



Beschaffungsamt
des BMI



KOMPETENZSTELLE
für nachhaltige Beschaffung

Handout



Declaration of Commitment to Compliance
with Labour and Social Standards in
Public ICT-Procurement

Handout

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with Labour and Social Standards in
Public ICT Procurement



***Human Rights in
Procurement***

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List of abbreviations

BeschA	Procurement Office of the Federal Ministry of the Interior (BMI)
BSCI	Business Social Compliance Initiative
CoC	Code of Conduct
EICC	Electronic Industry Citizenship Coalition
FTA	Foreign Trade Association
ILO	International Labour Organization
KNB	Centre of Excellence for Sustainable Procurement
NAP	National Action Plan for Business and Human Rights
NGO	Nongovernmental organisation
RBA	Responsible Business Alliance (formerly EICC)
SAAS	Social Accountability Accreditation Services
SAI	Social Accountability International
SCM	Supply Chain Management
SDG	Sustainable Development Goals
VAP	Validated Assessment Program – a process of the RBA

1. Introduction

1.1 Background

The public sector, accounting for an estimated procurement volume of EUR 350 billion annually, contributes decisively to the demand for sustainable products and services; this includes responsibility for deciding what to procure and how its decisions impact the market, environment and society.

The Federal Government has committed itself to implementing the 17 United Nations (UN) sustainability goals, which are known as “Sustainable Development Goals”. One of those goals is particularly relevant for sustainable procurement: Goal 12 addresses sustainable consumption and production:¹

“Our consumption has not yet taken sufficient account of our planet’s ecological limits. Companies should increasingly align their production to sustainability along global supply chains and respect human rights in the production process. People and the public sector should increase sustainable consumption. They can do so, for example, through fair trade, by buying eco-friendly products and avoiding food waste.

Part of this is that the international community of states has committed itself to sustainable procurement (Goal 12.7), which is:²

Goal 12. Ensure sustainable consumption and production patterns

...

12.7 “Promote public procurement practices that are sustainable, in accordance with national policies and priorities”

This is an important goal for the Federal Government, especially when working with the National Action Plan to implement the UN Guiding Principles on Business and Human Rights (NAP).

The Action Plan addresses the responsibility of German companies and their contribution to respecting human rights in their global supply chains. To this end, the NAP specifies responsibilities and globally uniform and verifiable standards.

However, the NAP also includes measures and statements regarding public procurement. On this topic, the NAP states:³

“The federal, state, and local authorities have particular responsibility in this domain, in that they must discharge the state duty to protect human rights and ensure that the use of public funds does not cause or foster any adverse impact on human rights.”

¹ German-language source: <https://www.dieglorreichen17.de>

² Resolution 70/1 adopted by the United Nations General Assembly on 25 September 2015. Transforming our world: the 2030 Agenda for Sustainable Development, page 24.

³ See also <https://www.auswaertiges-amt.de/de/aussenpolitik/themen/aussenwirtschaft/wirtschaft-und-menschenrechte>

One of the Federal Government's measures under the NAP is that the Centre of Excellence for Sustainable Procurement drew up a sectoral agreement and declaration of commitment together with Bitkom e.V., Germany's digital association, for the Procurement Office of the Federal Ministry of the Interior. Bitkom and its member firms commit themselves explicitly to the responsibility of the ICT industry for protecting human rights and maintaining international labour and social standards in their global supply chains. Bitkom, as a negotiating party, provided input into this Declaration of Commitment and is backing it, also by means of this Handout.

We have developed a model declaration with this declaration on social sustainability for ICT procurements; this will enable procurement officers and awarding agencies to inquire in compliance with applicable public procurement laws whether human rights are respected in procurement procedures. Human rights are inherent in all human beings – they are inalienable, they cannot be revoked and they provide the minimum framework of rights which human beings enjoy wherever they may live. They are based on the Universal Declaration of Human Rights of the United Nations, the European Convention on Human Rights and human rights regulations in the relevant states' foundations, such as the European Treaties, German Basic Law and the constitutions of the German federal states. They include, but are not limited to, the right to bodily integrity, the right to life and freedom, the prohibition of torture, the prohibition of discrimination, but also the right to a fair trial and the right to education.

We have to accept some responsibility when making consumer decisions as individuals and in the public sector. The production of goods, but also the provision of services, influence the people doing this work.

The International Labour Organisation (ILO) addresses the fundamental rights of these people. It is a specialised agency of the United Nations, which includes representatives of member states, employer and employee associations. The ILO standards include the rights of employees, which the member states will transpose into their relevant national law. In this context, the so-called ILO Core Labour Standards reflect these fundamental rights.

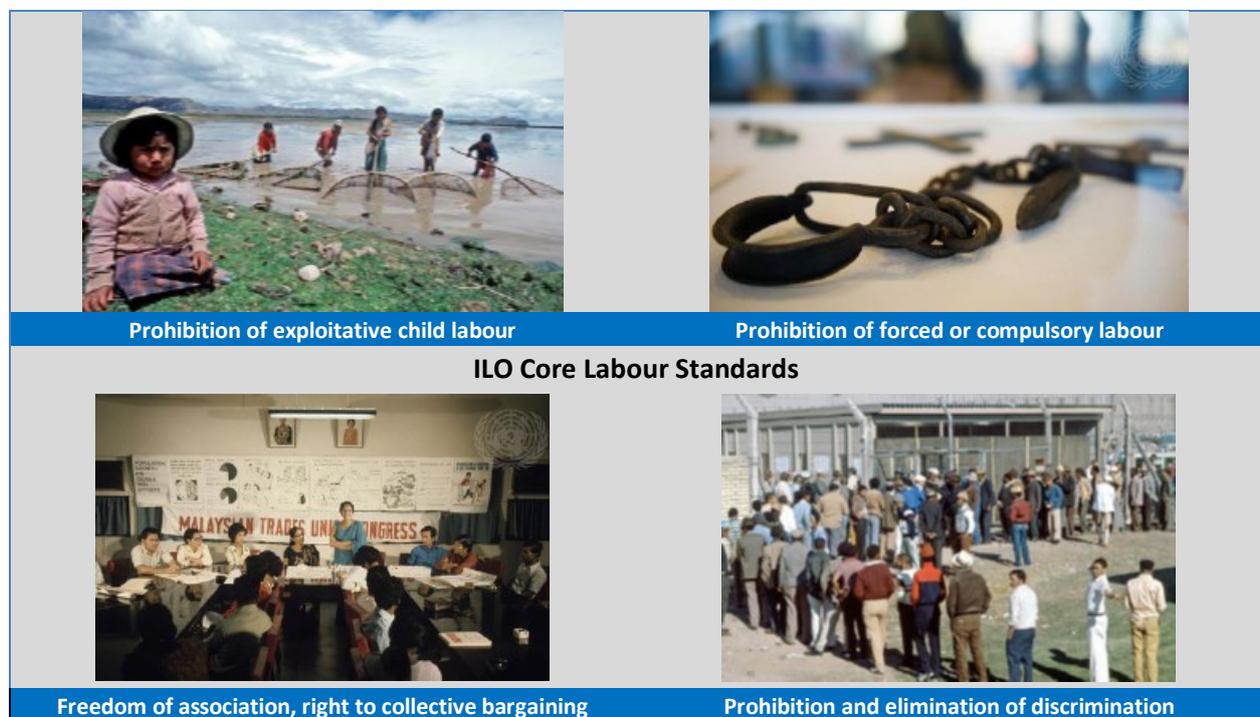


Fig. 1: ILO standards

1.2 Versions 1 & 2 of the Declaration of Commitment

In the early 2010s, the Procurement Office raised the question of how to fulfil its own responsibility on that score, because even then the Procurement Office purchased large quantities of ICT hardware and services in packages for the BMI area of responsibility and the direct federal administration.

The particular challenge is that many products are nowadays produced in international supply chains. These supply chains comprise hundreds or even thousands of companies and production facilities.

How can public procurement officers require tenderers to be responsible for ensuring that all parties involved in these complex supply chains will respect human rights? How can the awarding agency assume this responsibility for the public sector? How do you specify requirements so that tenderers can assume the responsibility demanded and are able to submit their tenders? After all, true competition is essential for the procurement process!

These questions can be addressed in different ways. For example, there is a non-profit foundation organised to monitor working conditions. In competitive procedures, it is also conceivable to apply so-called “award criteria” within the framework of the procurement process by giving a better rating to tenders which guarantee compliance with human rights.⁴

The approach described here is to use a contractual agreement to perform the contract which, if not observed, may lead to sanctions and even to the termination of contract. The agreement was developed in a dialogue between the BMI Procurement Office and Bitkom in order to ensure widest possible acceptance and to match the requirements imposed with what is feasible. Our intention in this respect is to ensure widest possible applicability and competition, but also to establish a standard.

The BMI Procurement Office, especially the Centre of Excellence for Sustainable Procurement, and Bitkom will continue their dialogue about the further development both of the Handout and the Declaration of Commitment.

The year 2013 saw the drafting of the first version of a declaration, which procurement officers can use as part of their invitation to tender to demand respect of human rights (specifically compliance with the ILO Core Labour Standards) during performance of a public contract. This version was revised as early as 2014 (Version 2) adapting above all the specifications for providing evidence and the form of sanctions. In the past few years, companies have made substantial progress on this issue – this development was reflected in additional negotiations.

Version 3 further extends the obligations of ICT product and ICT service providers to include compliance with fair working conditions. Additional ILO standards and another tier down the supply chains are significant differences from the 2014 version. Additional differences between versions 2 and 3 are listed in the following table.

⁴ Membership organisation: <https://electronicswatch.org/de>

Another approach is to demand a bidder concept which addresses human rights in the supply chain and to assess this concept according to the award criteria. For further information please do not hesitate to contact the Centre of Excellence for Sustainable Procurement if you are a procurement officer or Bitkom if you are a tenderer.

We cannot suggest any of the above approaches as risk-free – a certain legal risk always needs to be considered.

	ILO Declaration 2014	ILO Declaration 2019
Product groups	Hardware/services	Hardware/software/services
ILO standards to be observed	ILO Core Labour Standards (Nos. 29, 87, 98, 100, 105, 111, 138, 182)	ILO Core Labour Standards and additional ILO standards (Nos. 1, 102, 131, 155, 170)
Supply chain stage	Manufacturers and direct suppliers (product manufacturers iaw the Product Liability Act (ProdHaftG)); merchant function taken into account	Product manufacturers and product manufacturers' suppliers (that do not only act as a merchant), as applicable, for the respective stages of the supply chain Stage 1: Final production facility / also direct suppliers if products are refined Stage 2: direct suppliers for stage 1 Stage 3: direct suppliers for stage 2
Plausibility check I.	Based on completion of a questionnaire on the basis of sample questions	By means of the catalogue of documents – storage and submission of evidence required by ILO standards
Plausibility check II.	EICC (now RBA), BSCI (now amfori), SAI, UN Global Compact, GRI, TCO certified, FTSE4Good (etc.)	<ul style="list-style-type: none"> – Certificates by an independent third party – no more than 3 years old, significant deficiencies require a corrective action process – SA8000, TCO certified, RBA VAP Recognition Program platinum/gold standards are recognised – RBA VAP Recognition Program silver and amfori (additional explanation necessary because the system does not include corrective action) – others are possible if the above-mentioned requirements are fulfilled
Sanction option	Corrective action within a specified period / contractual penalty / termination	Reference to possible legal consequences as stipulated in Section 124 (1) No. 7 GWB. Corrective action within a specified period / contractual penalty / termination
Inspection options	Inspections – by the Contracting Authority itself or by contracted, independent third parties (coordinated with the Contractor and organisational support by the Contractor)	Inspections – by the Contracting Authority itself or by contracted, independent third parties (organisational support by the Contractor); the Contracting Authority or the third party to be accompanied by a qualified social auditor

Fig. 2: Differences between versions 2 and 3 of the ILO Declarations

From the beginning, the Declaration of Commitment has been designed as a model declaration. All Contracting Authorities can thus use the Declaration of Commitment in its present form and tenderers can prepare for the associated demands (e.g. to implement requirements, provide evidence). Therefore, we advise against changing the wording of the Declaration. These changes might lead to additional effort and ambiguities. Ambiguities might then lead to questions of tenderers. Should you make changes anyhow, these should be stated in a transparent manner, and corresponding information should be included in the bidding documents.

1.3 Declaration systematics

The procurement officer will enclose the Declaration of Commitment with the contract award documents. With their tendering, tenderers declare that, when performing the contract, they will comply with the obligations arising from the Declaration.

If they are awarded the contract, they will have two months to submit documents which enable procurement officers to conduct a plausibility check in order to determine whether the requested rights were respected. This is the most fully developed aspect compared with previous versions; Contractors are requested to submit a catalogue of documents and state in reply to key questions concerning every ILO standard how they will ensure that the requested rights are respected during performance of the contract. In addition, they will have to indicate which documents they will submit upon request to substantiate their explanations. Although this requires a considerable effort from the Contractor, procurement officers will be able to analyse the Contractors' concrete measures and to validate these measures as applicable after the documents have been requested. For framework agreements, companies have to annually review and adapt the explanation as required.

Alternatively, Contractors may submit specific certificates. Companies can obtain these certificates for their company locations if they have implemented certain management systems for complying with the ILO standards.

Generally, management systems may be defined as systematic, goal-oriented and planned procedures for implementing corporate policies and achieving business objectives. To this end, management systems control operational processes, devise process structures and optimise existing company procedures and processes. Depending on type and use of the management systems, the sector- and area-specific standards – e.g. ISO 9001 for quality management or ISO 14001 for environmental management – offer guidelines for process structuring and process control. In addition, management systems provide specifications as to how to optimise processes. These specifications are met by identifying and describing organisational structures and procedures and by improving them continually.

In this context, it was particularly important for us to work only with certificates that are as credible as possible, i.e. both certificates and their standards must be generally available; but above all, independent third parties must have reviewed the certificate standards. Certificates which we know and which fulfil the above-mentioned prerequisites are listed in Chapter 7.

If the Contractor does not submit the required documents or if ILO standards included in the Declaration of Commitment are breached during contract performance and that breach was not remedied, the Contracting Authority may first impose a contractual penalty but may also terminate the contract if necessary. In future invitations to tender, the Contractor may in this case be excluded for a period of three years from the contract award procedure in accordance with Section 124 (1) No. 7 GWB.

Using this Declaration of Commitment offers the possibility of including sustainability aspects in the contract performance provisions. It is not admissible to include the above-mentioned requirements as suitability criteria under public procurement law (Düsseldorf Higher Regional Court, decisions of 25 June 2014 (file ref.: VII-Verg 39/13) and 29 January 2014 (file ref.: VII-Verg 28/13)). However, the Contracting Authority may include Declarations of Commitment to the ILO Core Labour Standards as additional requirements (conditions) for contract performance in accordance with Section 97 (3) GWB.

The Declaration of Commitment always refers to compliance with the agreed ILO Core Labour Standards with regard to the main object of the contract during performance of that contract. Any evidence, possible violations and sanctions must also refer to the specific commitments.

1.4 Assistance in implementing the Declaration of Commitment

The public sector procurement agencies should use the new version of the Declaration of Commitment as part of their contract award documents during contract performance. Therefore, procurement officers and tenderers should not wait to learn more about using the Declaration. For that reason, and because the new Declaration of Commitment involves significant changes (both for procurement officers and tenderers), this Handout on the Declaration of Commitment has been prepared. It is a “living” document which will be revised regularly based on the lessons learned from previous invitations to tender and further insights.

