on the various branches, sub-contractors or, if the latter is truly impossible, contracting parties related to the product involved. I further undertake to cooperate with independent monitoring.

Date and signature

Belgium South

In French speaking Belgium, the CCC launched its first initiatives concerning ethical public procurement in 2002, in the context of the campaign for community elections. We mainly tried to raise the awareness of the public authorities about the concrete and important role they can play to promote the respect of workers' rights in the supply chains of work wear and uniforms. The idea was to create a demand from public authorities rather than to create an offer from companies. In 2003, the CCC together with Fair Trade Organisations in Belgium developed a vademecum (which follows this introduction) addressed to public authorities to show them that they can legally develop ethical procurements policies.

At the same time the trade union FGTB-ABVV in collaboration with the CSC-ACV developed the "Clean Clothes at Work"-model to invite workers in private companies and public administrations to ask for "clean" work wear, through the usual bargaining structures. As a follow up of these initiatives, we developed two main fields of work on public procurement: a. advocacy activities around the decision making process for the new European directive on public procurement, and b. contributions to the work towards a national public social label (that could lead to the integration of social criteria in the public procurement policies).

The new EU directive was now in the process of ratification by the member states. While it did not reach all our expectations, this new legal framework opens up new possibilities to take into account the ecological and social impact of the final product. It fails however to take into consideration the social conditions of the production of the good. Nevertheless, there is a wider scope for initiatives to be taken by public authorities, and especially by municipalities.

The Belgian public social label is a label given to goods or services produced with respect of the core labour rights (ILO core conventions). It tries to answer the need for an independent certification system that could bring the necessary "objectivity" for public choice of procurements. However, and at the present stage of its development, the Belgian public social label seems difficult to apply to goods with long and international supply chains, as ready-made garments.

In 2006, we will join efforts with CCC Belgium North to actively promote the independent verification of the Fair Wear Foundation as a tool for public authorities looking for fair suppliers and for companies searching for an external verification of their efforts to respect workers' rights in their supply chains.

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✂ Public authorities as promoters of Fair Trade

Public procurement represents 14% of the EU's Gross Domestic Product. Your council or local authority too can choose to buy the products of fair trade and in that way make a practical contribution to the sustainable development of both North and South.

The political will...

.. is not lacking. In response to growing public demand, an increasing number of local, regional and national authorities are behaving responsibly and choosing to consume fairly traded products.

These initiatives have been strengthened by the Belgian Government's Memorandum on Aid and Development and its National Plan for Sustainable Development. As part of its strategic objectives, the National Plan states explicitly the government's will *"to promote sustainable consumerism in Belgium"* and to take the necessary measures to *"ensure that by 2003, products carrying a fair trade label represent 4% of consumption"*. Public procurement is seen as an integral part of this initiative since *"fairly traded products must also represent 4% of the food purchased as part of public contracts"*.

The Amsterdam Treaty of 1 May 1999 shows similar developments at the European level. The Treaty stipulates that the Single Market should function not only to ensure economic growth in the conventional sense but also to achieve the broader aims of sustainable development within economic activity. As the European Court of Justice confirmed in two recent decisions¹, social, ethical and environmental issues are very much at the heart of such policies.

Taking action....

.. is possible.

Public procurement is about spending public monies and serving the public interest. Local authorities are therefore not at liberty to do as they please or proceed anyhow when making a public purchase.

Before being in a position to award a contract, the purchasing authority must go through procedures which will open the contract to all candidates.

Belgian law has defined the several ways of placing a contract in the law of 24 December 1993 and the royal statutes of 8 and 10 January 1996. The main stages are:

- **giving public notice of the contract**, which will include providing information about the contract itself and about the chosen procedure (see below);
- **defining the quality specifications** for selecting suppliers' offers;
- **selecting the mechanism for awarding** the contract. There are three options:

¹ The European Court of Justice ruled in favour of the city of Helsinki over the attribution of a contract for urban buses according to their pollution impact (decision C-469 of 31/01/02), and in favour of the Nord-pas de Calais region over awarding a building contract to the tenderer willing to employ local, unemployed people (decision C-225/98 of 26/09/2000).

- **acceptance of the lowest offer.** The contract is attributed to the candidate with the lowest offer that meets the contract specifications, i.e. direct costs are the dominant criteria;
- **putting out to tender.** The contract will be attributed to the candidate with the offer which is most interesting economically once a number of criteria, announced beforehand as part of the specifications or the call to tender, have been satisfied;
- **a negotiated procedure** with suppliers, which gives the public authority a bigger say in the decision. Several companies must nevertheless have been contacted before a contract can be awarded.

It is important to remember that, in sectors known as classical, i.e. sectors other than water, energy, transport and communications, contracting authorities can always choose to put out to tender **and so integrate in their specifications criteria other than direct costs, for instance ethical criteria.**

The need for flexibility

Although the awarding of contracts can never be a free for all, some flexibility has been introduced in the legislation by making it possible to resort to simplified procedures for smaller contracts.

- **Below a threshold of 5000 euros (not including VAT), the public purchaser can award a contract simply by putting an order** with a company or service provider - for delivery within a given time and at a given price.
⇒ For repeat orders and orders of perishable goods like coffee, tea, sugar, beverages, etc, this is clearly the best option. Local authorities can then easily favour fair trade products.
- **When a contract is estimated to be worth below 60000 euros (not including VAT), public authorities can resort to a negotiated procedure of which they need not give public notice.** In this case, it is not necessary to define quality specifications and selection criteria.
⇒ There are no obstacles in this procedure to local authorities implementing public purchasing policies which favour the products of fair trade.
- **Above this ceiling**, public authorities can resort to acceptance of the lowest offer, a call to tender or a publicly negotiated procedure. In this case, quality specifications and selection criteria must be defined.
⇒ Existing European and Belgian legislation make it entirely possible to integrate social, environmental and ethical clauses in the calls to tender.

Initiatives to replicate

There is nothing in international regulations, the Treaty of Maastricht or European public procurement directives which makes it compulsory to award contracts on the basis of direct costs alone.

It is therefore to be expected of local authorities, which have signed up to international treaties and written legislation to protect fundamental rights, that they

will wish to be coherent and respect these rights in the course of their every day activities.

Twice recently the European Court of Justice has ruled in favour of local authorities which had chosen not the cheapest deals on offer but tenders which, in one case, allowed local unemployed workers to be employed in the construction of a school, and in the other limited urban pollution. These decisions reaffirm that the management of projects for the public interest, a prime function of public services, requires the practical promotion of a perspective which does not limit itself to narrow economic considerations like the direct cost of a contract.

France

In May 1999, in response to a proposal issued by the “Parliament of the Children”, the National Assembly and the Senate voted a Law “aiming at prompting respect of the Rights of the Children in the world, especially in the context of school stationery purchases”. In particular, this law asks public organisations and schools to make sure they do not buy products manufactured by children.

At the end of 2000, while the Code of Public Procurement was being reformed, the *De l'éthique sur l'étiquette* Coalition asked that the possibility of requiring guarantees of good social quality is explicitly mentioned. This was done in 2001. When the new Code was released, the Ministry of Economy (Chancellor of the Exchequer) said that “*the objectives of the coalition De l'éthique sur l'étiquette, backed by numerous elected representatives [are] met*”.

At the end of 2002, nearly 220 local authorities (most of them cities/towns) had committed themselves to ethical public procurement (for example, Communauté Urbaine de Dunkerque, Tours, Conseil Régional Nord-Pas-de-Calais, Toulouse, Tourcoing, Epinal, Limoges, Clamart, La Roche-sur-Yon...)

Today, in partnership with *De l'éthique sur l'étiquette*, the national structure ‘Ethical Public Buying’, coordinated by Cités Unies France (Unified Cities of France), is operational and gives consistency to this initiative. This structure, for example, advises local authorities, organises training on the topic of ethical procurement and coordinates the activities of the networks.

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✂ **Guide to ethical public procurement**

TOOLS AND METHODOLOGY FOR GETTING INTO ACTION

When considering action, let's keep in mind that the aim of "ethical purchasing" is social progress. This progress can only result from negotiation with local players – if possible the representatives of workers', if not professional intermediaries.

A guarantee can only be given to consumers when the workers, informed of their rights and able to organise (in ways which can differ from one country to another: even in China there are possibilities, albeit limited), are actually involved in assessing working conditions and in setting up corrective action. The participation of workers and their representatives is central to raising social standards. Consumers should under no circumstances set up a system which could weaken or even substitute for trade unions or workers' representatives.

