



# SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT BAROMETER

Research report on socially responsible public procurements in Romania

September, 2021



# CONTEXT

This research report, called **Socially responsible public procurements barometer**, was elaborated within the framework of the project “Social Enterprises Accelerator!”, contract HCOP/449/4/16/127384, implemented by the foundation “Alături de voi” Romania, in partnership with the Development Advisory Group - fonduri-structurale.ro, being co-financed by the European Social Fund, through the Human capital Operational Program 2014-2020.

The content of this material does not necessarily represent the official position of the European Union or of the Romanian Government.

The report is based on the result of a survey conducted among contracting authorities and social economy operators from 10 August to 13 September 2021.

**In this context, we address many thanks to those 47 representatives of the public authorities and social economy entities who responded to the questions in the Socially responsible public procurements barometer. The data provided is valuable and we appreciate the effort and time spent on this research.**

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## ABBREVIATIONS

- **HCOP** – Human Capital Operational Programme with reference to the national program financed by the European Social Fund in Romania in 2014-2020, which is planned to be implemented by 2022.
- **SE** – Social enterprise
- **SIE** – Social insertion enterprise
- **SEE** - Social economy enterprises
- **UPA** – Unit protected and authorized according to the republished Law No 448/2006 as subsequently amended and supplemented on the protection and promotion of the rights of persons with disabilities
- **SRPP** – Socially responsible public procurements
- **ADV** - Alături de Voi
- **NOCP** - National Office for centralized procurements





# 1 SOCIALLY RESPONSIBLE PUBLIC PROCUREMENTS IN ROMANIA

## ▶ 1.1 Legislative framework

Through socially responsible public procurement (SRPP) public purchasers can promote employment opportunities, decent work, social inclusion, accessibility and respect for social and labour rights, the provision of high-quality social services and facilitate access to public tenders for social enterprises.

In 2014, the European Union adopted the Directive 2014/24/EU, which regulates, among other things, reserved public procurements and introduces social clauses in public procurement contracts. Provisions have thus been drawn up at the European level to allow the public purchasers to prioritize or to reserve markets/contracts to economic operators whose main purpose is to integrate socially and professionally the disabled or disadvantaged persons when awarding the public contracts (Article 20 Directive 2014/24/EU).

The Directive has also been transposed in Romania and these procurements have been explicitly introduced in Article 56 par. (1) of Law 98/2016, Article 69 par. (1) of Law 99/2016, respectively, as follows:

- The contracting authority/entity may reserve the right to participate in the award procedure only to **protected units authorized** under the republished Law No 448/2006, as subsequently amended and supplemented on the Protection and promotion of the rights of persons with disabilities, as well as to social insertion enterprises provided for by Law No 219/2015 on the Social economy.
- The contracting authority/entity may establish **social award criteria** related to the object of the contract. Also, for each **assessment factor** the contracting authority shall establish the weighting by which a characteristic may represent a social and inclusive advantage that can be scored.

We may say that the national legislation in the field of public procurement encourages the contracting authorities to carry out public procurements that meet the social objectives, giving the contracting authorities the possibility to reserve the right to participate in the award procedure only to authorized protected units and to social insertion enterprises.



## 1.2 Access to the public procurement market for social enterprises

Adequate access to the goods and services markets produced by social economy enterprises (SEE) is fundamental to their development and sustainability. The development of a “purchase from the SEE” culture is a cornerstone for a vibrant and dynamic social economy ecosystem, allowing access to both public and private markets, which can be strategically supported by public policies. This information is contained in a set of [Guidance for local public authorities in developing policies for the social and solidarity economy](#), published by *United Nations Research Institute for Social Development*.

The policies in the field of public procurements favouring the social economy enterprises can be a predictable and sustainable source of income for them, creating opportunities for these social economic operators to sell their goods and services on private markets, both directly to consumers (businesses to consumers or B2C), and indirectly through the development of partnerships with other SEE or private companies from wider supply chains (business to business or B2B). These opportunities have increased as individual consumers and profit-oriented enterprises become increasingly sensitive to ethical and responsible purchases.

Public policy tools exist, for example, online social procurement platforms, to facilitate the meeting between supply and demand, which can facilitate the access of the SEE to both private and public markets at regional, national and even international level.

## 1.3 Best practice models in Europe

### Barcelona, Spain

The Barcelona City Council is an example at European level of the courage and determination with which it promotes sustainable public procurement, integrating social, environmental, ethical and innovative considerations that take into account the rights of both workers and beneficiaries and users covered by public contracts. Barcelona's commitment to social procurement is part of its commitment to achieving the UN 2030 Agenda.

The Barcelona City Council has a [Social public procurement guide](#) defining social, inclusive and social justice measures at each level to promote public procurement within the enterprises subordinated to it and among the professionals in the procurement field.



In 2019, as a result of this sustainable public procurement strategy launched in 2016, already more than 88% of the public contracts in Barcelona had social clauses, environmental and innovation criteria.

