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The summary of conference proceeding on the development of social terms in public procurement

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DES AFFAIRES JURIDIQUES



January 2009

The day was led by François de Witt, commentator, France Info.

Opening

Martin Hirsch

High Commissioner for active solidarity against poverty

Ladies and gentlemen, dear friends, thank you for having taken the initiative to organise this symposium which is being held as part of the World Day to Overcome Extreme Poverty. The day before yesterday, in Aubagne, near Marseilles, a delegation of participants in the 7th roundtable on poverty and social exclusion had an opportunity to discover a Provençal eco-museum, located in a picture perfect setting. However, this visit was not about recreation: the aim was to gain knowledge on the practical conditions for implementing a contract under the terms of which 10% of work should be carried out by people being integrated – a contract entered into by the Aubagne authorities, in accordance with Article 14 of the public contracts code. In total, 2,000 hours have in this way been dedicated to integration, and the project has resulted in two recruitments.

How to transform an everyday action that is essential to the government's day-to-day operations (placing a contract) into a tool supporting the integration of people far removed from employment and often consigned, as a result of this, to situations of exclusion? The aim is to ensure that any legal constraints become tools for fighting against poverty, in various ways that the day's exchanges will make it possible to clarify. We may, for instance, reserve part of the performance of a contract to people who are being integrated. We may also choose to award the contract to the best performing tenderer in view of the integration objectives defined beforehand. Our first experience of including social clauses concerned the performance of surveys entrusted to polling institutes. We heard everything from these institutes, which were to say the least sceptical about the principle for the approach, which was however carried out successfully.

For its part, the French government is looking to call on integration clauses. It made this commitment on April 9 this year, setting itself an objective to systematically use such clauses with a view to achieving a usage rate of at least 10% on common purchases with businesses promoting integration through economic activities. This calls for a mobilisation of services controlled by the State, with a circular setting out to define the corresponding conditions. The commitment of the two Ministries will be essential in order to meet the objectives set. This symposium, which Jean-Baptiste de Foucauld has greatly contributed to organising, already attests to this commitment.

It seems to me that the majority of the legal questions raised by the old clauses in favour of the lowest socially responsible bidder have been answered today, both at national level and at European Union level: the legal security of the clauses that we are planning to use has today been established. The main issue therefore concerns the distribution of knowledge of these clauses and their successful implementation. A report was published a year ago on social clauses. Without recommending the addition of new legal provisions, it pleaded, in a more original way, for the use of existing provisions, the implementation of which was sometimes blocked, particularly because knowledge was not sufficiently shared. Following the Besançon day on public procurement clauses,

a delegate asked me about the situation in other European countries in terms of these practices. Today, we will have the opportunity to find out more about this. In any case, there is genuine interest among our partners for using the French experience as a lever on these questions.

Yesterday saw the first meeting of ministers from European Union Member States on the issue of poverty. In this way, the decision has been taken to set up a network of best practices linking these partners together. The use of social clauses is fully in line with the strategic objective for active integration, which the European Commission recommended on October 15. This concept is simple. It is based on three pillars:

- Minimum income, which exists in 25 out of the 27 States;
- Return to employment and support for this process;
- Access to social services for the most underprivileged.

The principle of active integration involves recognizing that it is essential to work on these three pillars to fight against poverty, in a way that is compatible with the main principles for our social and economic model. In this way, for instance, if the right to a minimum income is recognized, the return to employment must not translate into any loss or stagnation of this income. An active integration strategy must therefore be accompanied by mechanisms guaranteeing that the return to employment goes hand-in-hand with an increase in income levels.

We believe that the use of tools for returning people to employment, under conditions maximising the leverage for public procurement, is particularly important within this framework. Public authorities, traditional businesses, integration enterprises, integration beneficiaries find themselves as partners with the implementation of these contracts. All the European States can win with this approach. Thank you all for helping raise awareness on this day's work and discussions.

Social clauses in public procurement : presentation of national policies

Presentation of the French experience

Jean-Baptiste de Foucauld
General Inspector of Finances

As a civil servant, notably serving within tendering committees, I have seen that the articles and codes were not always used. I have also taken an interest in the implementation of social clauses for ethical and personal reasons, in view of what I see as their obvious interest.

When I asked myself why these clauses were not used, I first of all realised that my questions on this subject often came up against a wall of misunderstanding. I also saw a considerable gap between the possibilities offered by the public procurement code, in France, and the concrete use of its provisions. This shows a certain difficulty with the implementation of social clauses: which to choose, which populations to cover? How to prevent them from resulting in any additional costs, reducing the quality of the service provided or extending the timeframes involved? How to reassure businesses in order to prevent them from withdrawing from a tendering procedure providing for the implementation of social clauses? Within the civil service, who must be the driving force for such an approach? It is not simple to answer this question, since several solutions may be considered.

Following a certain number of meetings that I have had the opportunity to hold with the various players, two situations became clearer in my eyes. On the one hand, I found that social and environmental clauses did not need to be the “cherry on the cake” for contracts: they must represent a normal part of the professionalization of public contracts. During a “Copé” audit on the professionalization of public procurement, we retained the principle for the implementation of social clauses, as a capacity to be acquired for the professionalization of public procurement. That is why the steering of this approach was allocated, based on this assessment, to the French Ministry for the Economy, Employment and Industry.

On the other hand, I saw that there was a need for engineering in order to define relevant social clauses and monitor their application. This facilitation work must make it possible to have social clauses that are attractive, motivating and effective, in view of economic objectives and the fight against exclusion. This engineering is linked to public policies for the fight against exclusion.

We are only at the start of this process in France. We are going to work to build a public policy that could have a certain scope. The aim with this symposium is also to find out about the experiences in other countries, in order to draw the best lessons from them.

For the rest, several questions could guide our discussions :

- How to motivate public buyers: through advice, through incentives, through rewards, through obligations?
- How to legally secure the buyer, always haunted by the risk of litigation? A guide, drawn up with the support of the legal affairs department from the Ministry for the Economy, Employment and Industry, and the Ministry for the Budget, Public Accounts and Civil Service seeks to clarify this matter.
- How to organise the engineering enabling the buyer to choose the most motivating integration clause for the business and the most favourable for social advancement?
- How to ensure that such clauses are respected and applied correctly?
- How to evaluate the process in order to make this policy a regular part of the professionalised public procurement process?

I hope that this conference will make it possible to clarify these various aspects. I am sure that it will further enhance our viewpoints and perspectives.

Catherine Bergeal

Director of Legal Affairs, Ministry for the Economy, Employment and Industry, Ministry for the Budget, Public Accounts and Civil Service

I. Introduction

110,000 contracts were identified for public procurement in 2007, for a total amount of 55 billion euros. This shows the potential strength of the tool represented by public contracts. However, the rules governing public procurement (equality, transparency, neutrality of choices), which have a community constitutional value, represent a major constraint. Nevertheless, Article 6 of the French environment charter also has a constitutional value, requiring public policies to contribute to sustainable development and, in this respect, reconcile economic development and social progress. It is therefore up to us to reconcile two principles with equal value. For us, practitioners of the law, the challenge is to provide public buyers with the greatest legal security by offering them simple and operational mechanisms.

