

DAN

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

- Fifth joint online meeting.
 - September 30th 2021 10.30 to 12.30





- **10.30** Welcome to network members.
- 10.35 Latest news from the EU-Commission on public procurement
- **11.10** Finalize intro from DanSense and concept of the network
- 11.20 Short status on the challenges in article 42.3.b-d for public authorities
- 11.25 Article 42.3 and implication on other articles in the procurement directive
- 11.45 Any other business
- 12.10 New and relevant standards developed in public procurement.





Welcome to todays speakers:

The European Commission

Ms. Anna LUPI, Legal and Policy Officer, Public Procurement Unit/DG GROW C.2

The European Commission

Mr. Nikolaos PETRAS, Legal and Policy Officer, Public Procurement Unit/DG GROW C.2

CENCENELEC

Ms. Christina Thorngreen, Project manager.

DanSense

Mr. Søren Jensen, Director, DanSense



Welcome to new participants from

National public procurement authorities in:

- Hungary, Public Procurement Authority
- Several new persons from already participating countries

Observer:

SKI. (Denmark: Municipal and state purchasing service – my translation)

NSB's from:

 $_{\odot}$ No new NSB's this time. Still 19.





App. 90 representatives following the network from **23** countries. Update on 30th September 2021



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

Network participants



Country	National Public proc. Rep.	NSB representative
Austria	YES	YES
Belgium	YES	YES
Croatia	YES	YES
Cyprus	YES	YES
Czech Republic	YES	no
Denmark	YES	YES
England	no	YES
Estonia	no	YES
Finland	YES	YES
Germany	YES	YES
Hungary	YES	no
Iceland	YES	YES
Latvia	YES	YES
Lithuania	YES	YES
Luxembourg	no	YES
Malta	YES	no
Norway	YES	YES
Poland	YES	YES
Romania	YES	YES
Slovakia	YES	no
Spain	YES	YES
Sweden	YES	YES
Switzerland	no	YES

New representatives (green) and existing representatives (blue)

Today's registered participants comes from:

DAN

SEN

SE

Country	National Public proc. Rep.	NSB representative
Austria	YES	YES
Belgium	YES	YES
Croatia	YES	YES
Cyprus	YES	YES
Czech Republic	YES	no
Denmark	YES	YES
England	no	YES
Estonia	no	YES
Finland	YES	YES
Germany	YES	YES
Hungary	YES	no
Iceland	YES	YES
Latvia	YES	YES
Lithuania	YES	YES
Luxembourg	no	YES
Malta	YES	no
Norway	YES	YES
Poland	YES	YES
Romania	YES	YES
Slovakia	YES	no
Spain	YES	YES
Sweden	YES	YES
Switzerland	no	YES

Today's registered participants (green)



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.
- If connection is getting weak, please turn of video.
- Presentations will be sent out after the meeting.





Programme

**** ****

- 10.30 Welcome to network members.
- 10.35 Latest news from the EU-Commission on public procurement Addressing the distortive effects of foreign subsidies in the Single Market: Proposal for an EU Regulation
 - Presentation by Mr. Nikolaos PETRAS

Note: "Commission proposes new Regulation to address distortions caused by foreign subsidies in the Single Market"

<u>https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1982</u>





Any questions?

Programme

10.30 Welcome to network members.



- 10.35 Latest news from the EU-Commission on public procurement Buying social: A guide to taking account of social considerations in public procurement'
 - Presentation by the Commission, guest speaker Ms. Anna LUPI





Any questions?



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- 10.30 Welcome to network members.
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- **11.10** Finalize intro from DanSense and concept of the network

Presentation of DanSense

DanSense. Consulting engineers.

We specialise in:

Public Procurement and purchasing including

Environmental requirements. Referencing of standards. Sustainable and circular procurement.