## **Vendée, France**

The municipality of Vendée, France engaged socially responsible public procurement to provide high-quality organic food to pupils in local schools. During the analysis of the needs, the municipality identified a potential social enterprise, ADAPEI-ARIA 85, which employed 10 people with disabilities and provided services such as the storage, cutting, cleaning, and packaging of organic food. In 2011 they were awarded the contract, in accordance with French regulations, and then in 2015, using the reserved contract instrument, it was renewed for six years. This SRPP agreement, assessed at EUR 105.000 per year, has achieved two impact objectives: supporting the employment of 10 people with disabilities and promoting the consumption of local organic food, providing 1,8 million meals per year to pupils in 34 schools.

## **Tuscany, Italy**

ESTAR, a regional technical and administrative assistance entity of the Tuscany Government, Italy, has used the SRPP to achieve two objectives: promoting the participation of small and medium-sized enterprises and social cooperatives in public tenders and including environmental criteria in awarding contracts for the maintenance of green areas in medical facilities. The tender was divided into 11 lots, of which 8 were reserved for social cooperatives for a total amount of EUR 24 million. The winning social cooperatives were members of five federations with which Tuscany had signed a memorandum of cooperation. By using the SRPP instruments, the contracting authority has succeeded in promoting the professional integration of people with disabilities through social cooperatives.





## SRPP BAROMETER IN 2021 - RESULTS

Although the potential of social procurement has been recognized for a long time, including in Romania, by the legal provisions dedicated in Law 98/2016, respectively in Article 69, par. (1) of Law 99/2016, the scope of its legal use in practice was uncertain. For this reason, social procurement in Romania is rare.

ADV Romania, in partnership with [fonduri-structurale.ro](http://fonduri-structurale.ro), have launched a comprehensive program to promote social inclusion through socially responsible public procurement – the access of the social insertion enterprises to the public procurement market, aimed at developing the cooperation between local/central authorities and the subordinated institutions with social enterprises, social insertion enterprises and authorized protected units.

In this context, the Foundation “Alături de Voi” Romania has launched two surveys - one for the contracting authorities - local, regional, national public authorities) and the other for social economic operators - social enterprises, social insertion enterprises, authorized protected units, NGOs active in economic activity, on **the degree of knowledge of the provisions of the social public procurement law, namely social clauses and reserved contracts, and their use in practice.**

### ► 2.1 Methodology and respondents

An online survey was conducted among contracting authorities and social economic operators to establish the level of knowledge of the provisions of the social public procurement law on social clauses and reserved contracts and their application in practice for drawing up the Socially responsible public procurement barometer between August 10 and September 13, 2021.





On the European Commission portal - <https://ec.europa.eu/eusurvey> - two online questionnaires were created for the two categories of entities, respectively:

Questionnaire for social enterprises: <https://bit.ly/3z58R98>

Questionnaire for authorities and contracting entities: <https://bit.ly/3CtTWqc>

The questionnaires were spread via email, on the "Social Enterprises Accelerator" project page, on the social media of the Foundation ADV Romania (Facebook, LinkedIn), in the "Social economy" Facebook group and by relevant groups in the field of public procurement.

The invitation to take part in the survey was sent directly to the authorized protected units (207), social enterprises (745), to contracting authorities whose email addresses were available (1065).

The response rate was 1,8% for contracting authorities and 2,83% for authorized social enterprises and protected units. 20 questionnaires completed by contracting authorities and 27 by authorized social enterprises and protected units were recorded.

## ► 2.2 The perspective of the contracting authorities

### The objectives of the survey

- The assessment of the degree of knowledge and application of the current legal provisions on social clauses in public procurement and of the reserved contracts among Romanian contracting authorities.
- The identification of several measures that could lead to an improvement of the degree of knowledge and their implementation in Romania.



## The profile of respondents



Contracting authorities from 14 counties and from Bucharest participated in the research: Bacau, Bistrita-Nasaud, Botosani, Brasov, Constanta, Dolj, Gorj, Hunedoara, Mehedinti, Salaj, Sibiu, Timis, Valcea, Vaslui.

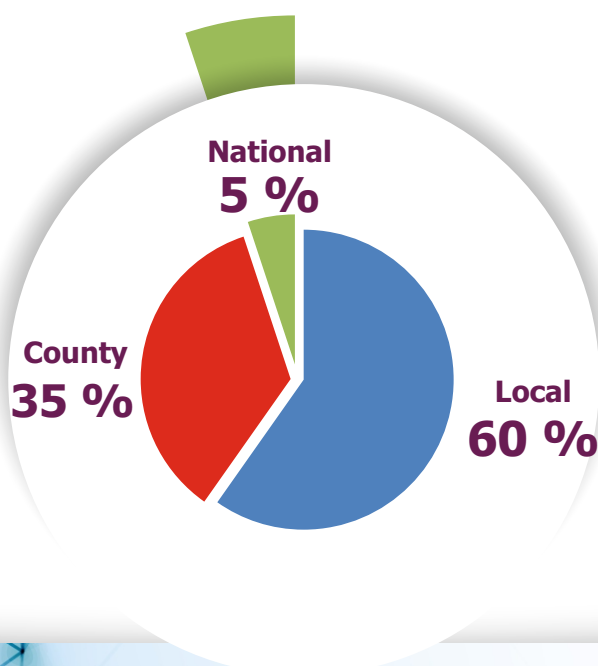
Among the types of institutions that responded to the questionnaires we can identify some County employment agencies directly responsible for the active measures for the employment of disadvantaged people and with certification and support for social insertion enterprises that precisely employ such workers.