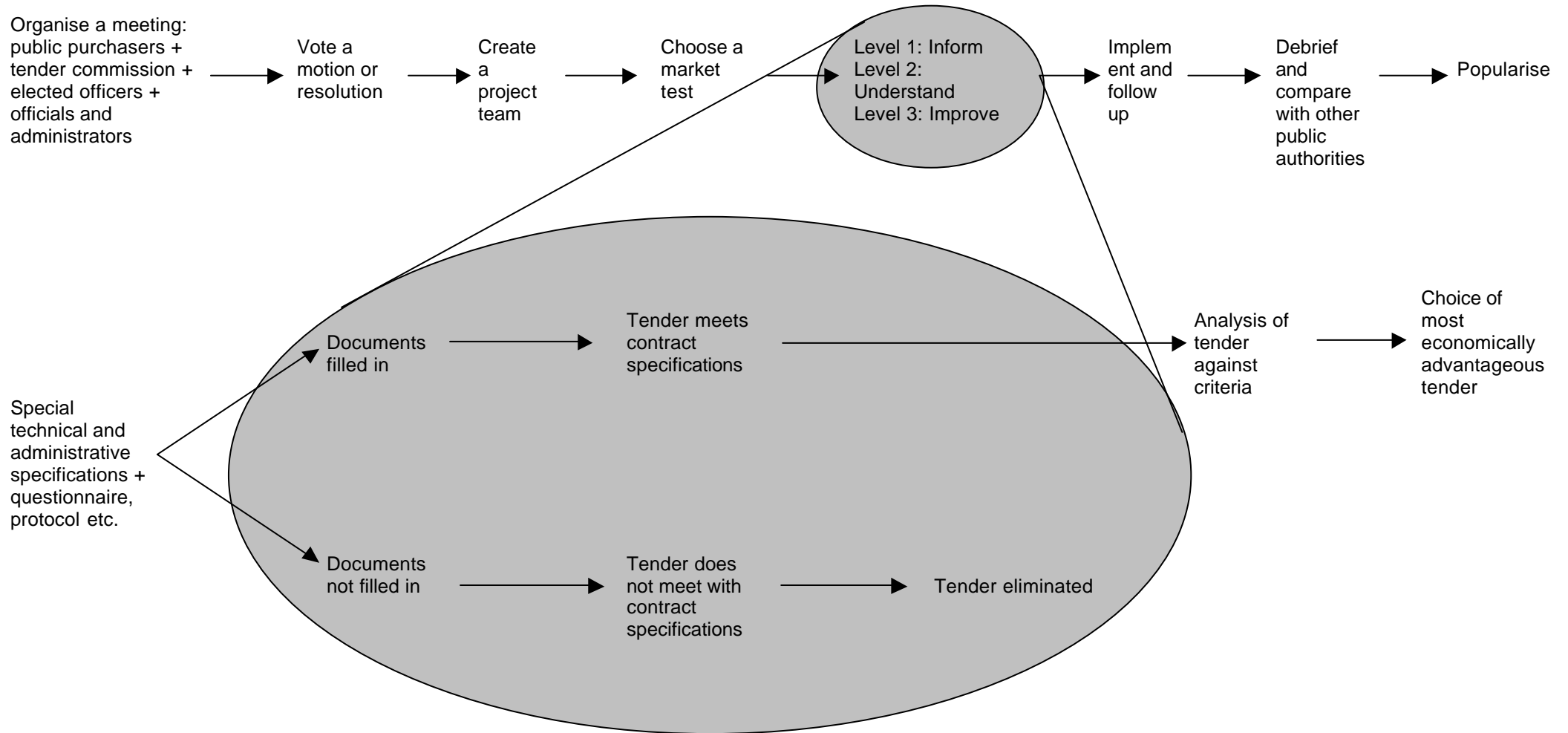
We are engaged in a process of research and action, where professionals are few and only have partial expertise. Let's bear this in mind when getting into action.

THE LOGIC OF PROGRESSIVE ENGAGEMENT: FROM POLITICAL WILL TO ACTION

Phase 1: Demonstrating the will

Phase 2: Market testing

Phase 3: Capitalising



WHERE TO START?

There is no single procedure for engaging in ethical purchasing. The aim of this section is simply to propose a logical way forward so that those responsible for public purchasing know how to proceed and make the procedure their own through a gradual process of learning.

PHASE 1: DEMONSTRATING THE WILL

- 1) It is a good idea to start by organising a meeting for members of the tender commission, elected officers, officials and administrators, in order to:
 - Clarify the objectives to be achieved
 - Clarify the means to be used
 - Highlight the need for synergy with, for instance, networks of fair trade cities, Clean Clothes Campaigns, local supporters of international solidarity NGOs, etc.
- 2) The authority publicises and makes official its political commitment with a text to be voted on by the Council. The choice is between a resolution or a motion (see examples in annexes 1 and 2). This enables the authority to justify the writing of clauses into contracts and their implementation (see box).

The European Court of Justice gave its verdict on 17 September 2002 in the case opposing the city of Helsinki to the Concordia Bus Company of Finland, which had been eliminated from a tender to supply buses for the city's urban transport system. The Court ruled that the local authority had the right to integrate an environmental clause in so far as its political commitment to environmental protection had been clearly signalled and made public.

A resolution is an official act by the authority, has the character of a regulation and must be implemented. It is integrated into administrative procedures and is the subject of debate throughout the decision process. It is subject to legal supervision and is not only made public but is an integral part of the register of administrative decisions. It is therefore recorded and can be referred to for many years to come. It is an official and long-term act.

A motion is an act of declaration which the authority passes to express its position or wishes. It is not regulatory. A motion is proposed by a member or political group of the Council, and has not necessarily been previously debated. Although a motion is included in the minutes of Council meetings and can therefore be consulted by the public for two months, it is not included in the register of administrative decisions. After two months, there will be no official trace of it.

Generally speaking, there are basic elements common to both types of action:

- the *international conventions* to which the text refers;
- the *consumer guarantee* to be sought from suppliers with regard to the social conditions in which goods are produced;
- an *education and information* element. This can target children, for instance through extra-curricular activities, adults, for instance through demonstrations, or companies and their employees.

PHASE 2: MARKET TESTING

- 1) Once the text has been voted on, a team must be put together which will carry the project forward, i.e. implement and follow it up. This team can be made up of people involved in public purchasing itself, international solidarity NGOs, Agenda 21, the Clean Clothes Campaign, etc... It is advisable that a short training programme be organised for this team, in order to define the aims of the project as concretely as possible, the methodology to be followed, the legal parameters of the public sector, the opportunities and constraints presented by the *Code des marchés*² (procurement contract code) as well as the mistakes to avoid.
- 2) This team can then choose the market(s) on which the new procedures are to be experimented. That choice can be according to a number of criteria:
 - the importance of the market: markets that are not covered by tenders for instance, enable more flexibility and limit the legal risks, though the economic impact can be less important;
 - the region's priorities with regard to local history and/or the local economy. For example in Northern France, known for its garment manufacture, the choice was naturally the garment sector;
 - a market's particular significance to ethical trade – for instance computers, garments – in general all products necessitating the use of a large labour force;
 - the specific wishes of a public authority;
 - a market with significant potential with regard to public information or education – e.g. Christmas presents, back to school merchandise;
 - an opportunity simply presenting itself.
- 3) Whether or not the market chosen is subject to tender, it is necessary to determine the level of engagement which will be required of suppliers. This level of engagement will determine the tools to be put in place (see section entitled "And Now to Action").

This implies firstly an analysis of local authority procedures for ordering goods, so that reference to social clauses can be introduced into these procedures. In particular, it is important to know:

- Who in the local authority is responsible for sending requests for information to interested companies, and at what stage such requests are sent?
- Who in the local authority will be evaluating company responses? What guarantees of coherence and homogeneity can be given where several persons are to be involved in this task? How will responses be compiled?
- Who will be responsible for filing the information received and making it available to others in the network and what form should this take?

It can be useful to create for each supplier an information file, containing for instance:

- the total amount bought each year from the supplier
- any reply from the supplier to previous questionnaires or requests for information
- the geographical origin of products whether the supplier already meets specific criteria (e.g. Max Havelaar, STEP, SA 8000³ or equivalent).

² A procurement contract code enshrined in French administrative legislation.

³ Max Havelaar is a European fair trade label, STEP is a label indicating a company's involvement in gradually moving towards ethical trade. SA 8000 is a set of social standards set up by Social Accountability.

- 4) It is highly recommended to work closely with suppliers when setting out to test a market. It is important that suppliers do not experience this change as yet another administrative constraint rather, on the contrary, as a normal and even beneficial evolution. This, together with a good understanding of the aims of the project by all involved, will greatly facilitate its development and effectiveness.

It is therefore necessary to help suppliers by:

- informing them
 - asking their opinion as to what instruments need to be set in place
 - listening to what they perceive to be the difficulties
 - enabling them to benefit from the experience of others in the network.
- 5) Regular evaluation must take place and involve all players (project team, suppliers, elected officers...) so as to remedy problems in good time and avoid the possibility of 'getting stuck'.

This market testing phase is essential for a more general integration of ethical criteria into public purchasing, and it takes time. Its aim is to help get familiar with the subject, understand the challenges, identify the technical and legal possibilities and put them into practice.

This learning process is necessary if the project is to prove sustainable, at least in the medium term.

It is also necessary to consider at the outset how to *support* those responsible for public purchasing. Such support can consist of an internal resource person, external consultancy, etc.

PHASE 3: CAPITALISING ON EXPERIENCE AND REPLICATION

This is the stage at which to organise, disseminate and popularise new information and instruments, using the technical, legal, administrative and political learning derived from market testing.

- 1) Firstly, the project team must analyse, together with the relevant commercial partners, the difficulties encountered in the course of the market test and the solutions identified, the difficulties that remain and the proposals for the future.

The main objective consists of measuring the efficiency and reliability of the tools that have been put in place. The difficulties encountered must be examined before any replication can take place. The same critical analysis must be applied to any modifications to the provision of services.

- 2) It will then be useful to compare the outcome of these sector-specific experiences to the experiences of other public authorities (strong and weak points of project, difficulties encountered, etc.), so as to extract learning which is relevant to all sectors. Having been debated by the stakeholders concerned, the tools and methodologies used can then be validated, or modified and adapted as necessary.

- 3) On the basis of this collective validation of results, each public authority can then extend the experience to other markets, taking care to continue to provide support to the suppliers. As with the market test, it is necessary to plan regular evaluations and to share experience and good practice within the network.

It will be some time before the process can be replicated, both within and between local authorities.

A step-by-step approach is an advantage in that it provides encouragement to suppliers while at the same time giving them time to organise themselves: it should at all times make it possible for companies to adapt to the new demands of the customers.

Legal Expertise: The Opportunity Offered by the Code Des Marchés Publics

THE MAIN PRINCIPLES OF PUBLIC PURCHASING

According to Article 1 of the *Code des marchés publics*, the rules governing public purchasing are based on four main principles (see annex 6):

- equality of opportunity and treatment
- free access to tendering procedures
- transparency of procedures
- the efficiency of public purchasing, to be guaranteed by the prior identification of the need, the respect of obligations regarding publicity and opening to competition, as well as the choice of the most economically advantageous tender.

