



Buying Fair Trade

European Model on Fair Trade Public Procurement

Author:



With input from:



World Fair Trade
Organization (WFTO)



Fairtrade Labelling
Organizations International (FLO)

This text has been drafted with the legal
support and advice of Marc Martens,
Bird & Bird LLP, an international law firm.

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Contents

| | |
|--|-----------|
| What is Fair Trade? | 3 |
| Why Fair Trade Public Procurement? | 4 |
| I. Where to begin? Setting up an organizational strategy | 4 |
| 1. Market Analysis | 4 |
| 2. Needs Assessment | 5 |
| 3. Political commitment | 5 |
| 4. Communicating with staff | 6 |
| 5. Awareness-raising towards the general public | 6 |
| 6. Choosing a suitable pilot contract | 6 |
| II. Purchasing Fair Trade: one concept, various possibilities | 6 |
| Recommended definition of Fair Trade criteria | 6 |
| A. Fair Trade in national procedures | 8 |
| 1. Direct purchase | 8 |
| 2. "Quotation" procedure | 9 |
| 3. "Adapted" procedure | 9 |
| 4. Tendering procedures | 9 |
| B. Fair Trade in procedures under the EU Directives' scope | 10 |
| Basic model - The Use of Variants | 11 |
| Conservative model – The inclusion of social criteria in contract performance clauses | 11 |
| Progressive model – A comprehensive and practical approach to Fair Trade tendering | 12 |



Buying Fair Trade – European Model on Fair Trade Public Procurement

This model has been developed within the **Public Affairs: Mobilising action for Fair Trade Public Procurement** project, funded by the European Commission. The contents are the sole responsibility of the European Fair Trade Association (EFTA) and may under no circumstances be regarded as the position of the European Commission.

The legal information in this document is accurate to the best of our knowledge and based on current best practices. Guidance provided in this model is based on the European Union (EU) legal framework, but does not constitute an official interpretation of EU law. Contracting authorities wishing to purchase Fair Trade products are advised to take into account specific national or regional laws or guidance documents on how to introduce Fair Trade in public procurement. EFTA does not assume liability for misinterpretations or implementation.

What is Fair Trade?

Fair Trade is a concept that was recognized by the European Parliament (EP) in 2006¹, and confirmed in 2009 and 2010 by the European Commission (EC)², the European Economic and Social Committee (EESC)³, the European Committee of the Regions (CoR)⁴ and the EP report on new developments in public procurement⁵.

It is defined at International level⁶ as:

“(...) a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers – especially in the South. Fair Trade Organizations, backed by consumers, are engaged actively in supporting producers, awareness raising and in campaigning for changes in the rules and practice of conventional international trade.”

A list of Fair Trade criteria to be used in procurement procedures is also available on page 6.



1. Resolution of the European Parliament of 6 July 2006 on *Fair Trade and development* (2005/2245(INI)), paragraph 2
2. Communication from the Commission of the European Communities of the 5 May 2009: *Contributing to Sustainable Development: The role of Fair Trade and nongovernmental trade-related sustainability assurance schemes* (com (2009) 215 final)
3. Opinion of the European Economic and Social Committee of 20 January 2010 on the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee: *Contributing to Sustainable Development: The role of Fair Trade and non-governmental trade-related sustainability assurance schemes* (REX/288 - CESE 108/2010)
4. Opinion of the Committee of the Regions of 10 February 2010 on *Contributing to Sustainable Development: the Role of Fair Trade and Non-governmental Trade-related Sustainability Assurance Schemes* (CdR 214/2009)
5. European Parliament Resolution of 18 May 2010 on *new developments in public procurement* (2009/2175(INI))
6. By the main Fair Trade networks Fairtrade Labelling Organizations International (FLO), World Fair Trade Organization (WFTO, formerly IFAT), European Fair Trade Association (EFTA) and Network of European Workshops (NEWS!) in 2001. More detailed information on the Fair Trade principles and the two complementary routes can be found in the Charter of Fair Trade principles, agreed in 2009 by the two International Fair Trade standards-setters, FLO and WFTO, available on: http://fairtrade-advocacy.org/images/stories/Charter_FTPrinciples_EN.pdf



Why Fair Trade Public Procurement?