II. Instruments for implementing social clauses

The legal instruments provided by Directive 2004/18/EC and Directive 2004/17/EC, which we contributed to drafting, are of four kinds:

1. Restricted public contracts provide for the possibility of restricting a contract or a work package within a contract to sheltered workshops. These have to employ a majority of disabled people. Such a measure must make it possible to put all the sheltered workshops into competition, without any discrimination.

2. Social clauses make it possible to impose performance conditions on tenderers for the contract involving the hiring of people in difficulty. This represents the most generally used instrument, since it is without a doubt the easiest to apply. The integration objective set by the clause must be reasonable and accessible to all types of business. Businesses must continue to have a free choice in terms of the conditions for applying the various clauses.

3. Public integration contracts are focused on integrating populations in difficulty. Community law provides for extremely streamlined procedures for awarding these contracts. Integration must represent the very purpose of the contract, although the contract may also cover the provision of work or services as support for the training carried out, provided that they do not represent the principal purpose of the contract and that their quality is only taken into account on a marginal basis when selecting tenders.

4. Lastly, for the implementation of social award criteria (Article 53-1 of the public procurement code), buyers must justify a link between the criteria for the award of the contract and the purpose of it. The social criteria may therefore only be retained for contracts with a strong social dimension.

III. Approaches for using these instruments

An effective procurement policy, in its social aspects, first of all calls for a relevant choice of contracts and work packages. The division into work packages may be used for performance clauses or restricted contracts, with the definition of work packages making it possible to make the effort demanded from businesses or integration associations more proportionate. It is necessary to target contracts with a strong labour content or contracts that are suitable for the implementation of training.

Businesses must be given room for manoeuvre: they must be able to choose between direct performance and the use of subcontracting. They must also be left to choose the conditions for using people in integration.

It is essential to provide buyers and economic operators with support. The successful experiences show that success with the implementation of integration clauses hinges on the definition of a consistent internal policy, combining the procurement approach and the social dimension.

Lastly, it appears to be very important to compare national practices against foreign experiences. Largely initiated by the local authorities, French social procurement policy now has a strong national dimension, as a result of the further involvement of the State's central government bodies.

François de Witt

You have stressed the fact that local authorities were leading the way with the implementation of social clauses for public procurement, ahead of the State. What are the factors behind this relative delay for the State?

Jean-Baptiste de Foucauld

Local elected representatives are close to their community, which includes a minority of people furthest from employment. This represents a natural motivation. Furthermore, the local authorities have been able to propose an engineering approach for transposing integration clauses into public contracts.

For the rest, the government is no doubt still too closed in on itself. I believe that it is important to develop social responsibility within government bodies and it is clear to see that there is still a long way to go in this respect. Despite everything, I can see that these concerns, when they are mentioned, are very favourably received: above all, the players need instructions and directions for use.

Catherine Bergeal

I also believe that the relative advance of local authorities reflects their greater proximity to the field. Moreover, the State generally places orders for higher amounts. Now, the implementation of social clauses is easier for contracts of a limited size. Lastly, the State's players are further removed from the field, but closer to Brussels.

Marie-Pierre Establie, Alliance Villes Emploi, Delegate General

I am a member of Alliance Villes Emploi and I believe that another factor accounts for the relative advance of regional authorities: they have been persuaded by a certain number of prominent figures, who have played a pioneering role, of the legitimacy of including social clauses in public contracts. This was not a natural inclination. The first experience implementing an engineering approach on these issues took place in Strasbourg, as part of the local plan for integration through economic activities. These plans – co-financed by the regional authorities and the European Social Fund – have played a decisive role as a driving force. Without the presence of such central players and their facilitating role, it would no doubt have been difficult to develop the application of social clauses.

Olivier Meneut, SNCF, Head of the sustainable and solidarity procurement policy

We can currently see a frenzy of procurement focused on the solidarity economy, in response to the obligations created by the law on disability and because each player is realising the quality of suppliers in this area. However, the size of this market is still limited and not all players will be

able to access it as much as they would like, particularly if public procurement considerably increases the part that it reserves for this market.

Jean-Baptiste de Foucauld

The ramping up of social clauses must make it possible to increase the possibilities for recruitment and optimise the existing systems. However, this might not be enough and we must expect to see an increase in the number of integration structures, which will cover a wider range of professions, looking beyond the sectors traditionally concerned (building, green spaces, catering, etc.).

Presentation of the British experience

Naomi Davy

Office of Government Commerce – United Kingdom

The British Office of Government Commerce is responsible for public procurement for most of the United Kingdom's central government bodies, which represents a total of 175 billion pounds per year. Our objective, within the Office of Government Commerce, is to ensure that the government uses public funds efficiently and effectively through its procurement policy.

We have focused on defining a practical approach in relation to public buyers, ensuring that social clauses are taken into consideration upstream on the procurement process. Rather than using standard clauses, we believed that it was preferable to define clauses on a case-by-case basis, factoring in the value of the contract and the specific risks associated with it. A brochure, describing each step in the public procurement process, has been drawn up in order to support buyers with their approach.

Sustainable development issues represent a priority concern for public procurement, to such an extent that a member of the government (appointed in March this year) specifically ensures that this dimension is taken into account in government bodies' public purchases. Another very important area in our eyes is that of SMEs, which have an undeniable role as a driving force for the entire economic fabric. We also believe in the exemplarity of this large portion of the economic fabric on a social level. Our approach does not intend to reserve any preferential treatment for SMEs: it is more about promoting recognition of the equivalent competitiveness of SMEs in relation to that of large groups, in many areas. A vast survey has been carried out in order to measure the opportunity for defining a part of public procurement reserved for SMEs. This principle, whose feasibility seemed questionable, has however been abandoned.

British public procurement also aims to apply a logic of equity. This concerns all public contracts, aimed at preventing discrimination in relation to gender, race or disability. Lastly, for food-related purchases, we work to support fair trade.

From the floor

Is there a formal definition of the British concept of value for money?

Naomi Davy

We define this concept as the cost of the product, as assessed throughout its life, in other words including the cost of its purchase as well as the cost of its management and its elimination, if necessary.

From the floor

I am part of a British union and I believe it is important to draw your attention to another aspect of the inclusion of social clauses in the procurement policy for government bodies in the United Kingdom. Britain represents Europe's largest public procurement market, but we can see that the growing use of integration enterprises is being reflected in a significant drop in wages for staff working in connection with these markets. To fight against this phenomenon, the government has adopted a certain number of social clauses, but these are still all too often ignored.

Secretary General of the OSPD (association of service providers for disabled people)

I would like to thank the French Presidency for having organised this symposium, which is bringing us together around an extremely important subject. The financial crisis is showing that through public procurement, public authorities can have an economic and social impact.