The procedure for opening to competition is more or less strict depending on the cost of the purchase:

- below 90 000 euros: no prior formality (this minimum is due to increase to 240 000 euros)
- between 90 000 and 200 000 euros: simplified opening to competition (due to be withdrawn)
- above 200 000 euros (due to increase to “240 000 euros”): call to tender.

The new code provides more opportunities for SMEs (Small or Medium Enterprises). Care must therefore be taken that the integration of ethical clauses should not constitute a new block to SMEs having access to public tendering.

Article 14, Entry Point to Ethical Clauses

It is article 14⁴ of the *Code des marchés publics* which enables an authority to insert ethical clauses into public purchasing:

“The definition of the conditions in which a contract is to be implemented can aim to promote the employment of people finding it difficult to obtain work [...] or protect the environment. These conditions must not discriminate against potential candidates”.

⁴ The Code des marchés public is in the process of being revised. Article 14, however, will remain as it is.

Even though international conventions are not referred to specifically in article 14, it is interesting to note that the procedures for application of the Code des marchés publics issued by the Finance Ministry make explicit reference to these conventions when commenting on article 14:

“As they formulate strategies against social exclusion or promote employment, public authorities can, without undermining the placing of a contract, demand of companies that the manufacture or production of the goods purchased should take place in decent conditions, for instance, should not involve child labour or go against internationally-recognised conventions. The local authority can in this case demand that the goods should bear a social label or meet equivalent standards.”

In order to ensure that such measures do not discriminate against potential suppliers, article 14 states that these conditions should be conditions of implementation of a contract, not criteria for choosing a supplier. In addition, public purchasers cannot of course draw up their criteria in such a way that only one company should be able to meet the conditions it has set.

The new article 14 thereby enables public authorities to define for themselves the level of social or environmental sustainability they are asking of their suppliers – whoever they are – in a more efficient way than if these clauses were actually criteria for choosing a supplier. In that way, genuine public purchasing policies, which respect legislation governing public purchasing and competition, can be developed”.

This instruction is explicit as to the difference between conditions of implementation and criteria for choosing a supplier: it is not possible to select a supplier on the basis of ethical commitment. Instead, it is possible to demand that the goods to be supplied respect the conventions of the ILO and that a tender be explicit as to how a potential supplier will ensure compliance with ILO conventions.

Clarifications

The clause

Generally, the clause relating to the social conditions in which goods are produced is linked to the conditions of implementation of the contract. It can consist of a paragraph in the special technical or administrative specifications, for instance under “origin of products”, or in the form of annexes to either. Clearer still, it can be a totally distinct element of the contract.

Conditions of implementation, selection criteria and level of social sustainability

The clause is a condition of implementation. It is one element of the compliance of the tender with the broader contract specifications. If a supplier does not respect the clause, the tender will be rejected because of non-conformity with contract specifications, not with the clause itself.

The clause must describe precisely what the intended outcome is, and ensure that several companies are in a position to comply. Since the clause is not in itself a criteria for selection, tenders cannot be rated according to their social performance but according to whether or not they comply with contract specifications.

It will be necessary to make reference to the contractual documents which state what precise demands are being made (see protocol and annexes 3,4 and 5).

Legal value of complementary documents

Local authorities, in application of article 53 of the new *Code des marchés*, are allowed to eliminate candidates whose tender does not comply with their contract specifications. It is possible to demand that the manufacture of the products to be purchased be in compliance with international conventions relating to workers' rights. In order to do so, local authorities can ask for back-up information that will enable them to assert whether or not this is the case.

The tender of a company which has not completed the protocol and other documents will therefore be excluded: since the local authority cannot ensure that its social clause is respected, the company is eliminated for non-compliance with the contract specifications.

Example of application

You have opened to tender a contract in which you have integrated a clause relating to human rights, and you have asked interested companies to indicate their commitment by signing a number of documents.

You are now receiving tenders. There are two possibilities:

- either the documents are filled in and signed according to contract specifications, and the tender is deemed receivable;

- the documents are not filled in and signed according to contract specifications and the tender is deemed non-receivable because of non-compliance with those specifications.

You have now reached the appraisal stage. You have taken care to prepare a table which analyses tenders according to your criteria. At this stage, the only companies remaining are those which have signed the documents that specify their commitments. Some have also sent additional, unsolicited information explaining the initiatives they have taken with regard to social standards.

What you must not do

Criteria for analysing tender

Technical performance

Services

Social performance

Price

Etc

Score

50 points

30 points

20 points

30 points

Your table shows a "social performance" criteria. Rating tenders in function of human rights, however, is not allowed by the *Code des marchés*. You cannot for instance attribute 10 points if all documents have been sent back duly filled and signed, and another 20 points if the company has already set up advanced internal procedures (e.g. training of the workforce, building schools in countries of the South, etc).

What you must do

During the appraisal, the clause can no longer be taken into account. There can be no distinction between companies which have only fulfilled contract specifications and those that go further.

AND NOW TO ACTION!

Depending on awareness at local authority level or on the means you are able to deploy, etc, three levels of commitment are possible on the part of the local authority:

- awareness raising and information
- understanding
- evaluating and improving.

For each level, find below the methodology to follow, the tools to use and the expected outcomes for the local authority, the companies and the workers concerned.

Generally speaking, a human rights clause is relatively simple to write. The difficulty resides rather in the working methods. The main obstacles will probably be to decide on the sort of support you wish to provide and to find qualified advisors. Team work and partnerships are therefore essential to the success of the project.

LEVEL 1: AWARENESS RAISING AND INFORMATION

This is the first stage of the process and is about raising the awareness of supplier companies. The local authority's demand for sustainable produced goods will act as a signal to companies, which will react with questions for the local authority. This enables the work of awareness raising to get started.

Methodology

The public purchasing authority writes into its special technical and administrative specifications a human rights clause (see box below), to which it adds the following annexes (see enclosed models in annexes 3,4 and 5):

- a protocol for committing to human rights and the objectives of this first level;
- international conventions on human rights
- a questionnaire on the origins of products and the initiatives taken by the company.

Outcomes

- only the companies which have filled in the documents are selected
- some companies see the potential of such developments, opt to go further and send additional information
- awareness raising: the local authority must be organised in order to be able to answer the questions of its suppliers.

Special technical and administrative specifications: chapter on origin of products

The goods must have been produced in satisfactory conditions which did not involve the employment of a workforce in conditions that differ from those set by internationally-recognised conventions (see article 14 of the *Code des Marchés publics*).

The candidate is invited to consult the enclosed questionnaire as well as the annex or attachment entitled “Protocol for committing to human rights”, which set out the aims and objectives of such a commitment. In order to comply, the candidate to tender must complete these. The candidate will also find enclosed a summary of international conventions on human rights.

LEVEL 2: UNDERSTANDING

One of the difficulties we are confronted with is our lack of knowledge of production chains. Some are relatively simple; others, garments and electronics among them, are highly complex: raw materials are produced in one place and processed in another; assembly takes place in a third, all of this complicated by a whole set of intermediaries, importers and retailers. Yet the ability to understand and trace back the production chain is essential.

Methodology

The public authority commits itself to tracing back the production chain. A human rights clause is integrated into the technical and administrative specifications. The protocol, enclosed as an annex or appendix, confirms this commitment and sets out the objectives of levels one and two. A questionnaire is enclosed (see annexes 3,4 and 5).

Created with partnership in mind, this protocol must make it possible to convince and obtain the collaboration of companies. It will enable them, among other things, to propose ways of tracing back the production chain when discussing how contract specifications are to be implemented.

According to the degree of complexity of the production chain, the supplier will be able to trace back or to help trace back:

- the technicalities of the production chain, i.e. the various stages of production;
- the modalities of employment: factory, workshop, number of employees, etc;
- the economics of the production chain, i.e. the value added at each stage.

The aim is to assess risk at each stage. Approximately six months are needed to collect the information. This method is therefore eminently applicable to annual purchases. If there are few intermediaries and the production chain is a short one, the supplier can trace back the production chain without help. If it is a complex chain with a number of intermediaries, the supplier will help an external expert to trace it back.

For this stage, it is preferable for the local authority to enlist the support of an expert, who will need to:

- be knowledgeable about obstacles to the implementation of labour rights;
- have experience of formulating and implementing company codes of conduct
- if necessary, have offices or contacts overseas, especially with local trade unions and other workers' organisations.

Using the services of an expert when tracing back a production chain is often very useful since few intermediaries will inform their customers of all suppliers involved - this for fear that customers could in future go directly to the suppliers concerned. Local authorities should consider working together to trace back production chains, in order to save money and have more economic influence on suppliers' sourcing and purchasing practices.

Outcomes

- Few local authorities have reached this level yet and precise outcomes are yet to be evaluated. These are being organised, in particular by the network in the Nord-Pas de Calais region of Northern France. Local authorities must be prepared to invest time in follow-up and some financial resources in enlisting outside expertise.
- The fact that some companies (CAMIF, Carrefour) have begun the process of tracing back their production chains demonstrates that this is not an unrealistic expectation.
- If some production chains appear “socially correct” at first sight, it will be important to examine the practices of their sub-contractors;
- This will be the first time that the suppliers are directly called to account and that the voice of workers is heard.

LEVEL 3: EVALUATION and IMPROVEMENT

This is the highest level of commitment. The aim is to trace back the production chain, identify risk potential, evaluate the social conditions of production then set up projects that will bring concrete improvements for workers. This takes time and is principally for bi- or tri-annual purchases.

We must be realistic: it is unlikely that a single local authority will weigh sufficiently with its suppliers to lead to this level of engagement. For this reason we suggest that several local authorities collaborate so as to have greater influence over their suppliers.

