

# Socially Responsible Public Procurement. Tools for Facilitation of Social Enterprises' Access to the Romanian Public Procurement Market

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## Summary:

*Public procurement is used, as it must play a major role in the social economy, enabling activation of social economy organizations in an environment characterized by competitiveness and economic efficiency. Debates about the socially responsible public procurement debates have intensified in the context of adopting the new legislative package on European public procurement. Our research demonstrated the need for implementation of measures for the increase in social responsibility of the public procurement in Romania.*

**Key words:** European legislation, public procurement, social economy, social responsibility.

**JEL Classification:** I3, H5, K4.

## 1. Introduction

The use of public procurement as a lever for the achievement of social policy objectives is not a new practice, but it has become more widespread lately. The legislative package on European public

procurement adopted in 2014 stimulates the social role of public procurement. Social inclusion, environmental objectives, innovation, are a few key aspects Romania, like all the other member countries, should integrate into its public procurement system. The consideration of social, ethical and environmental objects in the process of awarding public contracts will contribute to obtaining the optimal quality/price ratio and to the increase in the efficiency of using public funds.

This study aims at answering a few research questions, such as: Is there sufficient information among the representatives of organizations in the social economy and of contracting authorities in Romania in relation to the approaches made at the European level to encourage the participation of the organizations in the social economy at public procurement procedures? Would the current level of development of the organizations in the social economy in Romania allow for an active and sustainable participation of such organizations on the Romanian public procurement market? Which is the position of the representatives of the contracting authorities towards socially responsible public procurement?

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Based on the processing of the information collected by the online application of two questionnaires, addressed to the representatives of the contracting authorities and to the representatives of social economy organizations, a set of tools was established by means of which the access of social enterprises to the Romanian procurement market can be facilitated. The results of the research led to additional arguments to support the concept according to which the facilitation of the participation of social economy organizations to the public procurement market is a "positive discrimination", given the effects that will be obtained. These results can also be used by representatives of Romanian public authorities who will prepare development strategies for the socially responsible public procurement.

## 2. Conceptual framework

Public procurement refers to the process by which public authorities, such as government departments or local authorities, purchase work, goods or services from companies. A study prepared for the European Commission shows that "public procurement is a significant tool of the European Single Market as it represents 19% of the GDP of the European Union, spent by the public sector and utility service providers on public works, goods and services. Given its huge economic weight, public procurement is a powerful instrument to pursue broader policy objectives and foster growth in the EU. Traditionally, public procurement aims at ensuring that public funds are spent in an economically efficient way, and at guaranteeing the best value for money for the public buyer. However, in the last decade, public procurement has also acquired a strategic role. Governments are shifting away from considering procurement a purely administrative function, and are increasingly using public tenders as a means

for achieving policy goals, notably in the realms of innovation, sustainable and social development" (PricewaterhouseCoopers, 2015).

Using public procurement to achieve social objectives is a common practice in some countries. The broad overview of the history of social policies conducted by Christopher McCrudden (2004) allowed the identification of several cases where public procurement was used to facilitate the access of social economy organizations to public contracts.

The socially responsible public procurement means procurement operations that take into account one or more of the following social considerations: employment opportunities, decent work, compliance with social and labour rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all, taking account of sustainability criteria, including ethical trade issues and wider voluntary compliance with corporate social responsibility, while observing the principles enshrined in the Treaty for the European Union and the Procurement Directives (European Commission, 2010). The socially responsible public procurement may encourage the access of disadvantaged groups (people with a disability, young people, long-term unemployed, migrants etc) to the labour market; the promotion of employee rights (decent wage, access to vocational training, nondiscriminatory treatment etc.) and social protection and health care programs, etc. All of these elements could help deliver the social justice and equalities parts of sustainable development (Strategic Investment Board, 2015). Similar concepts are "sustainable public procurement" and "social public procurement". Walker and Brammer (2012) define sustainable procurement as the pursuit of sustainable development objectives through the purchasing and supply