Bitkom and the Centre of Excellence for Sustainable Procurement will hold information events and webinars to support tenderers and procurement officers in integrating the Declaration of Commitment. Tenderers may view information on the use of the Declaration on the Bitkom website (<https://www.itk-beschaffung.de/Verpflichtungserklaerung-2019>).

Information for procurement officers is available on the KNB website (http://www.nachhaltige-beschaffung.info/DE/Home/VE_HR). Procurement officers may contact the staff of the Centre of Excellence for Sustainable Procurement directly via e-mail and its telephone hotline.

Neither the Centre of Excellence for Sustainable Procurement nor Bitkom will register how often the Declaration of Commitment is used. “Tracking” is impossible. Nevertheless, we would be pleased if you could give us your invitations to tender as best practice examples in order to enable other Contracting Authorities to recognise that the implementation of the Declaration is feasible and in order to enable us to learn from your experience if applicable. We would be happy to publish your best practice examples on the above-mentioned websites for media coverage.

2. Overview of the key points of the Declaration of Commitment

2.1 Requirements

The requirements imposed on the tenderer during the performance of contracts are based on the ILO Standards Nos. 1, 29, 87, 98, 100, 102, 105, 111, 131, 138, 155, 170 and 182.

ILO Standard No.	Contents ⁵	Year
1	The hours of work for the members of workforce shall not exceed the maximum working hours permitted by local law and they shall be allowed a weekly rest period of at least one day	1919
29	No forced labour shall be performed, including slave and prison labour	1930
87	Workers shall have the right to establish and join unions and the right to collectively bargain	1948
98	Application of the principles of the right to organise and to bargain collectively	1949
100	Equal remuneration for men and women workers for work of equal value	1951
102	Workers shall be provided statutory social benefits	1952
105	Abolition of forced labour	1957
111	No distinction, exclusion or preference on the basis of race, colour, sex, religion, political opinion, national extraction or social origin shall be made	1958
131	Minimum wage fixing with special reference to developing countries	1970
138	Minimum age for admission to employment	1973
155	Occupational safety and health and the working environment	1981
170	Safety in the use of chemicals at work	1990
182	Prohibition and elimination of the worst forms of child labour	1999

The essence of these ILO standards shall be adhered to even if the national laws of a country which has not ratified one or more ILO standards apply or if such standards have not been implemented in national legislation.⁶ The scope of application comprises the main contract in the field of ICT hardware, software and services. It should be noted that the requirements must relate to the subject of the contract. This means that only the facilities involved in the production and not the entire company will be taken into account.

⁵ This summary of the contents of the ILO standards is as practice-oriented as possible. For the actual standards and the respective references, please refer to the Declaration of Commitment (German version), p. 1.

⁶ Declaration of Commitment (German version), p. 1, line 11 et seq.

Moreover, the Contractor shall put the applicable labour and social standards on display in the relevant production facility or communicate such information orally or in a similar way and in an appropriate manner to ensure that every worker understands the standards.⁷

Additionally, the Contractor shall ensure that any other parties involved in the supply chain and the performance of the contract also fulfil such obligations.⁸

It should be noted that the requirements for the first two stages of the supply chain must generally be fulfilled. The third stage of the supply chain shall be included for large-scale contracts.⁹ We believe that the majority of invitations to tender will not exceed the limit of EUR 50 million (or EUR 25 million) per lot. Therefore, the standard includes supply chain stages 1 and 2.

Illustration showing the integration of the different supply chain stages

The following diagram illustrates the definition of the supply chain stages for IT hardware which is sold and/or made available for use to the Contractor.

Main subject matters of the contract are, for example, notebooks, printers, servers, or network components. **Stage 1** of the supply chain refers to the production facility for finishing the main subject matter while **stage 2** refers to the permanent establishments of a supplier to that production facility, e.g. suppliers of hard disks, coolers, memory modules and spare parts, as well as service providers and material suppliers.

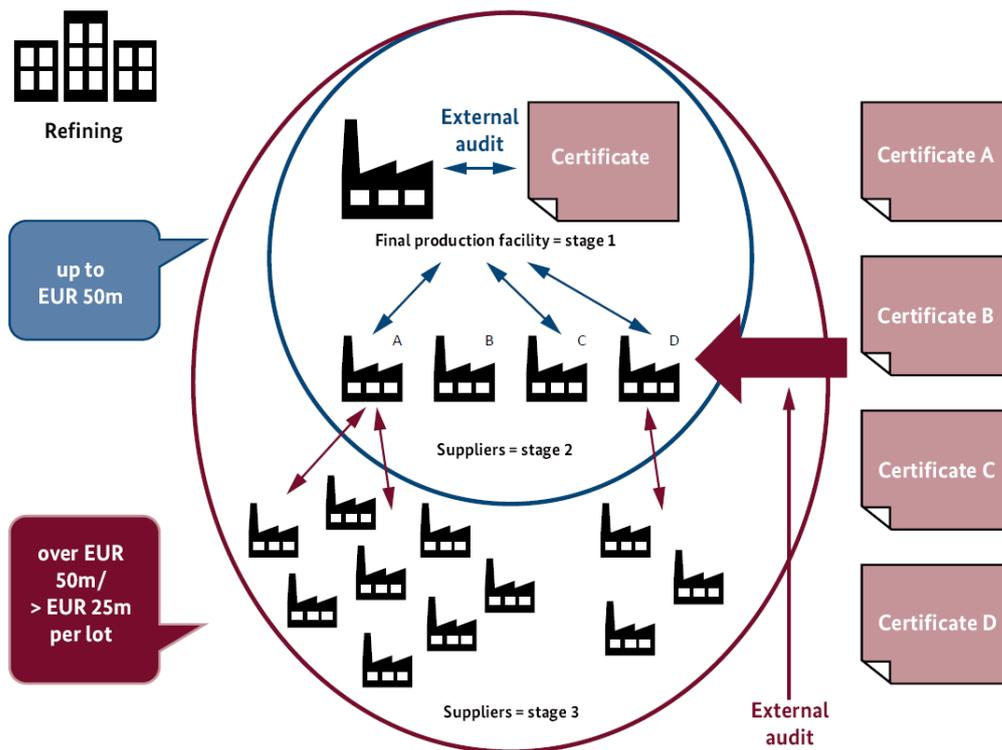


Fig. 3: Supply chain stages (example from Mr Elschner’s presentation, 2019 Information Event)

⁷ Declaration of Commitment (German version), p. 2, line 46 et seq.

⁸ Declaration of Commitment (German version), p. 2, line 50 et seq.

⁹ Declaration of Commitment (German version), p. 2, line 62 et seq.

Explanation of the diagram

The individual stages of the supply chain are defined as follows:

- **Stage 1:** The final production facility; in the event that products are only refined at the final production facility, also the final production facility's direct suppliers
Note: Product refinement means, for example, attaching of signs/stickers/logos and performing other final identity-building activities. The term also comprises the uploading of software (e.g. operating systems).
- **Stage 2:** All direct suppliers of stage 1 production facilities
- **Stage 3:** All direct suppliers of stage 2 production facilities

See also Declaration of Commitment (German version), p. 3, lines 3-7

The stage 2 direct suppliers are reached via the stage 1 management system.

The management system of four selected stage 2 suppliers is used to ensure that the suppliers involved at stage 3 of the supply chain will meet the requirements.

Footnote 3 of the Declaration of Commitment reads: "A company does not cease to be a direct supplier because of the involvement of an intermediary who is only a merchant."

A distributor of commercial goods is not a party involved as defined by the Declaration but may be a Contractor. A permanent establishment exclusively carrying out the refinement or pre-configuration of a finished product is not a party involved as defined by the Declaration. This includes businesses which, for example, install software on computers tailored to customer specifications, pre-configure equipment for shipment etc.

During performance of the contract it is possible that, for various reasons (e.g. in the case of supply shortages), the products supplied include components delivered by suppliers not listed in the initial documentation. At the time the contract is awarded, the Contractor may not always be able to anticipate potential future changes in the supply chain, particularly in cases of permanent procurement contracts or framework contracts.

2.2 Evidence of compliance with requirements

Contractors must provide evidence of how they and/or their suppliers are complying with requirements to enable the Contracting Authority to conduct a plausibility check. Contractors can choose between two options and/or a combination of both. In one contract, Option 1 (catalogue of documents) may be used to provide evidence for certain suppliers, while Option 2 (audits) will be selected for one or more other suppliers.

Example “Mix of options”

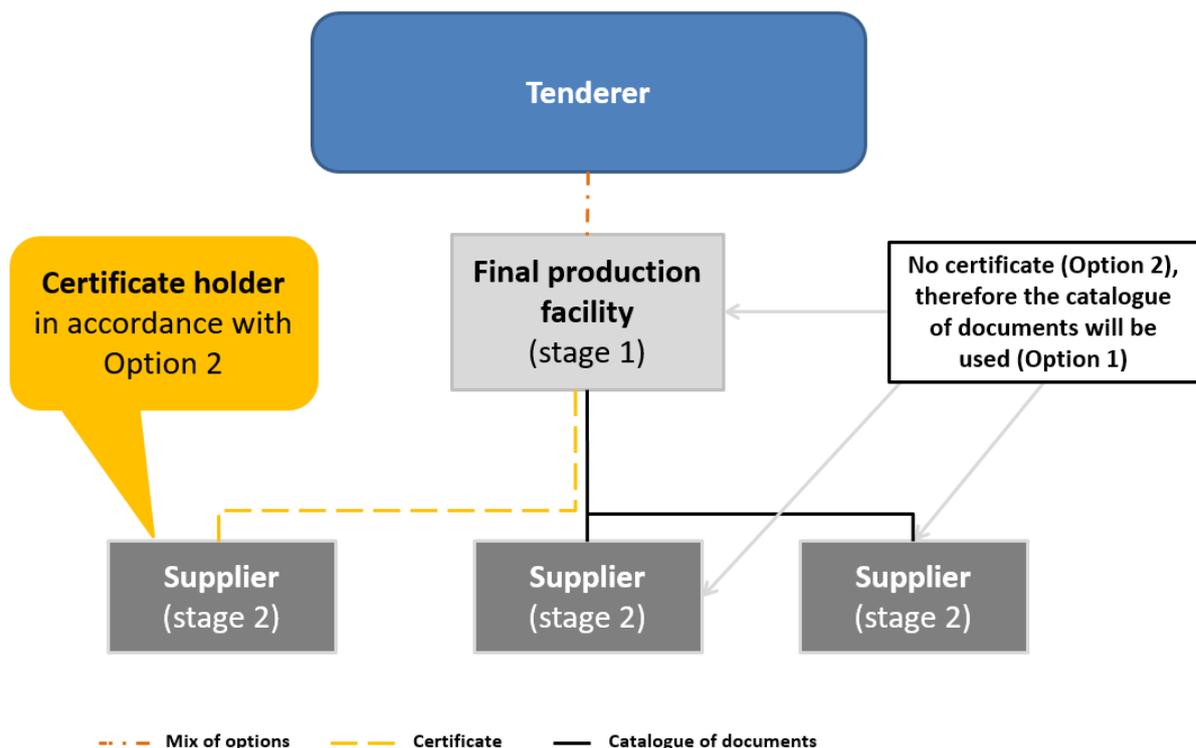


Fig. 4: Sample diagram showing the combination of options 1 and 2

Option 1 includes transmission of the catalogue of documents for the final production facility (for contracts up to EUR 25m/50m) and provision of addresses, names and contact data:¹⁰

- Address of the manufacturer with respect to the brand name, including the legal representative, and the responsible point of contact including full contact details;
- Addresses of the production facilities (suppliers), including the legal representative, and the responsible point of contact including full contact details;
- Name and full contact details of the point of contact responsible for employee interest related matters, having the role of an employee representative at the production facility.

¹⁰ Declaration of Commitment (German version), p. 4, line 8 et seq.

If evidence is required for stage 2 of the supply chain, the corresponding addresses and contact information for the four selected suppliers for stage 2 of the supply chain shall be provided.

In addition, questions specified in a catalogue of documents (Annex to the Declaration of Commitment) and intended to ensure the implementation of the requirements must be answered. This also requires information about which pieces of evidence will be submitted to demonstrate compliance with the requirements. In detail, this relates to

- outlining the measures taken to ensure implementation of the agreed labour and social standards by the involved parties pursuant to the catalogue of documents (as enclosed), and
- listing the evidence documents from the catalogue of documents intended to be submitted to prove compliance with the agreed obligations during the performance of the contract.

What is pivotal when this option is implemented is that production facility and Contractor have to jointly prepare and provide the required replies and documents. Specific requirements are listed for each ILO standard, which have to be taken into account and described in any case. Of course, the procurement agencies and tenderers are free to state why one or another aspect is not relevant for the subject of the contract.

Option 2 involves the submission of proof from an independent third party (certificates/external audits).¹¹ The underlying audit standard must fulfil the requirements specified in the Declaration of Commitment, the implementation of the standard must not reveal any significant deficiencies, and the audit must not be older than three years. If any significant deficiency has been identified, the standard must include processes which ensure corrective action within a specified period of time. This requires developing a Corrective Action Plan, which will specify how and by when deficiencies will be remedied. The certificates will only be issued, if these actions have been taken and the deficiency has been corrected within the period agreed. As a rule, this requires an additional closure audit.

The requirements were discussed and addressed in an abstract manner in negotiations with Bitkom. The objective is that, on the one hand, companies already working with standards can continue to use these standards to provide evidence as part of the Declaration of Commitment. On the other hand, the standards allow procurement officers to have the greatest possible trust that Contractors will fulfil their commitments.

During the review of the Declaration, four standards which meet the requirements were determined:¹²

- **SA8000** – Standard developed by SAI, an organisation headquartered in New York (USA)
- **RBA** (formerly: EICC) – membership initiative for companies, headquartered in Alexandria (USA); audits conducted under VAP with the VAP recognition levels platinum, gold will be accepted and – under certain conditions – also silver (see paragraph 7.3.3. of the VAP Recognition Program) of the Responsible Business Alliance (RBA)
- **Amfori** (formerly BSCI) – membership initiative; headquartered in Brussels (Belgium); certificates will be accepted under certain prerequisites
- **TCOcertainied** – sustainability certification for ICT products; (also on the basis of ecological criteria) headquartered in Stockholm (SWE)

You will find detailed explanations of the individual standards and instructions on their practical application in Chapter 7.

¹¹ Declaration of Commitment (German version), p. 5, line 9 et seq.

¹² Declaration of Commitment (German version), p. 5, line 36 et seq.

Working with “new” certificates

The standards are subject to requirements that have deliberately been formulated in such a way that any new or other standards can be accepted as part of the Declaration.

Case 1: Specific invitation to tender (case-by-case decision)

Before tendering (tenderer’s question), tenderers will explain that their desired standard complies with the requirements and will prove its equivalence. Further, a point of contact of the selected audit standard must be named (see Chapter 7). In this case, the Contracting Authority is responsible for examining and approving the new standard in its reply to the tenderer’s question.

Case 2: Incorporation of a new standard in the Declaration of Commitment

New standards will be incorporated using a coordinated process. This process is described on the KNB website (www.nachhaltige-beschaffung.info).