How can we guarantee that the accessibility objective is fairly taken into consideration in public procurement?

Furthermore, how can we promote the hiring of disabled people by "traditional" businesses that are not from the integration sector?

Jean-Baptiste de Foucauld

I believe that respect for the principle of accessibility is growing. This is about standards, which goes beyond the framework for this symposium.

To answer your second question, France has a law that requires businesses to have 6% of disabled people in their workforce. If they do not respect this target, which is the case for the vast majority of businesses, they are required to pay a tax into a fund that finances actions facilitating access to employment for disabled people – through actions to adapt workstations for instance.

There is also the possibility (provided for under European regulations) of using restricted contracts to recruit disabled people, but this possibility seems to be used only rarely so far.

Catherine Bergeal

One of our objectives is to let businesses and public authorities know that they will be able to fulfil the legal obligations they are subject to by including social clauses as part of public contracts, and not just by paying taxes.

Speech by European Commission services

I. Directorate General for Internal Market and Services – Public Procurement Policy Directorate

Ugo Bassi, Unit Head

The issue that has brought us together today lies at the heart of the debate that is driving the European Commission. For a long time, reconciling public procurement policy and social policy has seemed difficult in the eyes of the community bodies themselves. A debate took place, at the end of the 90s, on how to envisage these two approaches, as well as the means enabling them to be reconciled. Regulations governing public contracts appeared in Europe in the 70s, with a view to creating a genuine internal market for public procurement. This called for the creation of restrictive rules – applied on a uniform basis for all suppliers within the Union – in terms of transparency, fair treatment, proportionality, etc. The objective was to facilitate the adoption of a simple principle: the search, for public procurement principals, for the best value for money.

When other policies have come to light or spread at community level, such as the environmental policy or social policy, it became clear that public procurement could represent an appropriate instrument for pursuing such goals. At a certain time, the reconciliation of various types of objectives (notably economic and social) has led to a certain amount of wavering, as well as hesitation.

Today, a balance has been found. From a legal perspective, it is based around the concept of the contract purpose. The recent directives from 2004, relative to public contracts, ratified a principle that had already been asserted by the European Commission in the following doctrine: public buyers may pursue, through their purchases, objectives of any kind, provided that they are linked to the purpose of the contract. For instance, in terms of the environment, public procurement may give priority to purchasing strong performing products from an environmental viewpoint. However, it is not permitted to give preference to a business implementing a policy to respect the environment in its premises, since such a dimension would appear to be disconnected from the purpose of the contract.

The European Commission will shortly publish a guide in which the possibilities – already numerous – for factoring in social clauses, respecting the principles of equality for tenderers and aiming for the best value for money, are listed. This work will not cover all of the issues likely to

come to light, since there are still various points to be clarified, including for the community authorities. However, this instrument, which is intended to be practical, will represent a first means of helping contracting authorities to take social clauses into account.

II. Directorate General for Employment, Social Affairs and Equal Opportunities

Suzanne Bird, Policy Coordinator, responsible for the study concerning socially responsible practices in public contracts

I would like to thank the French Presidency of the European Union, as well as the ministries of the economy and budget, for their invitation to take part in this symposium.

The European Commission's commitment to including social clauses in public procurement stems from work carried out, as of 2006, on the social and environmental responsibility of businesses, within which it may be considered to represent a particular dimension. The aim was to make Europe a centre of excellence for corporate social responsibility, within the framework of a partnership for growth and employment. In this communication, attention focused on the inclusion of social clauses and the setting of objectives for employing underprivileged people.

Today, public procurement represents 16% of GDP, which gives an idea of the leverage effect it can generate in line with general interests. Another motivation for the European Commission's commitment on these matters lies in a need for clarity expressed by all of the players. In this way, a study has been launched by the community authorities and must be followed up with the production of a guide on the use of social clauses in public procurement, as indicated by Ugo Bassi.

If they wish, public buyers may, under various legal and regulatory texts, include social clauses in their public purchases, provided that the principles of equal access for the Union's suppliers and the best value for money are expected.

The study launched by the European Commission on socially responsible public procurement had several objectives:

- Defining the concept of socially responsible procurement policy in Europe;
- Defining what could be the terms of a public strategy in this area;
- Specifying the framework for the legal possibilities for socially responsible procurement;
- Specifying the added value of socially responsible public procurement;
- Proposing case studies.

Several "deliverables" were planned for from the outset:

- **An inventory of typical applications of socially responsible procurement**
The inventory of typical applications of socially responsible procurement has notably made it possible to draw up an inventory of the categories of social concerns that may be covered by a socially responsible procurement policy: employment, working conditions, accessibility, trade.

- **The legal and regulatory frameworks within the Union**

- **Six case studies**

These studies have been based on surveys conducted by email, over the phone and through visits. They aimed to look into the effects of factoring social clauses in to public contracts, in several areas: context and strategy for such an approach, follow-up, possible barriers and constraints. More specifically, six subjects were looked into, including equal opportunities and gender equality in the implementation of socially responsible procurement policies.

- **Elements that may represent the framework for a guide intended for potential public procurement players within the Union.**

These elements were to include the key concepts, the potential benefits of a socially responsible procurement policy, its relevance in view of the European Union's social agenda or even the legislative and regulatory approach for such matters.

The study showed that the legal framework for a socially responsible procurement policy was complex and changing extremely quickly within Member States. Practices vary and concern different levels of the public procurement policy. The need for a mutual enrichment of States, through an exchange of practices, was also highlighted, as well as the need for a certain number of technical adjustments. The drawing up of a “Green Paper” was judged to be useful by consultants, adapting this format to the subject of socially responsible public procurement. Lastly, specific work on evaluating the costs and benefits of such a policy looks like it will need to be taken further, in light of the recent nature of practices in this area and their still very incomplete knowledge.

A calendar has been defined, following on from this study. In this way, a meeting is scheduled to be held on November 6 in Brussels, which all of the players concerned will be able to attend. Written contributions will also be collected, via our website, up until the end of the year. In light of this, the basic elements for the guide should be able to be presented before summer 2009.

III. Discussion with the audience

Michael Frühmann

I believe that it is important to give Member States sufficient time to react to the directives. You are allowing us up until the end of the year to send in observations, but you are setting aside a six-month period for yourselves to analyse them. It would be useful for us also to have time to develop our recommendations.

Suzanne Bird

It is true that this calendar is extremely ambitious. However, we firmly believe that it is essential to get things moving. The findings from our study were presented to the Member States at the start of the year, which has enabled them to get a handle on this work. In any case, we will ensure that the consultation process is carried out properly since we are naturally highly attentive to the opinions of Member States.

Michael Frühmann

Furthermore, I fully share the analysis of the legal framework proposed by Ugo Bassi: it is essential to keep in mind that the European texts date from the 70s, at a time when economic and social objectives were defined within an entirely different context to that faced today. Community leanings were already looking at how purchases were made. For the first time, we seem to be being told "what" to buy and this change seems worrying to say the least.