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process, incorporating social, environmental and economic aspects. According to the United Nations Environment Programme (2012), the sustainable public procurement helps to achieve increasing availability of sustainable goods and services, strengthening the productive capacities and export capacities, employment creation, improving labor conditions, reducing energy and water consumption, reducing GHG emissions, increasing competitiveness of green industries, uptake of green technologies, more efficient use of natural resources, etc. Social public procurement implies the use of procurement to leverage extra social benefits and create 'social value' in local communities, beyond the simple purchasing of products and services required (Bonwick, 2014). The most comprehensive concept is "socially and environmentally responsible procurement". A comprehensive literature review in the field of socially and environmentally responsible procurement was developed by Hoejmoose and Adrien-Kirby (2012). They argue that the socially and environmentally responsible procurement literature is at a critical juncture in its development.

According to the European Commission, there are 4 basic approaches to how social aspects are integrated in public procurement:

- the inclusion of social criteria in the object of the public procurement contract and/or in the technical specifications of the goods/services that will be purchased;
- the exclusion (in compliance with the provisions of the law), from the public procurement procedures, of tenderers that do not meet a certain social conduct standard, proved by previous faulty behaviour;
- taking into account certain social aspects in the awarding criteria;
- observing certain social conditions after the award of the public procurement contract.

European Union public procurement market has been associated with the concept of "market failure" because contracting authorities (public sector bodies) cannot provide the necessary demand to stimulate the innovation (Aiken, 2006). Improving the institutional and legislative framework of public procurement can stimulate demand for innovative products and services, including social innovation (Bratt et al., 2013). The direct consequence of stimulating innovation would reduce the costs of products and services purchased with public money (Nakabayashi, 2013). Various authors (Schulten et al., 2012; Bovis, 2012; Hebly, 2008) have appreciated European regulations allowing Member States to reserve the right of sheltered workshops to participate in procedures for the award of public contracts or to reserve the execution of public contracts under sheltered employment programs, where most of the employees concerned are disabled persons.

Social enterprises have a major contribution to meeting socially responsible public procurement objectives. According to the European Commission's Social Business Initiative, a social enterprise is an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities. Introducing qualitative criteria relating to the social responsibility in the procurement process in the Directive 2014/24/EU is, among other things, a consequence of the growing importance of social enterprises for the EU Member States. According to Pîrvu and Tolea (2014),

emphasizing the role of public procurement in achieving social and environmental policy goals is realized through: (a) the introduction of a special procurement regime in the case of contracts whose object is represented by social and other specific services; (b) facilitating a better integration of the environmental considerations into the public procurement procedures; (c) supporting the implementation of the social inclusion policies; (d) stimulating innovation. The results of a study prove the need to create, at European level, information programmes for the representatives of the public contracting authorities concerning the role of social organizations in the community and the possibility to use tools to facilitate their access to the EU public procurement market (Pórvu and Clipici, 2015).

The directive 2014/24/EU contains a number of provisions that stimulate the socially responsible public procurement. So, member states may stipulate that the contracting authorities may reserve the right of certain organizations to participate in procedures for the award of public contracts intended solely for certain health, social and cultural services. These organizations must meet the following conditions: (a) to aim at pursuing a public service mission, related to the provision of health, social and cultural services; (b) profits should be reinvested in order to achieve the objective of the organization. If profits are distributed or redistributed, this should be based on considerations related to the participation; (c) the management or capital structure of the organization performing the contract should be based on the principle of the employees' participation in the capital or require the active participation of employees, users and stakeholders; (d) the organization has not been awarded a contract for the services concerned by the contracting authority under Directive 2014/24/EU in the last three years.

The member states adopt adequate measures, in order to make sure that, in the execution of public procurement contracts, economic operators observe the obligations applicable in the environment, social and labour field, imposed through the European Union laws, through the national laws, through collective agreements, or through international legal provisions, on environment, social field and labour. The member states can reserve the right to take part in public procurement procedures of sheltered workshops and social and professional organizations of persons with disabilities or disadvantaged, or can provide that such contracts be executed in the context of sheltered employment programmes, if at least 30 % of the workshop employees, economic operators or programmes in question are disabled or disfavoured workers. If contracting authorities intend to purchase works, products or services with certain environmental social or other characteristics, they can request, in the technical specifications, in the awarding criteria, or in the contract execution conditions, a specific label as proof that the respective works, products or services meet the requirements.

