

## The joint European network on Article 42.3:

- **The challenges for public contracting authorities and national standardisation bodies in referencing standards in public procurement.**

### Scope

The potentials in Article 42.3.b-d in the European public procurement directive 24/2014 on “Technical Specifications” is unfamiliar to most contracting authorities in Europe. This is the basic reason for creating the European Network on handling the challenges in Article 42 when developing technical specifications in public procurement. 20 countries participate.

The purpose of these meetings is not interpreting Article 42 but presenting practical solutions and debating the potentials for national public authorities for further professionalized public procurement as well as for NSB’s sales and promotion of standards. Increased understanding and use of standards in public procurement can save 5-10 % on national public procurement GDP and introduce documentable sustainable public procurement.

### Draft Agenda for fourth joint meeting

#### Thursday 20<sup>th</sup> May 2021 at 10.30-12.30:

- **Welcome to new network members.**
- **Short status on the challenges in article 42.3.b-d for public authorities.**
  - Directive 2014/24/EU and referencing of standards. **Søren Jensen**, DanSense.
- **Latest news on further professionalization of public procurement in Europe.**
  - Presenter to be decided – the European Commission.
- **Latest news on work done in CENCENELEC on standardisation.**
  - New standards developed. **Christina Thorngreen**, Project manager. CENCENELEC
- **New EU taxonomy for sustainable public procurement**
  - The European Commission. Presenter to be decided.
- **New Proposal: Innovations and standards (Sweden)**
  - **Awaiting**
- **Referencing of European harmonised standards in public procurement**
  - The European Commission and Danish Standards. Presenters to be decided.
- **Good examples in integrating Article 42.3.b-d in public procurement.**
  - Proposal on Good examples on integrating Article 42.3 from Austria – to be decided
- **Follow up on presentation 28<sup>th</sup> January on Bid-rigging.**
  - Practical examples and requirements set in technical specifications.
- **Any other business.**
  - Discussing national challenges. Latest news in training. Next meeting, and open floor.

## Background

In May 2019, a report on Referencing standards in public procurement<sup>1</sup> was published as a Joint initiative between CENCENELEC and the European Commission.

Based on a survey with reply from 423 top professional procurement officials in a total of six countries, the report clearly concluded, that referencing standards when developing procurement documents is an area still to be discovered by most.

The report had several conclusions all showing the lack of knowledge from procurements officers in referencing standards, but also indicating lack of knowledge from NSB<sup>2</sup>'s as to the possibilities in the area.

Four of the conclusions should raise eyebrows for NSB's as well as national public authorities:

1. Public authorities do not understand the standardisation codes, and do not know what kind of standard they reference according to the order of preference in article 42 in the procurement directive<sup>3</sup>.
2. More than 54 % of referenced standards in procurement documents originate from procurement documents in prior tenders, which is highly problematic.
3. Only in average 15 % of public Authorities have learned about standards through NSB's.
4. Public authorities have difficulties in referencing standards when choosing different procurement procedures.

Subsequent workshops in five countries with a total of more than 150 public contracting entities participating supported the study by clearly indicating lack of knowledge as to the potentials in Article 42.3 when referencing standards. Other national workshops/webinars in more countries showed the same tendencies. Less than 3 % were confident with correct referencing of standards in public procurement<sup>4</sup>.

This is a major challenge, and it clearly indicates that the potentials in describing technical specifications, as defined in Article 42.3, are not used.

**The EU-Commission states amongst others that<sup>5</sup>:**

- Every year, over 250 000 public authorities in the EU spend around 13,3% of GDP (around €2 trillion per year<sup>6</sup>) on the purchase of services, works and supplies.

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<sup>1</sup> [https://www.cencenelec.eu/news/brief\\_news/Pages/TN-2019-038.aspx](https://www.cencenelec.eu/news/brief_news/Pages/TN-2019-038.aspx)

<sup>2</sup> NSB: National standardisation body.

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0024>

<sup>4</sup> All workshops have been evaluated by the participants.

<sup>5</sup> [https://ec.europa.eu/growth/single-market/public-procurement\\_en](https://ec.europa.eu/growth/single-market/public-procurement_en)

<sup>6</sup> <https://ec.europa.eu/trade/policy/accessing-markets/public-procurement/>

- The public sector can use procurement to boost jobs, growth and investment, and to create an economy that is more innovative, resource and energy efficient, and socially inclusive.
- High quality public services depend on modern, well-managed and efficient procurement.
- Improving public procurement can yield big savings: even a 1% efficiency gain could save €20 billion per year.

By further professionalizing of public tenders, it might be possible to save maybe **5-10 % or even more**, meaning **€100-200 billion per year** in a period on up to 5 years by implementing correct use of standards in the procurement process. These money figures in national public procurement GDP, and the savings belong to the country. What is 10 % of your national public procurement GDP?