Of these, most of them, respectively 60% are public authorities / institutions of local interest, the rest of 35% being of county interest and an authority of national interest. Half of the public authorities/institutions of local interest were in rural areas, namely the communes Baru/Hunedoara, Bogdanesti/Vaslui, Bucecea/Botosani, Cata/Brasov, Ciocani/Vaslui, Gruia/Mehedinti, Prundeni/Valcea, Satu Nou/Bistrita-Nasaud, Seimeni/Constanta.

### Image 1. ▼

#### The profile of respondents:

##### Geographical area of responsibility / activity of the institution

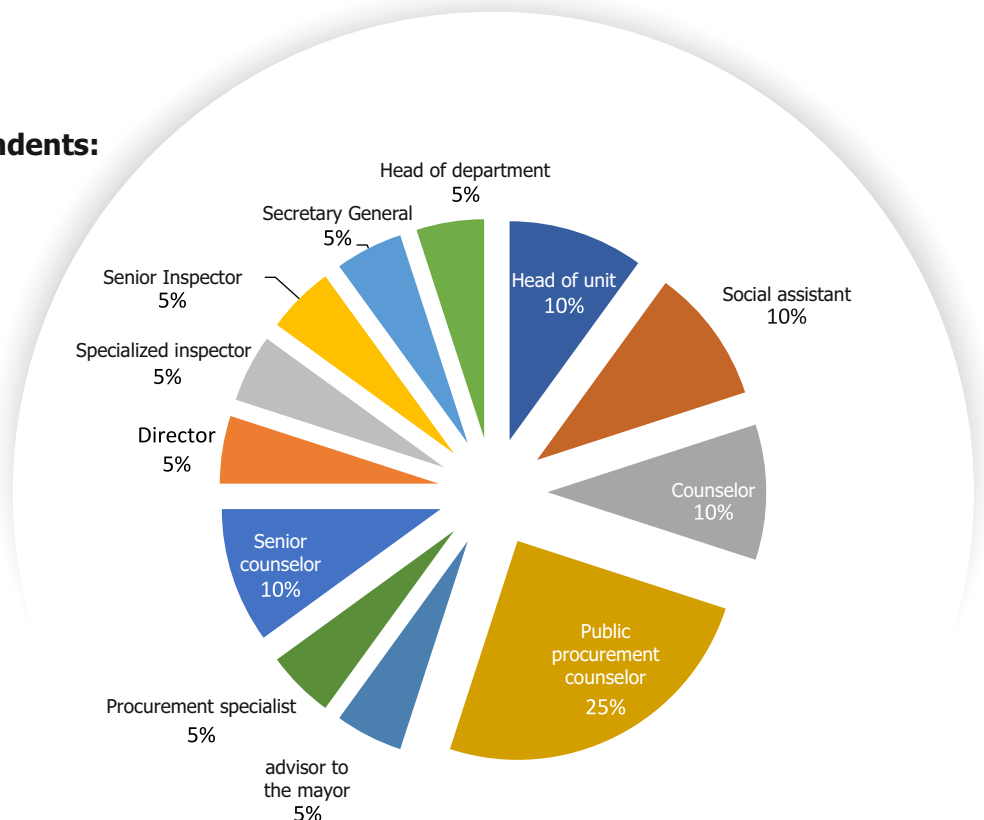


The positions of respondents were different, with most 25% being public procurement advisors, 5% experts in the dependent public procurement depending on and according to the size of the public institution and the specific way in which public procurement activities are organized internally – an activity involving the participation of several services and public decision-makers at the level of each contracting authority.

## Image 2. ►

### The profile of respondents:

#### Position held



We appreciated that the social public procurement is an area where the responsibilities in field of public procurement and social procurement are intersected, and that it would be expected that this type of procurement would be found more in the public institutions in the social field the decentralized services of the Ministry of Labour and Social Security (employment agencies, ANDPDCA, etc.).

The procedures specific to such procurement also require both knowledge in public procurement and in the social field. This is necessary to identify social clauses and indicators which could be used as criteria for assessing the tenders submitted by economic operators.



Image 3. ►

The profile of respondents:

Responsibilities for social inclusion / public procurement

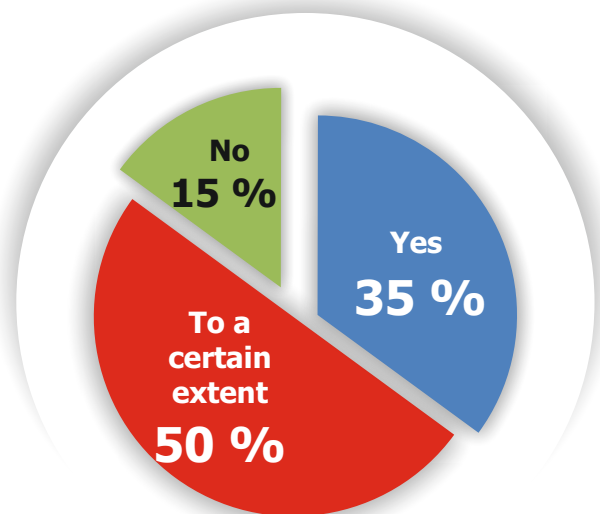


### Main results

**The low degree of knowledge of the legal provisions relating to social clauses and reserved contracts** is alarming – more than half of respondents with insufficient knowledge of these provisions of the legislation in the procurement field, with 15% of them having no knowledge of any kind.