Basically, there are different deadlines for submitting the documents. The period is two months for contracts with a contract value below EUR 50m. For contracts with a contract value exceeding EUR 25m/50m (lot/contract), the Contractor shall be granted a period of three months. The different periods are due to the corresponding provision of evidence. Particularly if stage 3 of the supply chain is taken into account by including four selected companies of supply chain stage 2 (see also Clause 3 “Plausibility Check” of the Declaration of Commitment), it is appropriate to extend the deadline for the Contractor because producing evidence requires an increased effort.¹³ It is possible to extend the submission period for plausible objective reasons¹⁴, e.g. if individual documents were lost in the mail or a certification is almost complete. External factors which are not in the tenderer’s sphere of influence (e.g. pandemics, natural disasters) should also be taken into account. Procurement officers shall extend these periods at their dutiful discretion. These external factors should also be taken into account in cases of re-certifications.

¹³ See also Fig. 3 “Supply chain stages” (para. 2.1)

¹⁴ Declaration of Commitment (German version), p. 3, line 18 et seq.

Declaration of Commitment

Option 1

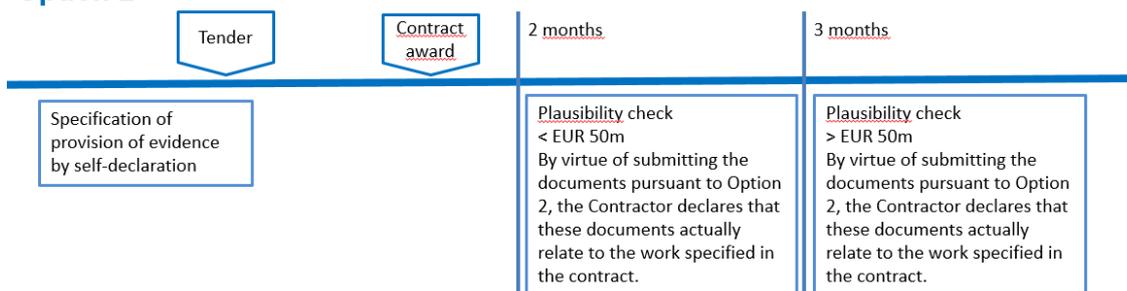


“The Contractor shall be obliged to retain the evidence under Option 1, Clause 3, for *a period of two years after the end of the contract in an audit-proof manner*, and to send the certificates for verification to the Contracting Authority or to a third party commissioned by it and bound to secrecy. The Contractor shall provide the evidence documents at least with clear headlines or file names in German language in order to ensure correct classification of the submitted documents by the Contracting Authority. The use of the document names listed in the catalogue of documents is recommended. Evidence shall be submitted to the Contracting Authority within two months upon request. *During the storage period, the Contracting Authority or a third party commissioned by it and bound to secrecy shall also be entitled to inspect the original documents at the place of storage.*”

Fig. 5: Periods of Option 1 (example from Mr Elschner’s presentation, 2019 Information Event)

Declaration of Commitment

Option 2



**Transitional arrangements for companies are planned – objective reason necessary –
“point of no return” – actions must be transparent**

Fig. 6: Periods of Option 2 (example from Mr Elschner’s presentation, 2019 Information Event)

2.3 Obligations and rights

The Contractor shall primarily be obliged to take appropriate measures in order to ensure compliance with the ILO standards listed in Chapter 2.1. In addition, the Contractor shall be obliged to submit all documents required to substantiate compliance with the requirements of the Declaration of Commitment (Clause 1 “Scope”) within a specified period of time. Particular requirements shall apply to stage 2 and stage 3 of the supply chain (large-scale contracts).¹⁵ Moreover, the Contractor must revise the evidence submitted on a regular basis and submit any changes required in the appropriate form to the Contracting Authority.¹⁶ The Contractor shall oblige other parties involved in the supply chain with regard to inspections by the Contracting Authority.

The Declaration of Commitment gives the Contracting Authority the following rights:

- The Contracting Authority may request current and substantiating documents at any time.
- The Contracting Authority may perform/initiate inspections at any time (the Contractor will provide organisational support).

2.4 Sanctions¹⁷

If the required standards are demonstrably violated during the performance of the contract; if even only some of the necessary documents have not been submitted; or if the inspection by the Contracting Authority or other parties involved has been hindered, the Contracting Authority may request the Contractor to correct the situation within a set period. Under certain prerequisites, non-compliance with this requirement may lead to the termination of the contract. However, the Contracting Authority may impose a contractual penalty.

It is to be assumed that sanctions in a contractual relationship will be imposed in due consideration of the contracting partner. However, sanctions should ensure that all potential Contractors fulfil the required commitments. This will also ensure that the competition between tenderers remains fair.

In addition to the penalty provisions specified in the Declaration of Commitment, the penalty provisions laid down in the Supplementary Terms of Contract for the Procurement of IT Supplies/Services (EVB-IT) shall apply, because they refer to completely different issues:

The contractual penalty specified in the Declaration of Commitment refers to the violation of the obligation to submit the required documents and/or to comply with the agreed working conditions. The EVB-IT provisions deal with violations regarding a timely supply free from defects.

Sanctions will be imposed in accordance with the legal provisions applicable in the field of contract awarding.

¹⁵ Declaration of Commitment (German version), p. 3, line 15 et seq.

¹⁶ Declaration of Commitment (German version), p. 3, line 22 et seq.

¹⁷ Declaration of Commitment (German version), p. 6, line 31 et seq.

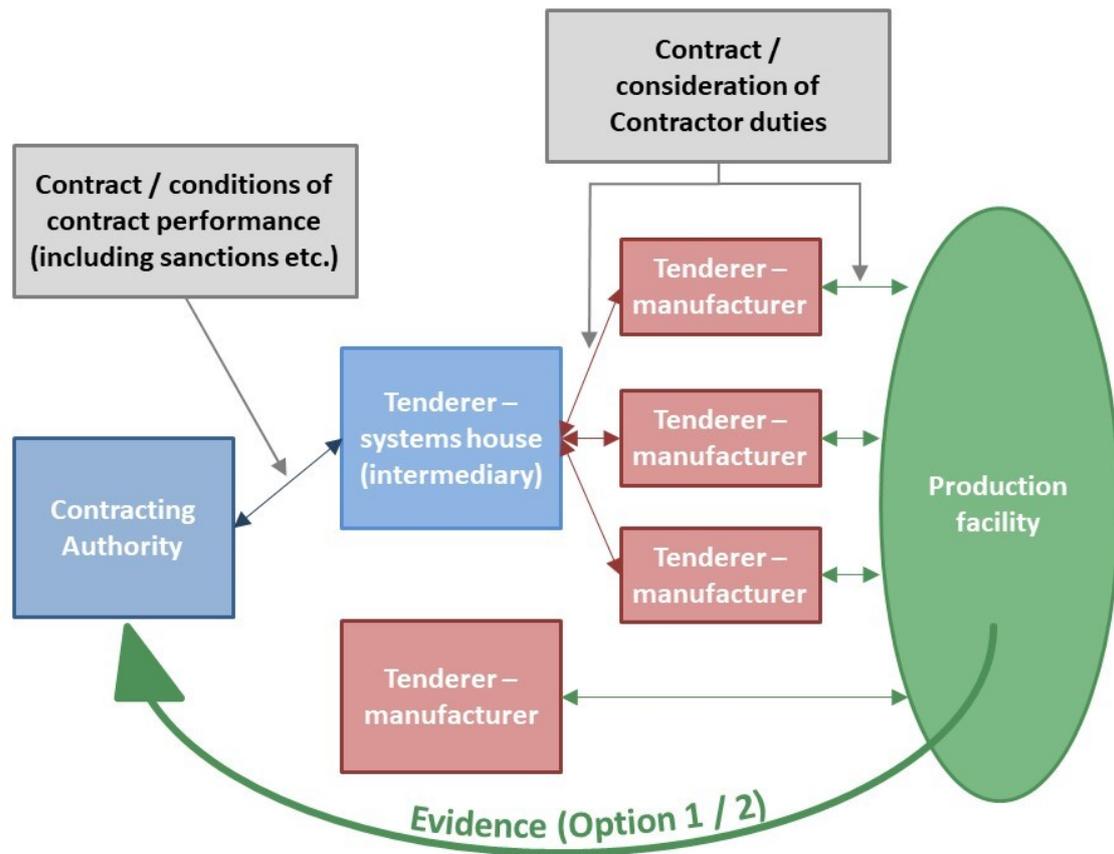


Fig. 7: Contract award landscape

3. Strategic and organisational matters

You intend to use the Declaration of Commitment in your next invitation to tender in order to procure ICT hardware, ICT software or IT services which are to be produced or used giving social aspects serious consideration?

Please note that many people have reservations and concerns when it comes to requesting that labour and social standards be enforced in invitations to tender for goods and services – this applies to both procurement officers and tenderers!

In order to ensure clarity and security in this context, it is useful to clearly define and regulate the use of the Declaration of Commitment in an appropriate procurement instruction/regulation.

If such regulations are not available, we recommend referring to the underlying (political) programmes, e.g. the Sustainable Development Goals (Agenda 2030) or to the National Action Plan – Implementation of the UN Guiding Principles on Business and Human Rights (NAP) as a backdrop for the use of the Declaration of Commitment (see also “1. Introduction”). Procurement agencies which are subject to the Federal Government’s programme of measures for sustainability can also justify the use of the Declaration of Commitment by referring to this programme.

In order to develop an understanding from the very beginning, it could be useful to “motivate” the relevant agencies and persons in the organisation as part of a campaign supported by convincing arguments and information. We recommend an early exchange about this issue with the parties involved and a discussion of positive aspects and challenges.

4. From preparation to publication of contract award documents

Brief overview of individual items for procurement agencies/tenderers (sample diagrams)

Procurement agency

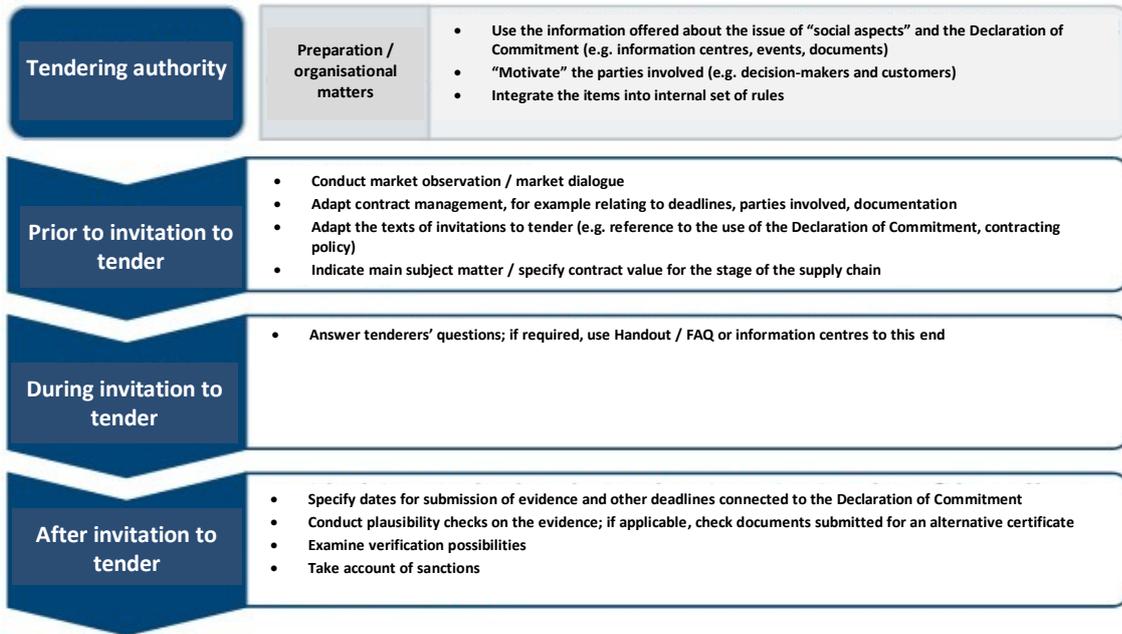


Fig. 8: Brief overview of individual items for procurement agencies

Tenderer

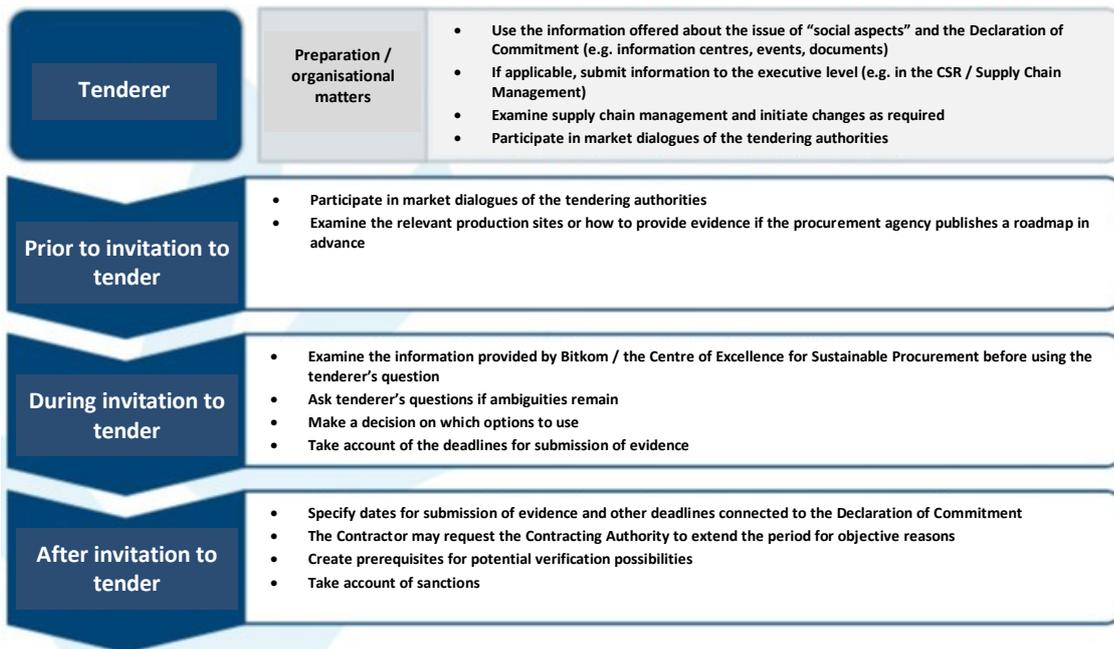


Fig. 9: Brief overview of individual items for tenderers

The brief overview shows that periods, contract volume, the general market situation and further details, like the significance of the contract and the complexity of the goods and services required, are relevant for using the Declaration of Commitment in the invitation to tender.

In its training courses, the Centre of Excellence for Sustainable Procurement always points out that market surveys can improve the chances of success of an invitation to tender for sustainable products and services. Important questions can already be answered at this stage, e.g. in a market dialogue. In this dialogue, customers, market and representatives of the procurement agencies will compare the requirements and the tender during a joint event, thus optimising the invitation to tender and/or its criteria. It will also be decided whether the invitation to tender – in view of the existing market – is suitable for applying the Declaration of Commitment. An indication may be, for example, whether sufficient potential tenderers are available.

For procurement officers

If the Declaration of Commitment is applied, the bidding and contractual documents have to be adapted accordingly. Besides, the formulation of the invitation to tender already requires planning the contract management processes, particularly with regard to submission and examination of documents and/or evidence for the term of the contract.