Ugo Bassi

The Directorate General for Internal Market and Services is responsible for the directives setting the rules that economic players must respect in their procurement policy. It is true that these rules are tending to evolve towards a prescription of what economic operators must buy. However, this matter is not the responsibility of the European Commission: this is only responding to a perfectly explicit political demand. In this area, the objectives have been set by the European Council and our political leaders. On a technical level, the European Commission has translated political position takings.

Michael Frühmann

Mrs. Bird mentioned the need for technical adjustments with a view to taking social clauses into consideration in public procurement. What do you understand by this?

Suzanne Bird

On this point, I am simply quoting the opinions of experts who have recognized, based on a consensus, the need for technical adjustments. I believe that it seems too early to give examples, since the debate is due to open shortly concerning their nature. In this way, I do not want to prejudge them. However, one thing is sure: we will need to remain coherent with the European directives governing economic activities within the Union.

François de Witt

The public contracts code sets out the objectives in terms of sustainable development: economic efficiency, respect for the environment and factoring in the social dimension. Do these three requirements represent a major constraint in terms of public procurement policy?

Jean-Baptiste de Foucauld

In the public procurement code, social clauses are not an obligation, but a possibility that must be looked at from the sustainable development angle. In this area, we have chosen to focus on people who are far removed from employment, since by tackling the issue from this angle, it allows us to

look at other concerns such as qualification gaps, any discrimination based on geographical origins or gender equality.

I believe that it would be useful to take a more detailed look at the study's findings.

Suzanne Bird

We have not published all of the study's findings, since some of them will be used for drawing up the guide which the Commission will be publishing shortly.

How does public procurement law allow an active integration policy to be implemented?

Roundtable

The participants in the roundtable were as follows:

Ugo Bassi, European Commission – Directorate General for Internal Market and Services;

Suzanne Bird, European Commission – Directorate General for Employment, Social Affairs and Equal Opportunities;

Anne Van Lancker, European Member of Parliament – Member of the Committee on Employment and Social Affairs;

Jean-Michel Bloch-Laine, European Economic and Social Committee – Member of the Employment, Social Affairs, Citizenship section;

Michael Frühmann, Federal Chancellery's Constitutional Service – Austria.

Anne Van Lancker

I worked on drawing up the directive governing public procurement, but I must admit that I was a little disappointed to see that further the negotiations that led to its creation, its content made it possible to take more in-depth action on environmental aspects more than on a social level. Social considerations may be retained when defining the call for tenders, while contracts may also be restricted to sheltered workshops. However, this does not guarantee the integration or social development of people: although it represents a major step forward, such contracts may also offer authorities an easy way of easing their conscience. I have been particularly disappointed when it comes to the criteria for awarding contracts, which are still too vague in terms of social requirements. Such criteria should notably have made it possible to better ensure the genuineness of businesses in their definition of social clauses.

Ugo Bassi

My point of view is slightly different from the one that has just been presented. Indeed, even if the list of criteria for allocation incorporate environmental criteria and not social considerations, the non-exhaustive nature of this list means that it is possible to add social clauses, which should therefore be taken into account in the same way as environmental concerns. The political pressure might have been stronger for factoring in environmental criteria. However, there are not any legal differences in terms of the conditions for taking both these types of concerns into consideration.

Michael Frühmann

For my part, I believe it is fortunate that the parliament decided to focus on the criteria for the award of contracts and not on the way of including social or environmental concerns. I can also see that States have kept significant room for manoeuvre in terms of how they apply the directives. And yet, the debate is only focusing, for the time being, on the content of these directives, which simply set out the main directions.

Anne Van Lancker

It is important to note that environmental aspects and social aspects have the same value within the directive that we are talking about. A wide ranging debate has taken place in Belgium purely to check that social aspects could be taken into account under the directive.

Ugo Bassi

There have not been any proceedings undertaken for breaches on this subject, whereas many States, since 2001, have explicitly mentioned social criteria, alongside environmental criteria, in the possible criteria for awarding public contracts. This shows that the Commission has not challenged the affirmation of social aspects under the directive.

Anne Van Lancker

Nonetheless, the fact remains that public authorities in Member States are reluctant to include social concerns, insofar as these are not even mentioned in the directive's text. From now on, we must focus our attention on the application of the directives and not their content. I am glad to see that the Commission will shortly be publishing a guide on this subject, even if its arrival is a little late. We could also suggest that the Commission should draw its inspiration from the many remarkable guides that already exist, such as the guide drawn up by the Association of Districts in Flanders. A very large number of tools exist and the best practices mentioned by Mrs. Bird seem to be relatively thin on the ground compared with the wealth of this material.

Jean-Michel Bloch-Laine

I was tasked by the European Economic and Social Council to draw up a report on the principle of experimentation, as a tool for developing public integration policies in Europe.

More specifically, I have been able to analyse, in connection with this work, the “Equal” approach carried out by the European Commission, which I found remarkable. It has involved an investment of 3 billion euros and benefited nearly 200,000 underprivileged people, involved in various capacities in the tests proposed. However, there is still uncertainty, among the majority of players, over the next steps taken following the successful tests.

The players also suffer, virtually always, from a feeling of isolation, even when their experience is considered to have been a success. They are always afraid that this experience might be precarious and unable to be reproduced, since it has not been validated.

It would therefore be interesting to build a living and constantly maintained network of experiences (having failed or succeeded) within the Union. This pooling could make it possible to identify the invariants for success or failure. The European Union has a fundamental role to play here.

Dominique Redman, Nord Region in France

I am surprised to have heard so little talk about the field. Since 2004, in the Nord Region of France, we have been using social clauses in public procurement. Through our public contracts, we are generating close to 200,000 hours of integration per year and the difficulties we face do not concern the implementation of these mechanisms: instead, they concern the emergence of learning and “integration pathways” that make it possible for the people concerned to acquire a genuine qualification, which facilitates their employability.

Another difficulty that we have come across concerns the use of “restricted public contracts”: there is a congestion effect, as a representative from the SNCF has indicated. In addition, the sheltered workshops offer limited services, particularly in terms of their technical nature.

Lastly, as highlighted by Mrs. Van Lancker, it is true that it is extremely difficult to use article 53 specifying the criteria for awarding public contracts. To offset this difficulty, we plan to combine Article 14 and Article 53 of the public contracts code in order to make it possible to put in place a genuine social engineering, benefiting populations in difficulty.

Michael Frühmann

During an experiment carried out in Austria, we saw that the national authorities had only very partial knowledge of the possibilities offered by sheltered workshops. We have therefore drawn up an inventory of the services offered by them, which should enable a more extensive use of their services.