Environmental Aspects and impacts Management systems, ISO 14001 etc. Specific environmental aspects. Sustainable development (Africa project)

Søren Jensen: MSc. Env. Mgm. "Master in Environmental Management". Owner of DanSense. Experience: 34 years from the public and private sector and in a fund.

www.dansense.dk Phone.: +45 20247001 E-mail.: sj@dansense.dk



Startup in Future vision: The Green circle of Sahara **January 2022.** CO₂ neutrality for PORTUGAL Tunis participating countries Algiers Athens Valletta Alger Gibraltar TUNISIA Mediterranean Sea The Green Corridor: 5,900x 200 km. Rabat 118,000,000 hectares MOROCCO ilor Cai ALGERIA The Green Link: 2,590 x 200 LIBYA km. EGYPT West: 9,500,000 hectares East: 42,300,000 hectares The Green Wall: 7,772 x 15 km. Red 11,662,500 Sea AURITANIA hectares MALI oua hott NIGER SUDAN ERIT EA CHAD Y Khartoun NEGAL Sana THE REPORT BURKINA FASO DJIBOU Bamako A-BISSAU N'Djamena BENIN NIGERIA Addis Ababa DAN Conakry TOGO SENSE Abuja **ETHIOPIA** CENTRAL SIERRA LEONE

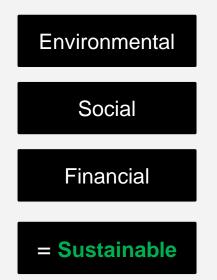
Sustainable development based on environmental, social, and financial sustainability Including Circular economy and Industrial Symbiosis



Sustainable development and sustainable procurement

Influence purchasing of works, services or supplies, in a way that is environmentally, socially and financially sustainable.

This requires knowledge to referencing of standards!



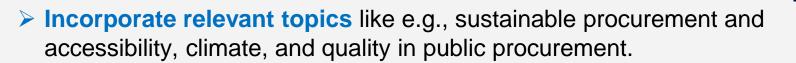
Standards are also necessary to best ensure in an easy way the basic public procurement principles on transparency, equal treatment, non-discrimination, mutual recognition, and at the same time securing documentation public procurement.





Tens of millions of Euro spent a year on developing standards, so why are they not used by public authorities?

- Further professionalize and simplify public procurement through increased referencing of standards in European Public Procurement. (Based on the Public procurement Directive <u>2014/24/EU</u>)
- Focusing <u>national procurement authorities</u> together with <u>NSB's</u> for increasing overall awareness on use of standards in public procurement in Europe in general.
- Demonstrate simple and new ways of referencing standards.



3-4 times a year presenting news and examples on public procurement related to referencing of standards in public procurement.







• The only specific European guide so far assisting contracting authorities directly in setting requirements in public tenders:

• More specific guides to be developed.



EDSE

Guide on

Sustainable building renovation

Referencing environmental requirements and standards when planning public tenders in Europe



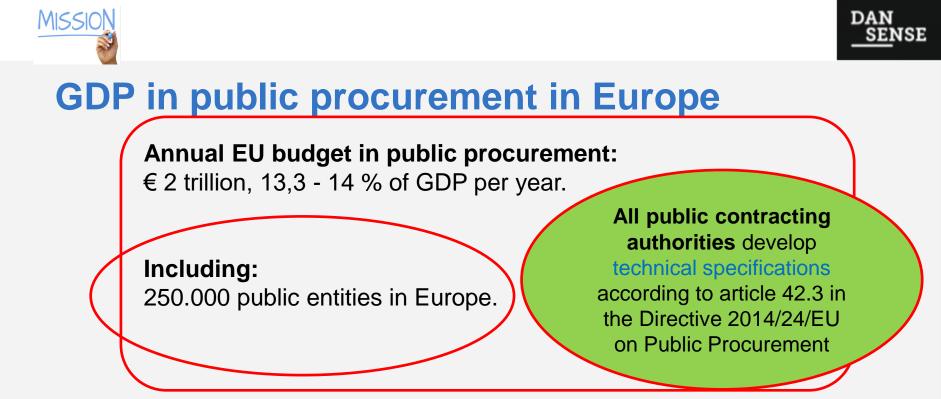


Example: Sustainable building renovation



Click the guide to read the preview

- Buildings account for approximately 40 % of the energy consumption and produces more than 1/3 of global GHG.
- For new buildings many steps have been taken through legislation as well as volunteer solutions (e.g., DGNB or Swan certificates). The Swan also include requirements for major renovations.
- For renovation of existing buildings, which is the major part of the building sector, this guide is the only one going into details on considerations to do before renovating or demolishing sustainable.