However Member States practices regarding social criteria in public procurement regulations are varied (Sarter et al., 2014, Zelenbabic, 2015, Sjøfjell and Wiesbrock- eds., 2016).

The concerns of the authorities that are competent in formulating public policies and strategies for the socially responsible public procurement have been very scarce. The 2015-2020 national strategy on public procurement (Romanian Government, 2015) mentions that, due to the lack of strategic vision, the function of preparing the public procurement policy is insufficiently outlined. The overall policy approach (e.g. the energy efficiency and the environmental objectives, social inclusion, etc.) is not evaluated or promoted. The socially responsible public

procurement in Romania is encouraged by the following rules:

- Law no. 448/2006 on the protection and promotion of the rights of people with disabilities provides for a number of measures meant to stimulate the purchase of goods and services from sheltered units. Thus, public authorities and institutions, legal entities, private or public, having at least 50 employees, out of which people with disabilities which comprise a percentage of less than 4% of the total number of employees, have the obligation to purchase goods or services resulting from the activity of persons with disabilities employed by authorised sheltered units, based on partnership, in the amount equivalent to 50% of the minimum national gross basic salary multiplied by the number of jobs on which they did not employ persons with disabilities (at least 4% of the total number of employees);
- Law No.98/2016 on public procurement transposed the provisions of Directive 2014/24/EU, stipulating that an award procedure can be reserved to sheltered workshops or to tenderers who undertake to execute the contract in the context of sheltered employment programmes, in which most employees involved are persons with disabilities, who, due to the nature or severity of their deficiencies, cannot exercise a professional activity under normal conditions.

The level of participation of social economy organizations in the Romanian public procurement market is very low. The main characteristics of public procurement made by social economy organizations are: (1) the low value of public procurement contracts; (2) the contracting authorities are mainly represented by public institutions; (3) the public procurement contracts generally aim the provision of services (Pîrvu, 2015a).

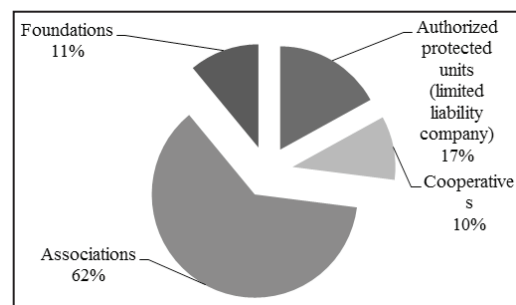
### 3. Methodology

In order to determine the tools by means of which the access of social enterprises to the Romanian public procurement market can be facilitated, 2 questionnaires were used, one dedicated to the representatives of contracting authorities, and the other to the representatives of social enterprises. The questionnaires were applied online (through the service provided by Google docs), and were sent via e-mail.

The database with the e-mails of the representatives of social enterprises (1780 entries) was formed by accessing the following websites: <http://www.database.ngo.ro/indexro.shtml>; [http://www.cddep.ro/informatii\\_publice/ong.chest\\_aprobate](http://www.cddep.ro/informatii_publice/ong.chest_aprobate) and <http://www.mmuncii.ro/j33/index.php/ro/2014-domenii/protectie-sociala/ppd>.

In the case of the questionnaire addressed to representatives of social economy organizations, an 8% response rate was recorded. Following the processing of the information collected, we noticed that social economy organizations functioning as associations account for the largest share in the sample (figura 1).

Fig.1. Structure of the sample by the form of social economy organizations

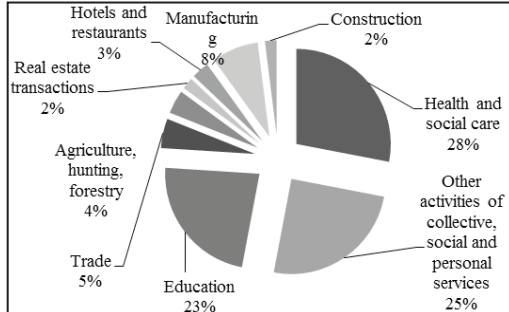


Source: Authors' calculation

More than half of the respondents declared that the object of activity of the represented organization is related to social and cultural activities: education, health and other collective, social and personal serviceactivities (figure 2).



