# The European Network of National Authorities and of National Standardization Bodies in the Field of Public Procurement

Challenges for Public Authorities and NSB's in referencing standards in public procurement.

- Third joint online meeting.
  - January 28<sup>th</sup> 2021 10.30 to 12.30



10.30	Welcome to new network members.
10.35	Short status on the challenges in article 42.3.b-d for public authorities.
10.50	Latest news on further professionalization of public procurement in Europe.
10.55	Latest news on work done in CENCENELEC on standardisation
11.10	Public procurement and rules of competition – Bid-rigging cartels.
11.35	Romania's approach to Article 42.3 - good examples"
12.00	Business case on "Or Equivalent" – new examples
12.10	Sustainable procurement
12.20	Any other business.



# 76 85 representatives following the network from 20 21 countries – Third meeting on 28th January 2021



- Representatives from 12 17 central public procurement authorities as well as from 19 NSB's (National standardisation bodies)
  - + Observers



## Welcome to new participants from

#### **National public procurement authorities in:**

<ul> <li>Finland Ministry of E</li> </ul>	conomic Affairs and Employment of Finland
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• Iceland Ríkiskaup / Central Public Procurement

Norway The Directorate for Public Administration and Financial Management

Poland The Public Procurement Office of Poland

Slovakia The Office for Public Procurement

• Sweden The National Agency for Public Procurement

#### **NSB's from:**

o No new NSB's this time. Still 19.





# **Network participants**

Country	National Public proc. Rep.	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			

New representatives (green) and existing representatives (blue)



## **Presenters**

#### Welcome to todays presenters:

**The European Commission – DG-COMP** 

Mr. Flavio Laina, Head of Unit

Romania, National Agency for Public Procurement

Ms. Raluca Martian, Head of Unit

**CENCENELEC** 

Ms. Christina Thorngreen, Project manager

**DanSense** 

Mr. Søren Jensen, Director, DanSense



### **Practicalities when meeting in Zoom**

- Keep the microphone on MUTE when not speaking
- Use "hands up" function if more people have questions at the same time.
- Presentations to be sent out after the meeting
- If practical questions to meeting please ask now.







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# **GDP** in public procurement in Europe

### **Annual EU budget in public procurement:**

€ 2 trillion, 13,3 - 14 % of GDP per year.

### **Including:**

250.000 public entities in Europe.

All public contracting
authorities develop
technical specifications
according to article 42.3 in
the Directive 2014/24/EU
on Public Procurement

# Savings by learning to reference standards in public procurement:

If 1 % saved = € 20 Billion per year.

# DanSense vision for Professionalized procurement with standards:

5-10 % saved plus introducing sustainable procurement.



### Article 42.3 in Directive 2014/24/EU

#### Summary.

For technical specifications, Article 42.3 states that

"the technical specifications shall be formulated in one of the following ways".

- There are four ways.
- Three of these ways include referencing standards.
- If referencing standards is not known = Art. 42.3(a) is the only option

# Meaning contracting authorities must invent own templates hence:

- Increasing transaction costs and discrimination, and
- Reducing competition, equal treatment, and transparency



Article 42.3



## Describe a wheelchair









Example: ISO 7176-3:2013

Wheelchairs- part 3: Determination of effectiveness of brakes



8

### Legal background for referencing standards

Directive 2014/24/EU of the European Parliament and of the council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC explicitly allows contracting authorities to reference standards in technical specifications in the procurement process

#### Article 42 "Technical specification"

#### 42.3

"....Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways"



**42.3.(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;



#### Legal background for referencing standards

■ 42.3(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 applies or national technical specifications relating to the design, calculation of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';"



- 42.3(c) in terms of performance or functional requirements as referred to in point (a), with reference to the point (b) as a means of presuments as referred to in point (b) as a means of presuments
- **42.3(d)** by reference to the technical specifications referred to in **point (b)** for certain characteristics, and by referred to the performance or functional requirements referred to in point (i) other characteristics.

If you don't understand standards you cannot use (b), (c) or (d)

Training in how to reference standards **is** needed.



Article 42.3



#### Art 42.3(b): Order of preference

# This list is exhaustive

If not mentioned, then not included.

In order of preference:

A: National standards transposing European standards

**B:** European Technical Assessments

**C:** Common technical specifications

D: International standards

**E:** Other technical reference systems established by the European standardisation bodies,

#### or if the above does not exist

F: National standards

**G:** National Technical approvals

**H:** National Technical specifications

Each reference accompanied by the words "or equivalent".







