



# social and environmental policies in public procurement

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# Social and Environmental Policies in Public Procurement

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require all public bodies to consider how they might promote the economic, social or environmental well-being of their relevant area in every contract they put out to tender under the EU procurement rules, and the Apprenticeships and Skills (Public Procurement Contracts) Bill, which if passed will require certain contracts let by public authorities to provide for apprenticeships and skills training.

## II. EU Law Governing Social and Environmental Issues

### II.1 Introduction – Overview of the EU rules

It is important for purchasing authorities who are considering including social and environmental policies in their procurement to always be aware of the EU rules governing procurement and ensure that such policies are compliant with those rules. Procurement in the EU is governed by the Treaty on the Functioning of the European Union (TFEU), with the free movement articles being particularly relevant. These cover free movement of goods (Article 34 TFEU), freedom to provide services (Article 56 TFEU) and freedom of establishment (Article 49 TFEU).

The TFEU regime is also supported by secondary legislation in the form of directives. For the public sector, the relevant directives are Directive 2008/18/EC (“the Public Sector Directive”) which sets out the substantive rules and Directive 89/665/EEC (“the Remedies Directive”) which sets out the consequences of breach of the Public Sector Directive. Both are implemented in UK law through the Public Contracts Regulations 2006. There are also corresponding directives for the utilities sector; Directives 2004/17/EC and 92/13/EEC, implemented in the Utilities Contracts Regulations 2006.

The EU rules are intended to ensure there is no discrimination favouring national suppliers and to open up a common EU market for public procurement, and are consequently very economically focused. The EU has also begun to recognise the importance of social and environmental issues in recent years, however, and so the Directives make it clear that there is some scope in the regime to consider such issues, with the important proviso that

## I. Introduction

In recent years there has been increasing recognition of the need to build into all of Government/public sector activities appropriate social, environmental and economic policies aimed at sustainable consumption and production, natural resource protection and environmental enhancement and the building of sustainable communities.

In 2009 the UK Office of Government Commerce issued a ‘procurement policy note’<sup>1</sup> which referred to a commitment in the Pre-Budget Report to the delivery of three priority policy areas through procurement (at that time these were apprenticeships, skills and youth employment; small businesses and low carbon resource efficiency). It was considered that these objectives could be delivered whilst preserving value for money and in conformity with the requirements of EU procurement legislation.

Purchasing authorities may feel that social and environmental issues should take a back seat to economic issues in the current recession, especially given the deep budget cuts which both local and central government bodies are facing. Despite this, the importance given to sustainability issues in procurement even in the current economic climate can be seen by the content of two Bills currently going through Parliament; the Public Services (Social Enterprise and Social Value) Bill, which if passed will

<sup>1</sup> PPN 15/09, available at [www.ogc.gov](http://www.ogc.gov)

they must be completed in line with the EU's overall aim of opening up the procurement market. While the Directives clarify that social and environmental criteria may sometimes be considered, however, there are few clear rules on how purchasing authorities should go about doing so such that it is often unclear if a particular approach would be lawful. Purchasing authorities thus have to balance the risk that a particular approach may be subsequently declared unlawful with the benefits of the policy. The following sections of this paper aim to aid purchasing authorities with this risk analysis by analysing the legal rules relating to various approaches. Where appropriate, the paper will also discuss the official guidance on the law from the Office of Government Commerce (OGC) and the European Commission.<sup>2</sup>

This paper will only discuss the rules under the Public Contracts Regulations 2006; the rules under the TFEU and the utilities rules are beyond its scope. The rules under the Regulations only apply to contracts which have a value over a certain threshold; there is thus greater scope for social and environmental policies in low value contracts which do not have to comply with these rules, though it is important to remember that the free movement provisions of the TFEU apply to all contracts, regardless of value.

