



Vlaamse
overheid

Due diligence in public procurement

Responsible supply chain management strategies for ICT
Cooperation with Electronics Watch

Agency for Facility Operations – Government of Flanders

BACKGROUND

➤ Article 18.2 Directive 2014/24:

“Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.”

➤ Article 7 Federal Procurement Law:

*“Economic operators have to comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law or collective agreements or by international laws (same annex). **They ensure subcontractors and every entity, regardless their tier, employing personnel for the execution of the contract complies with the previously mentioned laws and agreements.**”*



CONSEQUENCES NON-COMPLIANCE

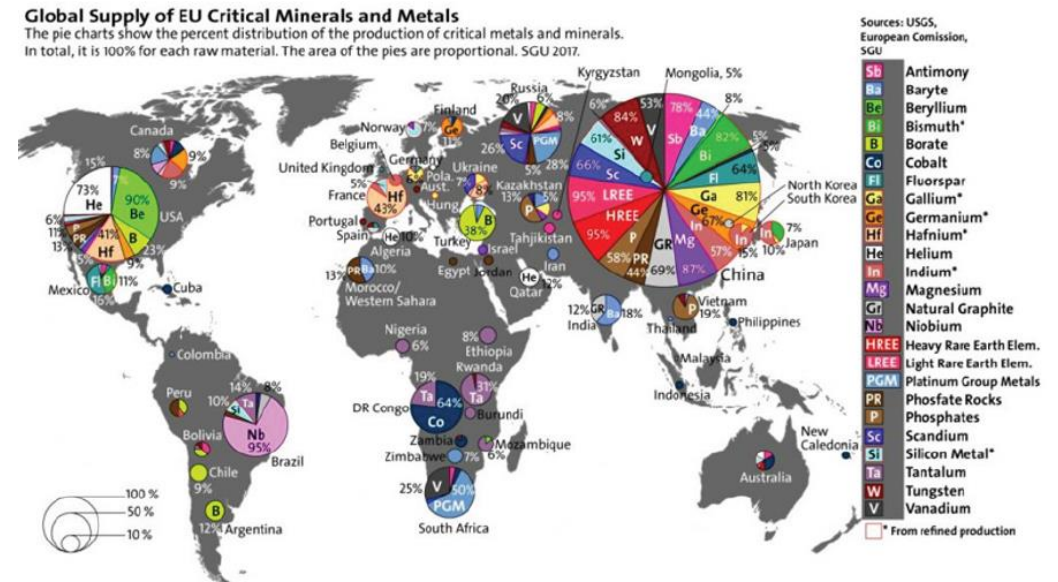
- During the tender phase
 - Possibility to exclude economic operators when they do not comply with article 7 Federal Procurement Law (article 69 FPL).
 - Unless they prove they undertook appropriate measures to remediate the breaches (article 70 FPL).
- During execution phase:
 - Abidance by article 7 FPL;
 - Declare in default, worst case scenario: ending contract.



ISSUE: MONITORING COMPLIANCE

- ∅ Supply chains are enormous, untransparent and have multiple layers:
 - Mining;
 - Manufacturing;
 - Assembly
- ∅ No proper certificates that cover all sustainability aspects (limited scope and/or product applicability)
- ∅ Consequence: following up on abundance to article 7 = hard

=> Agency for Facility Operations needed a plan!



PLAN: MONITORING ICT SUPPLY CHAINS

- **Electronics Watch is an NGO providing a monitoring service:**
 - Cooperation with local stakeholders in producing countries and facilities (a.o. worker driven monitoring);
 - Takes action and tries to remediate breaches of human rights and other laws;
- **Advantages:**
 - Improved transparency
 - Bundling of buying power (market leverage)
 - Indirect effects

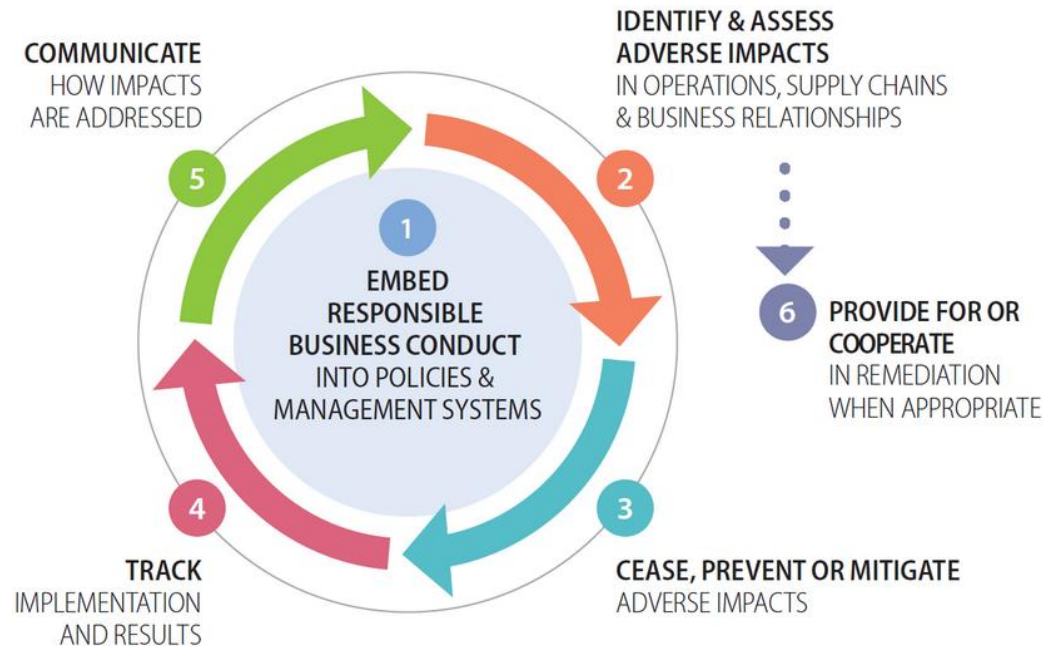


Responsible public procurement.
Rights of electronics workers.

ICT-CONTRACT AND CLAUSES (1)

- Contract for “tail-end” spend, including i.o. keyboards, headsets, cables, portable hard drives, smartphones and monitors;
- Maximum estimated value: € 21.600.000
- Sustainability:
 - Monitors: TCO-certificate Displays 9 and Energylabel E or lower
 - Award criterion: after-sales service

ICT-CONTRACT AND CLAUSES (2)



- **Clauses Electronics Watch – attachment to tender document**
 - Due diligence-clauses
 - Chapter 1 – definitions
 - Chapter 2 – applicable laws
 - Chapter 3 – duties of the contractor
 - Chapter 4 – dialogue and escalation
 - Chapter 5 – examples of breaches

- **Yearly meeting to follow up on execution of contract**



CONCLUSION

- Current legal framework = decent
- Issues are:
 - Missing central bodies registering breaches of labour, environmental and social law
 - Lack of thorough follow-up of contracts in the execution phase
 - Limited knowledge of international, regional laws and supply chains
- To do's:
 - Improving transparency by engaging with contractors and cooperating more closely with monitoring parties, like Electronics Watch
 - broadening public buyers network – collaboration e.g. CFIT (increasing buying power)
 - closer follow-up of public contracts in execution (→ needs people and skills)