Methodology

The public purchaser sets out to trace back the production chain, identify the risk potential, evaluate the social conditions of production and improve working conditions.

A human rights clause is integrated into the special technical and administrative specifications (chapter on origin of products), the first two paragraphs of which will be the same as for levels 1 and 2.

The following will be added: the goods will have been produced in compliance with recognised norms such as SA 8000 or social labels such as fair trade labels, or will meet equivalent standards⁵. The protocol, enclosed as an annex or appendix, confirms this commitment and will set out the objectives of levels one, two and three. A questionnaire is enclosed (see annexes 3,4 and 5).

It is indispensable at this level to resort to external expertise. An external expert will:

- be knowledgeable about labour rights
- be knowledgeable about international aid and development NGOs in order to develop a network
- be experienced in supporting companies in the formulation and implementation of codes of conduct
- have offices or contacts overseas, especially with local trade unions and other workers' organisations.

⁵ see www.cepaa.org, www.label-step-france.org, www.afnor.fr, www.maxhavelaarfrance.org.

The role of this expert is crucial. After tracing back the production chain and identifying the main problems, s/he will carry out a field investigation. Experts' local contacts enable them firstly to define the exact social situation of workers and secondly, to corrective actions.

Contacts with overseas trade unions and with humanitarian, aid or development NGOs will enable the expert to give concrete form to the project.

Audits

The methodologies used in most social auditing are in need of improvements. There are many difficulties - difficulties in meeting with workers, employers warned of visits, etc. It is also difficult to draw conclusions in political, socio-economic and cultural contexts that are totally different to our own. Hence the importance of finding ways of hearing workers, so that they themselves define their priorities and the kind of progress which they wish to see take place.

Outcomes

- In France, there are at present no such experiments carried out in the context of public purchasing. Our experiences so far consist of actions carried out as part of development aid projects. Evaluations are also intended at this level.
- For local authorities and companies, these are totally new processes which rely entirely on outside expertise. The pro-active and technical commitment of both parties is indispensable to the success of such a project.
- Although a few companies have had social audits conducted, very few provide social guarantees.
- Workers are directly involved in defining priorities for action.

THE EXPERIENCE OF NORD-PAS DE CALAIS

True to its reputation for social activism, the Nord-Pas de Calais region is probably the most committed and dynamic with regard to promoting ethical trade. As early as 1999, an important seminar on ethical trade, organised by the Regional Council, set out to raise awareness of local authorities and outlined the issues relating to public purchasing. Since then, several local authorities, including the urban community of Dunkerque, the cities of Tourcoing and Lille and the Regional Council of Nord-Pas de Calais, have experimented with integrating a clause relating to workers' rights in their public purchasing of merchandise, computers, etc.

Today, a regional network representing some two thirds of the region's population brings together fifteen authorities. Contracts specifications, precedents, motions and resolutions, etc are put at the disposal of each authority. These local authorities are at present working on a joint project: after a joint feasibility study, they will choose 2 or 3 markets in which they will write in the same social clause. The idea is to cumulate economic clout and so encourage companies to collaborate.

Education initiatives target school children and the public, but also companies. For example, the urban community of Dunkerque is conducting, with the Chamber of Commerce and Industry, an investigation into the knowledge of - and commitment to - corporate social responsibility of local companies. The aim is to identify existing possibilities, the positioning of companies and opportunities for progress.

WORKING TOGETHER IN A NATIONAL NETWORK

Following the campaigns launched by the French CCC in 2000 and 2001, more than 200 local authorities have spoken in favour of public purchasing which respects human rights. Several have decided to form a network of ethical public consumers.

The objectives are to raise awareness, provide training, equip elected officers and local authority employees so they can integrate social responsibility into the management of public purchasing.

This means:

- Informing, exchanging information and networking between the initiatives taking place all over France and putting the resulting information at the disposal of the greatest number, using websites, information bulletins, publications, etc.
- Proposing practical training (on the basis of local authority experiences) for elected officers and officials.
- Providing operational support by creating a network of expertise, the task of which is to help local authorities implement human rights clauses. This expertise needs to be legal as well as methodological.
- Negotiating at a national level with professional federations and institutions on how to take human rights into account.
- Engaging in reflection and debate, participating in European movements, lobbying the European Commission and national governments, observing and supporting the development of fair trade and CSR, participating in efforts to develop social labelling and norms, are other areas of interest for the network.

Annex 1: Motion on workers' rights

The Council of, aware that the economy must be of benefit to all and must specifically contribute to progress in education, health, respect of the environment and, more generally, human dignity, wishes through this declaration to express the will to favour public purchasing that is respectful of workers' rights.

This local authority bases this resolution on the following main, international conventions:

- the International Convention on the Rights of the Child, in particular article 32
- the European Union's Charter of Fundamental Rights
- the core conventions of the International Labour Organisation (ILO)⁶.

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- Convention 105 about the abolition of forced labour
- Convention 138 about child labour
- Convention 87 about freedom of association and the protection of the right to organise
- Convention 98 about the implementation of the right to organise and to bargain collectively
- Convention 111 about discrimination in the workplace
- Convention 26 about the institution of methods for fixing legal minimum wages
- Convention 131 about fixing the legal minimum wage, especially in developing countries. The UN's own calculations will be used where they are higher than the legal minimum wage or where a legal minimum wage does not exist.
- Convention 1 limiting working hours in industrial companies to 8 per day and 48 per week
- Convention 155 on health and safety and the working environment (especially part IV, action at company level).

All these conventions have been ratified.

The local authority as consumer

In keeping with the *Code des marchés publics* and the international conventions referred to above, this local authority will take care to integrate in its public purchasing contracts a clause relating to the social conditions in which the goods it purchases are produced.

The local authority will endeavour to take into account article 14 of the new *Code des marchés publics*, relating to the conditions of implementation of public contracts, which stipulate that “*the definition of the conditions in which a contract is to be implemented can aim to promote the employment of people finding it difficult to obtain work [...] or protect the environment*”. In order to ensure that such measures do not discriminate against potential suppliers, article 14 stipulates that these conditions should be conditions of implementation of a contract, not criteria for choosing a supplier.

The local authority and awareness raising

The local authority will disseminate information and support activities aiming to educate inhabitants and companies about ethical trade.

Members of the tender commission will be responsible for ensuring the respect of the present declaration.

This Council wishes that its Mayor/President should take the necessary steps to facilitate the implementation of this declaration, in particular in partnership with schools, parents' associations and NGOs which are actively promoting ethical consumption.

S/he will ensure that the local authority is able to obtain guarantees as to the origins, quality and conditions of production of the goods purchased, by participating in the activities of all who are working towards the implementation of the social standards defined by the ILO.

Annex 2: Resolution on integrating sustainable development specifications in public contracts

Having regard to the Universal Declaration on Human rights,
Having regard to the ILO'S Declaration on Fundamental Principles and Rights at Work, and to ILO conventions 1, 26, 87, 98, 105, 111, 131, 138, 155 and 182,
Having regard to the International Convention on the Rights of the Child, especially article 32,

Having regard to the Charter of Fundamental Rights of the European Union,
Having regard to the 'Howitt' resolution adopted by the European Parliament on 13 January 1999, on “EU standards for European Enterprises operating in developing countries: towards a European Code of Conduct”

Having regard to resolution 2003/C 39/02 of the European Council of 6 February 2003 on Corporate Social Responsibility,

Having regard to (*insert elements of national legislation*);

Being reminded by the Mayor/President that more than 250 million children aged under 14 are working throughout the world; the disappearance of primary forests and bio-diversity is accelerating; damage to the environment is reaching worrying

proportions (greenhouse effect, water pollution, etc...); employment is not accessible to all, in particular to disabled people;

Conscious of the need to fight for human dignity and the environment;

This local authority hereby affirms its commitment to promoting ethical [*responsible*] trade in the context of purchasing goods and services.

In keeping with international conventions, national legislation and local authority commitment to sustainable development, this local authority commits itself to integrating sustainable development specifications (relating to employment, the environment, workers' rights) in public purchasing contracts.

The local authority also commits itself to:

- Participating in regional, national and European networks which promote ethical public purchasing;
- Engaging in experiments for more ethical public purchasing, in particular in relation to workers' rights;
- Promoting initiatives that favour ethical trade among companies, the public and local partners.

Annex 3: Protocol of commitment to the rights of workers

More than 250 million children under 14 are working throughout the world. Millions of men and women are working in appalling conditions at an inhuman pace, for a poverty wage.

Yet many international conventions have defined the basic rights of workers:

- The Universal Declaration of Human Rights
- The ILO's Declaration on Fundamental Principles and Rights at Work and the following:
 - convention 138 about child labour
 - convention 87 about freedom of association and the protection of the right to organise
 - convention 98 about the implementation of the right to organise and to bargain collectively
 - convention 111 about discrimination in the workplace
 - convention 26 about the institution of methods for fixing legal minimum wages
 - convention 131 about fixing the legal minimum wage, especially in developing countries. The UN's own calculations will be used where they are higher than the legal minimum wage or where a legal minimum wage does not exist
 - convention 1 limiting working hours in industrial companies to 8 per day and 48 per week
 - convention 155 on health and safety and the working environment (especially part IV, "action at company level")
 - convention 105 about the abolition of forced labour;
- The International Convention on the Rights of Children, in particular article 32 which stipulates that children have the right to protection against work which endangers their health, education and development.

Like other players, companies share in the responsibility for working conditions. Their increasing awareness of company responsibility has led to the creation of:

- Corporate social responsibility observatories
- Companies forming associations for the purpose of raising the awareness of other companies
- Information sites for companies and the wider public
- Labels and a norm guaranteeing the respect of human rights
- Information and a European Green Paper on corporate social responsibility
- (in France) legislation on new economic regulations (law 2001-420 of 15 May 2001, article 116, and decree 2002-221 of 20 February 2002).