Potential economic savings by learning how to reference standards in public procurement:

If 1 % saved = \in 20 Billion a year over at least 5 years.

DanSense estimate for Professionalized procurement with standards: 5-10 % saved plus introducing sustainable procurement.

Money to be saved in public procurement in 5 years in Europe Up to € 1000 Billion – enough to reduce environmental and climate impacts considerably in each country.





This network is till now funded by DanSense for assisting national authorities in first steps on creating higher focus on article 42 and other relevant articles in the public procurement directive.

And

> Sharing experiences made nationally for beneficial gain.



ropean Guide

This network is <u>free of charge</u> for all participants. (max 100 is possible)









Besides that:

DanSense offer different kinds of more detailed training in how to reference standards in public procurement with reference to relevant articles in the Public Procurement Directive.

E.g., inclusion of;

- > Accessibility,
- > Environmental requirements,
- Use of certificates, and test reports,
- Means of proof
- Documentation,
- Use of quality assurance standards and environmental management standards.

This is not for free.





DanSense offer:

Same price in all of Europe.

First national meetings (core stakeholders)

- Setting up **first national** <u>meeting</u> between central procurement authorities, maybe including NSB's for discussing specific needs and challenges in use of standards.
 - (1-hour meeting for free)

First national workshops/webinars

- Together with a national stakeholder having first national training in how to reference standards in public procurement, **Article 42.3**.
 - 2x3 hours webinars per person € 333.
 - One day workshops or 2x3 hours webinars for <u>up to15</u> persons and arranged by a national authority. Price € 3000 plus potential travel expenses

Tailor made training

In specific articles in the directive relating to Article 42, like e.g.; Art. 43, 44, 60, 62, or in actual technical specifications being developed, e.g., with the need for adding sustainability requirements and standards. (*One day workshops or 2x3 hours webinars. Price* € 3000 plus € 1000 in specific preparation fee if needed, plus travel expenses

Train the trainer.

- A few selected persons from each country trained for starting own national training.
 - 5 days training of trainers in Denmark. Price € 10.000 including networking

Train the Trainer

In Denmark. Date: To be planned Participants: Max. 15 and max 3 from each country.



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Content:

- Training and use of Art. 42 and all related art.
- Specific training in how to reference environmental-, climate,accessibility,- CSR-, and work environment requirements for trainers – or other requirements wished by the trainees.
- Introduction to circular economy and sustainable public procurement.

When finished the trainer is enabled to conduct national training. In the price is a 1-year free assistance in planning of workshops, assistance for first workshop, and an invitation to be part of a training network for sharing ideas.

Webinar in Art. 42.3



In Zoom. Date: October 20th and 21st from 09.00 - 12.00 Participants: Max. 15.

Content:

- Specific training in knowledge and use of Art. 42.3 and setting requirements in public tenders.
- Specific training in how to use certificates and to require means of proof hence ensuring documentation of required goods, services and construction products.
- Examples on how to integrate CSR, Climate, accessibility and environmental issues via use of recognized standards

When completed, the trainee is able to reference Article 42.3 correctly and to understand how to reference standards in the procurement process and use standards in procurement procedures.

Price € 333.





Any questions?

Why is all this training needed?