Contracting authorities have a significant role in stimulating socially-conscious markets demonstrating socially responsible governance and set the example for citizens. By supporting marginalised producers and workers in the South through Fair Trade, contracting authorities can also show EU citizens their commitment to the three pillars of sustainable development (social, environmental and economic). Fair Trade is an effective way of contributing to contracting authorities' efforts in reaching the UN Millennium Development Goals. It is also a way to guarantee the ILO core conventions are being respected and the products purchased are not produced with recourse to child labour. In fact, a recent study by the University of Rome "Tor Vergata"⁷ shows the positive impact of public procurement policies that include Fair Trade by local authorities, not only for disadvantaged producers, but also to raise the awareness of citizens as involved stakeholders.



“It is legally possible for contracting authorities to purchase Fair Trade products, putting in practice their commitment to sustainability”

It is legally possible for contracting authorities that wish to put in practice their commitment to social, economic and environmental sustainability to purchase Fair Trade products, both for procedures within the scope of the EU Directives on Public Procurement⁸ and those that do not fall under their scope⁹.

The objective of this document is to give contracting authorities practical guidance on the different legal ways to include Fair Trade criteria in their procurement practices.

I. Where to begin? Setting up an organizational strategy

1. Market Analysis

This step allows public authorities to look at the current availability of Fair Trade products as well as the possible future availability. Before initiating actual purchasing procedures for Fair Trade products, the contracting authority should be confident the market can supply the product it is looking to purchase. The

7. Becchetti, Leonardo and Bustamante, Juana Paola, *In solidarity catering in Rome: Public Procurement and Impact of Fair and in solidarity Trade*, 2008, University of Rome Tor Vergata, study requested by CTM Altrmercato and ResPect - Centre for ethic and responsible enterprise

8. Directive 2004/17/EC of the European Parliament and the Council of 31 March 2004 coordinating the procurement procedures of entities operation in the water, energy, transport and postal service sectors (OJ L 134, 30.4.2004, p. 1, as amended by Commission Regulation (EC) No 1177/2009 of 30 November 2009, OJ L 314, 1.12.2009, p. 64) and Directive 2004/18/EC of the European Parliament and the Council of 31 March 2004 coordinating the procedures of the award of public work contracts (OJ L 134, 30.4.2004, p. 114, as amended by Commission Regulation (EC) No 1177/2009 of 30 November 2009, OJ L 314, 1.12.2009, p. 64)

9. These procedures must abide by the fundamental rules of the Treaty on the Functioning of the European Union (TFEU) and the principle of non-discrimination on the ground of nationality in particular



Buying Fair Trade – European Model on Fair Trade Public Procurement

most common Fair Trade products, in particular food ones, are easily available.

Some authorities develop purchasing catalogues as a result which can greatly contribute to eliminating additional steps when opening new procedures. Contracting authorities would benefit from contacting local or regional Fair Trade Organizations and other Fair Trade suppliers in order to develop such catalogues. These catalogues should, of course, be constantly updated.



2. Needs Assessment

This should include an analysis of the current situation and the desired outcome. What products are currently purchased that could be switched to Fair Trade? Are there other products that will be foreseeably purchased in the future that can be available through Fair Trade? Where could there be a beneficial combination of Fair Trade products with organic products? How many products would the contracting authority aim to convert in the next 5-10 years? What products would be prioritized?



In this step, benchmarks can also be set, e.g. over 5 years:

- Year 1** Set up organizational strategy.
- Year 2** Purchase of first Fair Trade product (e.g. 100% of all coffee purchased).
- Year 3** Expansion of pilot contract (if one year contract) and conversion to 2 additional Fair Trade products.
- Year 4** Purchase of additional Fair Trade products on all purchases where option is available as previous contracts expire.
- Year 5** Re-issue purchase procedure for first Fair Trade product and continue as in year 4.

3. Political commitment

A key element when purchasing Fair Trade is to have top level political commitment. This can take on various forms, from a general strategy on sustainability to a simple declaration, exclusively regarding purchasing policies or throughout its other policies too. These documents provide transparency to the greater public as well as within the organization. Such a commitment should indicate clear targets and the objectives of the purchasing policy. Ideally, it should also clearly state what Fair Trade is and who is responsible for the implementation of the purchasing procedures, as well as some general guidelines on how these procedures should be implemented.