## **II.2 Defining the Contract and Technical Specifications**

As emphasised in both the OGC and Commission advice, the stage at which purchasing authorities decide precisely what it is that they want to purchase is the most important stage for considering social and environmental issues. EU law does not come into play until the technical specifications of the contract begin to be designed, so this first decision over what to buy is the area in which there is not only the most scope for considering sustainability issues, but at which it is also the safest legally to do so. Before the specifications are started, purchasing authorities should evaluate whether there are more sustainable methods of achieving their needs. For example, awarding a contract for improved telephone and

video-conferencing facilities rather than a business travel contract or ensuring that any food contract has fair trade options (for more on fair trade and social labels, see below section III.1).

Once the decision has been made over what to buy, the purchasing authority must set out the technical specifications. The definitions of technical specifications (one for services and supplies and one for works) are found in Reg. 9(1) of the Public Contracts Regulations 2006. Each definition contains a non-exhaustive list of the issues which may be included in the specification this makes it clear that this includes social and environmental concerns, with both definitions including “environmental performance levels” and “design for all requirements (including accessibility for disabled persons)” in the list.

Reg. 9(7) sets out the possibility of a purchasing authority setting its specifications by reference to “performance or functional requirements”. The regulation states explicitly that these requirements may include environmental requirements. There is no mention of social issues, but there seems to be no logical reason to distinguish such issues and thus it is arguable that they may also be included. The reference specifically to environmental requirements was probably intended simply to clarify that such issues may be considered rather than being intended to set out that only environmental issues may be included. This is supported by examples given by the Commission of social issues which may be set out in technical specifications, such as computer equipment which is suitable for the visually impaired, which could be set out using functional requirements.<sup>3</sup>

However, purchasing authorities should always be cautious when attempting to create functional requirements which include social requirements. Social issues are often harder to link to performance requirements than environmental issues, being less likely to have a real impact on the ultimate performance of a product (see further below on production processes). There is also a higher risk of discrimination than with environmental policies given

<sup>2</sup> See OGC and DEFRA ‘Joint Note on Environmental Issues in Purchasing’ (2003); OGC ‘Social Issues in Purchasing’ (2006); OGC ‘Social Issues in Public Procurement’ (2008); and OGC ‘Buy Green and Make a Difference’ (2008), all available from [www.ogc.gov.uk](http://www.ogc.gov.uk); European Commission ‘Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement’ COM(2001) 274 (“Commission Communication on Environmental Issues”) and European Commission ‘Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement’ COM(2001) 566 (“Commission Communication on Social Issues”).

<sup>3</sup> Commission Communication on Social Issues at I.1.2, footnote 24.

the focus of most social policies on improving the situation of certain sections of society, which will often lead to a focus on the situation of certain groups in the UK or the local area. Special care must thus be taken to ensure that any social specifications are able to be fulfilled by companies throughout the EU and not only those in the UK.

Nonetheless, the use of functional requirements is a good way to consider social and environmental issues since it allows the market to offer solutions, both giving the authority an idea of what is feasible and also setting out innovative solutions the authority may not have considered. Reliance on functional requirements is also a good way to minimise legal risk. EU law requires that technical specifications be drafted so that competition is maximised (Reg. 9(4)) and functional requirements are the best way to do so.

The Regulations also make clear that authorities which do choose to use performance requirements for environmental specifications may do so by using eco-labels (Reg. 9(12)). Eco-labels are marks which are given to products and services which meet certain specified environmental standards and are a valuable method for purchasing authorities to be sure that those products and services are sound without having to check all the substantive claims themselves.<sup>4</sup> Purchasing authorities may refer to any eco-label which is appropriate to set out the authority's requirements, regardless of whether that label is run at EU level, multi-national or national, provided that the label is drawn up under a process under which all stakeholders can participate, is based on scientific information and for which the technical specifications are available to all parties.

#### **Possible Risk: Production Processes**

Reg 9(1) notes that works specifications should "permit the work, works, materials or goods to be described in a manner such that it fulfils the use for which it is intended by the contracting authority".

Does this mean that only requirements which will impact on the actual use of the product may be included?