#### Standards within recognised standardisation organisations



#### International standardisation

- ISO
- IEC
- ITU









### European standardisation

- CEN
- CENELEC
- ETSI







#### National standardisation

e.g.:







#### Other standards mentioned in order of preference above:

In B): European Technical Assessments for construction products

In C): Common technical specifications for the ICT area.





## **Public procurement**

End-to-end procurement







## **Public procurement**

End-to-end procurement





# An analysis in six countries show amongst others that:

- Standards are in general **not known to contracting authorities**.
- When learning about standards 55% of contracting authorities are self-taught in referencing standards.
- It is a general impression that standards can only be mentioned in open procedures.

#### Analysis of Public Sector Procurement Activities

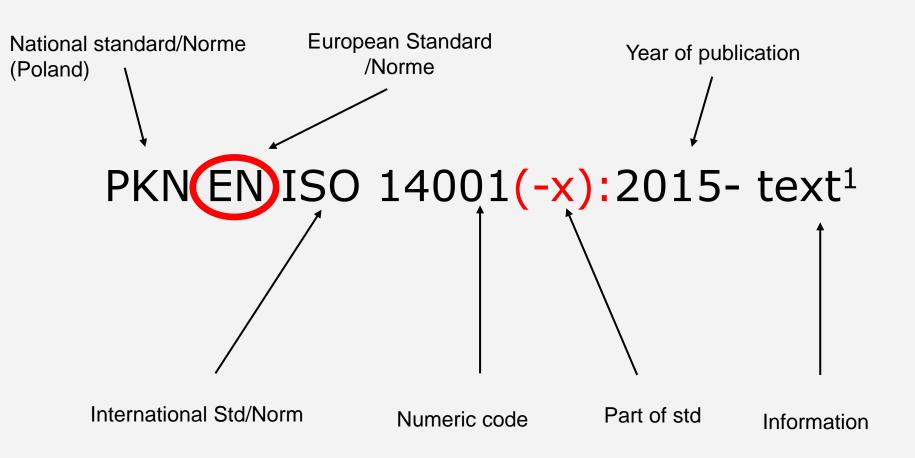
- A Report on Referencing Standards in Public Procurement

May 2019





# How to read a recognized standard



<sup>&</sup>lt;sup>1</sup>Text: Environmental management systems - Requirements with guidance for use



8



## Not knowing standards affects article 42.3.b-d,

and related articles affected by lack of knowledge of 42.3.b-d

### Not being able to reference standards reduces possibilities in e.g.:

#### Article 43 "Labels"

- Related e.g., to transparency, documentation and proof of conformity

#### Article 44 "Test reports, certification and other means of proof"

 Related to e.g., documentation, proof of conformity, measurement and transparency.

#### **Article 60** "Means of Proof"

- Related to e.g., **third party documentation** in a standardized way.

# **Article 62** "Quality assurance standards and environmental management standards"

- Related to e.g., correct use and documentation of certificates, better assessing of "other evidence", and requirements setting.



### Final challenge:

### Lack of communication and collaboration:

know all about public procurement, but often little about standards

#### NSB's

know all about standardisation, but often little about public procurement.





### Final challenge

### Lack of communication and collaboration:

With this forum,

DanSense wish to

assist in:

Solving all these challenges through increased collaboration, establishing national networks, hosting first national training of central PPO's, and training national trainers for continuing own national training.

And at the same time, we provide the needed to be to ensure increased professionalization of public procurement, including implementing successive professionalization, which is



### Why is it so important to reference standards?

# European Guide for referencing standards in public procurement

#### **Standards**

- Contains specific and described requirements
- Are primarily European or international so they may increase cross-border trade.
- Ensures a common understanding of the product or service.
- Can open for more innovative offers and bids.
- Can provide better documentation of delivered product / service (Art.44)
- Can document sustainable procurement



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Søren Jensen, DanSense.

On behalf of Mr. Nikolaos Petras, European Commission - DG Grow





# European initiatives 2021 Professionalized procurement





# European initiatives 2021 Professionalized procurement



# for public procurement professionals

PAGE CONTENTS

**ProcurCompEU** 

**ProcurCompEU toolbox** 

ProcurCompEU on the ground

ProcurComp<sup>EU</sup> is a tool designed by the European Commission to support the professionalisation of public procurement. By defining 30 key competences, it provides a common reference for public procurement professionals in the European Union and beyond. It recognizes and supports public procurement as a strategic function that delivers public investment for sustainable growth.