You should consider the following points in the sense of a checklist prior to the invitation to tender:

- Is the Declaration of Commitment relevant for the object of the invitation to tender? Does the invitation to tender refer to ICT hardware/software or ICT services to which the systematics of the Declaration of Commitment can be applied effectively?
Or does the Declaration refer to products or services for which an application does not make sense (e.g. license purchases)?
Note: Should this Declaration not be fully applicable for ICT services, the obligations of the Contractor shall be adjusted to the spirit and purpose of the relevant regulation.

The Declaration of Commitment only refers to the main object of the contract. We recommend indicating this object in the invitation to tender in order to ensure clarity with respect to the subject matter to which the requirements of the Declaration of Commitment refer.
- The evidence must be submitted for each main subject matter. It is advisable to provide tenderers with a template where they can select an option for each main subject matter: Option 1 (catalogue of documents), Option 2 (certificates) or a combination of Option 1 and Option 2.
- Individual procurement measures/framework contracts:
Particularly with regard to the periods specified, the Declaration of Commitment is in line with framework agreements, but can also be applied to individual orders. If the Declaration is applied to individual orders, it is to be ensured that the documents required for the plausibility check be submitted before final payment has been made, because Contractors and Contracting Authorities will no longer be bound by contract after this date. If documents were submitted incompletely or not at all, sanctions could no longer be imposed in such a case. We recommend extending the delivery deadlines such that the final payment will be made after submission of the documents. It must be ensured that payment will be made no later than 60 days after delivery, cf. Article 271 (a) (2) (1) and (2) of the German Civil Code (BGB).
- Prior to the invitation to tender, the procurement agency must allocate responsibilities within the organisation and assign tasks in line with contract management. For example, it has to be clear who will monitor the deadlines and who will check whether the documents to be provided have been

submitted in a complete, valid and useful manner. Of course, the situation of the respective organisation must be taken into account.

- Does the estimated contract value of the planned invitation to tender exceed EUR 50m per contract or EUR 25 m per lot?
 Note: For large-scale contracts, the commitment to provide direct evidence extends to four stage 2 suppliers; their management system is used to reach their stage 3 suppliers.
- Do you intend to conduct a market survey or, if applicable, a market dialogue in connection with the planned invitation to tender?
 Note: The integration of social criteria can also be discussed as part of the market survey in order to provide information about the contract award plans and requirements (Section 28 VgV, Section 28 UVgO). However, it is important to consider the legal framework conditions and limits – in the market survey, for example, no potential tenderer should receive information offering competitive advantages.
- Have you amended the model declaration?
 This is generally possible. We must point out, though, that tenderers may prepare themselves explicitly for use of the standard declaration. If a procurement agency amends the declaration, this may lead to a reduced number of tenders and uncertainties in the process.
 Note: The bidding documents must include this information transparently and clearly, so that tenderers can see that the Declaration of Commitment prepared by Bitkom and the Procurement Office has been amended. This could otherwise mislead potential tenderers who know and apply the Declaration of Commitment as a standard.
- If required, the periods for submitting the documents for the plausibility check (two or three months)¹⁸ shall be extended and specified in deviation from the model declaration. Organisational measures to be taken by the companies may currently justify such extensions particularly for large-scale contracts which include stage 3 of the supply chain. When the Declaration was applied in 2019, the Procurement Office and Bitkom jointly recommended that the periods for submissions be extended to 12 months. This may still be necessary. In the coming years, it is to be expected that companies will increasingly establish a routine and that deadlines will become easier to meet.
 Note: The procurement agencies should consider the information obtained from tenderers as part of the market survey, if possible. The Contracting Authorities may decide at their dutiful discretion to extend the periods if there are objective reasons (Clause 2 of the Declaration of Commitment – Contractor Duties).¹⁹
- During preparatory work, it is advisable to gain an overview of the systematics of providing evidence for basic preparation and for enabling organisational planning. You should familiarise yourself with the rules on deadlines, e.g. when evidence must be provided or requested as a follow-up if necessary. In addition, scope and type of the documents to be submitted may vary according to Options 1 or 2 and/or after audits.
- If the template is used, the (electronic) signature can be dispensed with if the tender submission form (or a similar document) refers to the Declaration and the (electronic) signature is added to the Declaration. The previous version included a text module for a supplementary contractual arrangement. This module has been dropped from the present version, because the Declaration of Commitment as a whole is to be regarded as an integral part of the terms of contract. Information to

¹⁸ Declaration of Commitment (German version), p. 3, line 15 et seq.

¹⁹ Declaration of Commitment (German version), p. 3, line 18 et seq.

this effect has to be included in the bidding documents – just like references to the general terms and conditions and other contractual arrangements.

- With respect to the documents to be submitted during contract performance, we recommend enclosing the form where the tenderer can fill in or mark the selected option (Option 1, Option 2 or a mix of both?).
- Details of contract management:
 - The contract notice or the contract award documents shall already refer to the use of the Declaration of Commitment, cf. Section 128 (2) No. 2 GWB. This can also be done, for example, in the special bidding terms or (additionally) in a guideline on the bidding documents.
 - The Declaration of Commitment must be included when the contract is drafted. In this respect, we recommend
 - enclosing the Declaration of Commitment with the documents for the invitation to tender,
 - including a passage to this effect in the contract, such as

Section x Declaration on social sustainability for IT

The parties are well aware of the importance of social sustainability for public procurement. Therefore, the Contractor, upon tendering, undertakes to ensure compliance with the standards of the International Labour Organisation (ILO) (hereinafter referred to as ILO Declaration), which are required in accordance with Clause 1 of the Declaration of Commitment, during the execution of the contract. In view of this, the Contracting Authority may require the Contractor to correct a situation within a reasonable period of time set by the Contracting Authority if, during the execution of the contract, it is demonstrably established that the Contractor or any other parties involved have violated the labour and social standards covered by this Declaration in accordance with Clause 1 of the ILO Declaration. The same applies if the Contractor or any other parties involved have not submitted any, or submitted incomplete, documents within the period of time specified in Clause 2 of the ILO Declaration or have hindered the inspection of working conditions within the meaning of Clause 1 of the ILO Declaration. If the Contractor fails to correct the situation within the set period for reasons for which the Contractor is responsible, the Contracting Authority may impose a contractual penalty or exercise its right of extraordinary termination to end the contract (Clause 5 of the ILO Declaration).

- inserting a note concerning the application in the bidding terms, such as

Declaration on social sustainability for IT contracts

The Form “Verpflichtungserklärung ILO BeschA-Bitkom 2019“ (Declaration of Commitment to Compliance with ILO Standards issued by the Procurement Office and Bitkom in 2019) includes conditions for the performance of IT contracts to ensure compliance with the Core Labour Standards of the International Labour Organisation (ILO). Please submit the form together with the tender and select the option considered (Option 1, Option 2 or a mix of both) in Clause 6 of the Declaration of Commitment. With your tender, you undertake to comply with the requirements listed in the Declaration for the entire term of the framework contract/of the individual orders. The Declaration will become part of the contract with acceptance of the offer.

5. From tender phase to award of tender (incl. tenderers' questions)

In order to ensure timely tendering in due form, the aforementioned planning recommendations should be considered prior to the invitation to tender.

When the invitation to tender is published, tenderers may have questions. It makes sense to use tenderers' questions in these cases. We strongly advise you to consult the Handout and potential tenderers' questions listed in the annex beforehand – the information given in the Handout can certainly help to answer some questions in advance. This applies to contracting authorities alike. In that case, please do not hesitate to contact Bitkom representing the tenderers or the Centre of Excellence for Sustainable Procurement representing the procurement officers.

On our own behalf, please note that should you ask tenderers' questions or should you be asked tenderers' questions which could be relevant to other Procurement Agencies' procedures as well, please submit them to the Centre of Excellence for Sustainable Procurement. The anonymized replies can then be included in the support documents.

To be noted in connection with tendering under Option 1 (catalogue of documents) is that, at the time of tendering, you only need to state that Option 1 will be used (by marking this option on the form with a cross). The measure must only be described in accordance with the catalogue of documents (catalogue of documents, p. 1, clause 1) when the contract was awarded. The documents specified therein (evidence as per p. 1, clause 2 of the catalogue of documents) must be submitted only if explicitly required by the Contracting Authority. The Contractor will then have a deadline of two months.²⁰

5.1 For procurement officers

Checklist prior to award of contract

- It needs to be checked whether the tenders comply with the terms and conditions as defined by the Declaration of Commitment. The tenderers must confirm in writing that they will provide supplies and services in compliance with the ILO standards and must specify how evidence will be provided (by marking this with a cross).
- Prior to the award of contract, it needs to be checked whether the form for selecting options has been submitted for each main subject matter.
- After the award of contract, the deadlines for submitting the documents for a plausibility check shall be determined based on the award date and the appropriate measures shall be taken for resubmission of the documents as part of contract management.
Note: The basic periods of two or three months may be extended at dutiful discretion if there are objective reasons (Clause 2 of the Declaration of Commitment - Contractor Duties).²¹

²⁰ Declaration of Commitment (German version), p. 5, line 3, catalogue of documents, p. 1.

²¹ Declaration of Commitment (German version), p. 3, line 18 et seq.

5.2 For tenderers

We advise you to clarify fundamental questions prior to participating in invitations to tender to which the Declaration of Commitment applies; this can support successful bidding. It is also important to consider that use of the Declaration of Commitment by the Contractor requires incorporating relevant aspects in contract management as corresponding documentation may have to be submitted! Possible language barriers with respect to suppliers etc. and long retention periods must be taken into account as well.

The following questions may help in this respect:

- Does my company operate a supply chain management (SCM) system which can answer the questions required by the Declaration of Commitment and provide the relevant information and documentation, if necessary?
- If not: Are the supply chains required for contract fulfilment familiar in my company and do I get access to the required information or documentation?
- Do the provisional contractual relationships involving the required supply chain stage (normally, contractual arrangements with suppliers of supply chain stage 2) include the contents necessary for inspections and sanctions or will I still be able to include them for this contract?
- How can I as a producer make available the required information and documentation to the intermediaries as well? (also relevant to para. 6.2 “For tenderers – Checklist for the contract term”)
- How do I as an intermediary make arrangements to obtain in good time the required information and documentation (catalogue of documents/certificates) from the manufacturers?
- Which options of the Declaration of Commitment will I be able to use as evidence? And did I complete the form required for tendering?

Checklist prior to tendering:

- When tendering, the tenderer must mark the option selected for providing evidence with a cross: Option 1, Option 2 or a combination of Option 1 and Option 2. The selected option of providing evidence can be changed later, when evidence is provided; an objective reason is to be given, which must then be explained to the Contracting Authority.
- The Contractor must make arrangements for submitting the documents for the plausibility check within the specified periods and for meeting the contractual obligations accordingly. In order to comply with the requirements for supply chain stage 2, a stage 1 production facility and a stage 2 production facility (for large-scale contracts a stage 2 production facility and a stage 3 production facility) must ensure that the relevant regulations have already been included in the provisional contractual relationships or can be included for the subject of the invitation to tender.

6. Contract management

Depending on the contract value, the Contractor has two or three months²² after the award of contract to provide the Contracting Authority with the information and documents specified in the tender documents. The Contracting Authority must monitor deadlines and, if missed, send a reminder. It should be borne in mind that the Contractor may request an extension of the period for objective reasons. The Contracting Authority must then give such reasons dutiful consideration and decide on setting a new deadline. Setting a deadline is of considerable importance as sanctions may be imposed for failure to submit information and documentation. Particularly, a contractual penalty calculated according to the number of days may be imposed (see also .Clause 5 of the Declaration of Commitment, “Sanctions”).²³

Depending on the option, the procurement agency must check the plausibility of the documents submitted. The negotiating parties are aware of the fact that it is practically impossible, based on the evidence submitted, to monitor in detail whether each supplier meets each requirement. Rather, the point of this plausibility check is to establish transparency wherever possible, thus reducing the risks of deficiencies and getting an overview of potential risks.

In addition, the Declaration of Commitment as part of the contract provides several possibilities to the Contracting Authorities during the term of contract to monitor adherence to the requirements which will be described in greater detail below.

6.1 For procurement officers or persons tasked with contract management

Checklist for plausibility check

When Option 1 (catalogue of documents) is checked for plausibility, all documents have to be checked for completeness, comprehensibility and relevance (see also nos. 1 - 3, p. 4):²⁴

- Product manufacturer and production facilities: Addresses and points of contact with full contact details
- Point of contact responsible for employee interest related matters: Name and full contact details (Note: also addresses and contact information of the four selected suppliers if supply chain stage 3 is integrated.)
- Contractor’s declaration as to which main subject matter the documents refer.
- Catalogue of documents:
 - Were the replies to the relevant items of the respective ILO standards plausible, transparent and comprehensible (from 1.1 to 6.3)? The questions listed in the catalogue are to be considered as key questions to be answered by the Contractor for this subject of the contract.
 - Each reply should briefly describe the relevant measure and its implementation as well as corresponding evidence. Page 1 of the catalogue of documents lists documents and other formats as an example of what may serve as evidence.
 - The documents must be named comprehensibly to indicate what they are about and to which ILO standards and measures they refer.

²² Declaration of Commitment (German version), p. 3, line 15 et seq.

²³ Declaration of Commitment (German version), p. 1, line 14 et seq.

²⁴ Declaration of Commitment (German version), p. 4, line 12 et seq.

Exemplary replies to the requirement “Occupational Safety and Health (ILO 155) and Safety in the Use of Chemicals (ILO 170)”

These are some examples of possible documentation:

“The company introduced an occupational safety and health management system in accordance with OHSAS 18001 or ISO 45001 and maintains this system. The system has been certified. The certification authority X issued the certification in the year N. The certificate serves as evidence.”

“The company introduced an occupational safety and health management system which is subject to regular inspection. The results are recorded in writing. Plant management and staff representatives assess the results and prepare action plans to improve occupational safety and health. Plant management monitors the implementation of the measures. The results and the documented action plans serve as evidence.”

or

“As to requirement X there exists an internal guideline Y which provides for inspections on a regular basis.” “Requirement Z is reviewed on a regular basis which is recorded in [the inspection protocol, corresponding e-mail communication; confirmation from the competent authority; or ...].”

The **plausibility check for Option 2 (submission of certificates)** requires reviewing first of all whether the certificate is still valid (max. three years) and whether it refers to the relevant subjects of the contract or production facilities. For this purpose, it is possible and reasonable to contact the standards organisation or certification body (see chapter 7). Special requirements have to be met particularly for amfori BSCI and RBA. If certificates of other comparable audit systems are submitted, the corresponding preconditions will have to be verified. Please refer to chapter 7.2 below.

Please be advised that the certificates have to be submitted for each supplier in accordance with the required supply chain stage.

Simplified practical example

Main objects of the contract are the objects of the contract which account for a significant proportion of the contract value. In a tender for “laptop computers with peripheral devices (e.g. mouse, keyboard, etc.)” with a total contract value of EUR 100m the peripheral devices are worth EUR 500,000. Here, the laptop computers are the main object of the contract. Thus, evidence documents for the laptop computers are to be submitted for the first stage of the supply chain (final assembly). If final assembly takes place at different production facilities, corresponding evidence is to be provided as well. As it is a large-scale contract, evidence must also be provided for four final assembly suppliers. The tenderer, rather than the individual production sites, will collect and submit these documents! It will not be sufficient if the tenderer alone provides evidence of own compliance (unless we are talking about one and the same production facility in which the final assembly of the main subject matter takes place).

- Combinations are possible, i.e. it is possible to submit the catalogue of documents with replies for one supplier and to provide evidence in the form of an accepted certificate for another.
- It is desirable that the tenderer provide an overview as to which production sites and how many per supply chain stage have to be considered altogether.