Rémi Risser, French ministry for ecology

There must be a limit to the implementation of social clauses and I believe, just like Mr. Bassi, that this limit must be the link with the purpose of the contract. This may be a product, a service, etc. In any case, these elements are not disembodied: a product or service is developed under certain conditions, on a social level and on an environmental level. As a result, there is not any incompatibility between the existence of a rule linked to the purpose of the contract and the examination of the conditions under which this purpose has been produced. If we refuse to examine the social conditions for production, we will naturally give preference to businesses offering the best price, even if, in an extreme scenario, this means encouraging slavery.

Michael Frühmann

I fully agree with you on a political level. Having said that, how will a small local authority from Hungary for instance be able to check that a computer has been produced in accordance with all of the conditions provided for under the ILO? For me, this does not seem possible on a practical level.

Suzanne Bird

It may be difficult to prove compliance with certain international standards. However, we could imagine ensuring that the businesses taking part in public contracts have to act in line with international standards.

François de Witt

Could active integration approaches be envisaged in countries that have recently joined the European Union, within which the standard of living is significantly lower than within the Europe of Fifteen?

Suzanne Bird

We want to ensure that labour laws are respected in all of the Member States. We must also safeguard worker mobility, which may have impacts on the job market.

Ugo Bassi

There are other stages in the public procurement procedure when social clauses can be taken into consideration, notably when defining the criteria for selecting the adjudicating authorities.

Rolf Gunterbass, European Trade Union Confederation

I am delighted to hear Mr. Bassi declare that social aspects can be taken into account in public procurement procedures. However, we must specify what is to be given priority: is the internal

market an end in itself or an instrument serving the various Treaties – which notably set out the social and environmental objectives? The latest European Treaty even talks about the “social market economy”, an expression that puts these two types of concerns on the same level.

Michael Frühmann

There is another source of misunderstanding: the political powers generally see the legal and legislative texts as a source of further obligations. They do not always ask themselves what this legal framework can allow them to do, quite simply.

If we accept that the legal framework allows the adjudicating authorities to implement their strategy, this may constitute an additional freedom for pursuing social or environmental objectives. Let’s not forget that the texts may also be looked at from this angle.

Secretary General of the OSPD (association of service providers for disabled people)

In the guide that the Commission will be publishing shortly, would it be possible to include specific issues linked to the specific social features of service providers (for instance, the growing weighting of precarious contracts, which go against the necessary construction of a trust-based link between a carer and a disabled person)?

Suzanne Bird

The Employment Directorate General is gearing up to launch the “New skills for new jobs” initiative. Today, qualifications are changing at a sustained rate and this is linked to the quality of jobs. It represents a political leaning and we will ensure that it is taken into consideration in the guide.

Romain Tournereau, Public contracts division, City of Brest

There is obviously a major expectation from local authorities concerning the rules for applying the directive. More specifically, could you clarify the meaning of the concept for “linked to the contract purpose”?

Ugo Bassi

The explanation for this concept is one of the subjects in the guide that we are going to be publishing. Within this framework, we are going to focus on proposing concrete cases, some of which may already be consulted on the site for the Directorate General for Internal Market and Services.

Jean-Baptiste de Foucauld

I believe that we have made progress, collectively, since several points have been clarified. However, for me, one uncertainty remains: could you confirm that the existence of a link between the conditions for the contract's performance and the contract purpose is not necessary?

Ugo Bassi

The performance of the contract's social clauses must be in line with the contract purpose. At least, that is how the European Commission sees it.

Jean-Baptiste de Foucauld

Could you specify what you mean by in line with the contract purpose?

Ugo Bassi

My answer has obviously led to a certain misunderstanding. Here, we are touching on the limits of what may be asserted, when it comes to giving an opinion on the compatibility of a scenario with community law.

It transpires that the grounds for the directive do not explicitly refer to the link with the contract purpose. However, I maintain that the performance clauses must be linked to the services provided in relation to the contract purpose. The social clause set for the performance of the contract must concern the contract.

Social clauses in public procurement : implementation
Presentation of a French experience
Nantes metropolitan district

Etienne Fabry

Head of employment and social innovation, Nantes Métropole

In 2004, the Nantes Métropole community council (584,000 inhabitants) took the decision to reserve, within the framework of its infrastructure development programme, a significant portion of public contracts to people who are furthest from employment in the region. The local plan for integration and employment (PLIE) was appointed as the operator for this experiment. In 2005, the mechanism was put in place. Within the local plan for integration and employment, a principal contractor assistance mission was created for integration, with a view to checking the feasibility of putting integration clauses in place, drawing up an inventory of the players in the field likely to participate and monitoring the capitalisation on the experience.

In 2006, a first review was drawn up based on the experiment. The target set for 200,000 hours of integration was achieved. Even more importantly, the leverage effect that the clauses can have within a region was highlighted. These findings led to a consolidation of the mechanism's steering bodies. Lastly, the community council adopted its “agenda 21”.

In 2007, the findings from the tests were consolidated, on a quantitative level as well as in terms of the populations targeted – with a specific look at the inhabitants of the agglomeration's priority areas. The number of principal contractors was increased – notably for mixed enterprises, Réseau Ferré de France and the departmental council, for part of its contracts. At this stage, Articles 14 and 53 of the public contracts code also started to be combined.

In 2008, the team that carried out the experiment has been integrated within the authority's services. The dialogue initiated with professional federations has been continued. At the same time, the significant number of principal contractors has made it necessary for a coordination effort around a shared “toolbox”.

Our approach has been at the crossroads between four public policies:

- The urban renewal and development policy;
- The town policy, with the prospect of signing the ANRU charter, which itself covers social requirements, since the principal contractors that have registered must commit to setting aside 5% of the hours worked under contracts signed with the ANRU for people living in sensitive urban areas with professional integration difficulties, giving priority to an approach for each district – within Nantes Métropole, we are giving priority to a global approach for the city;
- The economic development policy, since we are aiming at businesses;
- The employment and integration policy.

The system includes a guidance committee, chaired by the elected representatives from Nantes Métropole. It groups together the elected representatives from the services concerned and the

technical services, as well as the employment networks (ANPE, Maison de l'emploi, etc.), the operators for integration through economic activity and the representatives from the various professional branches. This committee meets once a year. It enables us to validate a certain number of strategies and review the difficulties and observations which may notably be reported to us by the professional world. The technical steering committee aims to resolve difficulties with the implementation of the system and ensures communication between the various services concerned.

The principal contractor operational assistance unit is responsible for identifying, among principal contractors, contracts that may incorporate integration clauses. Once the contract has been awarded, it will help the business to perform the contract, calling on integration enterprises or the populations in difficulty covered by the contract.

Follow-up meetings are held each month. Businesses' compliance with their commitments is checked within these meetings. These also aim to ensure follow-up and evaluation with principal contractors, businesses and integration operators.

Looking beyond just the awarding of contracts, the system aims to stimulate and strengthen players for integration through economic activity in their support role. The aim is also to build integration pathways and develop solidarities based on the region's development, ensuring that the work benefits all of the inhabitants. Lastly, it seeks to harmonise practices for principal contractors, particularly on a legal level.