The European Commission suggests in its Communications that the answer to the question in the box above is yes.<sup>5</sup> Following the Commission's argument, requirements in the specifications may only be included if they impact on the "performance characteristics (visible or invisible) of the product or service".<sup>6</sup> The OGC may support this view, noting that production processes may be considered in the specifications "where they help to define the characteristics of the product", though there is no mention of impact on performance.

The Commission's argument is somewhat confused, however, since the Communication also gives examples of specifications which are allowed, such as "green electricity" which in fact is identical in performance to the alternative.<sup>7</sup> It also leads to bizarre distinctions such as an authority being able to require organically produced food, since this may impact on the characteristics of the food, but not being able to require fair trade food, since this impacts only on the workers producing that food, not the food itself. It is thus arguable that the Commission's interpretation of the law here is incorrect and all production processes are allowable, but until this area is examined by the Court of Justice it remains an area of high risk for purchasing authorities.

### **II.3 Contractual Conditions**

Purchasing authorities may also include sustainability issues in the terms and conditions of the contract. The possibility of including such issues is expressly provided for in Reg. 39 which states that an authority may set out "conditions relating to the performance of the contract" and that these conditions may "in particular, include social and environmental considerations". This area is useful for considering sustainability issues which will be ongoing throughout the contract, such as training schemes, as opposed to schemes aimed at ensuring compliance with certain minimum standards, which are more suited to the technical specifications or to the qualification stage. Contractual conditions are also a useful area to include any issues which purchasing authorities are

<sup>4</sup> See Wisher, D. 'Reconciling national autonomy and trade integration in the context of eco-labelling', Ch. 10 in Arrowsmith, S. And Kunzlik, P. (eds), *Social and Environmental Policies in EU Law: New Directives and New Directions* (2009), (Cambridge: CUP) for a detailed discussion of the use of eco-labels in EU public procurement.

<sup>5</sup> Commission Communication on Environmental Issues, at II.1.2 and Commission Communication on Social Issues at I.1.1.

<sup>6</sup> Commission Communication on Environmental Issues, at II.1.2.

<sup>7</sup> Ibid. For discussion of this point, see Kunzlik, P. 'Making the Market Work for the Environment: Acceptance of (Some) "Green" Contract Award Criteria in Public Procurement' (2003) 15 JEL 175.

legally obliged to consider, such as obligations under the Equality Act 2010. For example, in compliance with the duty to promote equality of opportunity between men and women, authorities procuring a recruitment contract could include a contract condition stating that any jobs which are advertised under the contract should be offered on a part-time or flexible working basis unless there are compelling reasons not to, thus encouraging women to apply.<sup>8</sup>

Sustainability conditions must, however, be compliant with wider EU law, which in practice means that they must be non-discriminatory. A purchasing authority must therefore make sure that any social or environmental conditions which it includes do not favour UK suppliers or suppliers from a particular area of the UK (whether directly or indirectly). This requirement is particularly important to remember when considering workforce issues and may limit the utility of social policies such as those aimed at combating unemployment or at setting up training schemes, since such schemes must be designed in such a way as to also benefit the workers of any non-UK firms which win the contract.

It was noted above that any contract conditions must relate to the “performance of the contract”. Sustainability conditions must thus be tied strictly to the contract subject-matter; purchasing authorities cannot include conditions which will not impact on the actual contract performance. This includes conditions aimed at supporting the aims of a social or environmental policy but which will not in fact impact on the product or service the authority is purchasing, such as a condition setting up education services for former child workers. It also includes conditions which impact on a firm generally as opposed to just impacting on the precise branch or workers completing the contract. An authority thus can, for example, require a firm to pay a living wage to the workers making the precise products it is purchasing but not to its workers in the rest of the company. Such policies may in practice deter suppliers from bidding due to the difficulty of changing their practices for one set of workers or branch of the business, so purchasing authorities should consider the impact on competition before setting out these kinds of