4. Communicating with staff

Once there is a political commitment to purchasing Fair Trade products, it is important to communicate this to relevant purchasing staff and even to develop some training sessions on how to purchase Fair Trade. Engaged staff allows for a more effective implementation. Fair Trade organizations on the national, regional and local level can be of great assistance in this step and it is always useful to contact them¹⁰.

5. Awareness-raising towards the general public

Awareness-raising of Fair Trade purchasing has a two-fold reasoning behind it; it both provides transparency and clear explanation of how tax-payers' money is being spent and why, and it sets an example for the general public on a more sustainable way to purchase. This can be achieved through dedicated leaflets, posters, articles in media, interviews, special awareness-raising events on Fair Trade, joining Fair Trade towns campaign, etc.



6. Choosing a suitable pilot contract

Contracting authorities should choose a first contract suitable for testing their approach and lesson learning. Such a contract should take all aspects of purchasing that product into consideration, such as recurrence, volume, delivery, etc. This will permit future contracts to be improved through the lessons learned.

II. Purchasing Fair Trade: one concept, various possibilities

Recommended definition of Fair Trade criteria

When referring to Fair Trade in purchasing procedures, we advise using the wording of any national or regional law on Fair Trade that may exist in your region or country¹¹. Where such a law does not exist, we recommend using the relevant Fair Trade criteria laid down by the European Parliament Resolution on "Fair Trade and development"¹² and later confirmed by numerous other EU Institutions¹³, listed below with necessary formal adaptations¹⁴:

■ Economic Pillar

- a) A fair producer price, guaranteeing a fair wage and covering the costs of sustainable production and living. This price needs to be at least as high as the Fair Trade minimum price and premium, where they have been defined by international Fair Trade associations;

10. Lists of European Fair Trade organizations and European Fairtrade labelling initiatives can be found on WFTO and FLO websites: www.wfto.com and www.fairtrade.net

11. You can find non-exhaustive information about regional and national laws mentioning Fair Trade in the study "State of play of Fair Trade Public Procurement in Europe", and in "Fair Trade Public Procurement legal framework in the EU and the Member States" on the cd-rom enclosed

12. European Parliament Resolution of 6 July 2006 on *Fair Trade and development* (2005/2245(INI))

13. See footnotes 1 to 5 for the references to the EU Institutions documents supporting Fair Trade

14. The list and some criteria were split between the three pillars of sustainable development, and certain criteria were clarified in order to adapt them to the necessity of tendering procedures



Buying Fair Trade – European Model on Fair Trade Public Procurement

- b) part payments to be made in advance, if so requested by the producer;
- c) support for production and market access for producer organizations;
- d) monitoring and verification of compliance with these criteria, in which Southern organizations must play a greater role, leading to reduced costs and increased local participation in the certification process;
- e) regular impact assessments of Fair Trade activities;
- f) long-term, stable relations with producers and involvement on the part of producers in Fair Trade standard-setting;

■ Social Pillar

- g) transparency and traceability throughout the supply chain to guarantee appropriate consumer information;
- h) conditions of production which respect the eight International Labour Organization (ILO) Core Conventions;
- i) protection of human rights and in particular women's and children's rights and respect for traditional production methods which promote economic and social development;
- j) capacity building and empowerment for producers, particularly small-scale and marginalised producers and workers in developing countries, and their organizations, as well as for the respective communities, in order to ensure the sustainability of Fair Trade;
- k) awareness-raising activities about Fair Trade production and trading relationships, the mission and aims of Fair Trade and the prevailing injustice of international trade rules;

■ Environmental Pillar

- l) respect for the environment: All parties to Fair Trade relationships collaborate on continual improvement on the environmental impact of production and trade through efficient use of raw materials from sustainable sources, reducing use of energy from non-renewable sources, and improving waste management. Adoption of organic production processes in agriculture (over time and subject to local conditions) is encouraged.