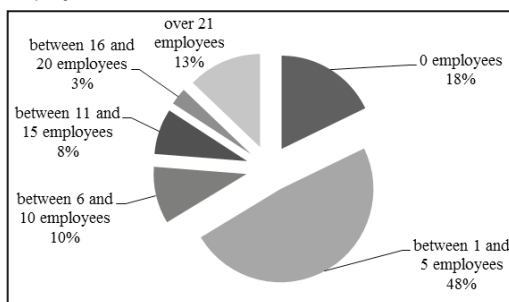
Fig. 2. Structure of the sample by the main activity of social economy organizations



Source: Authors' calculation

Almost half of the organizations constituting the object of the study have a low number of employees (between 1 and 5 employees), and 18% of them perform their activities without employees (figure 3). Most social economy organizations with a larger number of employees are organized as cooperative societies.

Fig. 3. Structure of the sample by the number of employees

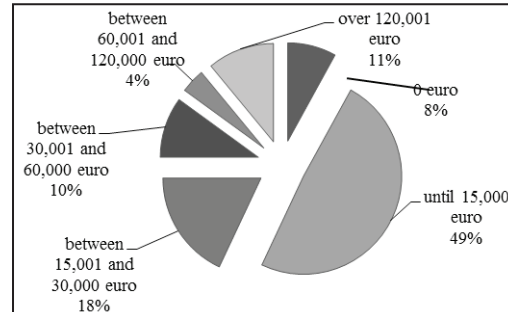


Source: Authors' calculation

Approximately 60% of the organizations constituting the object of the study recorded, in the previous year, income from economic activities or up to 15,000 euro (figure 4).

Even if the questionnaire was sent to social economy organizations whose email addresses were found online, without knowing, when the questionnaires were sent, whether the organizations in question had business incomes from the previous fiscal year, approximately 90% of the respondents declared that they had obtained such incomes.

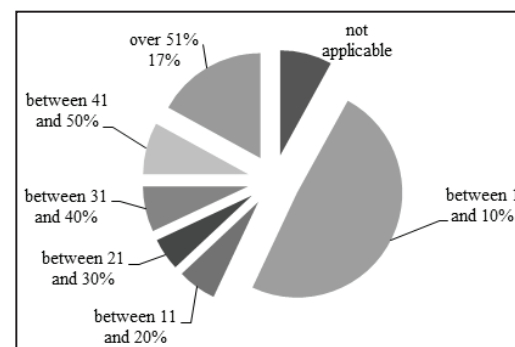
Fig. 4. Structure of the sample by the business income from the previous fiscal year



Source: Authors' calculation

Almost half of the organizations constituting the object of the study obtained business income representing less than 10% of the total income. 17% of the organizations mentioned ensure most incomes from business (figure 5).

Fig. 5. Structure of the sample by the share of business income in the total income

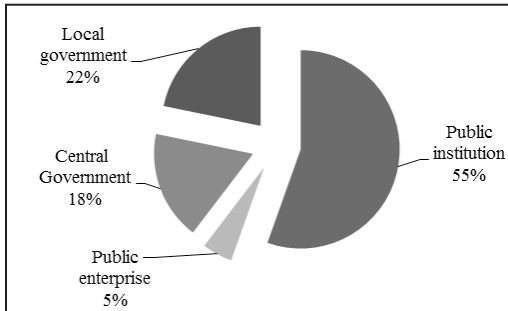


Source: Authors' calculation

The database with the e-mail addresses of the representatives of the contracting authorities (public procurement officers) includes 1140 entries and was formed by accessing the Public Procurement Electronic System (notices of intent and contract notices), published between 01 January and 31 December 2015.

In the case of the questionnaire addressed to the representatives of contracting authorities, a 6.8% response rate was recorded. At sample level, public institutions account for the largest share (figure 6).

Fig. 6. Structure of the sample by the type of contracting authority



Source: Authors' calculation

The relevant situation described hereinabove may be the result of the leading position of public institutions in the Romanian public procurement market, which award approximately 40% of the total public procurement contracts (Pórvu, 2015b).