conditions.<sup>9</sup>

Note that purchasing authorities cannot ask tenderers to supply any evidence to prove that they can comply with sustainability conditions, since these conditions fall outside the financial standing and technical ability categories for which the Regulations allow tenderers to be excluded (see further below, Section II.4).<sup>10</sup> Any supplier which refuses to comply with the condition, however, must be removed from the procurement process under the equal treatment principle. Purchasing authorities should therefore carefully consider whether a contract condition dealing with social or environmental issues is crucial to the contract since a supplier which complies with all the functional aspects of the contract but refuses the sustainability conditions cannot take part in the procurement process, thus limiting competition. Purchasing authorities should also note that, should a supplier accept the contract condition but subsequently breach that condition while during the performance of the contract, remedies under English law are limited where the other substantive elements of the contract have been performed since there is no real damage for the law to compensate. There is thus little practical way to guarantee performance of contract conditions relating to sustainability.

## **II.4 Prequalification and Selection for Participation**

The Public Contracts Regulations set out certain specific criteria which a purchasing authority may use to select candidates suitable to tender. This stage operates in two parts; firstly, the purchasing authority may choose to exclude candidates from participating in the tender process which do not meet certain minimum standards and secondly, from those candidates which meet the minimum standards, the same criteria may be used to determine those candidates which should be selected to participate where a procedure other than the open procedure has been chosen and there are a limited number of places available. Both stages offer some possibility for including sustainability considerations.

Under the Public Contracts Regulations, a procuring entity may exclude a firm for lack of financial standing,

<sup>8</sup> For this and further examples, see OGC ‘Make Equality Count’ (2008).

<sup>9</sup> For discussion of this point, see Arrowsmith, S. ‘Application of the EC Treaty and Directives’, Ch.4 in Arrowsmith and Kunzlik, above n.3, at pp.173-174.

<sup>10</sup> Case C-31/87 Gebroeders Beentjes BV v Netherlands [1988] ECR 4635, (“Beentjes”)

lack of technical or professional ability, or for certain other specified reasons relating to the professional conduct of the firm.<sup>11</sup> The latter reasons include, importantly, “being convicted of a criminal offence relating to conduct of his business or profession”<sup>12</sup> and committing “an act of grave misconduct in the course of his business or profession”.<sup>13</sup> These two criteria offer an opportunity to examine some sustainability considerations since the Recitals to the Public Sector Directive make it clear that the offences which may be considered include breaches of social and environmental legislation.<sup>14</sup>

The precise scope of the discretion available to public authorities here, however, is uncertain, depending on the definition of “grave misconduct”. Clearly, as the Commission sets out, it includes breaches of national civil legislation but how much further it extends is uncertain.<sup>15</sup> Arguably, it also includes breach of commitments outside national law, for example, breach of ILO Conventions, regardless of whether those conventions have been suitably implemented in national law. It may also include breaches of professional agreements relating to social or environmental standards which the company has signed up to, for example a breach of one of the principles of the UN Global Compact. The OGC, however, takes a more cautious view, stating that purchasing authorities may only exclude for grave misconduct where it involves a breach of national law, and so examining only legal breach appears to be the lowest risk option here.

The “technical capacity” criteria for exclusion and selection may also offer an opportunity to consider sustainability issues. Poor health and safety or labour standards may result in a firm being less able to complete a contract or to complete it to the standard required and thus are relevant considerations at this stage (so long as any consideration is limited solely to the company’s ability to complete the contract and does not look at wider considerations). The ability of companies to comply with environmental requirements in works and services contracts may also be checked with reference to the firm’s

compliance with environmental management schemes, insofar such checks are necessary for the performance of the contract.<sup>16</sup>

The Regulations do not mention the situation as regards products and it is thus unclear as to whether evidence as to compliance with environmental issues can be checked for products at this stage. As the OGC notes, environmental management schemes will rarely be relevant for supplies contracts, but the question remains as to whether other forms of evidence can be required if necessary. Arguably, however, where a requirement has lawfully been included in the technical specifications (i.e. where the environmental requirement can be said to impact on the performance characteristics, see above section II.2), it becomes an area which may be checked under technical capacity, so long as it can be done using the evidence generally allowable under Reg. 25.