European Guide for referencing standards in public procurement



Analysis of Public Sector Procurement Activities

- A Report on Referencing Standards in Public Procurement

May 2019









Programme

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Directive 2014/24/EU and referencing of standards. Søren Jensen, DanSense



Relevant material - initially

As part of a Joint initiative between the European Commission and the European standardisation organisation CEN/CENELEC



https://ec.europa.eu/docsroom/documents/33421?locale=en and https://www.cencenelec.eu/news/brief_news/Pages/TN-2019-038.aspx

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 recognized standards.
- If referencing standards is not known = Art. 42.3(a) is the only option.

Meaning contracting authorities will invent own templates hence:

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

European Guide for referencing standards in public procurement







Article 42.3



§

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;



The good old way of doing things throughout Europe!

Article 42.3

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 and a standards 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 performance or functional point (a), with reference to the technical sections referred to in point (b) as a means of presuming conformity with such performance or functional requirements
- 42.3(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by repute the performance or functional requirements referred to in point (b) other characteristics.

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





Article 42.3

Art 42.3(b): Order of preference

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".



This list of

standards is

exhaustive

If not mentioned, then not included.

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Article 42.3

Why is it so important to reference standards?

Standards;

- Ensure a common understanding of the works, services or supplies in a Transparent way.
- Contain specific and described requirements (first and basic, to be added to)
- Are primarily European or International so they may increase cross-border trade.

1.

European Guide for referencing standards in public procurement

- Can open for more innovative bids.
- Can provide better documentation of delivered product / service (Art.44)



Analysis of Public Sector Procurement Activities

- A Report on Referencing Standards in Public Procurement

May 2019

2.



In sectors:

Construction, Medical devices, and Waste

Including: 6 countries and 3525 survey persons.

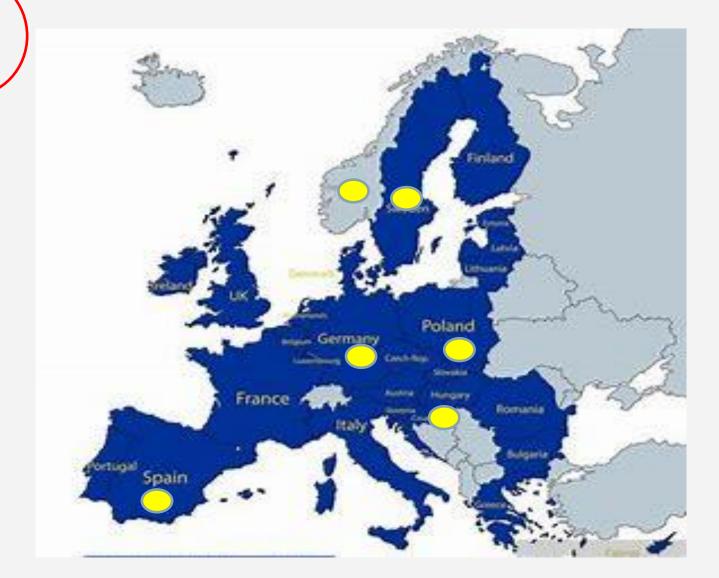
Response rate:

14 % or 423 persons.



Countries involved in the survey

2.





Several interesting results

Survey persons were extremely competent. Many years of experience and a long track record in public procurement.

For the **public sector**, the main reasons for referencing standards were:

- They are good for describing minimum requirements
- They provide clear specifications
- They are an integrated part of the market

The private sector the main reason was:

• They are requested by the public sector to provide standards

YET: the survey also revealed.

2.

It is most likely not known to the public authorities how to correctly identify and reference standards.