Image 4. ►

The degree of knowledge of the provisions of the law on public/sectoral procurement on social clauses and reserved contracts among the contracting authorities participating in the Barometer





At such a low level of familiarity of the contracting authorities with these procedures, it is no wonder that only 15% of respondents said they had conducted such procedures. More in-depth discussions with respondents revealed that in fact:

- A respondent confuses the procedures with social clauses with the procurement of social services – of general interest – which also have specific operating conditions in the new legislation;
- The contracting authority in question awarded a contract to an UPA for instance, without a reservation of that contract for this type of bidders but simply included UPA among the bidders and they won that procedure.

#### Image 5. ▼

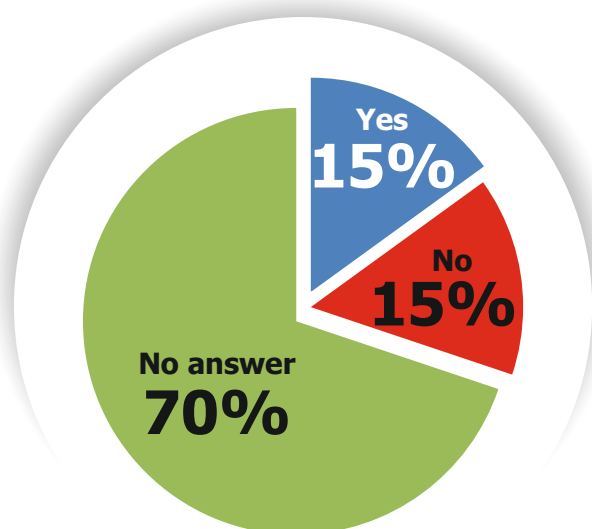
**The share of the contracting authorities running procedures with social clauses or reserving contracts for SIE or UPA.**

**Has your institution ever applied/carried out at least one procurement procedure with social clauses or has it entrusted a (reserved) contract to a social insertion enterprise SIE or to a protected unit authorized by UPA?**

#### Proposals to improve the situation

“What would be useful to do for the successful implementation of these national and European legal provisions?” - to this question most respondents recommended:

- **Activities for social public procurement officers** - Training of responsible public officials and Information - information/promotion campaigns at institutional level, development of a manual of procedures, debates.
- **Measures for the procurement process as a whole** - Increase of transparency, acquisition based on score/qualification for the tender.
- **Measures for the general climate** – for a better access of social enterprises to the public market - better promotion of social enterprises, involvement of local authorities.



## 2.3 The perspective of the social enterprises and authorized protected units

### The objectives of the survey

- The assessment of the degree of knowledge of the current legal provisions on social clauses in public procurement and reserved contracts among social enterprises, authorized protected units and social NGOs;
- The assessment of their current participation in public procurement in general and in society, in Romania, and of their intentions for participation in the future;
- The identification of the factors currently hampering their participation in public procurement in Romania and of some measures that could lead to its improvement.