#### **Potential Risk: Link to the Contract**

Environmental management schemes may only be checked where relevant to the performance of the contract (Reg. 25(2)(h)). Does this rule only apply to environmental schemes such that I can examine other social and environmental issues even if they will not directly impact on the contract performance?

The Regulations are unclear over whether, when a purchasing authority excludes a tenderer, the criteria it uses for exclusion must be directly relevant to the contract. Given the strong emphasis in other areas of the Regulations dealing with contract conditions and award criteria on a link with the contract, however, it appears arguable that the link is needed for exclusion criteria also. At the very least the information asked for must be proportionate, i.e. purchasing authorities must not ask for more information than is needed to ensure that firms are capable of completing the contract. Purchasing authorities should also be careful about asking for general firm information even where they have expressly stated that this information will not be used for selection; the courts will generally assume that any information which has been asked for has in fact been taken into account.<sup>17</sup>

<sup>11</sup> See Regs. 23(4), 24 and 25.

<sup>12</sup> Reg. 23(4)(d).

<sup>13</sup> Reg. 23(4)(e).

<sup>14</sup> See in particular Recitals 34 and 43 of the Public Sector Directive.

<sup>15</sup> Commission Communication on Social Issues, at I.1.3.1.

<sup>16</sup> Reg. 25(2)(h) and 25(4).

<sup>17</sup> See OGC ‘Social Issues in Purchasing’, above n.1, at p.55.

This also means that purchasing authorities should also be careful about using a set prequalification questionnaire for all contracts since it is unlikely that all sustainability criteria on that questionnaire will be relevant to all contracts awarded using it.

## II.5 Contract Award

Following Regulation 30(1) of the Public Contracts Regulations, contracts may be awarded either on the basis of lowest price or on the basis of which tender is the most economically advantageous (MEAT). The purchasing authority must state which basis it has chosen in the tender documents. Where an authority chooses to award on the basis of MEAT, it is clear that the criteria chosen for the basis of evaluation may include social and environmental criteria. Regulation 30(2) sets out a list of the types of criteria which may be included, which includes “environmental characteristics”. There is no mention of social issues, but the list is non-exhaustive so this does not preclude the possibility of social criteria so long as they are appropriate for determining the most economically advantageous tender. Award criteria examining sustainability issues have the benefit of allowing purchasing authorities to choose the firm best able to perform its social or environmental requirements, as opposed to examining such issues at the exclusion or selection stage at which only compliance with minimum standards can be examined. It also allows authorities to balance the policy against other issues including cost, helping to ensure value for money.

The main restraint when looking at sustainability issues is that all award criteria must be “linked to the subject matter of the contract”.<sup>18</sup> This reflects the fact that purchasing authorities should at this stage be evaluating the relative economic benefit of the tenders they have received and concerns which do not impact upon the actual contract are irrelevant to this evaluation. Thus, for example, a criterion evaluating tenderers ability to supply the energy required under the contract would be allowable, but a criterion which evaluated the firm’s general ability to produce green energy would not.<sup>19</sup>

Labour policies are particularly hard to structure so that they are linked to the subject-matter of the contract but, presuming they can be so linked, they should be allowable under EU law. The Commission takes a very restrictive view of labour-related award criteria, appearing to state that workforce criteria can only be used as a contract award condition when bids are otherwise equal.<sup>20</sup> The Commission ostensibly bases this on the CJEU decision in *Beentjes* but, while the criterion was in fact used in this manner in the case, there is no reference to this in the CJEU’s reasoning and there is no reason to limit the judgement in this manner.<sup>21</sup>

Authorities must also ensure that any criterion they include is capable of assessment and verification.<sup>22</sup> While this probably does not require precise quantitative assessment since some of the examples given of acceptable criteria in Regulation 30(2) are not capable of this (for example, aesthetic characteristics), if such assessment can be designed it would be preferable and authorities should in any case ensure that they have a clear and transparent method of assessment prepared for all sustainability criteria (which should be communicated to all tenderers), even if not quantitative. Authorities should be especially careful when considering social criteria which might require assessing a complete supply chain since it may be difficult to obtain and assess information on that scale.