ProcurComp<sup>EU</sup> helps organisations to build the teams of professionals they need to reach their strategic investment goals and to encourage careers in procurement. It helps individual public procurement professionals valorise their competences, and facilitates training and professional development. It also helps training providers to build the appropriate training programmes.



ProcurCompEU – In a nutshell English (1.1 MB - PDF)

Download ₫

Available languages (22) >



# European initiatives 2021 Professionalized procurement

#### **EU 2021**

Professionalized procurement



a tool designed by the European Commission to support the professionalisation of public procurement.

ProcurCompEU defines **30 competencies** public procurement professionals should demonstrate in order to perform their job well and be ready to face future challenges.

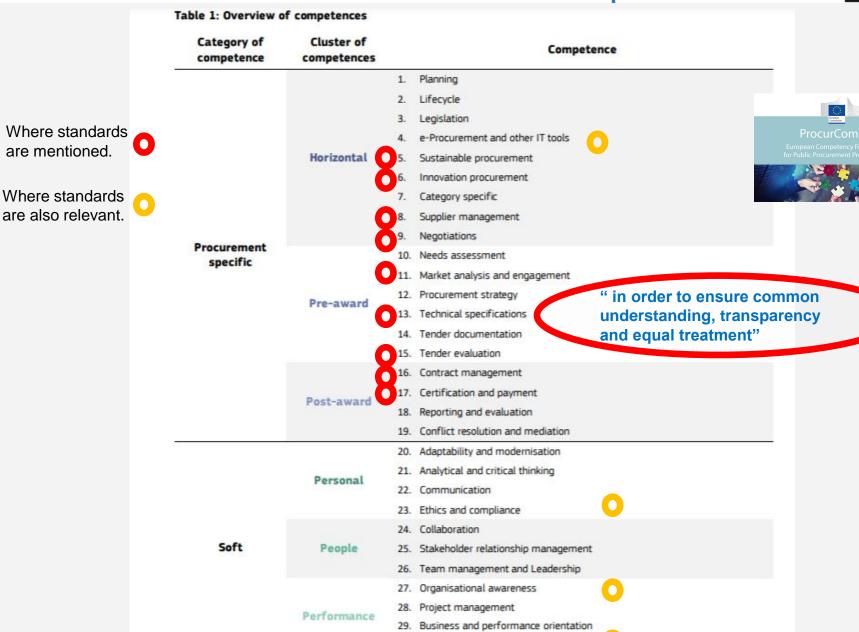
ProcurCompEU supports public procurement as a **strategic function** that delivers high value for money.

Learning about standards is an integrated part of professionalized procurement, as is sustainable procurement.





#### **EU Initiatives 2021 - Professionalized procurement**



Risk management and internal control



#### TRAINING MODULE 13. TECHNICAL SPECIFICATIONS

#### COMPETENCE DESCRIPTION

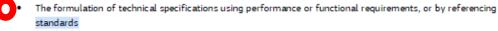
Drafting technical specifications involves transforming the findings of the needs assessment and market analysis into concrete specifications and evaluation criteria that can be used in assessing bids and awarding the contract. This includes setting objective and not over-prescriptive minimum requirements for the subject matter to avoid unnecessarily limiting competition. Ensuring that technical specifications are outcome-focused and future-proofed is key to enable innovation and continuous improvement. When drafting the technical specifications, public buyers should already define the exclusion, selection and award criteria which will be used to evaluate the offers in order to identify to Most Economically Advantageous Tender (MEAT). Technical specifications can also contain references to standards in order to ensure common understanding, transparency and equal treatment.

This competence requires the knowledge of drafting technical specifications that enable potential bidders to submit realistic offers that directly address the underlying need of the organisation.