Florent Solier
Head of public procurement for the City of Nantes

In 2004, when the system was launched, we were unable to measure, as of the offer stage, the quality of the implementation of integration actions. Changes in the legal context have led us to work on assessing this performance.

In this way, we have decided to maintain the conditions for performance as they were defined, setting a qualitative objective: providing beneficiaries with genuine professional experience. From then on, the business was asked to devise a method for performance in order to transmit its knowledge and know-how. On this basis, the quality of the method put forward by the businesses could be assessed.

We have retained four criteria:

- Volume (in relation to the level set by the contract), with a low weighting, so as not to result in a “race for volumes”;
- Operational coaching, with coaches to be identified and trained;
- Selection of the tasks entrusted to beneficiaries, which must be carried out in order to make it possible to transmit a genuine professional experience;

- Social support (housing, healthcare, etc.), to be examined in line with the integration operators.

When it comes to taking stock, we have not seen any increase in the failure rate, or any additional costs that might have been linked to the integration clause. We are starting to identify and distribute best practices, such as the setting up of training for coaching and the strengthening of the ties between businesses and integration operators, particularly when it comes to social support for beneficiaries.

At December 31, 2007, 200 operations were concerned by the system, for a total of 382,000 hours of integration (representing 218 jobs in FTEs). In this way, 515 people benefited from an employment contract, including 222 during the course of 2007. 154 businesses have been involved in this approach. Lastly, 209 people have had access to employment or a professionalization system.

Jean le Garrec, President of Alliance Villes Emploi

This system is remarkable. You talked about operational coaches, who are identified and trained. The principle is excellent, but what structure is this coaching housed within and who is this training implemented by?

Etienne Fabry

This coaching is not generalised, since this is the responsibility of the professional federations, such as the Fédération des Travaux publics, which are taking part in the approach.

Luca Facta, Federsolidarietà Confcooperative (Italy)

We are faced with a similar situation in Italy. There are various social operators in Piedmont, some operating within businesses and others outside of them. The Piedmont Region is subsidising the system, but the lack of any structured training mechanism is penalising the effectiveness of this approach.

Dominique Dewilder, Fédération nationale des travaux publics

I would like to moderate the optimism of the presentation. On several occasions, we have informed the approach's promoters that, in our eyes, the legal method proposed was not compliant with the public contracts code and that the combination of Article 14 and Article 53 represented an unfounded way of dodging the issue. Indeed, Article 53 sets out that the integration clause must be linked to the purpose of the contract, which is not the case for a construction contract.

More generally, if you ask businesses, relative to a contract, to employ x people looking for jobs, what happens to the Company's personnel during this time? Such a principle boils down to creating discrimination, or even a distortion of competition. Moreover, public works projects require very strict safety conditions, which make it essential to use trained personnel. These cases highlight the

need for a concerted review, far upstream, so that the social clause does not represent an obstacle hindering access to public contracts.

Florent Solier

We presented our work to the economic observatory for public procurement (OEAP) and our operation's legal setup has been incorporated into the guide produced by the Ministry for the Economy, Industry and Employment, which seems to vouch for its compliance with the principles of the public contracts code.

Etienne Fabry

I would like to add that the businesses taking part in our approach have not, so far, reported any blocking elements to us. There is absolutely no question of replacing employees who are already in position with populations in difficulty. On the contrary, we want businesses to consolidate their integration approach. That is the aim with the integration follow-up approach, going well beyond simply “controlling” the compliance of businesses with their commitments.

Ingrid Bigot, CAPEB (confederation of small construction businesses and tradesmen)

Do you know what percentage of businesses have less than 20 people, among the 154 businesses involved in your approach?

Etienne Fabry

We know the breakdown of businesses for each sector, but I am not in a position to give you this segmentation, depending on the size of the businesses.

Presentation of a foreign experience

Turin – Italy

Luca Facta

Federsolidarietà Confcooperative

Federsolidarietà Confcooperative is a federation of social cooperatives. The effectiveness of policies for integration through work hinges on an effective distribution of responsibilities between the State or the municipality and the businesses. However, "traditional" businesses are not encouraged to make any commitment to such approaches. The only obligation in terms of

assistance for populations in difficulty concerns access to employment for disabled people. In addition, businesses often prefer to pay a financial penalty rather than actively commit to approaches facilitating access to employment for populations in difficulty.

In Italy, the law of 1991 makes social cooperatives privileged places for the integration of populations in difficulty. There are two examples of regulations – developed by the municipality of Turin on the one hand, and the Province of Turin on the other – which extend the national law in an original way. In both cases, financial assistance is planned for, in proportion to the number of hours of integration awarded to populations in difficulty. The objective is to have at least 15% of hours covered by integration clauses. The populations concerned are very broad: they notably include the long-term unemployed, disabled people and former prisoners.

In addition, the system provides for tax breaks for the businesses (which may only be social cooperatives) involved in this approach. Each year, the State checks to ensure that the businesses are compliant with their commitments linked to their status as cooperatives.

A next step with the development of these systems will no doubt be to extend the tax breaks linked to it to cover all businesses, in order to address a wider scope than that for cooperatives, which is inevitably limited.

From the floor

The mechanism for the ANRU (national urban renewal agency) was mentioned just now. I would like to remind you that this Agency has been created by the public authorities and provided with several billion euros for funding urban renewal operations. The ANRU has put in place a national integration charter, which can be rolled out by each authority that has signed an agreement with it. This charter provides for 5% of the hours worked, under each agreement, to be reserved for social clauses. This represents several hundred thousand hours of integration, which local players must capitalise on in order to put integration operations in place.

In Seine-Saint-Denis, for instance, an agreement has been signed between the ANRU, the departmental council and several municipalities for coordinating, across the entire department, the representatives who, within a local plan for integration and employment, are going to be implementing these social clauses. The aim is to build genuine integration pathways.

Etienne Fabry

Indeed, this coordination represents a condition for the effectiveness of the approach. However, we are coming up against the reality: only 20% of integration clauses concern priority districts, while 30% of the beneficiaries are from these districts.

Gérard Brunaud, Mission Interministérielle France Achats

The building and public works sector has played a pioneering role. Nevertheless, the social clauses may be applied in all types of sectors, and more specifically on services. “Table de Cana”, which

made the buffet served during the lunch break for this symposium, is one such example. It is also important to remember that social clauses may be applied in connection with “small” contracts, especially when there is a local partnership in place for organising integration pathways. Such local partnerships then appear to be very useful in the development of social clauses application.

Jean le Garrec

The accounts given highlight the importance of defining a regional strategy around employment. We can also see that the figures are high. At national level, the system covers some 26,000 people who are in this way finding access to employment – in other words a fixed-term contract for longer than six months or a permanent contract. Here, we therefore have an extremely interesting lever.