## III. Specific Examples

This section will examine two specific examples of social and environmental policies in more detail in order to show more clearly the impact of EU law. The section will cover social labels as an example of the approach to social policies and carbon reduction schemes as the environmental example.

### III.1 Social Labels

Social labels, the most famous being the Fairtrade mark, are attached to products to show that that product has been produced by workers receiving

<sup>18</sup> Reg. 30(2).

<sup>19</sup> Case C-448/01, *EVN AG v Austria* [2003] ECR I-14527.

<sup>20</sup> *Com on Social Issues*, above n.1, at I.1.4.2.

<sup>21</sup> See *Arrowsmith*, above n.8, at pp.240-241.

<sup>22</sup> *Ibid*, at para. 51.

certain minimum standards of pay and labour conditions.<sup>23</sup> The various labels are available for a wide range of products (though the emphasis is on food products with a high risk of exploited labour being used to produce, such as bananas and sugar), and offer a valuable method for authorities to be sure that the labour used in the production of a product was fair without having to audit the supplier themselves, which would be prohibitively expensive to do.

It was noted in Section II.2 above, however, that the law may be interpreted so as to prevent purchasing authorities from examining production processes where those processes do not have an impact on the ultimate performance characteristics of the product. This interpretation of the law means that purchasing authorities cannot require that the products they purchase have a specific social label. Setting out a specific label as required would also probably breach the prohibition under EU law against non-discrimination. Similar to trademarks, which are prohibited from being included in specifications under Regulation 9(16), requiring compliance with one particular social label would have the effect of favouring certain suppliers over others and would thus conflict with the EU's main aim of opening up the procurement market to competition.

#### **Potential Risk: Comparable Labels**

While requiring one specific label is clearly prohibited, is it lawful under the EU rules to ask for a specific label but allow suppliers to show that they comply with the substantive requirements of that label in other ways?

Taking the approach above reduces the possibility of the requirement being challenged as discriminatory since the contract is now open to suppliers without the social label in theory, but in practice it may still be indirectly discriminatory since it is much harder for suppliers which do not have the label to comply with the requirement, since they must determine the requirements of the label and also prepare evidence. The Commission has in fact recently

brought proceedings against the Netherlands for breach of the procurement legislation by setting out a requirement such as this which allowed “comparable” labels.<sup>24</sup> The Commission argues that no guidance was given as to what the substantive requirements were which would make a label “comparable”, so that the requirement was not transparent and harder to fulfil for competing companies. Should a purchasing authority thus wish to set specifications by reference to a social mark, it is advisable to also set out the substantive requirements of that mark for all tenderers.

One approach could be to have an award criterion evaluating the amount of produce tenderers can supply for the contract which has been produced under fair trade conditions, similar to a requirement relating to the supply of green electricity for the contract, the possibility of which was accepted by the CJEU in EVN.<sup>25</sup> Note however that the recent Commission challenge to the Netherlands also examines a similar requirement granting additional points to tenders which could supply certain ingredients with the required social label on the grounds that such a requirement is not relevant to determining the most economically advantageous tender. This appears similar to one of the Commission's previous arguments that award criteria must be linked to a direct economic advantage to the purchaser, an argument the CJEU rejected in the Concordia Buses case.<sup>26</sup> If environmental criteria evaluating green electricity are acceptable, there seems no logical reason to distinguish social criteria so long as they are linked to the subject-matter. The Commission's argument may be based on the notion that electricity from green sources has different performance characteristics to electricity from non-renewable sources (see discussion above, section II.2), but as noted previously this argument is illogical since both are functionally identical. The CJEU's acceptance of non-economic environmental award criteria in Concordia Buses and EVN suggests that social criteria along the same lines should be acceptable.

