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FAIR TRADE GUIDELINES FOR THE PUBLIC PROCUREMENT ACT

INTRODUCTION: WHAT IS FAIR TRADE AND WHY DO WE CONSIDER THESE MATTERS IN PROCUREMENTS?

The public sector is a major consumer. The gross consumption of the public sector in Estonia makes up 14 to 16 per cent of the gross domestic product. Considering this is largely funded by taxpayers' contributions, it must be conducted responsibly and sustainably, and taking the interests of the whole society into account. Socially responsible public procurements are one way of going about that.

Fair trade is an international trading agreement and certification system that stands up for the interests of small-scale producers in developing countries. Fair trade is not charity, it is an approach to production and trading with one clear goal: to reduce poverty through trade, to guarantee fair prices for producers from developing countries, and reasonable working conditions and a sustainable future for workers. In other words, to achieve a similar situation that is guaranteed by law and abiding by the law in developed countries, including Estonia. Fair trade does not impose special conditions, but it seeks to guarantee similar decent conditions for work and life to those that we enjoy in developed countries, under the following conditions:

- 1) small-scale farmers in developing countries receive a minimum price for their product that covers costs and enables continuous development;
- 2) workers in plantations and producer cooperatives earn a living wage and work under humane conditions;
- 3) the use of slave and child labour is prohibited in the production process;
- 4) the Fairtrade Premium (Label conditions) is used to facilitate social development in the community;
- 5) the principles of environmental sustainability are observed in production.

The most common products imported into the European Union from developing countries, which can bear the label of responsible or ethical trading are coffee, tea, sugar, chocolate and other sweets, rice, quinoa, bananas and other tropical fruits, other food products, as well as wine, gold and cotton. Therefore, the principles of fair trade can be implemented, for example, while commissioning catering and catering services for schools and other public institutions, buying and servicing coffee vending machines, choosing catering places, etc.

Fair trade products have the same price level as ordinary products of the same quality. As with ordinary coffee, one can find products bearing fair trade labels with prices ranging from quite cheap to more exclusive and expensive. Products with extremely low prices that are imported from very far away are definitely not 'fair' because something must not have been paid to someone along the supply chain. In most cases, it is the worker or farmer in a developing country who is deprived of their chance for a decent life and development due to low prices and less pay than the minimum wage. All people, irrespective of where they live, must have a living wage. The fact that the goods have been produced in a distant country should not be a reason for not caring. Producers of food consumed in Estonia are equally important, irrespective of whether they are based in Estonia, Ecuador, India or Ghana. As we are consuming goods from small-scale producers and farmers from such countries, we also have a duty to stand up for their right to a decent life.

Good examples of how fair trade criteria can be set in a procurement procedure can already be found in several European countries. The Public Services (Social Value) Act has been in place in the United Kingdom since 2012. According to this Act, when procurements exceed a certain level, the participating entity must



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prove that social considerations have also been taken into account. The implementation of fair trade principles in public institutions has been taken so far in Scotland and Wales that the fair trade title has been awarded to the entire public sector. The fair trade cities movement is also popular, and in Finland, for example, 14 cities have already joined this movement.

LEGAL GROUNDS

The Public Procurement Act (PPA) allows for the requirement that fair trade principles be set for a procurement project. According to the general provisions of the PPA, social considerations, the implementation of innovation and environmentally friendly solutions are already taken into account upon planning and carrying out public procurement (section 2 subsection 2 of the PPA).

Section 85 subsection 3 of the PPA is the basis for setting the substantive criteria:

Upon identifying the most economically advantageous tender, the contracting authority or entity takes into account the best price-quality ratio that includes **qualitative, environmental or social criteria** in accordance with subsection 8 of this section, the tender price or cost, including costs that are likely to be incurred upon performance of the public contract and the costs of the life cycle in accordance with section 86 of this Act.

The contracting authority or entity may also determine the price or cost of a public contract themselves in the procurement documents, and **assess tenders solely based on qualitative, environmental or social criteria** (section 85 subsection 7 of the PPA).

The requirements of the PPA that entered into force on 1 September 2017 are, in turn, based on EU requirements, specifically on the requirements of Directives 2014/23/EU, 2014/24/EU and 2014/25/EU in force since April 2016.

SUBJECT MATTER OF THE PROCUREMENT

Setting the fair trade requirement in procurement conditions must be related to the subject matter of the procurement – to the goods or service being commissioned. An example of such goods or such a service can be buying food products, buying and servicing vending machines, commissioning catering and catering services, choosing catering places, also buying clothes or materials made of cotton.