Concrete aspects of the implementation of social clauses in public procurement

Roundtable

The participants in the roundtable were as follows:

Claude Alphan  ry, President of the Conseil National de l’Insertion par l’Activit     conomique;

Jean-Marie Lambert, Head of Human Resources, V  olia Eau;

Pierre Pelouzet, Head of Procurement, SNCF;

Salvatore Vetro, Director and Treasurer, European Network of Social Integration Enterprises (ENSIE).

Fran  ois de Witt

Mr. Alphan  ry, the unprecedented financial crisis that we have just come through heralds, according to most observers, what could be a long recession. Could you reposition the subject that has brought us together within a longer-term perspective, in line with this environment that is sluggish to say the least?

Claude Alphan  ry

This symposium does not seem far removed from this crisis. Looking beyond the essential re-establishment of banks’ solvency, various measures appear necessary at European level (R&D, industrial policy, etc.); but also at national level, where whole sections of the economy will need to be revived. This impetus to be given is both quantitative and qualitative – the public authorities

must give priority to approaches working towards effectively managed and sustainable development, and more specifically those covering the professional and social integration of populations that are furthest from employment.

The French public procurement code includes various provisions that are intended to facilitate socially responsible procurement. However, as we have been reminded, the use of such mechanisms remains rare, notably in light of concerns fuelled by businesses over the quality, turnaround times, and so on. There is clearly a lack of information on successful experiences, or as a minimum the experiences that have been carried out, in terms of mobilising social clauses. Behind it, I can see a lack of conviction, even a relative scepticism among elected representatives over the power of this lever. This has led us to recommend providing further information for principal contractors and any beneficiaries, as well as calling for facilitators to be put in place, with a view to ensuring a good fit between supply and demand in connection with the regulation for social clauses.

Several conditions appear to be necessary in order to genuinely benefit from the development of social clauses in public contracts:

- **Better knowledge of the integration offering and socioeconomic projects of some 5,000 dedicated structures for integration through economic activity**

A “traditional” business looking to apply social clauses must first of all know who to get in touch with. The public principal contractor must also know the capabilities and references of the integration operator, in order to define the purpose of the order as effectively as possible. It is vital to avoid issuing calls for tenders that are unsuccessful since they are ill-suited to the reality in the field. This better knowledge of the economic offering for structures promoting integration through economic activity is the purpose of the association for developing economic initiative (Association pour la Valorisation de l’Initiative Socio-économique, AVISE).

- **Better linking of the different players' logics: State, regional authorities, professional branches, integration operators**

Interfaces must be put in place between worlds that continue to be unaware of one another too often. This represents one of the functions of the local plans for integration and employment and the Alliance Villes Emploi, which aim to support mutual understanding and dialogue between all the partners.

- **Structuring efforts, or even a consolidation of structures promoting integration through economic activity**

This consolidation seems virtually indispensable for accessing increasingly large contracts.

These information, linking and structuring efforts could well be included in the plan to modernise integration through economic activity and in the roadmap resulting from the integration roundtable’s work, mentioned this morning by Martin Hirsch.

By defining objectives, adequate resources and target results for each structure, these agreements linking public employment services to structures for integration through economic activity give the latter their legibility and legitimacy. They must be based on a referenced offering, on budgeted resources for implementing them and on indicators for measuring their results. These resources

must not be limited to assistance from the State, in the form of subsidies or tax exemptions: many other resources may be looked into, starting with public procurement.

At regional level, regional councils for integration through economic activity must develop a strategic offering. Furthermore, the regional agreements, provided for under the law, will need to accompany the regional integration plans and have training and information resources. They should also aim to achieve a quantitative and qualitative increase in public orders placed with social clauses within the next four or five years.

Besides, increasing employment does not represent an end in itself: questions must be asked about the quality of the jobs created, depending on the sectors and professions. In any case, this approach aims, by recreating dialogue between the employees, businesses and regions, to “rebuild” the economic in social.

Pierre Pelouzet

The SNCF is a public corporation and is not subject to the public procurement code, but Directive 2004/17, whose application, in France, is relatively similar to the public contracts code – other than it offers even less flexibility than the code for the implementation of social clauses. This framework makes the implementation of social clauses more complex. This system of social clauses is contributing to the company's positive image and developing the sense of belonging among staff to a business that is committed to this approach.

Buyers find it difficult to plan for the implementation of performance conditions and to incorporate these conditions into the criteria for allocation. Today, if buyers want to include a social clause in a contract, they can notably do so with a call for tenders, providing for a quota of integration hours that businesses will need to specifically comply with. If I can put a criterion in place for awarding the contract linked to the conditions for the contract's performance, I will weight the operators' bids accordingly and I will in this way be able to select, for instance, an economic operator that is able to offer an integration hours quota that is twice as high.

Jean-Baptiste de Foucauld

Have you considered the variants method? The Ministry for the Economy, Employment and Industry's Legal Affairs Division has informed us that it was possible to include variants in calls for tenders specifying for instance that alternative solutions, in terms of social performances, may be proposed by the bidding businesses. This makes it possible to introduce flexibility into the mechanisms.

Pierre Pelouzet

Variants relating to the social performance might be considered as not having any link with the purpose of the contract, which takes us back to this morning's discussion. However, I would like to be able to work on this point and look into its legal feasibility.

Having said that, we are looking to work directly with integration enterprises, from the sheltered sector or under restricted contracts. However, I lament the fact that contracts cannot be reserved for integration enterprises, which often struggle to access the contracts that we are likely to offer.

François de Witt

Mr. de Foucauld, could there be a way of expanding the possibilities offered by the public procurement code?

Jean-Baptiste de Foucauld

This matter is set to be discussed at European level.

Jean-Marie Lambert

There is an old practice for integration in service businesses. We must remember that a business can only embark on such an approach if the needs actually exist. We have been able to play a role, in the water and building businesses, since these businesses draw on different employment pools than traditional employment pools: these represent professions with a local focus, which are sometimes very difficult, which are carried out at night, and so on. In this respect, they justify the implementation of a specific policy for employment and integration. We have had to start off by structuring a training policy, in order to keep the staff that we were contributing to integrating.

When we carry out major recruitment campaigns, such as Veolia Compétences, we offer a qualifying training programme and a permanent contract following the training. In certain employment pools, we struggle to find candidates. This means that we must also ask ourselves questions about the appeal of our businesses and the compensation for our staff – even if a business must also meet profitability objectives.

Social clauses have already shown their educational qualities. In this way, the world of human resources is much more involved in the operational realities of the various businesses, for which it was previously a more passive supplier.

Furthermore, the integration objective must be based at all times on guarantees for its long-term viability, without which there is a risk of simply making do with “quick wins”. That is why I am calling for better traceability on the policies implemented by businesses when it comes to integration.

Lastly, we are increasingly being called upon, at international level, in relation to our social policy: as of the stage for preparing files, we are asked to provide references concerning our policy for training, hiring, qualifications, compensation and employment. This change, seen across a very wide range of countries, reflects a trend that businesses can no longer ignore.