<sup>23</sup> For further examples of available social labels, see Annex I, OGC ‘Guidance on Fair Trade and Public Procurement’ (2008), available at [www.ogc.gov.uk](http://www.ogc.gov.uk)

<sup>24</sup> ‘Public procurement: Commission refers Netherlands to Court over contract award in Province of Noord-Holland’, Press Release IP/10/499, published 05/05/10.

<sup>25</sup> Above n.18.

<sup>26</sup> C-513/99, Concordia Bus Finland v Helsingin Kaupunki [2002] ECR I-7213.

Note, however, that if such an approach is taken, the substantive requirements of the social label should still be set out, as with specifications, otherwise the criterion runs the risk of being seen as discriminatory. On this basis, the Dutch criterion challenged by the Commission probably is unlawful since it refers to the labels directly.

The safest approach for authorities to take is to simply make it clear in the advertisements and tender documents that products with the preferred social label would be welcomed but without requiring the labels in any way. As the OGC notes, should a supplier which offers products with the social label then win the contract on the basis of having the most economically advantageous tender, they could then be required to provide those products for the authority when needed.<sup>27</sup>

### III.2 Carbon Reduction

The general consensus is that global warming is a serious threat to the planet unless action is taken to reduce our greenhouse gas emissions. Climate change is rising on the Government agenda and regulatory pressures are increasing.

In the UK, the Government is expanding its regulatory scope. On April 1 this year the CRC Energy Efficiency Scheme commenced which is a cap and trade scheme for non-energy intensive industries. By 2012 it is expected that the UK Government will modify the Companies Act to require statutory carbon reporting.

A large proportion of an organisation's carbon footprint is influenced by the emissions of its suppliers (in the delivery of energy and transport and also in the manufacture of goods to be used by the organisation) a recent report estimated that "for consumer goods makers, high-tech players, and other manufacturers, between 40 and 60 percent of a company's carbon footprint resides upstream in its supply chain".<sup>28</sup>

Some of Achilles' customers, recognising the urgency for action, approached Achilles requesting a jointly managed carbon programme that would enable engagement with their suppliers to reduce greenhouse gas emissions in the supply chain. Achilles' supplier management tools (qualification

systems databases and joint audit of suppliers' capacity) were already extensively used to manage procurement, health and safety and quality and this environmental risk element thus fits well with their current operations.

The result was Achilles' carbonReduction programme for the measurement, management and verification of greenhouse gas emissions. The programme is built on a common methodology for the assessment of suppliers, a single repository of information to store supplier greenhouse gas assessments, meaningful analysis to enable benchmarking and a supplier commitment to emission reductions.

The certification standard adopted by Achilles, CEMARS (Certified Emissions Measurement and Reduction Scheme) is the world's first internationally ISO accredited greenhouse gas certification scheme. CEMARS is globally recognised and harmonised with key international standards such as the GHG Protocol and also country-specific best practices such as the DEFRA Reporting Guidelines in the UK.

Purchasing entities (currently a number of major energy and water utility companies) are able to view data on the carbon footprint of suppliers and their success in improving their environmental performance, which is increasingly used in the award of contracts, where this is relevant to the contract (see discussion at II.4 above on "prequalification and selection for participation").

## IV. Conclusion

There is no doubt that the interest in the use of social and environmental issues in procurement (sustainability/CSR) remains strong despite the recent changes in economic conditions in the public sector.

Purchasing entities need to be aware of the limitations placed on such policies by European procurement legislation but, as can be seen in the analysis in section II above, there remains considerable scope for positive action.

This paper has attempted to assess the scope for action at the various parts of the procurement

<sup>27</sup> See OGC 'Social Issues in Purchasing' at p.16 and OGC 'Guidance on Fair Trade and Public Procurement' at p.3.

<sup>28</sup> McKinsey Global Institute Report July 2008

process and provide some assistance to purchasing authorities in reconciling policy requirements that often seem to conflict, and in identifying areas where significant benefits can be achieved without incurring excessive risk.

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