#### TRAINING TOPICS

#### This training module should cover:

- · The role and format of technical specifications
- Adapting template models when drafting technical specifications



- · The design of selection and award criteria and how they interact with technical specifications
- Weighting and scoring mechanisms for non-price criteria

#### **LEARNING OUTCOMES**

At the end of the training module, learners should be able to understand and/or perform the following at the desired level of proficiency:

- Understand the proper role and format of technical specifications in a procurement procedure
- Understand the implications of EU and national rules on the preparation of technical specifications
- Support the drafting of technical specifications
- Develop technical specifications that reflect the outcomes of the needs assessment and the market analysis
- Use performance or functional requirements or make references to standards in the technical specifications
- Define the weighting and scoring mechanisms used in the procurement procedures
- Conduct data collection to fine-tune specifications
- Adapt the approach to drafting technical specifications to different needs and markets
- Ensure that the technical specifications are adapted to the contract management phase
- Define organisational policies and guidelines for drafting technical specification in line with international best practices and in compliance with EU and national rules
- Monitor performance and identify lessons learned





## **EU Initiatives 2021 - Professionalized procurement**

Table 3: Examples of competences and target levels for common job profiles

			Pr	ocuremen	t job profi	les	
Cluster	Competence	Procurement support officer	Standalone public buyer	Public procurement specialist	Category specialist	Contract manager	Department manager
	1. Planning	-	1	1	2	2	3
Horizontal	2. Lifecycle	1	2	3	3	2	3
	3. Legislation	-		1	1		4
	4. e-Procurement & other IT tools	1	2	2	1	1	2
	5. Sustainable procurement	-	1	2	3	2	3
	6. Innovation Procurement	-	1	2	3	2	3
	7. Category specific	-	1	1	3	-	-
	8. Supplier management	1	1	1	2	2	2
	9. Negotiations	-	2	2	-	2	3
Pre-award	10. Needs assessment	1	1	2	2	-	3
	11. Market analysis and market engagement	1	2	2	2	-	-
	12. Procurement strategy	-	2	2	1	-	3
	13. Technical specifications	1	2	2	3	-	-
	14. Tender documentation	1	2	2	1	-	-
	15. Tender evaluation	-	2	2	1	-	2



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Ms. Christina Thorngreen, Project manager. CENCENELEC

New standards developed.



## European standardisation

- CEN CENELEC





## Latest news in Technical committees - 2021



Technical committees related to public procurement

### Europe

- TC 440 Electronic Public Procurement
  - Standards on electronically handling end-to-end procurement
    - Including e.g., e-catalogue and labels (Environmental).
- TC 447 Horizontal service standards
  - Standards on contracts, measurement (KPI's) etc
    - Proposals on new standards in e.g., B2B subcontracts and Servitization
- TC 461 Public procurement
  - First European standard being developed on Integrity and accountability.



## Latest news in Technical committees - 2021



#### **Technical committees related to public procurement**

### **Internationally (ISO)**

- TC 323 Circular economy
  - Standards on circular economy
    - Under development e.g., Measuring circularity framework, Analysis of cases studies.
- TC 207 Environmental management (ISO 14001)
- TC 268 Sustainable cities and communities





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Mr. Flavio Laina, Head of unit, DG-Competition, The European Commission.





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	Søren Jensen. Director, DanSense

Article 42.3





## **Art 42.3.b: Order of preference**

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Each reference accompanied by the words "or equivalent".







# Reference standards in technical specifications

What does that mean?

- The contracting authority shall take different solution responses into consideration from tenderers who believes that their solution complies with the technical specifications
- The contracting authority can not reject offers simply because the tenderer hasn't, via documentation, directly referred to specified standard.
- The contracting authority is obligated to consider any given solution in accordance with the technical specification described.





# Compliance with the technical specification

Reference to Dir. 2014/24/EU, art. 44 (1), (2), and (3)

## Test rapports or certificates

Contracting authorities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

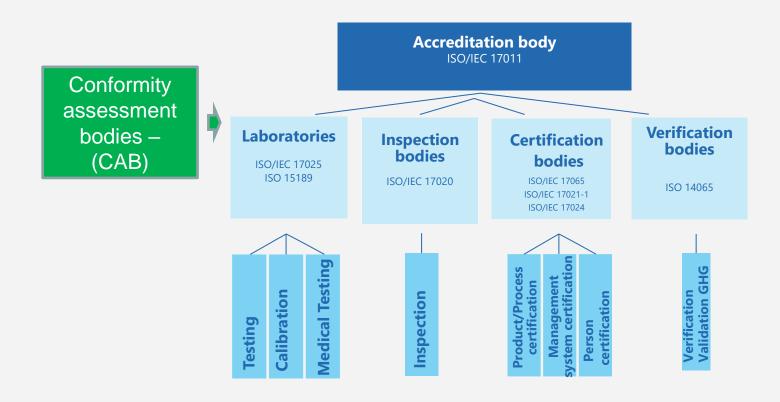
Contracting authorities may require that economic operators provide a

- test report from a conformity assessment body or
  - a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.
    - Where contracting authorities require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting authorities.
    - For the purpose of this paragraph a conformity assessment body spall be a body that
      performs conformity assessment activities including calibration, testing, certification
      and inspection accredited in accordance with Regulation (EC) No 765/2008 of the
      European Parliament and of the Council (1).