Three major results

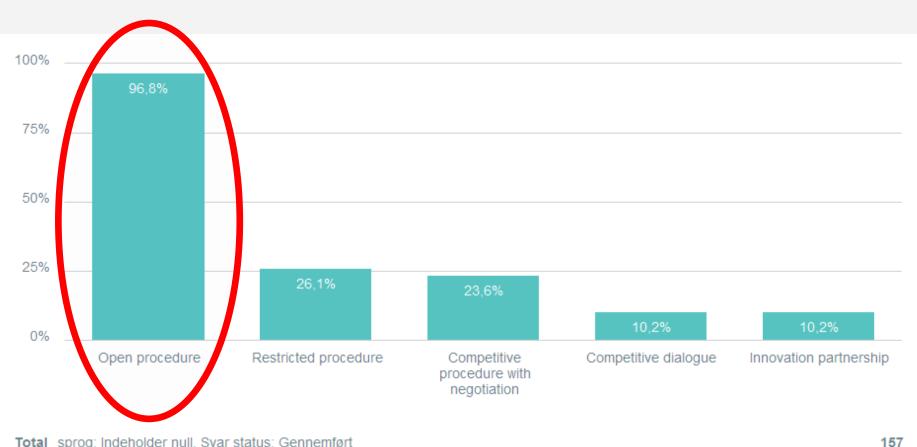
- Contracting authorities have troubles in knowing which type of standards are referenced. (How are standards compared according to Art. 42.3)
- 2. Most Contracting authorities are self-taught in referencing of standards (55 % simply reference to earlier used).

2.

3. There is a great insecurity on if standards can be used in all procurement procedures (Mainly only referenced in open procedure)



Public sector – Where are the standards primarily mentioned?



Total sprog: Indeholder null. Svar status: Gennemført





Any questions?



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Why it is so important to know what standards are to develop better technical specifications. A trip to other related articles.

- Presentation by Mr. Søren Jensen, DanSense.



4 Articles relating directly to the use of standards,

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 42.3 "Technical specifications".

Article 43 "Labels"

8

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

Article 60 "Means of Proof"

Article 62 "Quality assurance standards and environmental management standards"

(And more, not mentioned today like especially **Article 68**, Life-Cycle costing and also **Article 53**, electronic availability)



§ Article 42.3 (b-d)

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 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';"
- 42.3(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
- 42.3(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.





§ Article 42.3 (b-d)

Annex VII, 2

- "standard' means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:
 - International standard
 - European standard
 - National standard
 - European Technical Assessment
 - Common Technical specification

European Guide for referencing standards in public procurement





Article 42.3 (b-d)

Organisations developing <u>recognised</u> standards

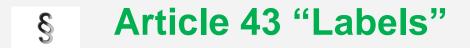




Article 42.3 (b-d) Article 42 adds more recognised standards outside these organisations



ESO's: European standardisation organisations mentioned above





The European ECO-Label is alongside many other eco-labels based on an international standard (EN ISO 14024:2018 Ecolabelling – Type 1 Eco-labelling)

Example: When requesting the EU ECOlabel on products, equivalent labels must be accepted. With reference to this standard, "or equivalent" can be detailed according to this standard. **Certificates (art 44)** may be provided as **Means of Proof (art 60)**

Note: Other international standards may help when setting requirements to labels or equivalent (EN/ISO 14021 2016 Environmental labels and declarations – selfdeclaration Type II or EN/ISO 14025 2010 Environmental labels and declarations – environmental declarations, Type III)



§ Article 43 "Labels"



Note:

Other international standards may help when setting requirements to labels or equivalent (EN/ISO 14021 2016 Environmental labels and declarations – selfdeclaration Type II or EN/ISO 14025 2010 Environmental labels and declarations – environmental declarations, Type III)

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

Standardisation terms

- Conformity assessment body
- Certificates
- Test reports

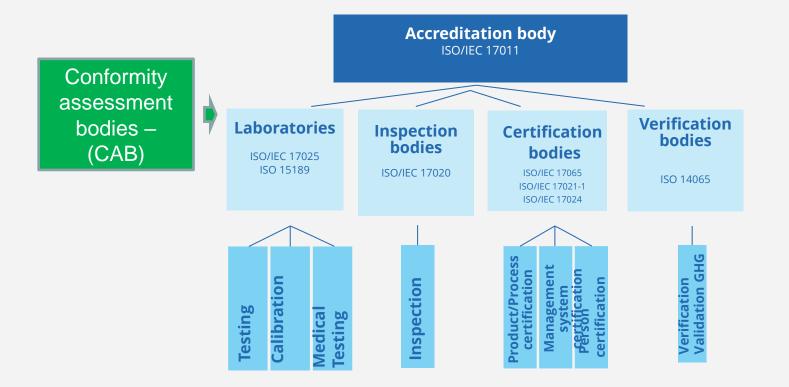
Test reports, certification and other means of proof

1. 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.