Having regard to this situation, the local authority in Council deliberation n° of the, relating to the respect of workers' rights, has committed itself to ensuring that it respects basic human rights in the act of public purchasing. This commitment is part of the local authority's implementation of articles 14 and 53 of the new *Code des marchés publics*, which enable local authorities to define conditions of implementation of public contracts which will protect the social conditions of workers.

We propose that your company should work with us towards such an objective and that you commit, alongside this local authority, to giving to each the right to work in dignity. Such commitment will take the form mainly of providing guarantees of the social sustainability of the products supplied.

Your comments.....

Commitments and objectives

Sharing this local authority's concern for the respect of fundamental social rights, I, the undersigned.....,

representative of the company, commit the same company to achieving and carrying out the following objectives and activities – this for the duration of the contract:

1) To advise this local authority of initiatives taken by my company. In order to do this, I will:

- fill in the local authority's questionnaire on the origins of the product and the initiatives taken by the company
- ensure the participation in information exchange meetings organised by the local authority of the company member of staff in charge of protocol follow up.

2A) To trace back:

- the technicalities of the production chain, i.e. the various stages of production;
- the modalities of employment: factory, workshop, number of employees, etc;
- the economics of the production chain, i.e. the value added at each stage.

2B) To identify potential risk areas by:

- communicating information in our possession in order to contribute to the good development of the project and in the knowledge that it will remain confidential;
- producing a summary of facts and figures available for each stage of production.

3A) To evaluate working conditions at various stages of production and risks attached to each.

3B) To define priorities for the improvement of working conditions.

3C) To initiate improvement plans, which will involve:

- calling upon the services of an expert to evaluate working conditions
- involving in the process the representatives of both workers and management, in ways that will vary according to countries and suppliers
- working in partnership with NGOs such as human right groups, aid agencies, etc.

Practicalities for 2 and 3 will be fixed at the planning stage.

I also wish to carry out the following, entirely voluntary activities, which cannot at any stage constitute an element of compliance with contract specifications (tick as appropriate):

- I will inform company employees of the project in which this company and the local authority are working together;
- I will set up awareness raising activities for the company’s employees – on the subject of human rights;
- I will share with other companies the learning derived from the project in which we are jointly engaged.

Confidentiality and transparency

All information relating to the activities of the company and its suppliers is confidential. Only the local authority and the expert appointed will have access to this information, and will respect its confidentiality. The company commits itself to communicating all information in its possession which is necessary to the good development of the project.

Where ethical trading initiatives are carried out in partnership with the local authority, the company commits itself to working with the local authority to formulate communication strategies for greater public transparency.

Protocol Follow-Up

The present protocol will be followed up by:

.....
(name of local authority staff in charge of project)

in his/her capacity of..... in the local authority

and by:

.....
(name of company staff in charge of project)

in his/her capacity of in the company.

There will be at least two follow up meetings per year. A project plan will be formulated at the first of these meetings.

Starting date and duration of protocol

This protocol takes effect on the date of signature and is valid for the duration of the contract.

Litigation

Any litigation occurring in the course of implementation of the above will be referred to the appropriate courts if parties cannot reach agreement.

Signed at..... Date:.....

Signature, name and stamp of vendor

Annex 4: ILO Conventions

See for example page 6 of this reader.

Annex 5: Questionnaire on the origins of the product and initiatives taken by the company

Have you adopted and are you implementing a code of conduct, or a labelling or certification scheme, in order to guarantee the respect of fundamental workers' rights in your supply chain (including both suppliers and sub-contractors)? Tick as appropriate.

Yes. (Give starting date and enclose documents).....

We are in the process of doing so (Enclose documentary evidence).....

No.

What initiatives have been taken by your company? Give two examples.

.....
.....
.....

Does your company carry out any monitoring activities? Tick as appropriate.

Yes - through the company's own international monitoring system

Yes - through a consultant/expert (give details)

No

Please give the precise address(es) where the product is manufactured.

.....
.....
.....
.....

Person to be contacted in your company in relation to ethical trading commitments:

Name:.....

First name:

Position in the company:.....

Telephone and email:.....

Signed at:.....

Date:

Company stamp, name and signature of vendor preceded by “Certified sincere and genuine”.

Annex 6: The main principles of public purchasing

According to article 1 of the Code des marches publics, the rules governing public purchasing rest on four main principles:

- equality of opportunity and treatment
- free access to tendering procedures
- transparency of procedures
- the efficiency of public purchasing, to be guaranteed by the prior identification of the need, the respect of obligations regarding publicity and opening to competition, as well as the choice of the most economically advantageous tender.

Equality of treatment and opportunity

Suppliers must benefit from equal treatment as their tenders are examined (article 1 of the *Code des marchés publics*). The principle of equal opportunity was the basis for devolution of public procurement. The criminal code has based the offence of unjustified advantage, or offence of favouritism, on this principle.

Free access to tendering procedures

Suppliers are free to present tenders to public purchasing contracts (article 1 of CMP). If the opening to competition seems of prime importance to the “seller”, it is also crucial to good management on the part of the “buyer” as it offers the possibility of broader technical and financial choices while ensuring access to tendering by most companies.

Transparency

Reaffirmed (in France) by law 93.122 of 29 January 1999, on the prevention of corruption and transparency in economic life and public procedures, the principle of

transparency concerns all methods and procedures resorted to in the placing of a contract.

Efficiency

This principle is new in the *Code des marchés publics* and rests on the responsibility of local authority employees and elected officers with regard to the finances they manage. The rules impose that they are efficient to the “last euro”, which involves a precise and previous definition of the needs to be met - through impartial, precise and unambiguous contract specifications, as well as the choice of the economically most advantageous tender - which assumes that considerations other cost alone are taken into account.

The law also recognises the personal responsibility of civil servants (law 48-1484 of 25 September 1948, article 6) and of elected officers (law 91-3 of 3 January 1991) in relation to management, and foresees fines in the case of “prejudice to the Treasury, the local authority or any other body concerned” (law of 25 September 1948).

As this is being written, a reform of the Code des Marchés Publics is in process. Consequently, details about public procurement procedures are not included in this guide.

The Netherlands

Since the Dutch CCC decided to cooperate more intensively with fewer municipalities there have been some achievements. In February 2004 the city of Utrecht organised a conference together with the Dutch CCC in order to create a sense of urgency amongst civil servants responsible for purchasing work wear. A wide range of city services (e.g. fire brigade, and the city museum) became aware of the crucial role they have in turning Utrecht into a 'Clean Clothes Community'. The possibility of just giving the option of giving a preference to companies who are member of the Fair Wear Foundation proved useful. Utrecht is formulating a general policy on this for all services of the municipality now.

The city of Amsterdam has written guidelines for purchasing 'clean' work wear and presented it to thirty professional purchasing professionals in the city in March 2004 (these guidelines are too extensive to be translated in English, but information on it can be obtained via the contact stated below). These guidelines have been awarded with the prize for sustainable purchasing by the Dutch Ministry of Economic Affairs. The motivation for the city to devise this document was both the motion adopted by the city council in December 2000 and the research done by the Dutch CCC in 2002. The following entry of this reader comprises a summary of this research on the extent (zero) to which the city had implemented the motion of 2000.

The guidelines were written in cooperation with the Dutch CCC. It explains the necessity of good and responsible procurement by the city and describes current practices in the work wear industry. The task of purchasing 'clean' clothes is roughly divided in two: In the case of a known company the guidelines include questions and give specific information to persuade companies already in contact with the city on how to become members of the Fair Wear Foundation. The second section of the guidelines suggest the adoption of criteria for tendering work wear and that a preference for companies that are member of Fair Wear Foundation can be adopted in all tender criteria. It is optional for the cities to use these guidelines. The departments that do not purchase 'clean' according to the guidelines will be publicly named on the City's internet site.

The 2005 evaluation of the guidelines revealed that out of 32 departments, only 1 had fully implemented the guidelines. The council now seeks ways to force the implementation of the guidelines and to make the guidelines a regular part of the purchaser's specifications.

Meanwhile, an enthusiastic civil servant in the city of Enschede managed to make the company's membership of the FWF (or an equivalent policy implemented by the company) part of the city's specifications. Since February 2005 all Enschede departments are provided with 'clean work wear'. None of the last six companies competing in the tender had any objections to become member of the FWF on the city's request.

The FWF claims 85% of the work wear supplied to local authorities in the Netherlands is now sourced directly or indirectly from FWF members and is therefore 'clean' (or will be clean soon).

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✂ **Summary and conclusions of the Dutch CCC research on the purchasing practices of the municipality of Amsterdam**

Methodology:

- interviews with purchasers of ten municipal departments and fifteen town districts
- interviews with nine commission agents (intermediaries)
- interviews with ten manufacturers/sourcing companies

Research has been done on the number of employees wearing work wear, the amount of money spent yearly on it, who is responsible for the purchase of work wear and the extent to which municipal departments and town districts take labour rights and environmental standards into account in the purchasing policy.

Besides municipal departments, companies supplying work wear to the City of Amsterdam were also interviewed, in order to examine the extent to which these companies pay attention to labour rights and environmental standards in the production of work wear.

- No fieldwork was carried out, although a visit to the factory of a Dutch producer in Poland and two of its subcontractors took place.
- The research was on work wear only, not on the purchase of work-boots.

A comparison between the regular (fashion) clothing sector and the work wear sector

In comparison with the regular (fashion) sector, the work wear sector is characterised by:

- A shorter supply chain: often the producers own the factory or maintain direct contacts with the factory.
- Often a long-term relationship with factories: up to ten or fifteen years, probably due to the special requirements on work wear such as safety standards, and sometimes workers need special training before starting to work in the factory.
- Production mostly concentrated in Eastern Europe and North-Africa, while the regular (fashion) sector sources mainly in Asia or worldwide.