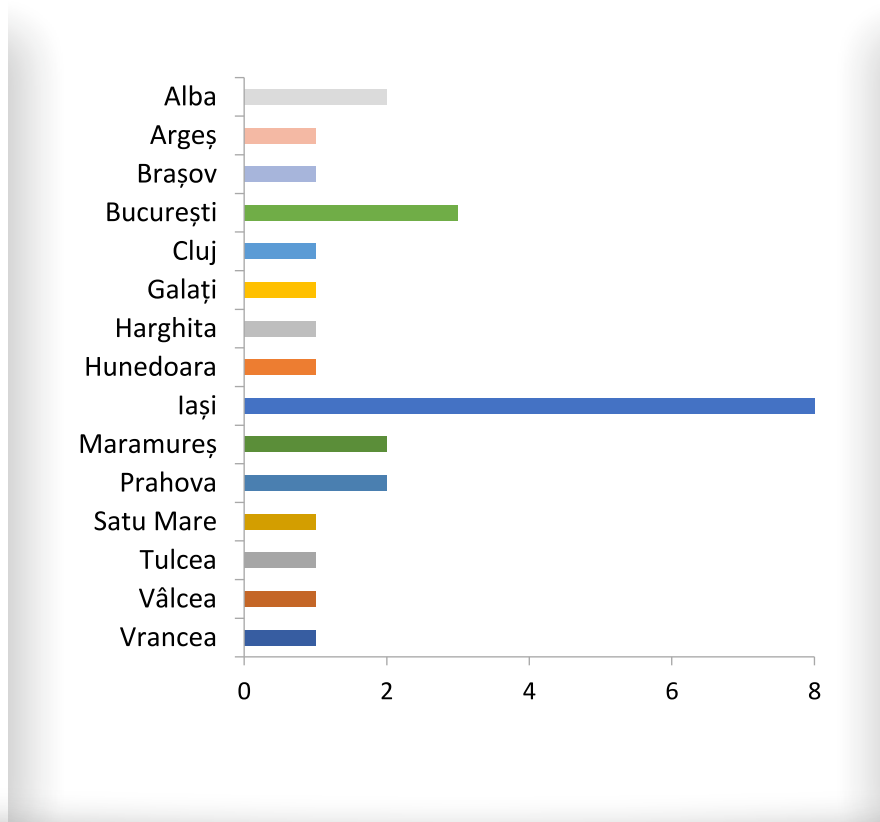
### The profile of respondents



Social enterprises, with or without a social mark or attestation form 15 counties participated in the research - of which counties common with the locality of the contracting authorities which replied to the questionnaire: Brasov, Bucuresti, Hunedoara, Valcea.

### Image 6. ▼

#### Profile of responding enterprises — distribution by county



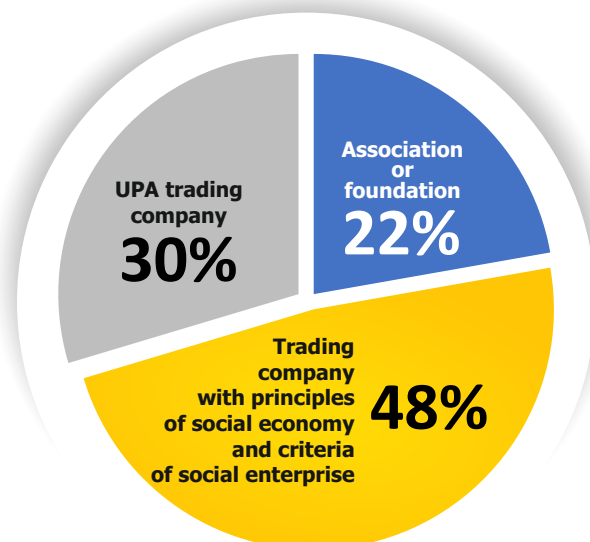
Among the types of organizations that responded, we found as a legal form for the most part –  $\frac{3}{4}$  of respondents – companies of which are either social enterprises or authorized protected units.

## Image 7. ►

### The profile of the responding enterprises

#### Legal form

Among the responding companies, it can be observed again the multitude of authorizations required to operate in various areas of employment and social services in Romania, which places a significant administrative task on private operators in the field.

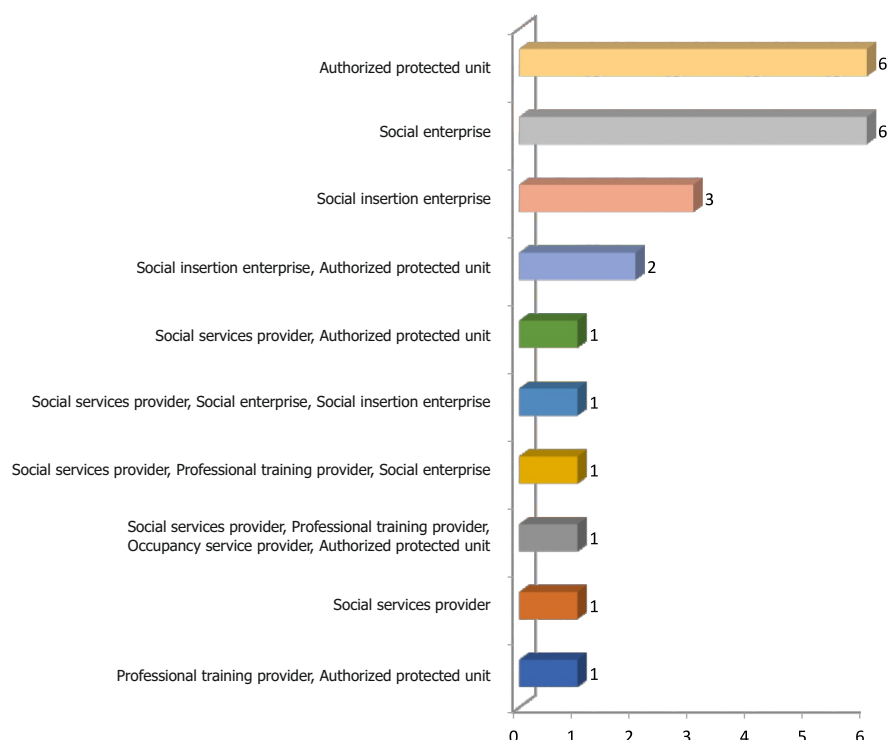


Of the respondents, less than half had a single authorization either by UPA or by SIE, the rest having at least two. We consider that **the social insertion enterprise has two distinct regimes** - as defined by the social enterprise attestation of conformity with the criteria for social enterprise and the social mark granted to social insertion enterprises confirming that they employ at least 30% of disadvantaged workers and that the support services required for socio-occupational integration are in place.