This could right now be a huge help when trying to recover public economy after the COVID-19 crisis. Later it could help generating a “greener” development. At the same time, it would be beneficial for the private sector in many ways. It may even increase focus on the necessity of developing new and relevant standards.

**And standards are key** to achieve these goals, so NSB’s as well as contracting authorities have an obligation to start focusing the potentials. Not just to increase own profit or savings, but to ensure more widespread use of standards in general. An additional benefit is, that by learning to reference standards, the key for future sustainable public procurement is also found.

## Consequences

Calling public procurement professional, when public authorities does not know how to effectively use Article 42 when writing technical specifications, is somewhat a far reach. There is still room for improvement, and this is what the network focuses.

For **NSB’s** it has a direct impact on the number of standards sold, hence loss of income and maybe also of interest as to the needs for the public sector.

That might lead to development of even fewer relevant standards in future, and it may explain part of the lack of public authorities engaged in development of standards.

- As just one example, several standards are right now being developed focusing the public sector and sustainability. If, as the analysis showed, standards are not referenced in public tenders, then what is the idea with developing standards for the public sector? Are they even focusing the right needs?
- Knowing that only about 2.000 out of approximately 27.000 existing standards are sold frequently, the “Black box” of no sales is way too big, even if thousands of relevant standards exists there. Many of them are truly relevant, but unknown to all.

For **public contracting authorities**, the consequences are even worse. Just mentioning a few examples, they risk:

- Reducing competition in public tenders.
- Reducing possibilities for equal treatment for bidders.

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- Reducing transparency in procurement documents.
- Losing money due to imprecise specifications.
- Fail to be able to ensure correct documentation, which is one of the strongest tools in standardisation.

Therefore, it is extremely important to ensure a collaboration between NSB's and national public authorities for focusing and learning more about potentials by referencing standards in technical specifications, and this network strives in assisting in developing this collaboration.

## Way forward

Most of the work needed for conducting training nationally is already developed and tested in several countries, but still not implemented.

- A Guide for referencing standards in public procurement already exist<sup>7</sup>.
- Basic material for training of public authorities already exist.
- Most standards needed for improving public procurement are already developed.
- The first "test-workshops" have till now been held for stakeholders in seven countries with great success, and some are awaiting, but with 250.000 public authorities with an unknown number of procurement entities, there is still a long way to go.
- A first guide on sustainable building renovation in Europe is developed for assisting contracting authorities in addressing sustainability requirements and standards in tenders<sup>8</sup>.

## What is needed nationally

**Step 1:** Participate in the network, listen in, and learn. It is for free for national participants.

**Step 2:**

- Initiate first national workshops on referencing standards in public procurement as joint initiatives between Public authorities and NSB's.

**Step 3:**

- Commence training of national experts to conduct the needed number of workshops for increasing knowledge to Article 42 and development of technical specifications for all.

If needed, DanSense will assist in all three steps, as well as in advising in the development of specific technical specifications.

## Registration

You register to future network meetings by sending a request to DanSense, Mr. Søren Jensen on [sj@dansense.dk](mailto:sj@dansense.dk)

When registered you will receive the link to the meeting.

<sup>7</sup> <https://ec.europa.eu/docsroom/documents/33421?locale=en>

<sup>8</sup> <https://webshop.ds.dk/en-gb/search?q=199&CurrencyCode=EUR>

Do not forget to co-invite your national public authority or NSB.

## Annex 1

### The EU Directive on public procurement, Article 42.3

In short, Article 42<sup>9</sup> offers different ways of developing technical specifications that lay down the characteristics required of a works, services, or supply.

*“(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;*

*(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when any of those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;*

*(c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;*

*(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.”*

While (a) is the approach almost always used, (b), (c) and (d) where referencing standards in the technical specification **are rarely used**, meaning that  $\frac{3}{4}$  of options mentioned in Article 42 are not put in action, **simply because of lack of knowledge in how to reference standards in procurement documents.**

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<sup>9</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0024>

### Members in the network per 28<sup>th</sup> January 2021

More than 80 persons from the below mentioned 21 countries are now registered in the network.

Country	Public proc. representative	NSB representative
Austria	YES	YES
Belgium	YES	YES
Croatia	YES	YES
Cyprus	YES	YES
Denmark	YES	YES
England	No	YES
Estonia	No	YES
Finland	YES	YES New participant
Germany	YES	YES
Iceland	YES	YES New participant
Latvia	YES	YES
Lithuania	YES	YES
Luxembourg	No	YES
Malta	YES	No
Norway	YES	YES New participant
Poland	YES	YES New participant
Romania	YES	YES
Slovakia	YES	No New country participant
Spain	YES	YES
Sweden	YES	YES New participant
Switzerland	no	YES