Research conclusions

- As the retailers of work wear are Dutch and delivery time is short, municipal departments, town districts and commission agents (intermediaries) remain ignorant of the real origin of the work wear. Therefore they may have the impression that environmental and labour standards are observed.
- Work wear is not manufactured in the Netherlands nor in Western Europe, but in Eastern Europe and North Africa.

- Municipal departments concentrate their attention on labour standards (especially upon child labour) and not on environmental standards.
 - Child labour: only the department of 'urban surveillance' has made broader enquiries.
 - Most procurement officers do consider the role of authorities to set an example as important.
- Producers and commission agents (intermediaries) do not have a code of conduct.
 - Major difference with the regular (fashion) sector
 - Some of the work wear companies have their own principles e.g. they don't carry out business in Asia, as that might include child labour.
 - Commission agents (intermediaries) think that clothes are produced in the Netherlands and Western Europe and therefore consider a code of conduct unnecessary.
- There is no verification of the observance of labour rights and environmental standards.
 - There is no code of conduct, and no verification of observance. Even when consumers ask for information, there is no clear procedure.
- Everybody is waiting for each other to make improvements:
 - Vicious circle
 - Producers and commission agents are interested in tangible and concrete possibilities for improvements. In this research they indicated that they consider attention to labour standards and environmental standards important. Producers with their own factories are well able to see to it that international labour rights are observed. Producers without their own factories mostly sustain year-long relationships with factories. Sometimes a factory produces exclusively for one producer. In this case the producer can also exercise considerable influence on the labour conditions in the factory.

Recommendations

- *Establish a municipal working group.* Members can be from the following specializations or departments: the public procurement department, the environmental department, the international co-operation department, the former local Agenda-21 group (if it exists in the municipality), the facilities department, the personnel department and civil society organisations including NGOs and trade unions). The working group can take advice from experts in the field of labour rights and environment in the clothing industry.
- *Examine how clothes are purchased at the moment.* Find out what method would be best, in what way purchases can be co-ordinated in order to get all the departments to apply the same criteria for their suppliers.
- *Appoint a civil servant responsible for sustainable purchasing.* This civil servant will (among other things) inform the municipal purchasers about the problems concerning the clothing industry and about existing alternatives.
- *Give preference to purchasing from companies associated with the Fair Wear Foundation,* or from companies that use similar criteria and use a similar way of verifying.
- *Establish a number of environmental protection measures in the contracts with the clothing industry.* These measures can for instance refer to reducing or reusing of packaging materials and to collecting, taking back, recycling or reusing discarded clothes. It is also possible to switch to a supplier of organic clothes.

The Dutch government is developing an internet site <http://www.senternovem.nl/duurzaaminkopen> about sustainable purchasing of work wear. This site is currently focusing on environmental issues, but will in the future also take social standards into account.

- *When tendering according to EU regulations, (for orders above a certain amount) make clear demands regarding the labour situation and the environment directly from the beginning.* For assistance and more information a municipality can contact the Bureau of Sustainable Purchasing or ICLEI.
- *Link Clean Clothes Communities-policy to general sustainability policy.* Clean Clothes Community policy can be carried out within the framework of the Local Agenda 21. Conversely, a general sustainable purchasing policy can be developed on the basis of experience with the purchase of “clean” clothes.
- *Explore the possibility of supporting local companies that contribute to the creation of sustainable employment under the right conditions.* Support those social organizations in developing countries and in your country that draw the attention of both companies and public authorities to their social responsibility.
- *Publish all the results in the local media.*

Recommendations to commission agents (intermediaries)

The Fair Wear Foundation (www.fairwear.nl) uses a code of conduct for garment companies. Fair Wear Foundation member companies accept this code, known as the Fair Wear Code of Labour Practices. In doing so, they are obliged to implement the labour standards included in the code at all of their garment suppliers. Furthermore, they agree that the Fair Wear Foundation will verify whether or not labour conditions at their suppliers actually meet these standards or are moving in that direction.

A Dutch company that endorses and implements the Fair Wear Code can become a member of the Fair Wear Foundation. Membership guarantees to the public that labour conditions at the member’s supply facilities are actually being improved where necessary. For companies, Fair Wear membership provides a credible tool for practising socially responsible corporate behaviour.

Recommendations to producers

Regarding the environment, producers have the following possibilities:

- *System of environmental management*

A system for the evaluation and improvement of the environmental performance of companies. With the aid of such a system, production within a company can be organized in an environmentally-friendly way. This can be achieved by shortening the production chain. Companies could be informed on this matter by trade associations that, together with the Ministry of Traffic, Planning and Environment (VROM) and civil society organisations have started a consultation on the improvement of production along the supply chain. These groups meet and discuss environmental issues related to production. Dutch companies can apply for grant to carry out a project within the framework of a subsidy arrangement as Production-oriented Environmental Care.

- *Life Cycle Analysis*

One way to monitor the total environmental and/or social impacts of a certain product is Life Cycle Analysis (LCA). The LCA is a method that analyses the impact of

production, use and disposal of products from 'cradle to grave'. It is an intensive and costly method but when performed critically and fully, is complete and thorough. It is a method to trace bottlenecks in the production chain and to make an inventory of solutions. Such an LCA can relate to the environment as well as to labour.

- *Introduction of organic cotton* i.e. cotton produced in an environmentally-friendly way.

Organic cotton can be introduced in several ways:

- the producer can add an extra “eco-collection” to the existing clothes collection
- organic cotton can be used in existing products to create a mixed organic/regular product
- in specific products the producer can choose for a complete change-over from regular to organic cotton

- *Environmentally-friendly finishing of fabrics:*

e.g. making fabrics crease-resistant and non-shrink.

Regarding the finishing of fabrics producers can take the following initiatives:

- reuse of chemicals; this will diminish the emission of pollutant and reduce costs
- for the bleaching of fabrics the comparatively environment-friendly hydrogen peroxide can be used
- companies can have their fabrics tested for environmental effects by a national research organisation, such as TNO in the Netherlands.

- *Environmentally-friendly packaging*

Companies can take steps to make the packaging of their products more environmentally-friendly. As a result packaging waste will be less voluminous and less noxious.

Regarding labour conditions, producers can take the following steps:

- *Set up a code of conduct*

Such a code should be based on ILO-conventions.

- *Verification*

If companies wish to implement a code of conduct and guarantee that this code will be respected, they should have their code verified by an independent authority in a transparent way. Only then the consumers and the workers will know that the company actually complies with its code. It is necessary that trade unions and social organizations are directly involved in the verification.

- *Fair Wear Foundation (see before)*

Companies can join the Fair Wear Foundation (FWF). The Dutch CCC, a trade union (FNV) and NGO's such as Novib and trade association Modint are members of the board of FWF. Currently FWF is carrying out pilot projects to set up the best way to implement its code of conduct and to have it independently verified. This doesn't mean that companies have to wait for the FWF results: they should start to improve labour conditions now.

If a company wants to join FWF, it can take the following steps:

- the management and the proprietors / shareholders decide in principle to accept the code of conduct and they inform all departments of the company about this intention

- the company appoints a person to co-ordinate the future implementation; this person will be the one to be addressed in that matter inside and outside the company
- the company makes up an inventory to what extent it already meets the code of conduct, in what respects it needs to make improvements and in what time this improvement can be realized.
- the company makes up an inventory of its subcontractors and asks itself the following questions:
 - how important are we for them and vice versa. Are we in the position to influence their labour policy?
 - is it possible for the subcontractors to apply the code of conduct and do they want to? (Make sure the subcontractors are well informed on that matter by motivated and expert employees!)
- ask the subcontractor to report on labour conditions and discuss the results
- determine the changes subcontractors have to make before meeting the FWF standard, what will be the resistance against it and its costs.

Germany

Activities in Germany at regional and city level

In Germany no law at national level in the field of ethical public procurement exists. There are the following activities at regional/municipal level:

1. The city of Munich (resolution on the procurement of products and exploitive child labour)

The city council of Munich passed a resolution on 17 July 2002 which refers to the tendering procedures. The revision of these procedures is aimed at preventing the city of Munich from procuring products (all types not only garments) produced by means of exploitative child labour.

See below for the following documents:

- ? Letter to current and future business partners of the regional capital Munich (Bavaria)
- ? Proof of the bidder's eligibility with regard to his reliability according to § 97 and 98 of the Competition Restriction Act

2. The city of Düsseldorf (North Rhein Westfalia)

The issue of ethical procurement was introduced in the city council by the local group "Local Agenda 21 Group" which exists in several cities and communities in Germany. The city council of Düsseldorf decided to start a project and invited different public purchasers to an exchange of information. In this meeting the fire-brigade and later the department of gardening declared interest in starting an ethical procurement project. The fire-brigade informed its 12 major suppliers that the city of Düsseldorf has the intention from 2002 on to include the international social minimum standards in its tenders. The response from the suppliers was very positive expressing that they not only understand but also support the intention of the city. Since 2002 all suppliers sign a "Personal declaration of the bidder" in which they answer questions referring to ILO social standards.

In the meantime a similar regional project of North Rhein Westfalia has also started in which it is also intended to develop a control mechanism.

See below: Annex to the call for tenders (Düsseldorf) below

3.State of North Rhein Westfalia

Two years ago we started a project in North Rhein Westfalia (NRW is the biggest federal state in Germany with the largest population). Within the framework of this project we implemented the following measures:

- 1) Evaluation of all the activities on public procurement in the area of work wear and other clothes in every community in NRW (c. 300) with a questionnaire
- 2) Organisation of a meeting with several stakeholders in the field of public procurement (purchasing agents in the communities, members of the NRW-government, the minister of environment NRW, a work wear factory, NGOs and the CCC Germany)
- 3) Publication of an "Action-Newsletter" for our CCC Germany members with a sample letter to the communities. The aim of the letter is to challenge the political leaders or the administration in the communities to engage with ethical public procurement and social standards.

