

Stakeholder Launch of the 2nd UNFSS Flagship Report

“Voluntary Sustainability Standards and the Role of the Government Perspectives from Emerging Market Economies and Europe”

Panel Discussion:

Strengthening the contribution of sustainability standards to the implementation of SDGs

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Input by Dr. Lale Akgün, director newtrade nrw

North Rhine-Westphalia is the most populous state of Germany, with a population of approximately 18 million, and the fourth largest by area. Four of Germany's ten biggest cities – Cologne, Düsseldorf, Dortmund, and Essen – are located within the state, as well as the biggest metropolitan area on the European continent, Rhine-Ruhr. Its economy is heavily based on industry, with the highest amount exports among the German states. However, since 2010 the State Government, headed by state premier Hannelore Kraft of the Social Democratic Party who is supported by members of the Social Democratic Party and the Green Party as heads of the various ministries, is deeply committed to the idea of sustainability and has adopted various laws to promote the topic.

Public procurement is decentralized in Germany as many of you already know. While the procurement of the federal government surely is of high interest, the bulk of procurement decisions and tenders are made on the local level. In the state of North Rhine-Westphalia public authorities consumes goods and services for more than 50 Billion Euro per year, its 396 municipalities are responsible for around 80% of this sum.

The enormous market power that lies in public procurement comes along with a high responsibility for the economic actions and decisions taken and made by public authorities, while representing also a lever to positively influence the supply side. The government of North Rhine-Westphalia takes its responsibility seriously and started to adjust procurement laws since 2012 and now again in the beginning of 2017 in order to, first, give municipalities and other public procurers the option to integrate social and economic criteria into their tenders and,

second, to implement basic requirements for procurement decisions. The decentralized structure of procurement and the principle of subsidiarity in Germany leave a lot of decision making power within the smallest units of government, while German states still have the power to constitute requirements on public procurement.

In public procurement, as it is implemented right now, voluntary sustainability standards (VSS) are playing an important role already, as they are often used to guarantee the fulfillment of standards set by law. They represent one way to proof that standards required by state law or by the procuring authority itself are fulfilled.

The UNFSS report is referencing towards public procurement as one of the ways governments can strengthen VSS and creating incentives for the use of such standards. From the experience of our work with procurers on the practical issues of sustainable procurement and from our work on the amendment of the Collective Agreement and Public Procurement Act of North Rhine-Westphalia (TVgG-NRW) we can clearly see that voluntary sustainability standards are in the center of attention.

Recent amendments of German law as a result of changes on the EU-level, make it now clearly possible to integrate social, ecological and innovative criteria into public procurement. The changes made it also easier for public procurers to refer to VSS in their tenders. It is now possible to directly refer to a certain standard and no longer necessary to specify the criteria used in that standard. Still, in the sake of competition law, other ways of proof of the required criteria apart from the named certification of the specific standard have to be accepted, but it is a huge step towards, making it easier for procurement officers to use a VSS as baseline for their procurement. In addition the state law in North Rhine-Westphalia makes it clear that public procurement offices have the freedom to set such high standards as can be found in many voluntary sustainability standards. If procurers are looking for social criteria to add to their tenders, voluntary standards are often in the first line in order to get orientation. In the current Collective Agreement and Public Procurement Act, the Fair Trade standard is directly mentioned and it is made clear that tenders can include criteria matching this voluntary standard.

But this concerns the relation between voluntary standards and voluntary decisions by procurers. Voluntary social standards also play an important role when procurement law requires certain criteria from bidders to take part in public tenders. North Rhine-Westphalia went, as one of few, ahead in making the compliance to the criteria of the ILO Core Convention by bidders and their suppliers mandatory for bidding on public tenders. Through the Collective Agreement and Public Procurement Act of 2012 products from countries on the DAC list by the OECD that fall under one of eleven product groups, as information and communication technology, textiles, or agricultural products have to be produced under conditions in accordance with the conditions mentioned in the ILO Core Convention. By making certain social criteria, as the ILO Core Convention, mandatory for the bidders and their providers, a need for proof arises. How can procurers be sure that companies fulfill the mandatory commitment to implement the ILO norms along their supply chain, especially as those often lack knowledge about their supply chains themselves?