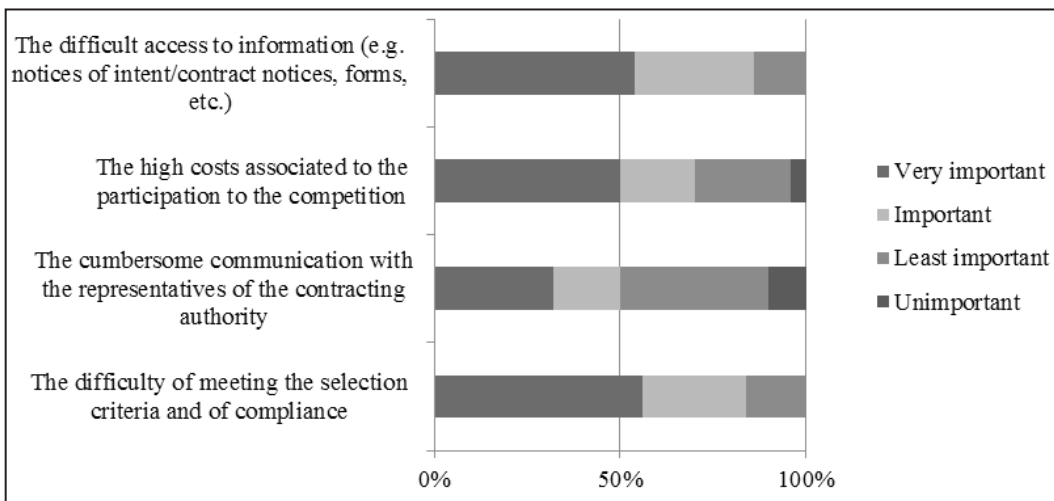
**Data analysis**

60% of the organizations constituting the object of our study took part in competitions for the award of public procurement contracts, and 55% of them benefited from public contracts in the previous year. The contribution of the income earned by executing public procurement contracts, to

income from economic activities is small (with a share of up to 10%), in most cases. This can be explained by the low interest of the social economy organizations in the participation in public procurement procedures. Almost half of the respondents declared that they had never accessed the Public Procurement Electronic System to look for business opportunities financed by public money. Only 18% of the respondents access frequently (daily or weekly) the online tender and public procurement platform. Moreover, 73% of the respondents declared that they are not aware of the approaches at European level adopted to encourage the participation of social economy organizations in public procurement procedures.

The difficulty of meeting the selection criteria and of compliance was assessed as a very important difficulty preventing social enterprises from participation in the public procurement market. The cumbersome communication with the representatives of the contracting authority, the high costs associated with the participation in the competition and the difficult access to information (e.g. notices of intent/contract notices, forms, etc.) were also identified as

Fig. 7. Assessing the difficulty in attending a competition for the award of public contracts



Source: Authors' calculation

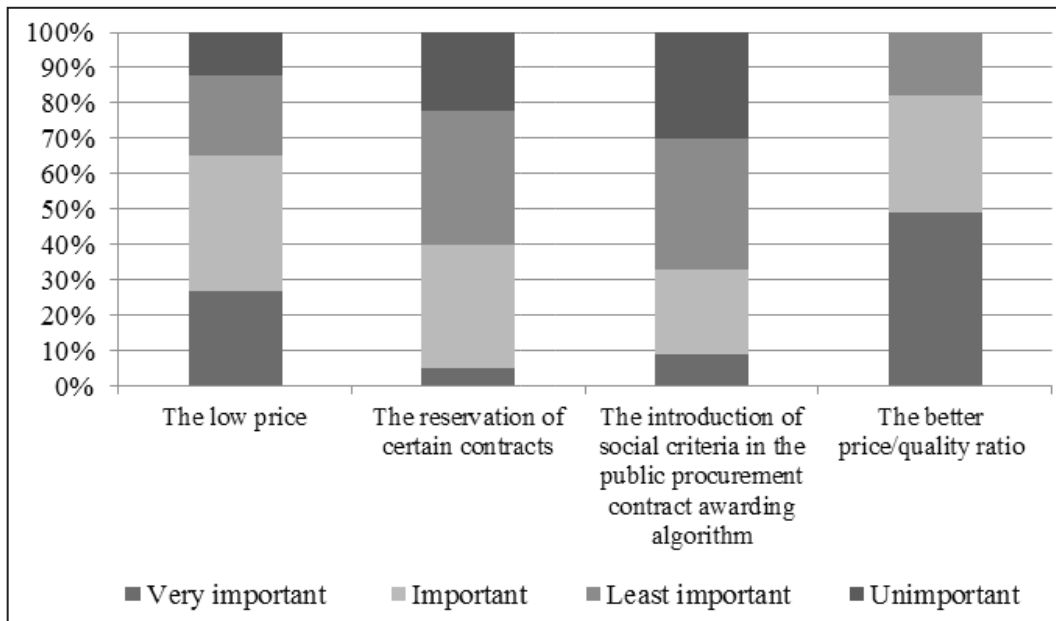
barriers to the way of the participation of social enterprises in the public procurement market, but their importance on the measurement scale was low (figure 7).