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







§ Article 60 "Means of Proof"

Means of proof

1. Contracting authorities may require the certificates, statements and other means of proof referred to in paragraphs 2, 3 and 4 of this Article and Annex XII <u>as evidence</u> for the absence of grounds for exclusion as referred to in Article 57 and for the fulfilment of the selection criteria in accordance with Article 58.

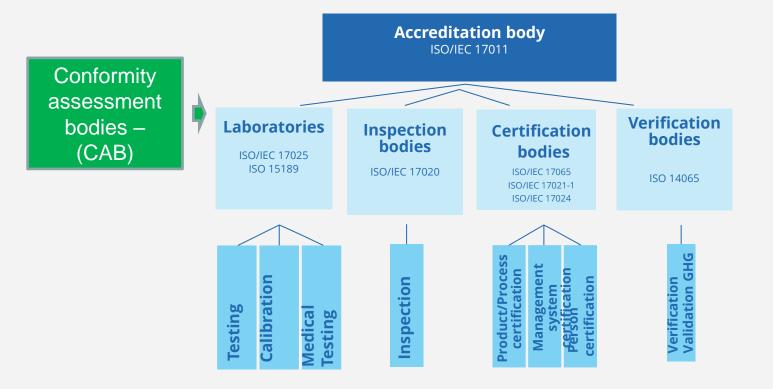
European Guide for referencing standards in public procurement



§ Article 60 "Means of Proof" Example Providing means of Proof – same way - Standards

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§ Article 62 "Quality assurance standards and environmental management standards"

Quality assurance standards and environmental management standards

"1. Contracting authorities shall, where they require the production of **certificates drawn up by independent bodies** attesting that the economic operator complies with **certain quality assurance <u>standards</u>**, including on accessibility for disabled persons, refer to quality assurance systems based on the **relevant European standards series certified by accredited bodies**. They shall recognise **equivalent certificates** from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator provided that the economic operator proves that the proposed quality assurance measures comply with the require quality assurance standards."





§ Article 62 "Quality assurance standards and environmental management standards"

Quality assurance standards and environmental management standards

"2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, they shall refer to the Eco- Management and Audit Scheme (EMAS) of the Union or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States."





§ Article 62 "Quality assurance standards and environmental management standards"

Example:

- What does "Quality assurance standards" mean?
 - Is it only ISO 9001 on quality management systems?

Many quality assurance standards exists, but they are not used in PP.

 Is "environmental management systems or standards" only about EMAS or ISO 14001 for environmental mangagement systems?

More options are available.

European Guide for referencing standards in public procurement





§ Summarizing

If there is **no knowledge of standards**, then;

- Setting of requirements
- Documenting use of certificates
- Ensuring proof of confirmation, and
- In general, developing technical specifications...

Is unneccessarily difficult, and documentation of correct *purchasing of works, services or supplies may heavily:*

- Reduce competition
- Increase total costs
- Prevent competition

European Guide for referencing standards in public procurement







Any questions?



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11.45 Any other business

Open discussion on national challenges. Latest news in training, next meeting.

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Any other business

From last meeting

$_{\odot}$ Do we need or 4 annual meetings?

 Not decided – Next meeting could be in December (four a year) or January (three a year).

$\circ\,$ How can we better increase use of standards?

- The ideas about a R&D program, and inviting Vendors to talk has not yet been followed up
- DanSense had talks with a number of stakeholders regarding establishing sub-groups. It is hard to find the time – to be elaborated more.





New topics

Proposal from DanSense

\circ Good experiences to present for next meeting

- We now have first appeal cases.
- Do you wish a specific topic on "appeal cases" for future meetings, for better exchange of knowledge?