Salvatore Vetro

Last Friday, I was in Italy and I heard the speech by the Minister of the Economy. He declared that the banking industry was contributing to the general interest, and in this respect, the banking sector needed to be supported. I said to myself: “if the banks contribute to the general interest, what about integration through economic activity?”

On all of my travels in Europe, as a director of the integration enterprise network ENSIE, I have seen a very high level of diversity in terms of the solutions put forward. Some have maintained that it was not possible to introduce social clauses that are not linked to the purpose of the contract. In reality, we can see that social clauses can be applied in the case of small size local contracts – which may lead to calls for the division of contracts into work packages.

At this point, I would like to highlight a best practice. The Walloon Region has set aside a budget in order to entrust a mission to a group of integration enterprise federations. This association is intended to support businesses and get them started, since integration enterprises are often held back by the complexity of public contracts.

Pierre Pelouzet

There are two types of obstacles: the complexity of the files that sometimes call for support to be put in place and the size of the contracts, which raises the question of the critical mass of integration structures.

Salvatore Vetro

The aim is to be extremely imaginative with the implementation of social clauses.

From the floor

I am speaking on behalf of the DGCCRF (Directorate General for Competition, Consumer Affairs and Fraud Prevention). I would like to specify that in France, it is through business associations that SME and cottage industries are able to access certain contracts whose size would mean that they were unable to bid on their own.

François de Witt

Running an integration enterprise means accepting – and even wanting – to see your staff leave the business, once they have been integrated. This certainly calls for a major personal conviction, which may not be compatible with the logic for large structures. In the end, is there not a need for larger integration structures in order to better meet the expectations of large principal contractors and businesses?

Jean-Marie Lambert

For me, this does not seem desirable. Integration enterprises must have a limited size, since they must be well familiar with the economic and social fabric in which they are operating. Having said that, the personal commitment of integration enterprise leaders is not incompatible with the existence of large structures.

Claude Alphan  ry

Indeed, they tend to be small structures that are well integrated at local level, with integration enterprises able to form a network in order to have a larger critical mass.

Jean le Garrec

I share Mr. Lambert’s conviction: integration enterprises must be highly integrated into the local economic fabric. This is a regional strategy issue.

Salvatore Vetro

Certain countries in Europe reserve an association status for integration enterprises, while others give them a commercial company status. Both possibilities exist.

For our part, we are calling for the creation of a European label that will make it possible to immediately identify integration enterprises, for which a certain number of common characteristics would be recognized. I believe that this is important in order to avoid employing people on low wages.

Pierre Pelouzet

It has been said that it was better for businesses with an integration offering to be of a limited size. In concrete terms, this requires all of our buyers to be trained up on the ins and outs of integration through economic activity, in order to implement social clauses through a myriad of small contracts, with very low levels.

Fran  ois de Witt

For you, would it be desirable to have “facilitators” between public principal contractors and integration enterprises?

Claude Alphantéry

Indeed, this role is very important. The facilitator represents a sort of gateway between the integration operators and public procurement. This is very difficult without support for small integration enterprises to be able to bid for contracts.

Jean le Garrec

This ties in with the coaching principle implemented in the case of the Nantes experience.

Pierre Pelouzet

This is indeed an essential function, in order to facilitate the identification of both supply and demand.

François de Witt

Is the internet site that was to be created at national level up and running?

Gérard Brunaud, Mission Interministérielle France Achats

This site, www.socialement-responsable.org, is up and running, in its first version, following the integration roundtable. It is populated by the 4,000 structures for integration through economic activity in France. Today, this dispersion represents a difficulty. Nevertheless, the priority given to professionalising integration players will meet the expectations of principal contractors, whether they are private or public. A “win-win” strategy is taking shape, through these service offerings.

Salvatore Vetro

I would like to add that in Wallonia, a decree has just been passed at its first reading that will require public authorities to implement social clauses in their contracts. There are plans to create an intermediation body to accompany all of the players.

Closing the day

Jean-Pierre Jouyet
Secretary of State in charge of European affairs

Ladies, gentlemen, dear friends,

You know that the French Ministry for the Economy, Industry and Employment is strongly committed to social clauses in public contracts. All those who have contributed to this work, starting off with Jean-Baptiste de Foucauld, are to be praised, the day after a European day devoted to the fight against poverty.

I know that you have spent a long time discussing the various European practices in terms of social clauses and the legal possibilities available to economic players (performance clauses, criteria for allocation, etc.). Today, the issue of social clauses is being taken up at European level, and I believe it is important to take stock of European perspectives for social clauses to be effectively applied for public procurement in France.

While European practices may differ, as shown by the day's work, I see this diversity as rich in lessons to be learned and worth being looked into.

The private sector has every interest in showing itself to be actively in favour of including social clauses: these are against neither competitiveness nor the rules in force in terms of employment. They may even favourably replace more restrictive systems, offering a means for diversifying sources of recruitment. Indeed, it is essential to safeguard the legal security of contracts and ensure that quality and costs are maintained, but these obstacles can be lifted, in order to contribute to the emergence of a socially responsible public procurement policy.

France has made progress with the growing awareness of the need for a development that is socially responsible. It is maintaining its commitment to using public procurement as a lever for access to employment for people who are far removed from it. By 2012, we want 10% of public contracts to enable access to employment for people who are far removed from it (long-term jobless, young people without any qualifications, disabled people and people entitled to low-income benefits). This approach seems to be suited to the French context; in different contexts, other approaches may seem more appropriate, as shown by certain interesting practices developed in Italy and the United Kingdom. It is therefore more than ever necessary for there to be cooperation between Member States, in addition to an exchange of best practices, which the European Commission is already encouraging. In any case, it seems possible to include various social concerns into public procurement best practices, such as the fundamental recommendations of the International Labour Organisation (ILO), respect for diversity, gender equality and the fight against discrimination.

It is important to measure the diversity of the experiences made possible by common directives. It is essential to promote these experiences and pursue an approach for innovation in this field. Public buyers have a major responsibility, even if it is not always easy to take on, in light of the nature of the purchases made, which are sometimes not particularly favourable for the application of social

clauses. In any case, there must not be any a priori assumptions in these areas and we must fully capitalise on the experiences already carried out.

By making the best practices our own, as Martin Hirsch has done in terms of active integration, we can help pave the way for the emergence of a European concern and the existence of a set of tools.

Lastly, citizens must also be convinced of the utility of this new approach. At the outset, this represented a gamble that was some way off being won. It has proven its effectiveness and, as elsewhere, it is vital to identify relevant regulations in order to move beyond the stage of exchanging best practices.

Public procurement serving employment is not merely a noble idea: it must act as an economic and social lever, included in sustainable development policies. In this respect, we must update the Lisbon strategy, although it already includes references to this type of approach. There must be a growing social responsibility for contracts, through the application of European directives. The Directorate General for Employment's work will be enhanced through the exchanges that have taken place today, and I would like to thank you for this.