PREPARING PROCUREMENT DOCUMENTS: IN WHICH DOCUMENTS SHOULD THE REQUIREMENTS BE SET?

Conditions for meeting fair trade requirements can be set in the following **procurement documents**:

- 1) technical specifications,
- 2) award criteria,
- 3) contract performance conditions.



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For example, conditions referring to fair trade requirements may stipulate that a relevant product should originate from fair trade and, among others, should also meet the requirement of paying a certain minimum price and premium (also price premium) to producers.¹

In **technical specifications**, requirements can be set for the production process and technology at any stage of the life cycle of the product or service (section 87 subsection 2 clause 8 of the PPA). This means that requirements can specify that a certain percentage of the goods commissioned or of the goods used for providing a service must have their origin in fair trade. Tenders which do not meet this requirement will be removed from further consideration.

In this case, the promotion of social goals or buying fair trade products does not represent a competitive advantage for the bidding party, and larger contributions are also not advantageous for the tender; instead, all bidding parties participating in the procedure must supply fair trade products according to the volume determined in the contract conditions.

Using the fair trade requirement in **award criteria** means that in addition to the price, other criteria are set in procurement conditions, according to which the tenders are comparatively assessed. For example, it is possible to determine that a tender gets more points compared to other tenders during the comparative assessment if the tender involves a larger percentage of commissioned goods with their origin in fair trade. Please see a more detailed explanation of awarding assessment points below.

In **contract performance conditions**, the requirement of abiding by fair trade principles should be set separately when also determined in technical specifications and/or award criteria. It should also be stipulated that a contracting authority or entity has the right to check whether this requirement is met. Otherwise, meeting the requirement might not actually be guaranteed. When it appears that a bidding party is actually unable to meet the fair trade requirement, this is seen as a breach of public contract. As the PPA does not regulate matters related to contract performance, legal remedies of the Law of Obligations Act can be used when a breach of requirements occurs, including requesting the contract to be performed, reducing the price, demanding damages to be compensated, withdrawing from the contract in the case of a fundamental breach, or cancelling a contract.

What stage the fair trade requirement should be set can depend both on the goal of the contracting authority or entity and on the availability of goods of fair trade origin. It is also possible to set the requirement of having a certain percentage of goods originate from fair trade, but in addition to that, tenders receive points for the percentage exceeding the determined share.

A bidding party **cannot be obliged to use a particular fair trade label** (for example, the Fairtrade label), but while setting the requirements, it is permitted to refer to a particular label; for example,

¹ In addition to a minimum price, a premium, and also price premium, is paid to a producer, and a remarkable share of this is invested in development projects for producer communities. These projects include supply of drinking water, construction of roads, education and health care institutions, covering the costs of schooling, vocational education and health care, microfinancing, and others.



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setting the condition that a procured service or object must bear the Fairtrade label or meet equivalent requirements (see fair trade criteria in the annex to the guidelines).

While assessing whether an object or a service meets certain requirements, a label can be used as a criterion for making a decision. But should a product lack a label, it does not mean the product does not meet certain requirements. Other suitable evidence must also be taken into account.

ASSESSING AND SELECTING THE WINNER

In the assessment stage, points are awarded to tenders according to the award criteria, and the best tender is chosen or declared successful. According to section 117 subsection 1 of the PPA, the contracting authority or entity declares successful the most economically advantageous tender based on the award criteria. This might not mean a tender with the lowest price but in addition to price, other criteria may also be important. Among others, these may be criteria related to social aspects, for example, the requirement of having the commissioned goods originate from fair trade.

Bonus points can be awarded to tenders that consider social values, for example, implement fair trade principles. A bidding party who proves that they procure the largest percentage of products from fair trade is awarded more points.

The easiest solution for distributing points among tenders is awarding the maximum amount of points to a tender with the largest share of products from fair trade, and less points to tenders with a proportionately smaller share of fair trade products. In this case, the minimum share of fair trade products for awarding points in the first place should also be determined.

As the promotion of fair trade is an additional indicator, not the main indicator for quality related to the subject matter of the procurement, this requirement cannot be an obstacle to achieving the main goal of procurement – finding the most economically advantageous solution. The recommended share of points awarded for products originating from fair trade could be 10 to 30% of all the assessment points.