Checklist during contract term

- Within two months after the contract has been awarded (or three months for large-scale contracts) the Contractors must submit the documents requested for the plausibility check. Separate documents must be submitted for each relevant production site at the supply chain stage in question!
- Option 1 (catalogue of documents) requires at least an annual check on whether the explanations about what measures were taken to meet the requirements are still up-to-date.²⁵
- If Option 2 is exercised, it should be checked that the certificate is valid and not older than three years.²⁶
- From an organisational point of view, it is advisable to draw up a template for monitoring deadlines in order to have an overview and be able to follow up on any missing documents from Contractors in good time.
- An overview should be prepared showing for which and for how many suppliers the necessary evidence must be provided as a matter of principle as well as to which supply chain stage this evidence is allocated. This helps to verify later whether the necessary evidence was actually provided for all relevant suppliers. Therefore, it is useful to request such an overview from the Contractor.

The Contracting Authority may take advantage of the following options for verification during the term of the contract, especially for framework agreements covering several years.

- Requesting current documents at any time in the event of reasonable doubts. Reasonable doubts may arise, for example, as part of a company's own contract management (evidence submitted) or if other interested or third parties (media reports) have provided sufficiently specific information. They should clearly refer to the specific product manufacturer or party concerned and include concrete information which would be relevant in the context of ILO standards.
 - Option 1 means submission of name and address of the production facility, related to a serial number of a produced or rendered main object of the contract, once a year or if there are reasonable doubts. This will also apply to stage 2 of the supply chain.
 - Inspections performed on site by the Contracting Authority or a third party commissioned by the Contracting Authority. The Contracting Authority will be responsible for organising these measures as well as for determining type and scale. In any case, the Contracting Authority shall be accompanied by a qualified social auditor. The Contractor may demand a non-disclosure agreement.²⁷ Inspections within the meaning of this Declaration refer to the production facilities of the parties involved in accordance with this Declaration.

Explanatory notes: Parties involved are companies that are directly related to the contract performance or that are product manufacturers. In addition to final manufacturers, these can also be suppliers and subcontractors that supply parts/provide services for the production process of the final product.²⁸ An early coordination is advisable to ensure organisational support from the Contractor.
- The qualified social auditor must prove that they have been trained in the inspection of ILO standards or have relevant practical experience. This obligation shall not apply if the Contracting Authority or the third party commissioned by it can demonstrate having the relevant experience and training. Please refer to the glossary of the Declaration of Commitment for the definition of "experience". The

²⁵ Declaration of Commitment (German version), p. 4, line 31 et seq.

²⁶ Declaration of Commitment (German version), p. 5, line 24 et seq.

²⁷ Declaration of Commitment (German version), p. 6, line 18 et seq.

²⁸ Glossary of the Declaration of Commitment

Contracting Authority must bear in mind that, if it involves third parties, the Contractor may demand a non-disclosure agreement beforehand.

Should you intend to carry out inspections based on this Declaration of Commitment, we would be pleased if you involved the Centre of Excellence for Sustainable Procurement.

6.2 For tenderers

Checklist during contract term

- The Contractor shall be obliged to inspect the submitted certificates on a regular basis, but at least annually. In this context, the Contractor shall be obliged to correct or resubmit any documents if the content of the previously submitted substantiated documents is no longer valid due to changes in the Contractor's contract performance process or that of another party involved.²⁹

This means that the Contractor will ensure during the term of the contract

- that deadlines will be established for the term of the contract;
 - that the Contractor will make such contractual arrangements with affiliated companies / suppliers as to enable an inspection at least once a year and that the Contractor will be informed of the above changes in the contract performance process and that appropriate measures (submission of new certificates, if required) will be carried out;
 - that the Contractor may request the tendering authority to grant an extension of the time limit, stating the objective reason, if it is foreseeable that the deadlines for submitting the certificates cannot be met.
- If Option 1 is exercised, the Contracting Authority shall be entitled, after production or fulfilment of the main objects of the contract, to demand the names and addresses of the production sites of a product with a specific serial number also for stage 2 of the supply chain once per year or in the case of reasonable doubt with regard to a specific serial number.³⁰ This right of the Contracting Authority requires the Contractor to ensure that the main object of the contract can be allocated to a production site based on the given serial number. As the serial number is selected randomly, all allocated main subject matters must be registered for each production process; this information must be available to or, upon request by the Contracting Authority, be made available to the Contractor (for example, system companies in particular must ensure that, upon enquiry, information will be made available to them at short notice).

Note: The protection of the Contractor's trade and business secrets will be ensured by the statutory obligations of the Contracting Authority that are to be taken into account.³¹

- Option 1 means that, during the term of the contract, the Contractor shall at regular intervals, but at least annually, present the measures it has taken to comply with the labour and social standards pursuant to this Declaration.³² For reasons of practicability, it is recommended that the Contracting Authority consider the Contractor's report on changes to the measures specified in the catalogue of documents sufficient. This is to demonstrate how the Contractor ensures that the final production facilities and/or the respective suppliers to be involved fulfil the requirements. In concrete terms, the Contractor has to describe the measures (e.g. contractual arrangements, inspections on site) taken for this purpose.

²⁹ Declaration of Commitment (German version), p. 3, lines 22-26.

³⁰ Declaration of Commitment (German version), p. 4, lines 26-28.

³¹ See for example Section 5 of the German Contract Award Regulations (Vergabeverordnung – VgV) and Section 31 of the German Administrative Procedure Act (Verwaltungsverfahrensgesetz – VwVfG) and the corresponding legal rules.

³² Declaration of Commitment (German version), p. 4, lines 31-34.

- The Contractor shall be obliged to retain the evidence under Option 1, Clause 3, for a period of two years after the end of the contract in an audit-proof manner, and to send the certificates for verification to the Contracting Authority or to a third party commissioned by the Contracting Authority and bound to secrecy. The Contractor shall provide the evidence documents at least with clear headlines or file names in German language in order to ensure correct classification of the submitted documents by the Contracting Authority. The use of the document names listed in the catalogue of documents is recommended.³³

In this respect, attention should be paid to the following aspects:

- The documents do not have to be translated. In order to make it easier to allocate the documents to the relevant requirements, a German document or file name such as “Stundenzettel” (time sheet), “Zahlung Sozialversicherungsbeiträge” (payment of social security contributions), “Lohnzahlungen” (payment of wages) is to be used.
If possible, each document must clearly indicate which ILO standards they refer to and they have to be marked with the number specified in the catalogue of documents (e.g. 1.1, 4.3 etc.).
- Audit-proof storage does not only mean documents kept in paper versions, but also digitised documents (“audit-proof archiving”).
- During the storage period, the Contracting Authority or a third party commissioned by it and bound to secrecy shall also be entitled to inspect the original documents at the place of storage.³⁴
This right to inspection was established to be able to verify the original documents and to relieve the companies of the burden of having to send the original documents to Germany. Furthermore, the possibilities of verification as meant by Clause 4 “Contracting Authority Rights” are to be supported.

³³ Declaration of Commitment (German version), pp. 4-5, line 36 et seq.

³⁴ Declaration of Commitment (German version), p. 5, lines 4-6.

7. Standards, certificates and audits (Option 2)

7.1 General techniques for standards and audits

By conducting audits, Contractors can plausibly demonstrate to the Contracting Authority that they comply with the working conditions required in the production process, particularly at individual production sites and suppliers premises. The following section briefly outlines the systematics of these audits and its most important associated terms.

However, we would like to clarify that standards and audits are no quality labels within the meaning of the public procurement law (Section 34 VgV or Section 24 UVgO). We consider a direct requirement as evidence concerning public procurement law to be problematic in terms of this law.

However, it is generally in the interest of the Contractors working with audits and standards to present them in contract award procedures to enable a plausibility check.

What is checked in practice on site during audits?

In order to ensure a systematic approach and coverage of all relevant topics, the procedure is based on issues and questions contained in a specific Code of Conduct (CoC). Such a Code of Conduct is published by the standards development organisation and usually refers to international legal rules such as the Universal Declaration of Human Rights and the ILO standards. The Declaration of Commitment accepts CoCs which recognised organisations with the necessary expert knowledge have developed, mostly in a multiannual procedure involving different groups.

CoCs established by single companies for themselves or only for certain production sites will not be accepted as part of the Declaration of Commitment.

The CoCs are normally transferred to manuals for use by auditors or to similar practice-related documents in order to carry out the actual on-site inspections. Thus, the relevant rules and topics are translated into concrete questions.

How are on-site audits carried out?

Audits include, for example, interviewing personnel and managerial staff on site, inspecting the premises (e.g. chemicals depot and emergency exits) and reviewing documents (e.g. timekeeping systems, internal instructions). In contrast to internal audits (first-party audits), which are useful e.g. for preparing inspections, and to supplier audits (second-party audits), external audits are carried out by outside and independent persons who have relevant expert knowledge and are not involved in the organisation's processes. These are called "independent third parties" as the person must not be directly dependent on the standards development organisation or the production site to be inspected. This type of audits is called "third-party audit". Short- or medium-term notice is usually given of audits in order to ensure organisational support of the auditors, for example. However, most standards include inspections without prior notice in exceptional cases, especially if violations are suspected. Audits are carried out by recognised auditors who can prove relevant expert knowledge and experience. Auditors are usually employed by recognised accredited test and certification institutes.

What happens if misconduct is discovered?

If it is found based on the above-mentioned CoC and inspection manual that certain standards are not met and a human rights violation is suspected, these facts as well as compliance with the standards will be documented in an audit report. This is also known as a deficiency or deviation, in relation to audits the terms “finding” or “non-conformity” are also used. With regard to type, severity and intensity they are usually assessed once again and prioritised accordingly.

Plans which are part of the audit systems and outline the measures for correcting the deficiencies, called corrective action plans, must be established. The certificates will only be issued, if the deficiencies have been corrected within the period agreed. As a rule, this requires an additional closure audit.

7.2 Provision of evidence exercising Option 2 in the Declaration of Commitment

The Declaration of Commitment states in this respect:

When a contract has been awarded, it is also possible to submit certificates from an independent third party (external audit) as an alternative to Option 1. The corresponding certificate must meet all minimum requirements:

- a) The agreed labour and social standards pursuant to Section 1 shall be part of the audit standard to be used.*
- b) The submitted certificate shall certify that the audit did not reveal any significant deficiencies in the implementation of these labour and social standards.*
- c) Transparent explanation of the standard used for the audits shall be ensured (e.g. publicly accessible Code of Conduct).*
- d) The formulation of the audit standard and thus the benchmark must be created independently of the company and production site to be audited.*
- e) The audit must be conducted by an independent external expert / organisation.*

Declaration of Commitment, p. 5, lines 10-22.

On pages 5 and 6, the Declaration of Commitment lists four standards systems which are accepted within the meaning of this Declaration of Commitment, because they were closely examined in the negotiations on the Declaration of Commitment and classified as acceptable based on the above-mentioned abstract criteria. More details on these four standards are given in chapter 7.3.

The basis is that, for example, membership alone in an initiative is not sufficient. In any case, audits must be conducted and certified in accordance with this Declaration. A Contractor presenting an alternative certificate has to submit a list based on which the Contracting Authority can track compliance with points a) to e). If the list is missing or lacks content, the Contracting Authority has to make a follow-up request.

Checklist when other certificates are submitted:

- Submitting detailed documentation to demonstrate compliance with the minimum standards a) to e);
- Naming a point of contact for the selected audit standard;
- Contractor’s declaration as to which main subject matter of the contract (contractual performance covered by the contract) the documents refer.

For reasons of secrecy, audit reports are normally not submitted to the Contracting Authority. This cannot normally be expected from the Contractor either.

With regard to the validity and corresponding deadlines, the following specifications must be met:

- i. As of the day of submission of the certificate, the audit which is the basis of the certificate shall not be older than three years.*
- ii. If the audit turns older than three years during the term of the contract, a new audit shall be performed immediately and a new certificate shall be presented.*
- iii. If any significant deficiencies have been identified in individual areas, it shall be demonstrated that a corrective action process has been started. In this case, the Contractor shall submit a certificate from an independent third party within six months, according to which the deficiencies have been remedied.*

The Contractor shall immediately inform the Contracting Authority if it is unable to submit all documents within the given period for objective reasons. The Contracting Authority shall give such reasons dutiful consideration and decide whether to extend the submission period.

Declaration of Commitment, p. 5, lines 23-35.

Practical advice about i. and ii.)

- Each certificate must necessarily contain a date of issue, which is to be checked.
- The date of expiry of the three-year time limit must be noted down in contract management for resubmission. The three-year-time limit for a certificate could expire during the contract term. In this case, a follow-up certificate must be requested if the Contractor does not update the evidence independently.
- The validity of the certificates can be verified via the certification authorities or standards organisations.

Practical advice about iii.)

This could be the case if an audit revealed significant deficiencies in a specific area and the certificate is therefore not issued. In order to correct these deficiencies, a corrective action plan may be drawn up. Such a plan must be prepared in cooperation with the reviewing audit organisation, disclosed to the Contracting Authority and must provide for the correction of the deficiencies within six months. It must be demonstrated that the corrective actions were carried out. If these are isolated deficiencies, such as missing fire extinguishers or locked emergency exits, it must be explained that structural measures are taken to minimise the probability of a deficiency in the future. (Example: In addition to the correction, it must be explained how this problem is being dealt with as a matter of principle to avoid this critical issue in the future).

The decision to extend the time limit must take account of the complexity and impact of the deficiencies and the associated remedial measure. The following parameters can be used, for example:

- Seriousness of the deficiency: frequency, intensity and impact on workers;
- Time and effort needed to implement remedial measures;
- What progress has been achieved in implementing the measures?

It cannot be expected that the results of the audits show absolutely no deficiencies. This is the nature of things – particularly as audits and certificates are used to ensure that deficiencies are remedied step by step. The particular value of the Declaration of Commitment is not to identify problems in a factory but to solve problems. Both the Contracting Authority and the Contractor should devote their attention to this. Here, the focus is on “significant deficiencies”. Minor deficiencies are to be remedied all the same.

Standards use specific terms to assess individual deficiencies (e.g. serious, moderate, minor). However, assessments and terms differ from standard to standard. We deliberately used the term “significant deficiency” which does not refer to any specific standard. The definition in the glossary can be used for appraisal. However, the contracting parties, i.e. the Contracting Authority and the Contractor, are responsible for evaluation.

7.3 Working with individual standards³⁵

The standards mentioned in the Handout are presented briefly below, including advice on how they should be used in practice. The information mainly results from intensive, direct talks with the organisations and publicly accessible information available on their websites. If you are interested, we recommend intensive reading of texts in which the standards are presented and discussed more extensively.

7.3.1 SA8000

Designation: SA8000 Standard

Available since: 1997

Current version: SA8000:2014

Issued by: Social Accountability International (SAI)

Supported by SAAS (e.g. in data collection)

Type of organisation / initiative: non-governmental organisation (NGO) involving many different actors

Headquarters: New York, USA

The SA8000 Standard is an international standard, first published by Social Accountability International (SAI) in 1997. SAI is a non-governmental organisation headquartered in New York, USA. SAI refers to the SA8000 Standard as a multi-stakeholder initiative, since the development process and the subsequent revision processes involved actors from different areas (above all non-governmental organisations, corporations and the research community). The current version of the standard has been available since 2014 and is therefore known as SA8000:2014.