## Image 8. ►

### The profile of the responding enterprises:

#### – social authorizations held



## Main results

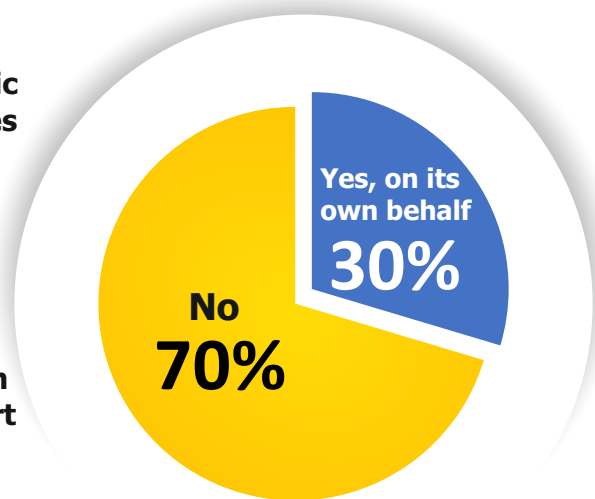
Most respondents, more than 2/3 of them, have never participated in a procurement procedure – although the first condition for success is to try. We will see further why, although... interested social enterprises do not participate in public procurement procedures.

Of those who participated, they all did it on their own – the participation as a sub-contractor of a larger company in such procedures is a relatively common practice in EU countries with experience in social procurement.

### Image 9. ►

**The frequency of participation in the public procurement procedures of the enterprises taking part in the Barometer**

**Has your organization participated in any public/sectoral procurement procedure on its own behalf or as a sub-contractor - part of a consortium in the last 3 years?**



The reasons expressed by the respondents for not taking part in such procedures are diverse - one third of the participants being start-ups, did not have the time and the market experience/production capacity needed for serious orders. A large number of enterprises have not yet raised the issue of such sales to the public sector (they stated *That was not the case, I did not have the opportunity, I did not think it was necessary*).

Other reasons why social enterprises responding to Barometer do not participate in public procurement procedures:

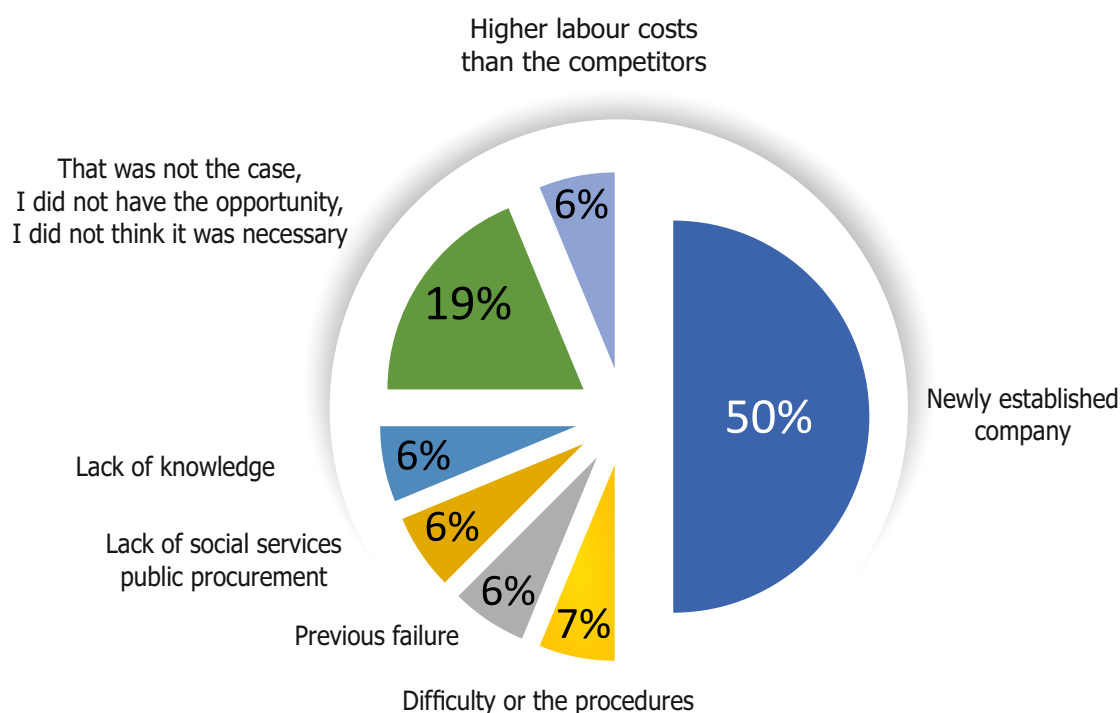
- Difficulty in procedures and lack of knowledge in the field;
- Previous failure;
- Lack of social services public procurement;
- Scepticism about the result of the procedure - the higher labour costs of social enterprises (i.e. "disadvantaged workers") than of the competing firms.





**Image 10.** ▼

**The reasons why SIE and UPA responding to the Barometer do not participate in public procurement**



**The frequency of social clauses and reserved contracts**

Our research shows that these procedures are practically as non-existent in the Romanian public procurement market.

Practically *the social enterprises* - those which by their attestation ensure the social character of a procurement, do not benefit from any of these favourable procedures, established by the European legislation adopted by Romania. *The protected units* are the only ones who benefit, but also to a very limited extent.