Recommended assessment criteria

Goal: core level	Goal: comprehensive level
Option A: 10 to 30% of the total mass/value	Option A: 30 to 70% of the total mass/value
Option B: List of products	Option B: List of products

In **option A**, assessment points are awarded proportionately to tenders where more than x% of all the commissioned goods (e.g. coffee, tea, chocolate (cocoa), sugar, bananas) have been produced and purchased according to the requirements of a fair trade certification system that:



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- requires the minimum content of a certified product of 90%, and
- is based on multi-stakeholder organisations with a wide range of members or working with international fair trade standards, including working conditions applied in production according to ILO (International Labour Organization) requirements.

The figure for the x% is set by the contracting authority or entity itself, based on the desired level (see the table above). Meeting the requirements can be proved by the Fairtrade or other systems/schemes complying with the aforementioned conditions. Please see the additional explanations for referring to specific labels in procurement below.

In order to prove whether a criterion is complied with, a bidding party will submit data on all the coffee, tea, chocolate (cocoa), sugar and bananas (names and quantities) they plan to procure while performing the contract, indicating in particular these products which meet a criterion.

In **option B**, assessment points are proportionately awarded to tenders that have food and beverages made and bought according to a fair trade certification system meeting the same terms and conditions as in option A.

In order to prove whether a criterion is complied with, a bidding party will submit a list of products they plan to procure while performing the contract and which meet a criterion.

A bidding party must determine themselves whether the percentage is calculated based on the volume, weight or sums of money spent.

N.B. The share of a particular assessment criterion must already be specified in the procurement documents of a public procurement. Criteria that have not been communicated in the procurement documents cannot be used in the assessment stage.

ACTIVITIES AFTER THE SELECTION: CONTRACT PERFORMANCE CONDITIONS

Among others, procurement documents must include all the terms and conditions of the prospective public contract, which may involve economic, innovation-related, environmental, social or employment-related considerations, except for the conditions on which the contracting authority or entity seeks competitive tenders (please see section 77 subsection 4 clause 4 of the PPA).

Therefore, while preparing the procurement documents of a public procurement, the terms and conditions of a contract that all the bidding parties are expected to fulfil must be specified. This can also include the minimum requirements for abiding by the principles of fair trade (e.g. a percentage for the fair trade origin of goods). It is reasonable to set provisions for terms and conditions on which competitive tenders are sought, making it possible to check later whether the conditions of a procurement are also met later. For example, it is reasonable to fix the percentage in the contract, when according to the winning party's tender, 70% of the procured coffee would originate from fair trade.



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LABELS: WHAT ARE LABELS AND HOW TO ATTEST/APPROVE THEM?

‘Label’ means any document, certificate or attestation confirming that the supplies, services, works, processes or procedures in question meet certain requirements (section 89 subsection 1 of the PPA).

Should the contracting authority or entity want the procured goods or services to meet the requirements that a specific label guarantees, they can require this label to be used; the respective terms and conditions have been established in section 89 subsection 2 of the PPA. In summary, the goal of these terms and conditions is for the application of the label to be transparent and on an equal basis for everyone, and for the requirements of the label to be verifiable. The existence of a label can only be required when the technical specifications of a tender are based on environmental, social or other special characteristics.

These guidelines here focus on fair trade with the best-known label being Fairtrade. Various certification systems are used in the world, and their labels speak about the conditions that the production of their goods has fulfilled. In addition to fair trade labels, Mondo has highlighted two more labels that can be found on goods produced and available in Estonia: UTZ Certified and Rainforest Alliance (but these are not fair trade labels). More information on different labels can be found in Annex 2 of the guidelines.



The contracting authority or entity may require the procured goods or services to comply with all the requirements of a label or with just some of them – the latter have to be clearly highlighted.

For example, should a contracting authority or entity wish to procure “chocolate whose production has not used child labour”, they should highlight specific requirements of the Fairtrade label concerning the use of child labour, and refer to the Fairtrade label as one of the opportunities for proving that these conditions have been fulfilled.

Should a contracting authority or entity want goods or a service to comply with the requirements related to a specific label, it is sufficient if they refer to a specific label in the procurement documents. For the sake of certainty, these requirements may also always be written out in detail.

If the contracting authority or entity has required the existence of a specific label, they must also accept other equivalent labels or other relevant evidence submitted to their satisfaction in proof of the conformity of the label with the requirements (please see section 114 subsections 5 and 7 of the PPA). Reference to equivalence must already be included in the procurement terms and conditions.