# International standards structure ensuring proof of conformity with test reports and certificates





# Compliance with the technical specifications

The "Danish model" cf. the Danish Competition and Consumer Authority

### – Situation one:

- If the tenderer does not have the opportunity to obtain the required test reports or certificates within the applicable deadline for reasons that cannot be attributed to the tenderer in question.
  - Always a specific assessment

### Situation two:

- If the tenderer does not have the required test reports or certificates, **even though** it has been possible to obtain it within the applicable deadline.
  - One Hour rule (different rules in each country)



# **Example one**

# In a public tender the contracting entity require the use of the EU Ecolabel "Or equivalent" should still be accepted.

- Almost 500 so-called ecolabels exist, and most of them are not equivalent to the EU Ecolabel.
- By referencing an international standard EN ISO 14024:2018
   Ecolabelling Type 1 Eco-labelling, which is basis for the EU Ecolabel, the number of equivalent labels is already reduced to approximatelly 25.
- Other kind of documentation shall also be accepted, provided proof of conformity exist.





# **Example two**

In a public tender the contracting entity wish to compare lifecycles costing for ICT-products they wish to purchase for their organisation.



When specifying their requirements, they decide to use the award criteria "**Cost**" and they define point 4.3 on Life cycle inventory analysis (LCI) in "*EN/ISO14044* on *Environmental management* – *Life Cycle assessment* – *Requirements and guidelines*" as the reference for defining LCI.

They accept "or equivalent" documentation, provided that attest report or a certificate, or other means of proof is provided from a third-party conformity assessment body.

<sup>\*1</sup> A cost-effectiveness approach, such as life-cycle costing.



# **Summary**

- Standards SIMPLIFY YOUR SPECIFICATIONS
  - Requirements for quality specifying services, works and supplies can easily be described

- Do not be afraid of the phrase "or equivalent"
  - Used correctly there will be no disproportionate waste of time comparing documentation for the contracting authority.

Conformity assessment bodies – (CAB)



# **Programme**

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	Søren Jensen. Director, DanSense



## Sustainable procurement

Purchasing of works, supplies or goods, in a way that is environmentally, socially and financially sustainable.

Environmental

Social

**Financial** 

= Sustainable

Approaching sustainability procurement approach through different tools



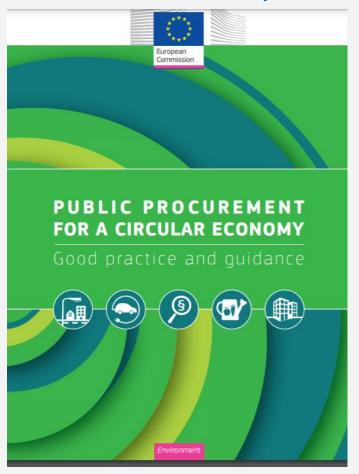
## **The European Commission - TOOLS**

2016/2017

**Buying Green** 



## Circular economy





## **The European Commission - TOOLS**

2019 - 2020

## Cooperate social responsibility +



## Financing sustainable growth





# **The European Commission and CENCENELEC - TOOLS** 2019

### With DanSense as consultant







# **DanSense - TOOLS** 2020

First sector specific guide for contracting authorities in referencing standards and environmental requirement in public procurement



## Focusing:

- Standardisation aspects,
- Environmental aspects,
- Circular economy in
- Building renovation and demolition projects.
- Useful for new construction projects too.



# EU Initiatives 2020 On sustainable procurement

### **EU 2020**

## **Green Deal**

#### Climate neutral

The EU will be climate neutral by 2050. To do this, it will carry out a series of initiatives that will protect the environment and boost the green economy.