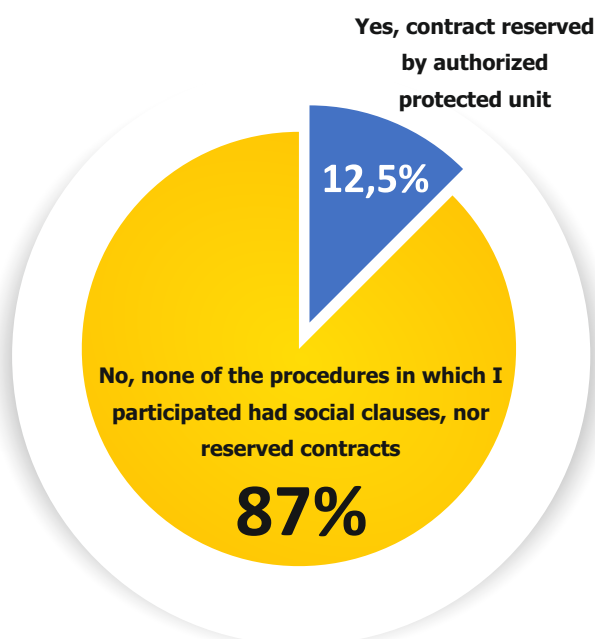


**Image 11.** ►

**The frequency of procedures with social clauses or reserved contracts within the procurement contracts with SIE and UPA**

**The participating social enterprises and UPA are interested to enter the public procurement market, in particular the social ones .**

Almost 2/3 of the respondents who did not have the opportunity to participate before the survey would be interested in participating in public procurement procedures – a small proportion of which only under certain conditions.

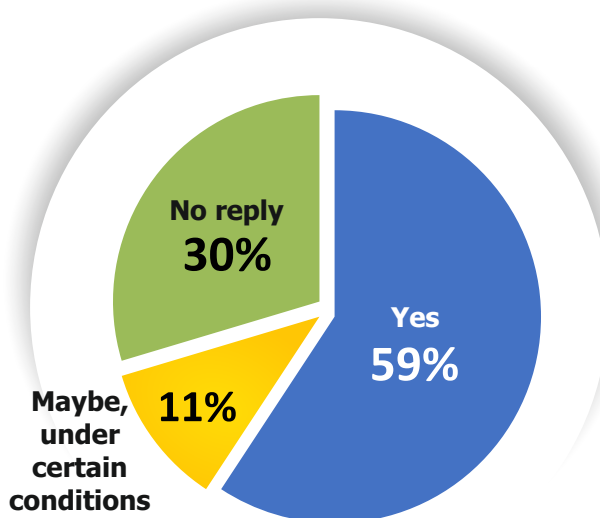


**Image 12.** ►

**The interest of social enterprises to enter the public procurement market in the future**

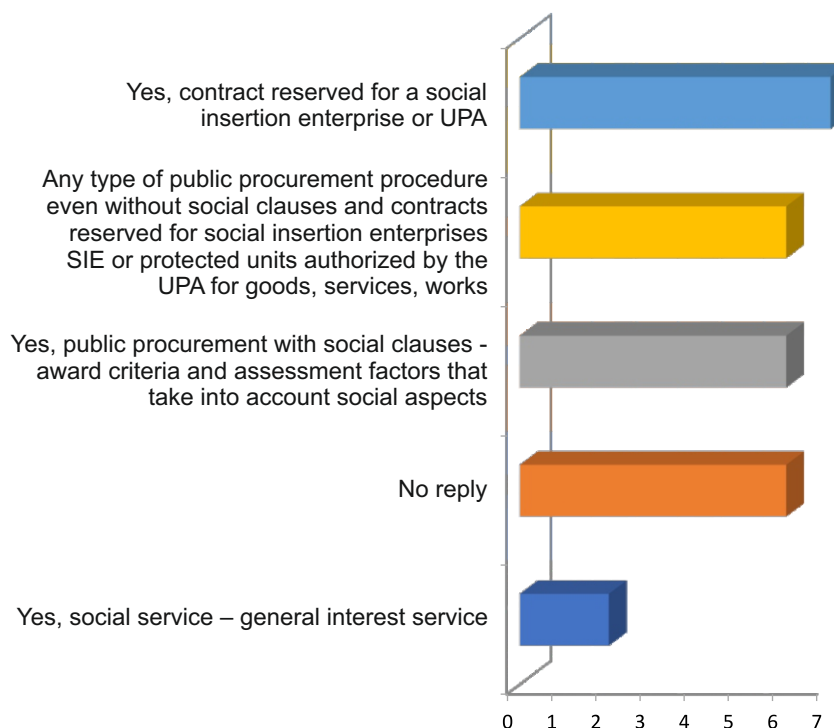
The enterprises participating in the Barometer prefer to take part in the social procurement procedures – either with social clauses – award criteria and assessment factors that take into account social aspects or for a contract reserved for a social insertion enterprise or UPA.

At the same time, almost 1/3 of them would participate in any type of public procurement procedure, even without social clauses and contracts reserved for social insertion enterprises SIE/or protected units authorized by UPA - for goods, services or works for which the organization has expertise and production capacity.