When assessing equivalence, it must certainly be assessed: 1) whether the label used by a bidding party guarantees the same criteria are met as the label required by the contracting authority or entity (e.g. a fair producer price, decent production conditions, etc., see Annex 1), and 2) whether



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the reliability of a label used by a bidding party is confirmed by an independent certification system. It is not enough when a producer confirms that a label confirms that fair trade criteria are met.

These guidelines were drawn up by Kärt Vaarmari and NGO Mondo within the project “Supply Cha!nge. Make Supermarkets Fair”, funded by the European Commission and Ministry of Foreign Affairs of the Republic of Estonia with the funds for development and humanitarian aid, and the goal of the project being to make the private labels of supermarkets more fair and cost-effective. Please see: www.supplychainge.org and www.fairtrade.ee.

NGO Mondo turned 10 in 2017 and is the largest Estonian organisation working on development cooperation, humanitarian aid and global education. Read more at mondo.org.ee



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ANNEX 1 – FAIR TRADE CRITERIA






[The European Parliament resolution on Fair Trade and development from 2006](#) defines the following fair trade criteria:

- a) a fair producer price, guaranteeing a fair wage and covering the costs of sustainable production and living. This price needs to be at least as high as the Fair Trade minimum price and premium, where they have been defined by international Fair Trade associations;
- b) part payments to be made in advance, if so requested by the producer;
- c) long-term, stable relations with producers and involvement on the part of the producers in Fair Trade standard-setting;
- d) transparency and traceability throughout the supply chain to guarantee appropriate consumer information;
- e) conditions of production that respect the eight International Labour Organization (ILO) Core Conventions;
- f) respect for the environment, protection of human rights and in particular women's and children's rights and respect for traditional production methods that promote economic and social development;
- g) capacity building and empowerment for producers, particularly small-scale and marginalised producers and workers in developing countries, and their organisations, as well as for the respective communities, in order to ensure the sustainability of Fair Trade;
- h) support for production and market access for producer organisations;
- i) awareness-raising activities about Fair Trade production and trading relationships, the mission and aims of Fair Trade and the prevailing injustice of international trade rules;
- j) monitoring and verification of compliance with these criteria, in which Southern organisations must play a greater role, leading to reduced costs and increased local participation in the certification process;
- k) regular impact assessments of Fair Trade activities.



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ANNEX 2 – FAIR TRADE LABELS

	What does this label mean?	What is the consumer actually buying when they buy a product bearing this label (e.g. fair wage for a farmer, environmental safety, etc.)?
<p>Fairtrade Max Havelaar</p> 	<p>In 2001, Fairtrade imposed recruited labour standards for certain crops. The certified crops that meet the recruited labour standards are bananas, flowers, tea, fruit and vegetables. Fairtrade is divided into two independent organisations: Fairtrade International, setting the Fairtrade standards and supporting the producers, and FLOCERT, inspecting and certifying producer organisations and intermediaries.</p>	<p>Fairtrade International sets the minimum price of products; starting from the minimum price level, negotiations over price between a producer and a buyer. Cane sugar is the only product without a minimum price. When the market price is higher than the minimum price, market price must be paid. Workers are paid the national minimum wage or regional average wage, depending on which of these is higher. The health and safety requirements have been laid down in great detail. The workers are treated equally. In addition to minimum price, the producer is also paid a premium that is used for community projects. Farmers participate in the decision-making process of a cooperative by complying with democratic principles, and they decide for themselves what they would like to build in their community using the premium.</p>
<p>Ecocert Fair Trade</p> 	<p>Ecocert certifies organic farming products. By promoting organic farming and creating a check and certification system around the world, Ecocert protects an environmentally sustainable approach.</p>	<p>Fair wage and premium to producers, workers are treated equally (women, religious minorities, seasonal workers, etc.), the transparency of information is guaranteed, no discrimination, reduction of environmental impacts arising from activities (energy, soil, water and waste management), protection of biodiversity, and the prohibition of GMOs.</p>
<p>Organic Fair Trade & Organic Solidarity – Bio Partenaire</p>   	<p>The goal is to unite and support small and medium-sized enterprises who have been awarded the certificate “Organic Fair Trade” or “Organic Solidarity”, to promote responsible production and consumption, and raise consumer awareness of the problems related to fair trade and organic production.</p>	<p>Fair wage and premium to producers, workers are treated equally (women, religious minorities, seasonal workers, etc.), the transparency of information is guaranteed, no discrimination, reduction of environmental impacts arising from activities (energy, soil, water and waste management), protection of biodiversity, and the prohibition of GMOs.</p>