Contents and range of criteria

The contents of the standard are based primarily on the standards of the International Labour Organisation (ILO) and the Universal Declaration of Human Rights. The SA8000 Standard comprises criteria of eight topics which are continuously monitored and improved as part of a management system.³⁶

The ILO standards required in accordance with the Declaration of Commitment are included in these topics.

³⁵ We would like to point out expressly that the following information is predominantly obtained directly from the standards. Other sources are marked accordingly.

³⁶ <https://sa-intl.org/programs/sa8000/>

The official version of the standard is available in English, but SA8000 also provides a German translation.³⁷

Certification

The SA8000 Standard is a standard that can be certified. Accredited certification bodies will provide the certification itself. A list of certification organisations is available on the SA8000 website,³⁸ where you will also find further details on duration³⁹, scope and costs⁴⁰ of certification.

Dissemination of standard

A list of certified organisations is available on the Internet. A submitted certificate can be cross-checked here once again for validity and further information, for example. A list per sector and country is also available.⁴¹

With a view to the status of individual organisations, you can also get in direct contact with SAAS.⁴² If a single certificate is to be validated, you should contact the certification organisation concerned. SAAS urges the certification organisations to publish relevant information.

Awarding agency checklist

- Overview of number and type of sites (what kind of supply chain stage) for which certificates must be submitted (collected by the tenderer);
- The overview must include the sites for which SA8000 certificates are submitted;
- Check validity of the certificates and keep track of their expiry date (see above).

7.3.2 TCO Certified

Designation: TCO Certified

Available since: 2009 (focus on social criteria)

Current version: TCO certified, generation 8

Issued by: TCO Development owned by TCO (Swedish Confederation of Professional Employees)

Type of organisation / initiative: nonprofit organisation

Headquarters: Stockholm, Sweden

TCO Certified is a certification label issued by TCO Development, an organisation which is owned by TCO, the Swedish Confederation of Professional Employees. TCO certifications have been available since 1992, originally focussing on occupational safety and health as well as environmental aspects. The certification has been known as TCO Certified since 2009 and also includes social issues with a focus on worker rights. By TCO's own account, the TCO Certified criteria are developed in an open process with stakeholders from different areas, e.g. manufacturers, brands, researchers, NGOs. The criteria are revised every three years and currently correspond to the "generation 8" version.

³⁷ <https://sa-intl.org/resources/sa8000-standard/sa8000-translations/>

³⁸ <http://www.saasaccreditation.org/accredcertbodies.htm>

³⁹ <http://www.saasaccreditation.org/sites/default/files/u4/SAAS Procedure 200 v%204.2 March.2020.pdf>

⁴⁰ <https://sa-intl.org/resources/sa8000-certification-costs/>

⁴¹ <http://www.saasaccreditation.org/certifacilitieslist>

⁴² <http://www.saasaccreditation.org/contact>

Contents and range of criteria

TCO Certified establishes criteria which refer to a specific product. These criteria comprise environmental, occupational safety and health as well as social aspects both for production and use as well as disposal. A general criteria overview can be found on the Internet⁴³; the criteria are defined differently in detail depending on the product category.⁴⁴ A product must meet all relevant criteria in order to be certified. TCO Certified is classified as a Type 1 Ecolabel⁴⁵ as it meets the ISO 14024 requirements.⁴⁶ TCO Certified products are visibly marked with a corresponding label. This is the difference to the other standards specified in the Declaration.

With a view to social aspects within the meaning of the Declaration of Commitment, the criteria primarily refer to the ILO Core Labour Standards, working hours, handling of hazardous chemicals and the UN Convention on the Rights of the Child. Furthermore, they also include requirements regarding anti-corruption and conflict minerals.⁴⁷

Certification

External audits as required in accordance with the Declaration of Commitment are part of the products' certification process. In order to obtain the certificate, brand owners must demonstrate that social audits are carried out at least every three years in all final assembly plants that manufacture products with TCO Certified labelling.⁴⁸ Other standards such as the RBA Standard and the SA800 Standard are accepted for conduct and range of audits; they are also verified, according to TCO statements, in particular with regard to the implementation of the Corrective Action Plan. A certificate is valid for a period of two years from the date of issue and can be extended for one year.

Dissemination of standard

Certification is possible for eleven product groups of monitors, notebooks, tablets, smartphones, desktop computers, all-in-one computers, projectors, headsets, network devices, data storage products and servers. If all product groups are taken together, approximately 3,500 products of 20 brands are currently certified.

Practical advice: You will find a complete searchable list in the Product Finder.⁴⁹ You can enter the model designation and filter by brand and product category. In addition, you can see the certification date and the date on which the validity of the certificate expires.

Awarding agency checklist

- Has the label actually been attached to the products in compliance with the main subject matter?
- Period of validity of the certificates and follow-up requests upon expiration of the certificate;
- Validity of the certificate in the event of product modifications;
- Large-scale contracts require additional evidence to be provided for the second stage of the supply chain (catalogue of documents or other standard) even if the product has been TCO Certified.

⁴³ <https://tcocertified.de/kriterienubersicht/>

⁴⁴ <https://tcocertified.de/zertifizierungsdokumente/>

⁴⁵ Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (2019). <https://www.bmu.de/publikation/umweltinformationen-fuer-produkte-und-dienstleistungen/>, p. 22 ff.

⁴⁶ <https://tcocertified.de/tcocertified/>

⁴⁷ <https://tcocertified.com/files/materials/summary-criteria-tco-certified.pdf>

⁴⁸ <https://tcocertified.de/uberprufung-der-einhaltung/>

⁴⁹ <https://tcocertified.de/product-finder/>

7.3.3 VAP Recognition Program of the Responsible Business Alliance (RBA)

Designation: VAP (Validated Assessment Program) Recognition Program

Available since: 2014

Current version of the applicable code of conduct: Version 6.0, since 2008

Issued by: Responsible Business Alliance (RBA), formerly the Electronic Industry Citizenship Coalition (EICC)

Type of organisation / initiative: Membership initiative from the business sector

Headquarters: Alexandria, USA

The Electronic Industry Citizenship Coalition (EICC) was founded in 2004 as an industry coalition and later renamed Responsible Business Alliance (RBA). Its member companies are mainly from the electronics, retail, auto and toy sector. RBA has approximately 380 members including all associated initiatives.⁵⁰

Contents and range of criteria

RBA members are committed to a joint Code of Conduct (CoC). The CoC includes, inter alia, environmental and social criteria and refers to international legal rules such as the Universal Declaration of Human Rights, of the International Labour Organization (ILO), OECD Guidelines for Multinational Enterprises, ISO and SAI Standards.⁵¹ However, membership does not necessarily presuppose that external audits be carried out within the meaning of the Declaration.⁵²

VAP (Validated Assessment Program) Recognition Program

Within the VAP Program, companies can arrange for audits to be carried out at the production site in accordance with the RBA Code of Conduct and the standards contained therein. Furthermore, VAP also means that the results are documented in an audit report. Non-conformity is recorded in a Corrective Action Plan. If the non-conformity is corrected, the verifiable correction of the deficiencies can be documented by means of an additional “VAP Closure Assessment”.

If the standards are met, three different recognition levels can be awarded: platinum, gold and silver. Within the scope of the Declaration of Commitment, the recognition levels platinum and gold are accepted as they ensure that neither priority deficiencies nor serious deficiencies were found concerning the standards required under the Declaration of Commitment. The overall assessment requires at least 180 points (gold) or 200 (platinum) points, which prevents the awarding of recognition levels despite many cases of minor non-conformity.⁵³

⁵⁰ <http://www.responsiblebusiness.org/about/rba/>

⁵¹ <http://www.responsiblebusiness.org/code-of-conduct/>

⁵² Code of Conduct p. 13, http://www.responsiblebusiness.org/media/docs/RBACodeofConduct7.0_English.pdf, “Periodic self-evaluations to ensure conformity to [...] the content of the Code”
There are different membership categories and corresponding requirements for external audits (VAP) starting at a certain level; <http://www.responsiblebusiness.org/join-us/>.

⁵³ <http://www.responsiblebusiness.org/vap/about-vap/>

Example of an RBA certificate with recognition level gold



Recognition level "silver" means that the RBA VAP system cannot completely rule out major deficiencies regarding the required ILO standards. Recognition level "silver" will be accepted if the Contractor is able to prove that there is no major deficiency regarding the concrete ILO standards. For this purpose, the Contractor can submit, for example, the detailed assessment of the audit results to the Contracting Authority, which will maintain secrecy; the Contractor can thus confirm that no major or priority findings related to any ILO standard required.

If the Contracting Authority wishes to check these aspects, the Contracting Authority is to receive the following information:

- Non-conformances with RBA requirements relevant to the required ILO standards;
- Non-conformance levels (minor, major, priority);
- Finding statements.

Insofar as the audit confirms that there are no significant deficiencies related to the ILO standards required in this declaration, the Contracting Authority also recognises audit standard RBA VAP Audit Recognition Program silver. Compliance with this requirement can, for example, be demonstrated by the disclosure of the detailed audit results in relation to the relevant ILO standards required by the declaration to the Contracting Authority.

Declaration of Commitment, p. 6, lines 1-5.

An RBA certificate will be valid for two years after the closure audit. All RBA certified production sites are accessible to RBA members sending a request to VAP@responsiblebusiness.org⁵⁴ as well as via an RBA members' platform.⁵⁵

Dissemination of standard

In total, there are twelve certification companies which carry out audits. For a list of these companies see the following link.⁵⁶ Further information about the certification costs and process can be found on the RBA website.⁵⁷

Awarding agency checklist

- Overview of number and type of sites (what kind of supply chain stage) for which certificates must be submitted (collected by the tenderer);
- The overview must include the sites for which RBA certificates are submitted;
- Under the VAP each certificate must have the recognition level platinum or gold.
- Recognition level silver requires further information to be submitted or requested as a follow-up (see above).
- The validity of the certificate must be verified and kept track of.

7.3.4 Amfori BSCI

Designation of the programme: Amfori BSCI (Business Social Compliance Initiative)

Available since: 2003

Current version: since 2017 (current code of conduct)

Issued by: amfori, formerly FTA (Foreign Trade Association)

Type of organisation / initiative: Membership initiative from the business sector

Amfori BSCI is an initiative of members of the amfori Association.

Contents and range of criteria

The amfori BSCI Code of Conduct⁵⁸ is a set of principles and values of socially responsible business. This Code of Conduct refers to international conventions such as the Universal Declaration of Human Rights, the Children's Rights and Business Principles, UN Guiding Principles on Business and Human Rights, OECD

⁵⁴ <http://www.responsiblebusiness.org/media/docs/VAPRecFAQs.pdf>

⁵⁵ <https://www.rba-online.org/portal/sign-on.isp>

⁵⁶ <http://www.responsiblebusiness.org/media/docs/ApprovedAuditFirms.pdf>

⁵⁷ <http://www.responsiblebusiness.org/vap/about-vap/>

⁵⁸ <https://www.amfori.org/sites/default/files/amfori-2020-03-05-amfori-BSCI-code-of-conduct.pdf>

Guidelines, UN Global Compact and International Labour Organization (ILO) Conventions and Recommendations.

The central amfori BSCI platform, which can be accessed by all members and all production facilities, provides the reports of the audits carried out in compliance with the amfori BSCI Code of Conduct. The audit report of the individual production facility can only be uploaded by the auditing company which is accredited by amfori BSCI and has carried out the audit. Audit results and reports of the production facilities can be made available to other members through the platform. Amfori BSCI audits may and can only be carried out by auditing companies accredited by amfori BSCI and specially trained auditors.

Confirmation within the meaning of the Declaration of Commitment

However, amfori BSCI membership does not necessarily mean that external audits were carried out in accordance with the Declaration. If the tenderer wishes to provide evidence by means of an amfori BSCI audit that a relevant production facility complies with the ILO standards required in the Declaration, the tenderer has to submit, within the relevant time limit, a “Statement for amfori members in the context of the Declaration of Commitment to Compliance with Labour and Social in German Public ICT procurement” (see figure 11).

If the audit identifies no significant areas of improvement at the time of the audit, i.e. deficiencies related to the ILO standards required in the Declaration, an audit according to the amfori BSCI Standard is also accepted. This can be demonstrated by a confirmation from amfori BSCI.

Declaration of Commitment, p. 6, lines 6-9.

Such a confirmation can be submitted only if all ILO standards required in the Declaration have been met.

Awarding agency checklist

- Confirmation by the amfori BSCI member according to template (see figure 10)
- The confirmation must contain at least
 - the name of the supplier for which the amfori BSCI member provides this confirmation;
 - the date of the audit (not older than two years) and when its validity expires;
 - if the overall assessment is “C” this can be done, for example, by disclosing the detailed assessment of the audit results of the relevant issues;
- Overview of number and type of sites (what kind of supply chain stage) for which certificates must be submitted (collected by the tenderer);
- The overview must include the sites for which amfori BSCI certificates are submitted;
- Should you have any questions, please do not hesitate to contact amfori BSCI at info@amfori.org or the auditing organisation which has carried out the audit.

The corresponding confirmation will be drawn up by the Network Representative Germany and presented by the Contractor for all relevant suppliers.



Statement for amfori BSCI members

in the context of the Declaration of Commitment to Compliance with Labour and Social Standards in German Public ICT procurement

This statement is issued with regards to the Declaration of Commitment to Compliance with Labour and Social Standards in Public ICT procurement in Germany. This document can be submitted for ICT procurement tender processes at any authority level in Germany, including federal, regional and municipal levels. It lays the basis for tender processes in which amfori BSCI participants need to demonstrate that the product they offer in a tender process has been produced under socially compliant conditions.

amfori herewith confirms that the producer <Name>
<Adress>
<amfori BSCI DBID>

has been audited by <Name of the auditing company> on <Date>
in the course of an amfori BSCI audit,
has received an overall rating <Overall audit rating>

and at the time of this audit no significant findings with regard to ILO norms mentioned in the Declaration of Commitment with Labour and Social Standards in Public ICT procurement have been found during this audit.

Notwithstanding any useability and validity timeframes in the context of the mentioned Declaration of Commitment, the validity of the above mentioned amfori BSCI audit expires on <Date of end of validity>.

<Place, date, signature of amfori Network Representative Germany>

Fig. 10: Confirmation by the amfori BSCI member for the relevant production facility

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Annex 1:

Declaration of Commitment with catalogue of documents

Declaration of Commitment

to Compliance with Labour and Social Standards in Public ICT Procurement

1. Scope

When awarded a contract (order), the Bidder¹ (hereinafter referred to as the "Contractor") hereby commits to executing the contract in compliance with the regulations that implement the core labour standards of the International Labour Organization (ILO), including ILO standards 1, 102, 131, 155 and 170 into national law at the respective production facility or other place of individual work performance.

The substance of the labour and social standards covered by this Declaration must still be complied with, even if the national law of a country applies in which one or more ILO standards have not been ratified or implemented into national law.