### Image 13. ▼

#### Types of procurements preferred by the responding social enterprises



#### Strategies for sales to public authorities and their efficiency

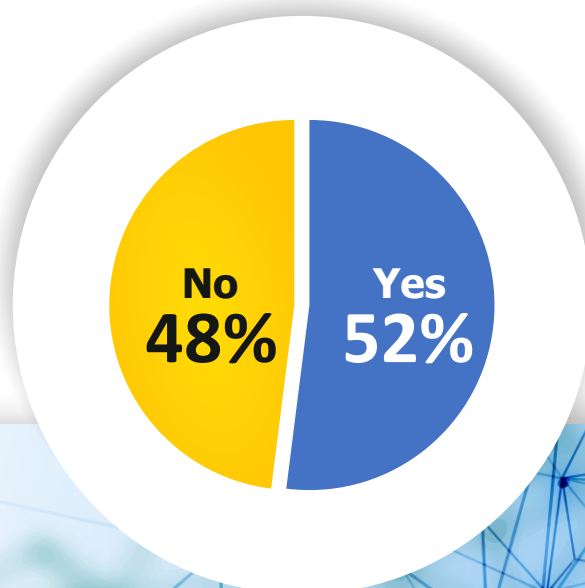
Most of the responding enterprises approached the contracting authorities to present their products and services, but almost half of them did not.

### Image 14. ▼

#### The share of social economic operators who have presented their products and services to contracting authorities

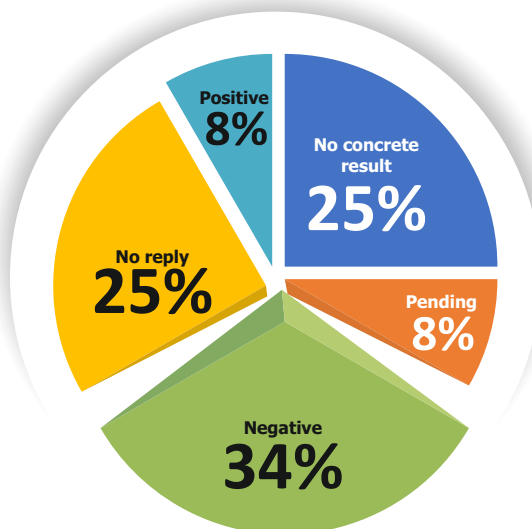
#### The proactivity of the responding enterprises in relation to the contracting authorities – presentation of the products/services

It is no wonder that the enterprises are lagging in doing so, because after the answers of the participants in Barometer, these steps are generally not successful.



**Image 15. ▼**

**The result of the presentation of the goods or services to the contracting authorities**



**The proposals of the enterprises participating in the Barometer**

**The accessibility of the procurement platform for SIE and UPA or the achievement of a dedicated platform:**

- the creation of a platform containing all the commercial offers of social enterprises and their promotion on all communication channels;
- the notification of all social enterprises when a public procurement of interest to them - with social criteria or reserved contract is published;
- simple procedure and transparent communication of the process;
- the visibility of information for participation by social enterprises.

**At the level of the procurement procedures - Clear and transparent assessment criteria**

**The adaptation of the legislation in the field to stimulate social public procurement -**

Compelling the public authorities that 10% of the yearly budget dedicated to public procurement (not including the disability tax) to be used for procurement procedures reserved for S.I.E. with schedules of conditions containing social and green (environmental) clauses.

**Awareness, popularisation, information of other possible stakeholders!**

- Private entities that are not aware of the legislation on contracts with protected units – could invite them as sub-contractors;
- The information of the people of the role of these social enterprises and of municipalities which should award certain types of service contracts only to social insertion enterprises.

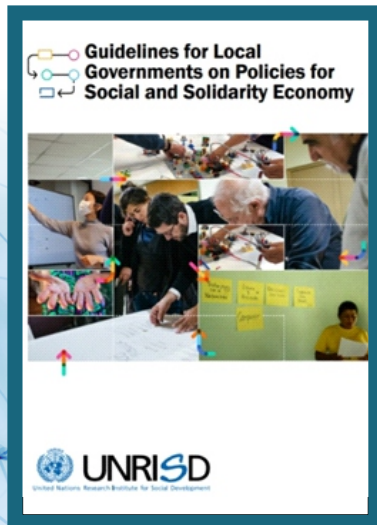
**A network of social enterprises with a management capable of facilitating the procurement process by sector of activity.**





## Useful resources

Most social enterprises contributing to the research have approached contracting authorities to present the products and services offered, but almost half of the contracting authorities chose not to procure from such entities.



[UN Guide on SRPP](#)



[Barcelona Guide on SRPP](#)



[ONAC, Romania - model of good practice](#)



[71 models of good practice EC Guide](#)





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**Research report, carried out within the framework of the project "Social Enterprises Accelerator", co-financed by the European Social Fund through the Human capital Operational Program 2014-2020**

**Priority axis 4:** Social inclusion and combating poverty

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**Contract no:** HCOP/449/4/16/127384

**Beneficiary:** The foundation "Alaturi de Voi" Romania and [fonduri-structurale.ro](http://fonduri-structurale.ro)