Example Denmark: <u>Appeal case decision</u>.

"When are evaluation requirements fulfilled, and when is an environmental certification "Or Equivalent"?" July 22nd 2021. (Short version)

Part 2 "or equivalent"

- The complaint concerned, secondly, the contracting authority's evaluation requirement that the conference venue should have obtained the Nordic Ecolabel, Green Key or ISO 20121 certification or equivalent. It appeared from the tender material that it was a requirement that the tenderer had to submit documentation if the tenderer fulfilled the requirement in a "or equivalent" manner.
- <u>Complainants</u> claimed that the offer met the requirement via a "corresponding standard" in the form of a "DS Standard".
- The Complaints Board stated with reference to the content of the offer and the supplementary information from complainants - that it was not clear how the "DS standard"* similarly met the requirements for the properties that the other environmental certificates were proof of, nor did it appear further. information on which certification "DS Standard" expressed.

"DS Standard"

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An unspecified national standard from the National standardisa tion body (NSB)

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Example Denmark: Appeal case decision.

"When are evaluation requirements fulfilled, and when is an environmental certification "Or Equivalent"?" July 22nd 2021. (Short version)

Part 2 "or equivalent" - Decision

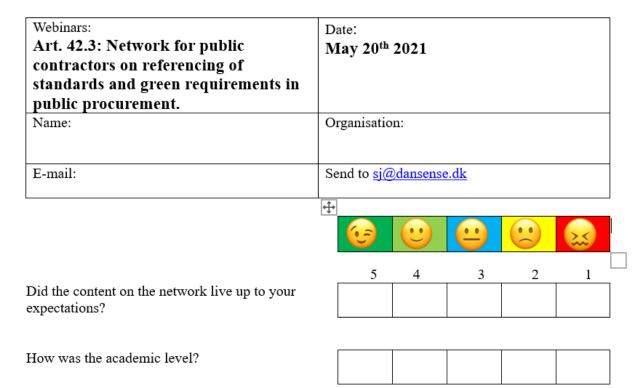
- <u>The Complaints Board stated</u> with reference to the content of the offer and the supplementary information from complainants - that it was not clear how the "DS standard" similarly met the requirements for the properties that the other environmental certificates were proof of, nor did it appear further. information on which certification "DS Standard" expressed.
- <u>The Complaints Board</u> then reiterated that it is the tenderer who bears the risk of errors and incompleteness in the tender, and since, according to the information, there was no other basis for ascertaining that the contracting authority had acted unreasonably in connection with the evaluation and scoring of complaints regarding the evaluation requirement. environmental certification, there was no basis for upholding the claim.

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Any other business

An Evaluation is always good

Evaluation and new ideas for the network.



New topics

Which of the following topics might be most relevant to you at your next network meeting?

- 1. Good national experiences in the use of standards in public procurement
- 2. Innovation through better use of standards.
- 3. Latest news from the EC, on green public procurement
- 4. **National implementation** on referencing of standards and green requirements in public procurement.
- 5. EU's Green deal and consequences for technical specifications.
- 6. EOTA and European use of ETA's.
- 7. Labels and broader perspectives through the use of standards

1	2	3	4	5	6	7

Do you have suggestions for new topics to address in the network?



Good national steps toward increased awareness on the use of standards

- Have a first joint meeting with DanSense (for free)
 - > With national relevant central stakeholders -5-10.
- Create your plan for increased awareness and knowledge training.
 - > If needed, with first assistance from DanSense
- > Example
 - Denmark held first national training (webinar) for central authorities and the largest public contractor in June 2021. This enlightened the need for future training.



Next meeting

More meetings than a year? Maybe 4?

Plane right now: January, May, October

Proposed next meeting: **December 8th or January 12th 2022**.

Decisions and inputs:

- 1
- 2
- 3



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 - By Ms. Christina Thorngreen, CENCENELEC





Any questions?