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<p>Fair for Life</p> 	<p>Fair for Life combines three types of requirements: organic farming, corporate responsibility and fair trade. The label “Fair for Life” is also an opportunity for companies whose products have been awarded the “For Life” certificate covering organic farming and social requirements.</p>	<p>Fair wage and premium to producers, all workers are treated equally (women, religious minorities, seasonal workers, etc.), no discrimination.</p> <p>Fair for Life focuses on effective use of water and use of renewable energy sources.</p>
<p>Fair Trade USA</p> 	<p>Fair Trade USA separated from Fairtrade International, wishing to implement their initiative “Fair Trade For All” that expanded the standards of recruited labour to consumables that Fairtrade International only allows organised small-scale farmers (e.g. coffee plantations) to use. With the same initiative, Fair Trade USA expanded their certificate to unorganised producers under their own standards, aimed specifically at independent small-scale farmers.</p>	<p>Minimum price has been set for most products, it is obligatory to pay national minimum wage or regional average wage to workers, depending on which of these is higher. The premium varies and depends on whether the workers are paid a living wage.</p>
<p>Naturland Fair</p> 	<p>The pioneer of German organic production sector in the 1980s – Naturland – is now an international association, active on several fronts: sustainable forestry, sustainable fisheries, cosmetics and textiles. Naturland Fair, founded in 2010, is based on the pillars of sustainability: agriculture, social communication and honest relationships. It is optional for companies who have already been awarded the organic “Naturland” label. They develop frameworks, organise certificate audits and promote organic farming via their actions.</p>	<p>Fair price for producers and workers (either the minimum price set by Fairtrade International, or in case it is not there, the price is made up of production costs + 10 %, and in case production costs are not known, the price is made up of the market price + 10 %). A premium is available, all permanent workers have social insurance, all workers are treated equally (with special attention being paid to women), and human rights are not violated. Renewable energy sources are preferred and energy is used effectively. Water resources are used carefully and sustainably. Waste disposal is eco-friendly, and as much is reused as possible. No synthetic chemicals or growth regulators are used. GMOs are prohibited.</p>





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<p>Forest Garden Products</p> 	<p>This particular agroforestry model (forestry system that temporarily also grows crops where trees are usually grown) supports the restoration of deforested and degraded areas by offering new sources of income, food and other basic needs. The goal of such a farming method is to preserve water and soil, manage pests, increase biodiversity and restore the cycle of nutrients.</p>	<p>A fair price is paid to producers, and it has to cover the production costs and basic needs (the price has to be 5% higher than the usual market price). Producers also receive the premium. Standards are in place in order to prevent discrimination and all workers are treated equally. The FGP standards reduce ecological footprint, and procedures for reducing wasting water are followed. Attention is also paid to restoring biodiversity.</p>
<p>Small Producers' Symbol</p> 	<p>The distinctive feature of the label "Small Producers' Symbol" is that it is only given to associations of small producers, and it excludes private plantations and unorganised small producers.</p>	<p>The producers are paid the minimum price (fair price) set by FUNDEPPO (Foundation of Organized Small Producers); organic producers are also paid the premium ("organic acknowledgement"). Discrimination against workers is prohibited. GMOs and hazardous chemical substances are prohibited.</p>
<p>WFTO (World Fair Trade Organisation)</p> 	<p>Members of producer organisations in the WFTO are organisations that have been founded to support excluded communities and preserve traditional skills. Most members are groups of handicraftsmen.</p>	<p>A fair price is paid for producers (premium is included in fair price), all workers must have nationally established social benefits, workers are treated equally, no discrimination, damages to nature are minimised, and organic farming methods are preferred.</p>



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Labels supporting environmentally friendly production but are not fair trade labels

	<p>UTZ Certified focuses on increasing production and improving the quality of the produce by educating the farmers.</p>	<p>As a result, the farmers have a bigger income and the communities are sustainable. UTZ Certified products are cocoa, coffee, tea and nuts.</p>
	<p>Rainforest Alliance focuses on the preservation of biodiversity and the management of sustainable farming.</p>	<p>By buying products bearing the Rainforest Alliance label, we guarantee the existence of the necessary means for the farmers of developing countries and their better living conditions.</p>