This means that in executing the contract

No forced labour, including slave and prison labour, is performed in violation of the 1930 *Convention No. 29* on Forced or Compulsory Labour and the 1957 *Convention No. 105* on the Abolition of Forced Labour;

All workers have the right to form and join trade unions and the right to collectively bargain pursuant to *Convention No. 87* on Freedom of Association and Protection of the Right to Organise of 1948 and *Convention No. 98* on the Application of the Principles of the Right to Organise and Collective Bargaining of 1949;

No distinction, exclusion or preference based on race, colour, sex, creed, political opinion, national descent or social origin shall be made in accordance with *Convention No. 111* on Discrimination in Employment and Occupation of 1958, which abolishes or impairs inequality of opportunity or treatment in employment or occupation;

Male and female workers are paid equal pay for work of equal value pursuant to *Convention No. 100* on Equal Pay for Equal Work for Men and Women of 1951;

No child labour in its worst forms is performed in violation of *Convention No. 182* on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999 and *Convention No. 138* on the Minimum Age for Admission to Employment of 1976;

No work is carried out in in violation of *Convention No. 155* concerning Occupational Safety and Health and Working Environment, 1981, or in violation of *Convention No. 170* on Safety in the use of Chemical Substances at work, 1990;

¹ For purposes of this Declaration of Commitment, a bidding consortium shall also be deemed to be a bidder.

Wages are paid in accordance with Convention No. 131 on the Establishment of Minimum Wages, with special reference to Developing Countries, 1970;

Hours of work for workers do not exceed the maximum working hours allowed by local law and at least one day of rest per week is granted in accordance with Convention No. 1 from 1919 which limits the hours of work in industrial undertakings;

Social security benefits are granted to workers in accordance with Convention No. 102 concerning minimum standards of social security.²

Moreover, the Contractor shall provide notices or a comparable bulletin in all languages used in the production facility to ensure that employees at the respective production facility are informed of the labour and social standards that are to be complied with.

Additionally, the Contractor must ensure that these obligations are also complied with by other parties involved in executing the contract.

As defined by this Declaration, other parties involved are:

- **For ICT hardware/software:**
Product manufacturers and the suppliers of the product manufacturer (that not only exclusively function as a merchant), as far as the respective stage of the supply chain is taken into account³
- **For ICT services⁴:**
Contractors and subcontractors, as far as the respective stage of the supply chain is taken into account.

This obligation extends to the main performance components of the contract. The main performance components are those performance components which account for a significant proportion of the contract value.

This obligation extends to the first and second stage of the supply chain. This obligation extends to the third stage of the supply chain when the contract has a significant contract value (over €50 million gross or over €25 million gross per lot for lot-based contracts).

The individual stages of the supply chain are defined as follows:

- Stage 1: The final production facility and, in the event that only product refinement takes place at the final production facility, its direct suppliers as well;
- Stage 2: All direct suppliers of the production facilities of stage 1;
- Stage 3: All direct suppliers of the level 2 production facilities.

The compliance with labour and social standards subject to this Declaration is a substantial requirement for the execution of the contract. Reference is made to the legal consequences

² The standards are available online at <http://www.ilo.org>.

³ The direct supply characteristic of an enterprise does not cease to exist even if an enterprise that is exclusively functioning as a merchant acts as an intermediary.

⁴ In case this Declaration is not fully applicable for ICT services, the obligations of the Contractor shall be adjusted to spirit and purpose of the relevant regulation.

set out in Section 124, Para. 1, No. 7 German Law prohibiting Restraints on Competition (GWB).

2. Contractor Duties

The Contractor shall ensure compliance with the requirements set out in Section 1 as follows:

The Contractor shall independently assess compliance with the requirements set out in Section 1 for all parties involved.

After the contract has been awarded, the Contractor shall submit to the Client (hereinafter referred to as the "Contracting Authority") all documents required to substantiate compliance with the requirements by the parties involved no later than two months after the contract has been awarded. If the obligation also extends to the third stage of the supply chain, the period shall be extended to three months. If, on objective grounds, the Contractor is unable to comply with the time limit, the Contractor shall immediately inform the Contracting Authority thereof. The Contracting Authority shall decide at his due discretion whether to extend the time limit, taking into account the reasons given.

The Contractor is obliged to revise the evidence submitted at regular intervals; at least once a year. Further, the Contractor is obliged to correct or resubmit the documents if the explanatory content of the prior submitted documents is no longer covered by the Contractor or another involved party due to changes in the process of performance.

3. Plausibility Check

The submitted documents enable a plausibility check by the Contracting Authority with regard to compliance with the labour and social standards subject to this Declaration. Insofar as the contract has a contract value on the basis of which compliance with the agreed labour and social standards also extends to stage 3 of the supply chain, the substantiating documents for stage 3 only have to be provided for four supplier companies of stage 2, to be selected by the Contractor.

For stage 1 of the supply chain, the substantiating documents shall be submitted directly according to the following options 1 or 2. For stage 2 of the supply chain, it is sufficient if compliance with the agreed labour and social standards is ensured by contractual obligations between a production facility of stage 1 and a production facility of stage 2. However, if a contract with a significant contract value leads to the extension of the agreed labour and social standards to stage 3 of the supply chain, the substantiating documents shall be submitted directly for the selected production facilities of stage 2 of the supply chain. In these cases it is then sufficient, if compliance with the agreed labour and social standards in stage 3 is ensured by contractual obligations between these production facilities and their direct suppliers.

The Contractor has the discretion to send the documents according to one of the following two options. In both cases, the Contractor has to add a declaration as to which main performance parts of the contract the documents are referring to.

Option 1

When sending the documents, the Contractor shall state how he will ensure the compliance of the labour and social standards covered by this Declaration by the parties involved during the execution of the contract:

1. By naming the following information for every major performance component for stage 1 of the supply chain:
 - a. Address of the manufacturer with respect to the brand name including the legal representative and a responsible contact person, the latter including contact information;
 - b. Addresses of the production facilities including the legal representative and a responsible contact person, the latter including contact information;
 - c. Name and contact information of the contact person for employee matters in the sense of an employee representative in the production facilities.

In case of an obligation to provide evidence with respect to stage 3 of the supply chain, the corresponding addresses and contact information for the four selected suppliers for stage 2 of the supply chain must be provided.

2. By outlining how he will ensure the implementation of the agreed labour and social standards by the involved parties pursuant to the catalogue of documents (see German version) and
3. By declaring which evidence, in accordance with the catalogue of documents, he will submit after executing the contract as proof that the agreed obligations have been met during execution of the contract.

After production and fulfilment of the major performance components subject to the contract, the Contracting Authority can also demand the addresses and the names of the production sites of a product with a specific serial number for stage 2 of the supply chain. He is entitled to demand this yearly or in case of reasonable doubt. In order to protect the Contractor's trade and business secrets, reference is made to the statutory obligations of the public Contracting Authority⁵.

During the term of the contract, the Contractor shall at regular intervals, but at least annually, present the measures he has taken to comply with the labour and social standards pursuant to this Declaration. This leaves unaffected the obligations arising from section 2 paragraph 4 of this Declaration (Contractor Duties).

The Contractor is obliged to safeguard the evidence in accordance with Option 1, Clause 3 for a period of two years after the end of the contract in a tamper-proof manner and to send the evidence for verification to the Contracting Authority or to a third party commissioned by him and bound to secrecy. In doing so, the Contractor provides the documents at least with clear headlines or file names in German language in order to ensure a correct classification by the Contracting Authority. It is recommended to choose a denomination in accordance with the catalogue of documents. Once the Contracting Authority requests the evidence, the latter must be submitted within two months. While the evidence is being safeguarded, the

⁵ See for example Section 5 German Public Procurement Regulation (VgV) and Section 31 German Administrative Procedure Act (VwVfG) and corresponding regulation.

Contracting Authority or a third party commissioned by him shall also have the right to inspect the original documents at the place of storage.

By virtue of submitting the documents pursuant to option 1, the Contractor declares that these documents actually relate to the contractual performance covered by the contract.

Option 2

As an alternative to option 1, if a contract is placed, certificates from an independent third party (external audit) may be submitted. The corresponding certificate must meet all minimum requirements:

- a. The labour and social standards pursuant to Section 1 form part of the used audit standard used.
- b. The certificate submitted states that the audit did not reveal any significant deficiencies in the implementation of these said labour and social standards.
- c. There has to be a transparent explanation which standard was used for the audits (e.g. through a publicly accessible Code of Conduct).
- d. The formulation of the audit standard and thus the benchmark must be created independently of the company and production site that is audited.
- e. The audit must be conducted by an independent external expert or organization.

With regard to the validity and corresponding deadlines, the following specifications must be met:

- i. The audit, to which the certificate refers to, must not be older than three years when the certificate is submitted.
- ii. If the audit turns older than three years during the duration of the contract, a new audit must be performed immediately and a new certificate has to be presented.
- iii. If significant deficiencies have been identified in individual areas, it must be demonstrated that a process of corrective action has been started. In this case, the Contractor must submit a certificate within six months from an independent third party, according to which the deficiencies have been remedied.

If, on objective grounds, the Contractor is unable to comply with the time limit, the Contractor shall immediately inform the Contracting Authority thereof. The Contracting Authority shall decide at its due discretion whether to extend the time limit, taking into account the reasons given.

In any case, the Contracting Authority recognizes the audit standards SA 8000, RBA VAP Audit Recognition Program platinum/gold and TCO certified. When holding these audit standards, proof of the remediation of the deficiencies does not have to be presented, as the minimum standards (a) to (e) listed under paragraph 1 are considered to be met.

Insofar as the audit confirms that there are no significant deficiencies related to the ILO standards required in this declaration, the Contracting Authority also recognizes audit standard RBA VAP Audit Recognition Program silver. The compliance with this requirement

can, for example, be demonstrated by the disclosure of the detailed audit results in relation to the relevant ILO standards required by the declaration to the Contracting Authority.

If, in the course of the audit, it is confirmed that at the time of the audit there were no significant areas of improvement (deficiencies) related to the ILO standards required in the declaration, an audit according to the amfori BSCI standard is also accepted. This can be demonstrated by a confirmation from amfori BSCI.⁶

If the audit is set out under another comparable audit system, compliance with the minimum standards a) to e) in paragraph 1 must be clearly described in addition to presenting the certificate. Further, a contact person of the selected audit standard must be named.

By virtue of submitting the documents pursuant to option 2, the Contractor declares that these documents actually relate to the subjects covered by the contract.

4. Contracting Authority Rights

The Contracting Authority has the right to request current and substantiating documents at any time in the event of justified doubts.

The Contracting Authority shall have the right to perform inspections regarding the compliance with the labour and social standards agreed in this Declaration by the production facilities of the parties involved. He can perform these inspections at any time himself or through third parties that he commissions. The Contractor shall provide him with organisational support in this respect.

The Contracting Authority or the third party must be accompanied by a qualified social auditor who can demonstrate that he has been trained in inspections of ILO standards (e.g. in accordance with the IRCA standard for social audits or comparable) or have relevant practical experience. This obligation does not apply if the Contracting Authority himself or the third party commissioned by him already has the relevant experience or training.

The Contractor must oblige the other parties involved in the supply chain accordingly with regard to such an inspection. If the Contracting Authority involves third parties, the Contractor may demand a non-disclosure agreement beforehand.

5. Sanctions

The Contracting Authority may require the Contractor to remedy a situation within a reasonable period of time set by the Contracting Authority, if, during the performance of the contract, it is demonstrably established, i.e. through a state inspection, judicial proceeding or other inspection agreed under private law, that the Contractor himself or the other parties involved have violated the labour and social standards covered by this Declaration, have not

⁶ This confirmation is used by amfori BSCI in agreement with the Beschaffungsamt / Kompetenzstelle für nachhaltige Beschaffung for use under this agreement. Amfori BSCI confirms that at the time of the audit and in the context of an audit by an independent third party there were no significant areas for improvement (deficiencies) related to the ILO standards required in the declaration. The certificate is not an otherwise publicly available and verifiable certificate. A mere membership in amfori BSCI is not enough.

submitted the documents as described in section 3 of this Declaration or have hindered the inspection of working conditions as described in this Declaration.

If the Contractor fails to remedy the situation within the set period, the Contracting Authority may exercise his right of extraordinary termination to end the contract. This does not apply if the Contractor is not responsible for the delay. In the event of a breach of the labour and social standards covered by this Declaration and said breach is negligible and has not been repeated after a warning was issued, the right of extraordinary termination cannot be exercised.

Irrespective of this, the Contracting Authority may demand a contractual penalty, if the Contractor violates his obligations agreed in this Declaration.

In cases where the breach of duty is due to the failure to provide substantiating documents or due to hindering the inspection of working conditions, the contractual penalty for each calendar day on which the Contractor is in default of compliance after the set deadline, shall be 0.2% of the contract value, whereby a maximum daily penalty of 10,000 euros shall be stipulated.

In the event of a demonstrable violation of the agreed labour and social standards, the contractual penalty shall be determined for each individual case at the dutiful discretion of the Contracting Authority and shall depend on the severity and duration of the violation, whereby a maximum amount of 250,000 euros shall be stipulated.

The total amount of all contractual penalties to be paid on the basis of this provision may not exceed 5% of the contract value.

Section 341 (3) German Civil Code (BGB) shall be amended to the effect that the contractual penalty can be asserted until the final payment. This shall not apply if the Contracting Authority did not reserve the right to the contractual penalty at the time of acceptance, despite the Contractor's request. The contractual penalties shall be set off against claims for damages that arise from the same breach of duty.

6. Options for documents for the plausibility check

When submitting an offer, the Contractor must explain which option he intends to select (according to section 6.). If the Contractor wishes to deviate from the selection after submission of the offer, he must notify the Contracting Authority and state the reason.

- Option 1 (catalogue of documents)
- Option 2 (certificates)
- Combination of Option 1 and Option 2 (for contract values >50/25 Mio. Euro)

Catalogue of documents for the Declaration on Social Sustainability for IT (Annex 1)

Please describe the following aspects for each of the ILO standards listed (the answer may not exceed a total of 13 pages):

1. What measures will you take to ensure for yourself and the other parties involved that no work is performed in violation of the relevant ILO standard during execution of the order?
2. What evidence will you provide of this after the order has been executed?

Appropriate evidence as meant by No. 3, Option 1, Item 3 of the Declaration includes protocols, audit reports, procedural instructions, contractual agreements, e-mail correspondence, official documents, deeds, certificates, image and sound recordings or the like.

By submitting the documents, the contractor declares that they relate in fact to the contractual service.

National law at the respective production site or at another place of individual work performance must be taken into account with respect to the requirements listed below.

1. ILO 29 / 105 (forced labour)

No work may be performed using forced labour, servitude (including debt bondage) or compulsory labour, prison labour or slavery or human trafficking.

At a minimum, describe how you will prevent that

- 1.1 Employees do not have to make any payments for their employment.
- 1.2 No recruitment or placement fees will be charged to workers during their recruitment process, and any fees charged will be refunded to workers.
- 1.3 In the event of termination, the employee must be remunerated accordingly for the work performed during the accounting period until the termination takes effect.
- 1.4 Employees are not employed without an employment contract; where the latter must contain all necessary provisions relating to the employment relationship - in the native language of the respective employee.
- 1.5 Passports, visas, identity cards or other official identification documents are not confiscated and kept by the production site.
- 1.6 Pupils/students/trainees are not dealt with improperly, that is, by proving by evidence that their records are properly managed, training partners are carefully examined and obliged with strict duties of care so as to protect the rights of pupils/students/trainees in accordance with applicable laws and regulations.

2. ILO 87, 98 (freedom of association, collective bargaining)

In the performance of the contract, the right of all workers to form and join trade unions of their choice, to bargain collectively and to hold peaceful meetings and the right of workers to refrain from such action shall not be restricted.

At a minimum, describe how you will prevent that

- 2.1 The company neither interferes in the interests of the trade union/works council nor financially supports such efforts.
- 2.2 The company does not discipline or threaten employees to prevent them from forming or joining a trade union or to deter such activities.
- 2.3 Trade union members / works council members are treated differently from any other employee.