- 4) Publication of a booklet with basic information about clean clothes in the communities.

In May 2005 we began a new project in NRW. The essence of this project is:

- 1) Information for the public about ethical public procurement and social standards.
- 2) Establishment of a network with communities.
- 3) Implementation of a panel with the title "clean work wear in the communities in NRW". Stakeholders of the panel are: purchasing agents in the communities, members of the NRW-government, the minister of environment NRW, a work wear factory, NGOs and the CCC Germany.
- 4) Dialogue with work wear factories in NRW.

4. The City of Hamburg

Contrary to the above examples in Munich and Düsseldorf, the city of Hamburg is governed by the conservative party (CDU). Another difference: Hamburg is a city and a state at the same time. The idea for the ethical public procurement for garments was brought up by the Advisory Council of Development Aid of the City of Hamburg. This is a committee of individuals nominated by the Senate because of their reputation for development issues etc. Political affiliation plays no or little role in this committee. An active person of the German CCC, also member of TERRE DES FEMMES, a German's women's rights organisation, is member of the Council and has developed the project "Consideration of Social Criteria in Public Procurement of Work Wear and Textiles". The project deals with a change in the criteria in the tendering procedures of public authorities in the purchase of work wear, by extending these criteria to include adherence to minimum social standards. The social standards are guided by the core conventions of the International Labour Organisation. On 20th of October 2003, the Advisory Council on Development Aid Policy unanimously accepted a resolution in which it asks the Senate to introduce social minimum standards in its public procurement policy towards garments and leather products.

As a first step the city administration was asked to collect data on the procurement of work wear by the City of Hamburg. All concerned departments of the City received a questionnaire and had to fill it out.

Research conclusions:

- The city of Hamburg spends annually 4-5 million Euro for work wear.
- Persons in charge of procurement in the municipal departments are ignorant of the real origin of the work wear. The questionnaire by itself contributed to awareness raising amongst the staff of the city administration. All of them had to contact their suppliers and to ask them the information about production conditions.
- Staff think that their work wear clothes are special and are of high quality (e.g. for fire-brigade or hospitals) and therefore are produced in Germany. They also believe that production in Eastern European countries would follow social standards. Therefore they are willing to give the required information and some of them even to start a project.
- Work wear is partly produced in Germany but much is coming from Eastern Europe (Poland, Moldavia, Hungary, Bulgaria) and South East Asia (China, India, Pakistan, Bangladesh: leather gloves)

Later, discussions of the topic with different stakeholders (Chamber of Commerce, Sustainability conference in Hamburg) were held. On 17 November 2003, a four hour meeting took place at which persons in charge of public procurement of the city administration as well as of public enterprises participated. A representative from Dunkirk in France was invited to report on her experiences in this area. The aim of this discussion was to raise awareness of those authorities responsible for procurement of the issue in question, as well as to discuss questions such as legal aspects, a possible certification of companies concerning the use of social criteria etc., as well as planning future steps to be taken on the matter.

Major questions/topics were the following:

- possible price increase when products are produced under social criteria
- legal situation
- control mechanism

On 8 March, 2004 the topic was discussed at the highest political level, and it was decided to write a letter to the suppliers in which these are asked to answer the three following questions: whether they let produce in countries with low wages, whether they have a code of conduct and whether they control their own code of conduct (audit reports should be attached). The evaluation of answers are supposed to be presented in June/July 2004.

See 'Partial report: "Consideration of Social Criteria in Public Procurement of Work Wear and Textiles" for the third report of the Advisory Council on Development Aid Policy"' below.

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✂ **Partial report: "Consideration of Social Criteria in Public Procurement of Work Wear and Textiles" for the third report of the Advisory Council on Development Aid Policy**

According to the Advisory Council decision of 31.1.2003, the development aid policies that were drawn up by the former Advisory Council and laid down in the second report of January 2001 to the Senate of the Free and Hanseatic (FH) City of Hamburg are to form the basis for the work of the new Advisory Council. On this basis, concrete projects should be developed to translate the guidelines into action.

Under point 6 in chapter 2.3 entitled "Economic Policy and State Economic Activity", the development aid policy guidelines lay down that "Hamburg supports and strengthens initiatives in relation to development aid policy in the economic sphere in accordance with the Agenda 21. This includes the promotion of production and marketing favourable to development, environment, and society, in cooperation with political bodies, corporations and civil organisations. Initial attempts in this direction, such as the Hamburg Conference on Rugs, are to be extended."

In relation to this issue, the Advisory Council on Development Aid Policy has developed the project "Consideration of Social Criteria in Public Procurement of Work Wear and Textiles". The project deals with a change in the criteria in the tendering procedures of public authorities in the purchase of work wear by extending these criteria to include adherence to minimum social standards. The social standards are guided by the core principles of the International Labour Organisation. With this project, the Advisory Council on Development Aid Policy wishes to raise awareness of the Hamburg authorities and public sector enterprises with regard to this issue.

On 20th October 2003, the Advisory Council on Development Aid Policy unanimously accepted the following decision:

Consideration of Social Criteria in Public Procurement of Work Wear through the FH City of Hamburg

Aim: Socially friendly public purchasing of work wear through the FH City of Hamburg.

Decision: The Advisory Council on Development Aid Policy calls on the Hamburg senate to oblige its authorities to consider social minimum standards as criteria to be applied when inviting tenders for work wear and textiles. The social standards are guided by the norms of the International Labour Organisation (ILO) as listed below.

Explanation

The production of clothing, including work wear (uniforms for police, fire services, waste disposal workers, transport bodies, hospitals, etc.) is currently located largely in so-called low wage countries, in particular South East Asia, Central America and Eastern Europe. In Germany, retailers place orders with producers in these countries to provide clothing and textiles. As a rule, there is no independent control of working conditions under which clothing is produced. Research carried out by the 11-year old campaign for "clean" (in the sense of socially acceptable with regards to production) clothes, which has representations in 12 European countries (Clean Clothes Campaign - CCC), shows that during the production of clothing, human as well as

workers' rights are fundamentally violated (the suppression of organisations such as trade unions, unhealthy working conditions, no pay or payment below the subsistence level, child labour, etc.).

The current tendering procedures for procurement in Hamburg only include ecological criteria (e.g. § 3 of the Hamburg Waste Management Law holds that authorities dealing with procurement and enterprises as well as building projects have to favour ecologically friendly products insofar as they do not cause unreasonable additional costs. Furthermore, the use of tropical wood is forbidden in procurement of furniture or as building material). With the aforementioned decision, social criteria are now to be considered as well. According to the EU Commission, every awarding authority is entitled to choose those goods and/or services that comply with its social and political concerns, providing that this choice does not lead to a situation where access to the relevant market is restricted to the disadvantage of bidders from other EU Member States.

With the passing of the above regulation, the Senate of the FH City of Hamburg therefore expresses that

- it has a social responsibility in its public procurement world-wide,
- development aid policy begins with purchasing at home and is not restricted to development aid projects abroad.

Positive examples

In recent years, consciousness of inhumane working conditions in producing countries has increased. The following is a list of examples where social concerns were considered in the allocation of public tenders.

- In North Rhine Westphalia, the city of Düsseldorf has initiated a project (exemplified in the equipment of the fire services) whereby future tenders/procurement of work wear will have to adhere to social minimum standards as laid down by international labour law.
- In July 2002, Munich city council decided that in future, no products manufactured by means of child labour would be procured.
- In December 2000, the city parliament of Amsterdam passed a resolution according to which adherence to social minimum standards should be considered. (Research by the Dutch branch of the CCC found that the city spends € 2 million each year on uniforms for the city administration. The uniforms are mainly produced in Eastern Europe and Northern Africa, whereby the city did not oblige their suppliers to adhere to social criteria).
- The Dutch parliament has also recently passed a resolution according to which the authorities will have to consider internationally accepted environmental criteria and ILO standards when procuring clothing. The Ministry of Defence is to be the first to apply these criteria.
- In Flanders (Belgium), 50 cities have committed themselves to socially friendly purchasing.
- In France, over 250 cities and communes have passed a resolution on socially friendly public purchasing.

Social minimum criteria

The following social criteria have been accepted by various multi-stakeholder initiatives as fundamental rights in the clothing industry and relate to agreements passed by the International Labour Organisation (ILO), as well as the Universal Declaration of Human Rights:

- The prohibition of **forced labour** and labour in servitude or bondage (ILO Conventions 29 and 105)
- No **discrimination** and equal remuneration (ILO Conventions 100 and 111)
- The **prohibition of child labour** (children under 15 years of age) (ILO Conventions 138 and 182)
- The **right to freedom of association** and the right to collective bargaining (ILO Conventions 87, 98, 135 and ILO Recommendation 143)
- Weekly **working hours restriction** to 48 hours and a maximum of 12 hours voluntary overtime (ILO Convention 1)
- The right to a **living wage** (ILO Conventions 26 and 161, and the Universal Declaration of Human Rights)
- The employment relationship is stable and contractually regulated
- Best possible provision of **health and safety** at work (ILO agreement 155)

The following multi-stakeholder initiatives have included the above-named minimum social criteria in their code of conduct: Ethical Trading Initiative (United Kingdom), Fair Wear Foundation (The Netherlands), Clean Clothes Campaign (Europe), Social Accountability International (USA, in the SA 8000-Standard), International Association of Free Trade Unions (IBFG, Germany).