With the exception of the cases where public procurement contracts were reserved to authorised sheltered units, respondents declared that the contracting authorities had not favoured the participation of their organization in competitions for the award of public procurement contracts. The small size of most organisations constituting the object of our study does not allow them to execute public contracts with a high value. More than half of the respondents declared

The authorised sheltered units were the entities to which most public procurement contracts were awarded (42% of the total), followed by associations and foundations with economic activity (30% of the total) and cooperative societies (28% of the total).

More than 80% of the respondents deemed that the provision by the social economy organizations of a better price/quality ratio is the most important aspect of awarding public procurement contracts. More than 50% of the respondents attached low importance to the introduction of social criteria in the public procurement contract awarding algorithm (figure 8).

Fig. 8. Assessing the importance of some aspects in awarding public procurement contracts



Source: Authors' calculation

that the resources available to them (human, material, financial, etc.) would enable them to execute, each year, public procurement contracts with a value of up to 20000 euro.

Approximately 70% of the respondents declared that the public entities they represent awarded public procurement contracts to social economy organizations.

80% of the respondents declared that there is no information concerning the approaches made at European level to encourage the participation of social economy organizations in public procurement procedures. In general, the lines of action proposed by the European Commission to support social economy organizations are



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little known at the level of the contracting authorities. More than 70% of the respondents declared that they were not informed with respect to the measures proposed at European level for the improvement of the social economy organizations' access to funds and for the increase in the visibility of social entrepreneurship. Only 45% of the respondents have information about the actions taken at European level for the improvement of the legal framework, with the purpose of encouraging the activity of social enterprises.

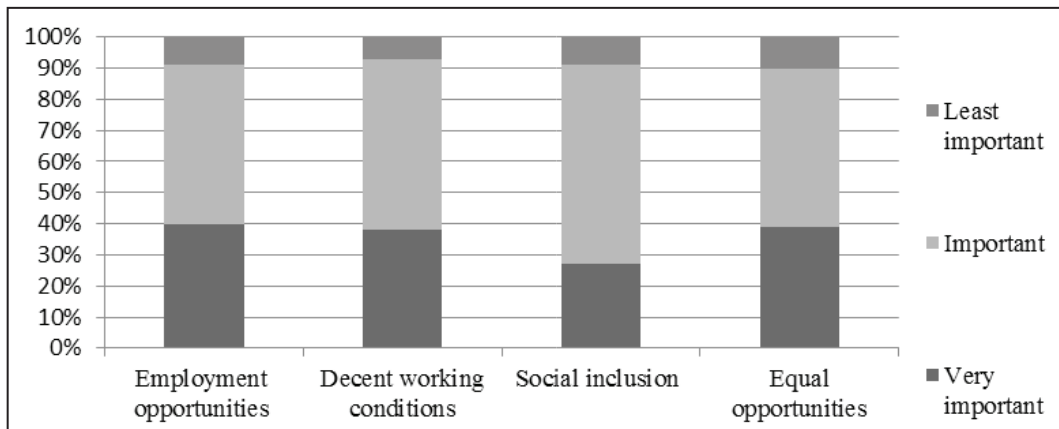
Almost all the respondents admitted that socially responsible public procurement is a method by which the public authorities can provide economic operators with real incentives for the development of a socially responsible management in terms of employment, providing decent working conditions, and observing social and labour rights, social inclusion and equal opportunities (figure 9).

organizations to public procurement procedures, and of the quality of the social services/goods. Only 7% of the respondents declared that there would be no effects of the use of the tools in question, and 9% of the respondents identified the increase in the public procurement contract price as a negative effect of this measure.