3. ILO 100 (equal pay) and ILO 111 (No discrimination)

It must be ensured in executing contracts (orders) that the workforce does not experience any unlawful discrimination, for example, that no employee experiences discrimination based on race, colour, age, sex, sexual orientation, gender identity and expression of sexuality, ethnicity or national origin, disability, pregnancy, religion, political orientation, trade union membership, proven veteran status, protected hereditary information or marital status in the context of recruitment procedures and employment relationships (for example, regarding pay, promotion, awarding of bonuses or access to training).

At a minimum, describe how you will ensure that

- 3.1 The general salary components and other remuneration are defined and made available to the workforce.
- 3.2 At the end of a payroll period, the employees in your company are informed of the components of the paid wages/salaries.
- 3.3 Promotions and access to training will be based on performance metrics or the need for training.
- 3.4 Employees have written job descriptions that focus exclusively on the knowledge/skills that are necessary to perform the job and do not define any necessary personal characteristics.
- 3.5 Tests, medical reports, etc. are not used in a discriminatory manner.
- 3.6 Locally prescribed regulations for the protection of employees during pregnancy and parental leave are complied with.

4. ILO 138 / 182 (no child labour)

When executing contracts, it must be ensured that the worst form of child labour in accordance with ILO 138/182 does not occur during the production of the main performance components and that the minimum age for admission to employment is taken into account.

As a minimum, state

- 4.1 the minimum age for admission to employment in the country in which the production site is located.

Furthermore, describe at a minimum how you will ensure that

- 4.2 Child labour does not occur during production, provision of services or deliveries.
- 4.3 Approved workplace training programs comply with all laws and regulations.
- 4.4 Workers under the age of 18 do not perform work that could adversely affect their health or safety, such as night shifts and overtime.
- 4.5 Pupils/students/trainees are not dealt with improperly, that is, by showing that their records are managed properly, training partners are reviewed carefully and obliged to strict duties of care so as to protect the rights of pupils/students in accordance with applicable laws and regulations.
- 4.6 The production site has put in place a reliable age verification mechanism as part of the recruitment process.

5. ILO 155 (occupational health and safety) and ILO 170 (safety in the use of chemical substances)

Measures to ensure that occupational health and safety is taken into account in the production of the main performance components must be implemented.

At a minimum, describe how you will ensure that

- 5.1 The risks to employees' jobs are limited by appropriate workplace design, technical and administrative controls, preventive maintenance and safe labour practices (including maintenance safety measures) and regular safety training. If hazards cannot be adequately limited in this manner, a description must be provided stating how appropriate, properly maintained personal protective equipment and teaching materials regarding the risks to which employees are exposed in connection with these hazards are made available to employees.
- 5.2 The drinking water in the production facility is checked.
- 5.3 In the event that welding or brazing is required in the company, a welding permit must be obtained before commencing work.
- 5.4 The entire electrical installation in the company has been verified and is maintained.
- 5.5 In the event of repair or maintenance of any type of machine, it is locked for use and the power supply is interrupted.
- 5.6 Each industrial workplace is subjected to a risk analysis in order to define whether personal protective equipment is necessary for employees at that workplace.
- 5.7 Every employee receives any personal protective equipment that may be necessary and is regularly instructed in its use.
- 5.8 The chemical composition of products is tested, measured and documented.
- 5.9 Your products comply with legal restrictions regarding materials (e.g. RoHS, REACH).
- 5.10 Substances for which the legal restrictions regarding materials apply are not used in production.
- 5.11 Hazardous substances/chemicals are labelled with warnings (in an understandable form).

6. ILO 131 (minimum wage) and ILO 102 (social security)

It must be ensured that during the performance of the contract the remuneration paid to the workers complies with all applicable wage laws, including those relating to minimum wages, overtime and statutory social benefits. It must also be ensured that any use of temporary work, posting of workers and outsourcing of work complies with local legislation.

At a minimum, please describe

- 6.1 What is the applicable statutory minimum wage in the country (or region/industry sector) of the production site and what minimum wage that is actually paid when the contract is executed.
- 6.2 Which social benefits are prescribed by law and which social benefits are actually paid to the social insurance agencies and institutions when the order is executed.
- 6.3 How you will prevent salary cuts from being used as a disciplinary measure.

7. ILO 1 (limitation of hours of work)

It must be ensured that during the execution of the contract the weekly working hours do not exceed the maximum amount set by local laws, and that employees are granted the legally prescribed interruptions of work (breaks, non-working time, weekend) during the execution of the contract.

At a minimum, describe

- 7.1 The legal requirements regarding the maximum permitted regular working hours per week and the maximum permitted overtime hours per day/week/month in the country in which the production facility is located, and
- 7.2 Which time recording and time management system you will use to ensure that the legally prescribed working hours and work interruption times are adhered to.

General requirements

Information for employees

It must be ensured that the employees in the production facilities receive clear and accurate information about their rights during the execution of the contract.

At a minimum, describe

- a) How you will ensure that employees receive information about policies, procedures, expectations and performance in a manner that enables all employees to understand.

Responsibility in the supply chain

In conclusion, please describe

- a) How you ensure compliance with the agreed labour and social standards through contractual obligations between a Stage 1 organisation and a Stage 2 organisation,
- b) How you will make ILO (International Labour Organisation) standards known to suppliers, and
- c) How you will monitor compliance with the agreed ILO standards.

Annex 2:

Glossary

Glossary for ILO Declaration 2019

Term	Explanation
Award of a contract (tender)	The award of a contract is the notice of the Contracting Authority to a Contractor that its bid has been accepted. Award of a contract is the public procurement term for the acceptance of an offer. The award of the contract event triggering the start of the submission period for pieces of evidence.
Certificate	Certificates are, for example, evidence in the form of certificates or declarations by an independent third party, but not full audit reports.
Parties involved	Parties involved are companies that are directly related to the contract performance or that are product manufacturers. In addition to final manufacturers, these can also be suppliers and subcontractors that supply parts / provide services for the production process of the final product.
IT service	IT service is any service based on the use of information technology (IT service) or a support service for the use or introduction of an IT product (e.g. training, consulting or other support services, integration or customising).
End of contract	<p>As a rule, a contract / framework agreement expires at the end of the period determined in a fixed-term contract.</p> <p>The contract may be terminated prematurely through effective termination / rescission.</p> <p>With respect to framework agreements, the end of the agreement may be reached before the end of the period determined in the agreement by exhausting the estimated order volume.</p> <p>In the case of contracts with only selective service exchange (in particular purchase contract), the contract ends when the mutual main service obligations (performance of the contractual work and payment of the claim) have been fulfilled completely.</p>

Term	Explanation
<p>Experience (as meant by Clause 4 “Contracting Authority Rights” of the ILO Declaration)</p>	<p>Experience in the supervision, and / or in monitoring labour rights at production sites of the electronics supply chain includes:</p> <p><u>Labour and trust relationships with workers</u></p> <ul style="list-style-type: none"> – Several years of work for local civil society organisations that focus on labour rights and directly work together with workers in the region – Provision of training on worker rights, complaint management for workers, and / or legal assistance to workers <p>AND</p> <p><u>Legal and other framework conditions</u></p> <ul style="list-style-type: none"> – Application of domestic labour law standards and norms to conditions at specific workplaces – Application of international labour law standards, including the ILO conventions, to conditions at specific workplaces – Understanding the socio-political context of the electronics industry at certain locations <p>AND</p> <p><u>Research and reporting methods</u></p> <ul style="list-style-type: none"> – Use of methods and techniques for collecting and evaluating evidence – e.g. through interviews or document and data analysis – Conducting workforce surveys – Conducting interviews with workers and management personnel, in particular semi-structured in-depth interviews with sensitivity to sex, age, nationality and employment status – Analysis of data in relation to relevant standards, conventions and norms – Knowledge development and conclusions <p>AND</p> <p><u>Sector-specific context</u></p> <ul style="list-style-type: none"> – Analysis of workplace dynamics in the electronics industry through observations of working and living environments – Understanding sector-wide developments <p>Experience as meant by this Declaration is at least 5 years of activity with the above-mentioned types of experience.</p>
<p>Significant deficiency / violation</p>	<p>The significance of a deficiency / violation must be assessed in each individual case, taking all circumstances into consideration. The decisive factors are, in particular, the worthiness of protection of the affected right, and the severity of the violation (e.g. with regard to frequency and duration).</p>

Term	Explanation
Main object of the contract	<p>Main objects of the contract are the objects of the contract which account for a significant proportion of the contract value.</p> <p>Example</p> <ol style="list-style-type: none"> 1) Laptop computers with peripheral devices (e.g. mouse, keyboard, etc.) with a total contract value of EUR 100m, including peripheral devices worth EUR 500,000. Here, the laptop computers are the main object of the contract. 2) Laptop computers with docking station, value of docking stations amounting to 50 % of the contract value. Here, both devices are main objects of the contract.
IRCA	<p>International Register of Certificated Auditors https://en.wikipedia.org/wiki/International_Register_of_Certificated_Auditors</p>
Evidence	<p>Evidence within the meaning of the Declaration are the documents specified in Option 1 for plausibility checks. Suitable evidence within the meaning of the Declaration are records, audit reports, procedural instructions, contractual agreements, e-mail correspondence, official documents, deeds, certificates, image and sound recordings or the like.</p>
National law	<p>National law within the meaning of the Declaration is the applicable law of the country to which the respective production site is subject. In the case of a service, this is the applicable law to which the underlying employment relationships are subject, regardless of whether they are employment relationships or freelance activities.</p>
Product	<p>Product within the meaning of this Declaration is any movable property, even if it forms part of another movable property or an immovable property, as well as any result of intellectual effort.</p> <p>Software is a product within the meaning of this Declaration. Even if the creation of individual software is owed, it is as a rule owed on the basis of a contract for work, as is the case with the delivery of a “product” whereby no service is owed.</p>
Product manufacturer	<p>The product manufacturer is the producer of the final product. A product manufacturer is also anyone who claims to be a manufacturer by affixing his / her name, trademark or other distinctive sign.</p>
Production site	<p>Production sites are places where the final product, a raw material or a sub-product is manufactured.</p>
Independent third parties	<p>Independent third parties are persons over whom neither the Contractor nor the Contracting Authority have any economic, financial or personal influence and who are certified for the task set.</p>

Term	Explanation
EICC – RBA	http://www.responsiblebusiness.org/
BSCI – Amfori	http://www.bsci-intl.org/ https://de.wikipedia.org/wiki/Business_Social_Compliance_Initiative
SA 8000	http://www.sa-intl.org/ https://www.nachhaltigkeit.info/artikel/sozialstandards sa_8000_1564.htm https://de.wikipedia.org/wiki/SA8000
TCO certified	http://tcocertified.de/

Annex 3:

FAQ – Frequently asked questions

1. ***Is it possible to have the Centre of Excellence for Sustainable Procurement (KNB) or Bitkom confirm that a certificate is accepted before tasking a certificate provider other than the four mentioned?***

The Centre of Excellence for Sustainable Procurement and Bitkom are still in a stage of process development for considering a new certificate based on the underlying standard. Until then: Companies are welcome to contact Bitkom to find out whether a particular certificate provider is known and has already been evaluated. If this is not the case, however, KNB or Bitkom will not carry out a corresponding examination. Unfortunately, a preliminary examination cannot be done either. Should you as a tenderer wish to use a certificate provider other than the one listed in the Declaration of Commitment, please check independently whether the minimum standards of other evidence are met. Attention should be drawn to the following statement in the Declaration of Commitment:

“If the audit is set out under another comparable audit system, a description of compliance with the minimum standards a) to e) in Paragraph 1 must be submitted in addition to the certificate. Further, a point of contact of the selected audit standard must be named.”

2. ***Who will bear the costs of the audits?***

The tenderer, the manufacturer or the production facility will bear the costs for certification.

3. ***The Declaration does not state how thoroughly the audits have to be performed. Where can I find related information?***

The audits are performed on the basis of the standards issued by the certificate providers. The negotiators were and are aware that minor differences in procedures do exist between the standards development organisations. This is accepted and taken for granted for the benefit of the companies that work with the standards.

4. ***In which language must the reply to the catalogue of documents be made?***

The Contracting Authority usually specifies in the bidding terms in which language the documents must be submitted. They must usually be submitted in German. However, it cannot be ruled out that an agency also admits foreign language tenders.

Exceptions may apply to the evidence to be requested by the Contracting Authority, if applicable.

Declaration of Commitment – Option 1, penultimate paragraph:

“The Contractor shall be obliged to retain the evidence under Option 1, Clause 3, for a period of two years after the end of the contract in an audit-proof manner, and to send the certificates for verification to the Contracting Authority or to a third party commissioned by it and bound to secrecy. The Contractor shall provide the evidence documents at least with clear headlines or file names in German language in order to ensure correct classification of the submitted documents by the Contracting Authority. The use of the document names listed in the catalogue of documents is recommended.”

Bitkom and KNB agreed in this respect that, if an electronic transmission is to be expected, at least the file name must refer to the document contained therein. If documents are sent, these must be designated in the same way.

5. ***Does the certificate only have to be held for final production stage 1 or also for stage 2 (for contract values < EUR 50m)?***

Only the certificate of stage 1 of the supply chain is required, as the certificate covers contracts of supply chain stage 2.

- 6. *A necessary software is loaded on a server. The server is rented out. Which is stage 1 and which stage 2 of the supply chain?***

Regardless of whether the server is rented out or purchased, the installation of software is not a product development according to the supply chain definition of the Declaration of Commitment, as long as the Contracting Authority does not consider the software to be the main object of the service and wants to use the Declaration of Commitment to this end. In order to avoid confusion, it is therefore advisable for the Contracting Authority to specify in the invitation to tender which of the parts affected by the Declaration of Commitment is the main object of the contract.
- 7. *Where document management systems (DMS) are concerned, do I need to get them certified?***

The Declaration of Commitment covers software, hardware and services. Here, too, the Contracting Authority must make a clear decision about the main object of the contract involved. This should be evident in the invitation to tender. Otherwise, it is advisable to have this clarified by a tenderer's question in advance of the tender.
- 8. *What if the tenderer submits evidence only twelve months later and the contract has already been fulfilled?***

A period of twelve months for submission of evidence was recommended for the initial phase only. The deadlines (two to three months) are different depending on the amount of the contract value. The awarding agency may decide on changes to these deadlines at its dutiful discretion for objective reasons. Other deadlines must be taken into account for direct deliveries. Since payment must be made within a certain period, this period must also apply to the evidence, because otherwise contractual obligations will no longer apply. The Contracting Authority can only demand sanctions within this period.
- 9. *Do the certificates stifle the market?***

No. The certificates do not stifle the market. In principle, increasing demands will result in a corresponding supply in the market, just like in relation to quality improvement.
- 10. *Certificates cost money!***

Yes, but the use of the Declaration of Commitment is about compliance with ILO standards, which are the subject of the Declaration; compliance with these standards is in the interest and is the responsibility of the Contracting Authority.
- 11. *How is open source software to be handled for the purposes of this Declaration?***

Systemically, open source software is legally available to the public in its entirety and also in modules for free re-use and modification. As a result, supplier and producer are often not aware of each other and have not come to any contractual arrangements. The supplier cannot determine the time of production of the software (or part thereof) in the light of compliance with the ILO Core Labour Standards. In this respect, there is no supply chain within the meaning of this Declaration.