Steps that have so far been taken by the Advisory Council on Development Aid Policy

1. The collection of data on the procurement of work wear by the FH City of Hamburg

The first step consisted of sending a letter, dated 3.2.2003, and written by the Advisory Council on Development Aid Policy, to Mr. Rehaag, the Senator for Health and Environment, with the request to provide details on the current extent of work wear procurement within the senate, in order to prepare for a meeting with the advisory council. The Advisory Council thereby formulated questions to the senator with regard to the number of employees with uniforms, the annual costs and relevant criteria for the tenders. The senator replied on 30.4.2003, answering a number of questions. The annual costs for new and replacement purchases of work protection clothing for the authority for health and environment alone thereby amount to around € 2 million. The senate office also made enquiries with other authorities. The police, prison authorities and courts have annual costs of around € 1.5 million, the costs of the fire services amount to around € 1 million every year. The survey has so far not included all purchasing areas.

2. Discussion with Senator Rehaag on 12.5.2003

On May 12th 2003, the planned meeting between the Advisory Council on Development Aid Policy and Senator Rehaag took place. The senator in principle agreed with the opinion of the Advisory Council that, as a minimum, any tenders have to adhere to the core principles of the ILO. Privy counsellor Mr. Stuth suggested inviting city representatives who have experience in this area or experts from the Federal Ministry for Economic Cooperation (BMZ) to an exchange of opinion on the matter.

3. Preparation of and participation in the sustainability conference

At the sustainability conference, which took place in the town hall on 1st September 2003, the issue of "Social Criteria in the Procurement of Work Wear" was introduced and intensively prepared with the help of the Advisory Council in the form of a forum. The forum was led by the health and tax authorities. During preparation it was agreed that considering the complexity of the issue it would be best to initially restrict the

topic to suppliers' adherence to social criteria. The following contributions were presented at the forum:

- "Socially friendly procurement by the authority", introduction to the issue by Dr. Burckhardt from the Advisory Council on Development Aid Policy.
- Fundamental principles in the award of contracts, legal basis, result of a poll with entrepreneurs in Hamburg on the production conditions of their suppliers and perspectives on the issue, by Hans Randl, tax authority, office for organisation and central services.
- The social programme of the mail-order company *Otto*, by Achim Lohrie.

4. Interest voiced by the regional hospital service LBK (*Landesbetrieb Krankenhäuser*)

Interest on the subject was voiced by the Centre for Occupational, Environmental, and Health Protection (*Zentrum für Arbeits-, Umwelt- und Gesundheitsschutz - Z.A.G.*) of the LBK. Up to now, there have been two discussions with representatives of the Z.A.G. and the service company Purchase and Logistics of the LBK, as well as representatives of the Advisory Council and the environmental ministry. In order to achieve a concrete implementation of social criteria with regard to inviting tenders, it would be desirable if institutions such as the LBK would set a good example so that new experience with the tendering procedures can be gained.

5. Discussion with the Hamburg Chamber of Commerce

On 14.10, there were initial talks with the president of the Hamburg chamber of commerce, Dr. Dreyer, HGF Prof. Dr. Schmidt-Trenz, the executive director of the business division 'Internationales Corinna Nienstedt' and six members of the Advisory Council for Development Aid Policy. In the meeting, the Advisory Council urged for, amongst other things, raising awareness of the trading organisations, in particular the small and medium-sized ones, with regard to their suppliers' adherence to social criteria. The Chamber of Commerce reacted positively to this suggestion and it was proposed to initiate a series of talks on this issue with different entrepreneurial sectors.

6. Discussions within the public authority

The next step was a four hour long discussion involving specialists held on 17 November 2003 for public sector enterprises and authorities responsible for tenders issued by the FH Hamburg, in which privy counsellor Mr. Stuth also participated. Further participants were 20 people from two authorities (the office of the senate and the tax authority) as well as eight public enterprises. This expert discussion was prepared and carried out by the Advisory Council on Development Aid Policy together with the senate's office. A representative from Dunkirk in France was invited to report on her experiences in this area. Dr. Kerker from the *InWEnt* (Organisation for International Cooperation, Advanced Training and Dialogue) reported on the experiences the city of Düsseldorf had made. The aim of this discussion was to raise awareness of those authorities responsible for procurement to the issue in question, as well as to discuss questions such as legal aspects, a possible certification of companies concerning the use of social criteria etc., as well as planning future steps to be taken on the matter.

Letter to current and future business partners of the regional capital Munich (Bavaria)

Hep Monatzeder
Mayor
13.11.2003

Changes in the tendering procedure of the regional capital Munich:
No products resulting from exploitative child labour

Dear Sir or Madam:

On 17 July 2002, the Munich city council discussed how the city of Munich could contribute to globally sustainable and socially just development. The discussion centred on a particularly appalling violation of minimum social standards, namely, exploitative child labour. We interpret "exploitative child labour" according to the Convention No. 182 of the ILO (International Labour Organisation), which defines the worst forms of child labour. The Convention has recently been ratified by the Federal Republic of Germany and came into force on 18.04.2003. These worst forms of child labour are banned by international conventions as well as by almost all national legislation world-wide. The European Union assumes that the ILO Convention No. 182 naturally applies to all EU Member States.

As a result of its discussion of 17 July, the city council has decided on an amendment of the tendering procedures in the Bavarian capital Munich, which came into force on 18 April 2003. The revision is aimed at preventing as far as possible the city of Munich from procuring its products produced by means of exploitative child labour. With this communication, we would thereby like to allow you time to adjust your business practices to the amended requirements.

From now on, the authorities dealing with calls for tender will scrutinise more closely the products procured - insofar as they originate from the South and products known to be produced by means of child exploitation. These products currently include: balls, sports articles, sportswear, toys, rugs, household and garment textiles, natural stone, paving stones, leather products, cheap products made from wood and agricultural products such as cocoa, orange juice or tomatoes.

If you make a bid involving any of the above named products, you will be asked to provide further details on where the product was produced and/or processed. If the production/processing location should lie within Asia, Africa or Latin America, we will ask you to supply either.

a) an independent certification which confirms that the product was not produced and/or processed by means of exploitative child labour according to the ILO Convention No. 182 (e.g. a fair trade label or Rugmark label),

or

b) the binding commitment of your company that the product was not produced and/or processed by means of exploitative child labour (this commitment naturally includes the activities of all suppliers and subcontractors),

or, if such a promise is not possible

c) your binding confirmation that your company, your suppliers and your subcontractors have introduced active and target-oriented measures against the use of child labour as laid down by the ILO Convention No. 182.

In the case of a) and b), you will be asked to provide a commitment, code of conduct or social standards letter signed by a person from within the management level of your company and, if applicable, a more detailed description of the measures introduced.

In future, the presentation of the above-named certificates or confirmation will be a requirement for your participation in the tendering procedure. Compliance with declared commitments will be checked through cooperation with international human rights organisations.

We are confident that your company also wishes to prevent being involved in exploitative child labour, and that you therefore support these measures. Insofar as you are already active with regard to exploitative child labour, we would be delighted to reward this dedication in future through our procurement strategy. If this issue does not yet form part of your company policy, you can receive more information on relevant personal commitments from the chamber of commerce or the association responsible.

I would be delighted to hear your suggestions on the planned amendments. Please do not hesitate to contact me if you have any further queries on the matter.

Yours sincerely,

Hep Monatzeder

Proof of the bidder's eligibility with regard to his reliability according to § 97 and 98 of the Competition Restriction Act

The city council has decided on a change in the allocation of tenders invited by the regional capital city of Munich. The decision intends to prevent the future procurement of products manufactured by means of child labour.

The following products are known to be produced by means of child labour:

- Balls, sports articles, sportswear
- Toys
- Rugs, home textiles and clothing
- Leather products
- Cheap wood products
- Paving stones
- Agricultural products such as cocoa, orange juice or tomatoes

Are the above-named products produced or processed in **Asia, Africa or Central America**?

Yes

No

If yes, the following certification or declaration is required:

- An independent certificate, which confirms that the product has not been produced and/or processed by means of exploitative child labour according to ILO Convention No. 182 (e.g. a fair trade or Rugmark label), is enclosed

Yes

No

If there is no certification, a **declaration** has to be issued.

- I/we hereby affirm that the product has been produced and/or processed without the help of exploitative child labour according to ILO Convention No. 182.

Yes

No

If it is not possible to issue this declaration, the following assurance has to be made:

- I/we hereby provide a binding declaration that my/our company, my/our suppliers and their subcontractors have initiated target-oriented measures against the use of exploitative child labour.

Yes

No

Relevant codes of conducts, as well as descriptions of the measures introduced, should be enclosed.

- I am/we are aware of the fact that an essentially false declaration will lead to my/our exclusion from this and any future allocation of tenders.

Date, stamp, signature

Annex to the call for tenders

Adherence to minimum social standards that comply with the core principles of the ILO (International Labour Organisation)

Personal declaration of the bidder

- 1) In which countries and cities are the production and/or processing sites of the products to be procured located?
- 2) Are the producing companies in possession and under direction of the bidding company, or are they contractual partners of the bidding company?
- 3) Does your company have its own code of conduct with regard to compliance with social standards? If yes, what is the wording of the same?
- 4) *Core principles 29 and 105: forced labour*
Does the manufacturing process involve forced labour according to the ILO definition?
- 5) *Core principle 87: freedom of association and the protection of the right to freedom of association*
Do workers have the right and the possibility to organise themselves freely in interest associations?
- 6) *Core principle 98: freedom of association and the right to collective negotiations*
Is there an expressed right to collective negotiations in order to enable the representation of workers' interests?
- 7) *Core principle 100: equal remuneration*
Do male and female workers receive the same pay for the same work?
- 8) *Core principle 111: discrimination*
Are workers treated equally, independently of race, colour, sex, religion, political conviction, nationality or social status?
- 9) *Core principle 138: minimum age*
Does at the production location the age of workers fall below the minimum age for employment as legally stipulated?
- 10) *Core principle 182: worst forms of child labour*
Are the legal stipulations for the prevention and prohibition of child labour which apply at the production site being complied with?