Approximately 70% of the respondents were undecided in relation to the possibility to increase the number/value of the public procurement contracts awarded to social economy organizations following the implementation of the provisions of Directive 2014/24/EU on public procurement into the Romanian legislation. Only 27% of the respondents were optimistic about this possibility.

The processing of the data collected through the questionnaires allowed for the identification and ranking of some tools for the facilitation of social economy organizations' access to the award of public procurement contracts (table 1).

Fig. 9. Assessing the importance of some aspects regarding the socially responsible public procurement



Source: Authors' calculation

More than 40% of the respondents deemed that the use of tools to facilitate social economy organizations' access to the award of public procurement contracts will generate both the enhancement of the participation of social economy

The points of view of the representatives of social economy organizations and of the representatives of the contracting authority in relation to the opportunity of using certain tools to facilitate social economy organizations' access to the award of public

Table 1. Ranking of some tools for the facilitation of social economy organizations' access to the award of public procurement contracts

Tool for the facilitation of social economy organizations' access to the award of public procurement contracts	Scores given by the representatives of social economy organizations	Scores given by the representatives of the contracting authority
Allocation of a higher score to social aspects in the public procurement contract awarding algorithm	3	2.4
The reservation of the social economy organizations right to participate in public procurement procedures	3.3	2.8
The consideration of social aspects in determining the qualification and selection criteria	4	2.0
The creation of an information platform specializing in contract notices dedicated exclusively to social economy organizations	4.5	3.7

Source: Authors' calculation

procurement contracts are very different. For example, the consideration of social aspects in determining the qualification and selection criteria benefits from a good score from the representatives of social economy organizations and a low score from the representatives of the contracting authorities. The representatives of the contracting authorities are far more reserved in relation to the possibility to use tools that might "complicate" the public procurement procedures.

### Conclusion

The research carried out in relation to the identification of tools for the facilitation of social enterprises' access to the Romanian public procurement market proves, on the one hand, the low level of initiative of the representatives of social economy organizations to find business opportunities, and on the other, the reticence of the contracting authorities in relation to the implementation of certain measures for the increase of the participation of social economy organizations to public procurement procedures.

The low level of information about the actions proposed at European level for the encouragement of the activity of social enterprises is a common aspect both for the representatives of the social economy organizations, as well as for the representatives of the contracting authorities. In this context, the creation of an information platform specializing in contract notices dedicated exclusively to social economy organizations seems to be the most appropriate tool for the encouragement of the social enterprises' participation in the Romanian public procurement market.

The representatives of the social economy organizations seem to be much more optimistic than the representatives of the contracting authorities in relation to the possibility to use tools to facilitate the social economy organizations' access to the award of public procurement contracts, even if the latter admit that the implementation of measures for the increase in social responsibility of the public procurement might generate many favourable effects for

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society, in general, and especially for the categories of disadvantaged people.

Even if the questionnaires had only one open question related to expressing personal opinions on tools that could be used to facilitate the social economy organizations' access to the award of public procurement contracts or to the effects of their use, the number of people who answered this question was very low. However, they enabled us to receive interesting ideas, such as introducing into the public procurement laws of a provision according to which, through a notice of intent related to the procurement, the contracting authority could request feedback from social enterprises in relation to the characteristics of the products/services that will be purchased, in order to mention in the technical specifications observations that can bring social value. Thus, the contracting authorities would be able to purchase social innovative products/services that could not be requested otherwise through the notice of intent. Carrying out "face to face" interviews with the representatives of social economy organizations and with the representatives of the contracting authorities could be the starting point for new concepts and implicitly for the identification of new directions of research.

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