Exceeding the requirements of some state laws, as many VSS include, but also go beyond, the norms of the ILO Core Convention, such standards and their certification are a good way to know that the criteria by bidding on tenders are met. The control systems in place within many voluntary standards provide one of the best assertions of that, at this point in time. Other options, apart from standard based certificates, include self-declarations by companies, stating compliance with legal requirements, which bear the risk to distort competition. Companies can simply pretend to see to the implementation of ILO norms in their supply chains, especially when there is no control mechanism at work, as it is the case right now.

The amendment of the Collective Agreement and Public Procurement Act of North Rhine-Westphalia, that should become effective around January 2017, is taking these problems into account, and should rely even more on proof by third parties regarding the fulfillment of mandatory social criteria. Therefore, voluntary social standards may become even more important for public procurement as until now. The general jurisdiction of the act over all public procurement offices as well as the development of similar laws by other states will probably lead to a higher demand for standards and their certification.

At the same time the critique directed towards VSS is and will become even more pressing in the area of public procurement. Already there are complaints by procurers about the multitude and variety of the many different standards already in place. It means a lot of effort to understand, distinguish and choose between the different voluntary standards in order to integrate them into a certain tender or even to use them as guideline. Even more problematic becomes the process of checking if a specific standard or a certificate of this standard presented by a bidder complies with the legal requirements and is trustworthy. An internet database founded by the federal government, the Sustainability Compass (Kompass Nachhaltigkeit), may help with orientation but the variety of standards requires procurers to look into the various standards presented to them by companies. More efforts from all sides have to be made to help procurers with this.

Quality and trustworthiness of voluntary standards, especially as they are starting to proliferate and as an increasing number of organizations and standards are entering the market for standards, have to be held up and controlled.

The amendment opens legal opportunities to contract controls of the value chain itself, but up to now no mechanism that is easy to replicate and within a bearable cost-framework is accessible for public procurers. One of the projects of newtrade nrw is about testing the options of controlling supply chains and fulfillment of the ILO norms, as criteria that have to be fulfilled by the bidders or their suppliers in the production of goods, in public tenders. This would lead to a fair competition where companies have to act on the same baseline. Up to today, companies can simply claim to meet the criteria demanded. The main aim of these controls would be to level the playing field and discourage companies to use phony claims to bid on public tenders, but also bidders who use a voluntary standard to proof their compliance could face such controls.

Opportunities to demand standards that are going beyond the legal requirements of the state law are rarely used by procurers. A rising number of pilot projects using higher standards, and often referring to existing private standards, shows that the issue gains traction, but as the use of a term “pilot projects” suggests, we are far from everyday usage of the possibilities at hand.

Our aim has to be, to foster a competition for sustainability, between companies but also between public procurers to reach a turning point in the general consumption of goods, were the demand-side as well as the supply-side both attach value to social standards in production chains. Voluntary social standards, which are used as benchmarks within tenders, are often going far beyond of what is required by law and therefore setting an example for other tenders. Public procurement in North Rhine-Westphalia and other German states and also across municipalities that are taking their responsibilities serious is therefore already increasing the impact of voluntary sustainability standards.

The task of state governments is to help public procurers fulfilling the legal requirements in their everyday work and even more to foster the use of higher sustainability criteria in everyday procurement.

The task of providers of voluntary sustainability standards would be to keep their standards trustworthy and accessible by, among other ways, strengthening transparency while keeping costs low.

Both are no simple tasks, but as long as social standards along the value chain are often not as high or as good enforced as needed and governments in the Global North do not fully implement UN Guiding Principles on Business and Human Rights public procurement has to become more sustainable, both on the basis of legal requirements and the consumption decisions of public authorities. This is also reflected by the Agenda 2030 and the Sustainable Development Goals which include public procurement as an important factor in reaching a more sustainable world. As one part of the sustainability strategy of North Rhine-Westphalia its Collective Agreement and Public Procurement Act is an important stepping stone to the SDG 12.7 “Public procurement should be sustainable”. In the end public procurement is a form of consumption as any other, but with the potential to be used as a lever to influence production as well as consumption practices. Voluntary standards do play an essential role in this, as they can contribute to SDG 12, concerning sustainable consumption and production and they might become of even more importance as procurers are looking for orientation for responsible decisions on ethical procurement, which in turn increases the demand for transparent, reliable and trustworthy voluntary standards.