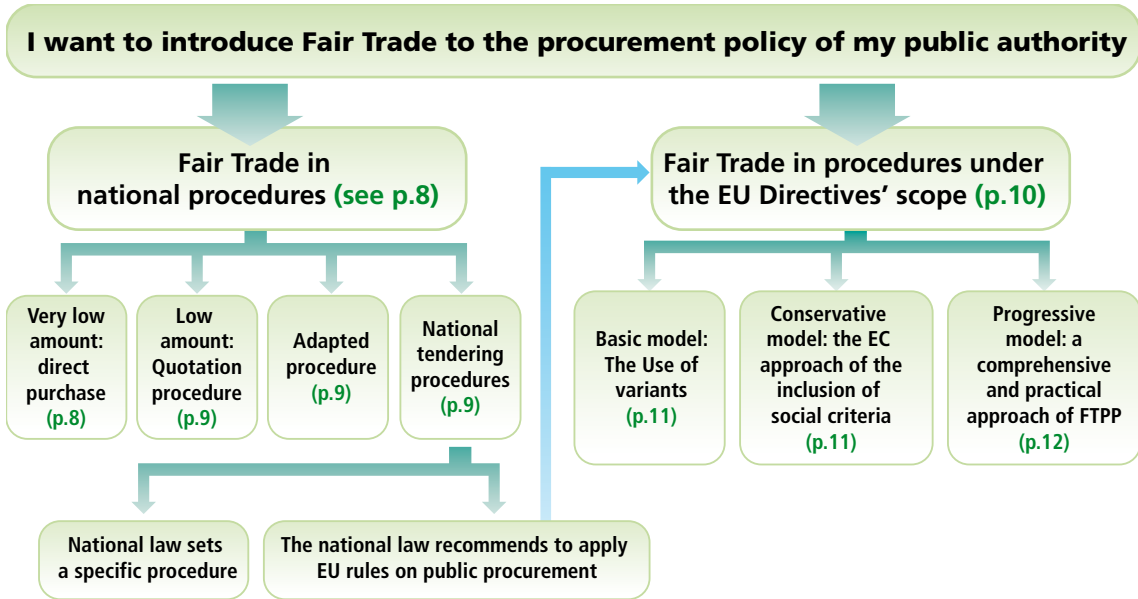
This definition of Fair Trade criteria by the above three pillars is the one that is referred to later in the document when recommending to “List Fair Trade criteria here”.

These Fair Trade criteria, that are recognized at International and EU level, must be included by contracting authorities to be able to give preference to Fair Trade products. There are different legal ways for authorities to purchase Fair Trade items, depending on the contracting authority's organizational strategy and the corresponding procedure, as schematized and detailed below¹⁵:

*“A fair
producer price,
guaranteeing
a fair wage
and covering
the costs of
sustainable
production and
living”*



15. General EU principles of transparency, objectivity and non-discrimination must be respected in all cases, also below the EU thresholds



A. Fair Trade in national procedures¹⁶

In principle, EU Directives only apply to contracts which have a total estimated value exceeding the pre-established thresholds set by the Directive 2004/18/EC¹⁷.

Below EU Directives' thresholds¹⁸, Member States have national purchasing procedures that vary from country to country¹⁹, yet there are, however, some very similar standard processes across the EU, on which we will focus on in this manual. Fundamental rules of EU law including without limitation the free movement of goods, the freedom of establishment and the freedom to provide services in the EU as well as the principles of transparency, objectivity and non-discrimination must be respected in all cases also below the EU thresholds.

In some circumstances, for purchases of very low value, Member States may authorize purchasing without tendering procedure.

1. Direct purchase

Through this procedure, the contracting authority is free to purchase from any supplier without seeking a minimum number of quotes or conducting a tender procedure. A negotiated procedure takes place and in

16. "National" procedures refer to the procedures that are determined by national law and do not fall under EU Directives' scope. These procedures apply to contracts which estimated value is below the thresholds set by EU Directives

17. Directive 2004/18/EC is applicable to public works contracts, public supply contracts and public service contracts which have a value excluding VAT estimated to be no less than the pre-established thresholds set by the directive. The thresholds are recalculated by the European Commission every two years. Their updated value is currently of EUR 125 000 for public supply and service contracts awarded by central government authorities, EUR 193 000 for public supply and service contracts awarded by contracting authorities which are not central government authorities, EUR 387 000 for public supply and service contracts awarded by entities operating in the water, energy, transport and postal services sectors, and EUR 4 845 000 in the case of works contracts, pursuant to Commission Regulation (EC) No 1177/2009, OJ L 314, 1.12.2009, p. 64

18. See footnote 17

19. More information on national procedures in EU countries is available on the cd-rom in "Fair Trade Public Procurement legal framework in the EU and the Member States"