Reaching this target will require action by all sectors of our economy, including

- investing in environmentally-friendly technologies
- supporting industry to innovate
- rolling out cleaner, cheaper and healthier forms of private and public transport
- decarbonising the energy sector
- ensuring buildings are more energy efficient
- working with international partners to improve global environmental standards



# EU Initiatives 2020 On sustainable procurement

## **EU 2020**

## **EU Taxonomy**

A list of environmentally sustainable economic activities.

In order to meet the EU's climate and energy targets for 2030 and reach the objectives of the European Green Deal, it is fundamental to direct investments towards sustainable projects and activities.

A common language and a clear definition of what is 'sustainable' is needed. This is why the action plan on financing sustainable growth called for the creation of a common classification system for sustainable economic activities, or an "EU taxonomy".





We have the overall network for practical discussing of challenges in Article 42.3 on technical specifications in public procurement and in standardisation.

- We have first guidelines on referencing sustainability in public procurement.
- We have training packages on how to reference environmental requirements and standards in public procurement.
- We have the first sector specific guide for PPO's on sustainable building renovation.

#### But we need to:

- Initiate national training.
- Establish national networks.
- Develop new sector specific Tools and guides on referencing standards and sustainable procurement in public procurement.

# Checklist – national training





Priority	Action	Status
1	Establish a European Network of National Authorities in the Field of Public Procurement and of National Standardization Bodies	Done – meeting 3-4 times a year. (January, May, September)
2	Creating first national meetings between national PPO and standardisation bodies for initiating the project.	Ongoing – Contact DanSense
3	Hosting first training nationally in referencing standards and sustainable procurement in public procurement and establishing national forums	Ongoing – Contact DanSense. 1-2 webinars in each country before national training.
4	Training national trainers for conducting future training nationally and in national language.	Awaiting - First workshops on training of national trainers in June 2021. 3-4 days physical training <sup>1</sup> in Denmark ( <i>provided the COVID-19 sit. allows</i> )
5	Developing the second sector specific European guide in an area with major influence on environment and climate.	Proposal: Textiles.
6	Advising specifically in first public tenders including standards and environmental requirements in public procurement	Ongoing – Contact DanSense

<sup>\*1</sup> Practical training in standardisation and referencing of standards in public procurement, sustainable procurement, circular economy, and environmental aspects for experts in charge of national training.

# Second European guide - proposal

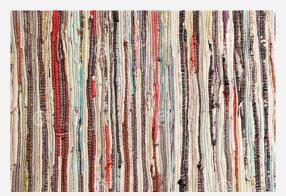


## Guide for the public sector on

# Sustainable procurement of textiles

Referencing sustainability requirements and standards when planning public tenders in Europe









# Textiles and global pollution

- In 2015, the production of textiles was 96.6 million tons.
- Textile production has a heavy environmental impact within, for example, the use of hazardous substances, discharge of wastewater, waste, CO<sub>2</sub> etc.
- Textiles constitute the fourth largest global industry in terms of the use of primary raw materials as well as water.
- Textiles make up the fifth largest emitter of greenhouse gases.
- Less than 1% of textiles are recycled.

## **Examples:**

- Textiles constitutes 30 % of Indias exports
- 4698 compagnies globally are ISO 14001 certified.
- Video <u>Environmental aspects</u>:

#### **References:**

Recycling less than 1% India export.

Production of textiles.



# Textiles and global pollution

## The Europen Commissions wish to:

### The new sustainable product framework for textiles

- developing ecodesign measures to ensure that textile products are fit for circularity
- ensuring the uptake of secondary raw materials
- tackling the presence of hazardous chemicals
- empowering business and private consumers to choose sustainable textiles and get easy access to reuse and repair services

Plan for the European Commission

# Checklist – Toolbox – what is missing?





What is needed nationally?



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# Any other business

- Good experiences to present for next meeting
  - o Austria?
- New topics
  - o EU Taxonomy
  - Referencing of harmonised standards in technical specifications
- **Other topics or challenges to discuss.**
- Next meeting
  - January
  - o Thursday May 20th 2021
  - o October





## **Presentation of DanSense**

**DanSense.** Consulting engineers.

## We specialise in:



Environmental requirements.

Referencing of standards.

Sustainable and circular procurement.

## **Environmental Aspects and impacts**

Sustainable development (Africa project)

Management systems, ISO 14001 etc.

Specific environmental aspects.

**Søren Jensen:** MSc. Env. Mgm. "Master in Environmental Management". Owner of DanSense. Experience: 33 years from the public and private sector and in a fund.

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