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# Legal news



# Danish AM Hub

THEME

# A Sustainable Dimension of the 3D Printing Industry

"Sustainability" is part of the DNA of many businesses in the 3D printing industry. Especially the technologies and processes behind 3D printing are repeatedly highlighted and marketed as more sustainable than competing alternatives and often with good reason. Efficient product designs and waste-minimal processes are among some of the sustainable virtues that the 3D printing industry is contributing with on a daily basis.

But did you know that there are other ways to integrate sustainability in your 3D printing business? Here, we suggest two alternative ways to incorporate sustainability in your day-to-day business activities; in contracting and public procurement. We also remind you of one important pitfall when promoting sustainability in product marketing to ensure that your marketing is as legal as it is effective.

## What is sustainability?

A universal definition of "sustainability" does not exist. *The Brundtland report* (1987) by the World Commission on Environment and Development broadly defines the concept of sustainable development as a "development that meets the need of the present without compromising the ability of future generations to meet their own needs."

Sustainability generally consists of three pillars: economic, environmental, and social sustainability, often referred to as the three P's (profit, planet, people).

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# Sustainable contracting and strategic planning



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## **Ensuring sustainability begins with individual businesses actively deciding to take steps to incorporate sustainable solutions in their day-to-day business activities.**

The 3D printing industry is already a front runner in creating and optimising sustainable solutions by its 3D printing processes that reduce or eliminate costs of transportation and storage and produce less waste using additive manufacturing methods. It is also very likely that your 3D printing business already excels at waste disposal and reduction, lowering energy usage and reusing and recycling materials.

Another, readily accessible, way to incorporate sustainability in more aspects of your business is to think sustainability into contracting as well as strategic planning.

## **Sustainability in contractual terms**

Based on the lack of global standard terms on sustainability, your business could consider incorporating a *framework of sustainability* into all contracts to ensure legal accountability for sustainable solutions with business associates, suppliers and more. *General contract terms* that mind sustainability may be drawn up to ensure easy and consistent requirements for all business relations.

In general, it is advisable to consider sustainability both when choosing suppliers and other business associates and when choosing materials for production, etc. Be *critical and selective* in your choice of business associates and your materials for production and make sure that every partner associated with your 3D printing business comply with similar high standards of sustainability as your own business does.

## **Long-term strategic planning**

To ensure long-term solutions for a sustainable future, your 3D printing business may conduct a strategy in line with the [UN's 17 Sustainable Development Goals](#) (the "SDGs") in the same way as CSR strategies are widely implemented into contracts today. Further, your business may focus on choosing solutions that are socially and environmentally beneficial instead of purely aiming at economically profitable solutions. It may advance the competitive edge of your 3D printing business.

# Sustainable public procurement of AM solutions



Another way to enhance the potential of your 3D printing business' sustainable solutions is to actively use such sustainable virtues in public tenders. Participating in public procurement may be a beneficial way to secure substantial orders from public authorities, and the sustainable dimensions of your 3D printing business have the potential to be a useful advantage when competing for a public tender.

In public procurement, sustainability may be integrated in several steps of the process. The Danish Public Procurement Act (*Udbudsloven*) includes a number of possibilities for public authorities to include sustainability in public procurement and there are also ways for the potential suppliers/bidders to (lawfully) affect the tender in a more sustainable direction.

## Choice of award criterion

As an example, when using the award criterion "best price-quality ratio", public authorities may specify award criteria related to sustainability, e.g. environmental and innovation characteristics of purchased goods or services, and when using the award criteria "best price-quality ratio" or "cost" public authorities may use criteria related to the life cycle costs of such goods and services.

## 6 ways to include sustainability

The Confederation of Danish Industry has published [a position paper](#) (in Danish: "*Grønne offentlige indkøb uden unødvendige omkostninger*"). This paper lists six ways in which sustainability can be included in public procurement:

- 1.** The purchase is based on EU's green procurement criteria and, for instance, the requirements behind label schemes like the EU Ecolabel.
- 2.** The purchase is based on total cost of ownership where the life cycle of the product and the operating costs are incorporated.
- 3.** The purchase includes considerations about – and possibly specific requirements for – the after-use phase of the product.
- 4.** The procurement emphasises quality in the evaluation of the tender offers.
- 5.** The procurement's preliminary market consultation focuses on optimising the logistic setup for delivery of the product.
- 6.** The contract contains an innovation clause which encourages continuous improvements in the operation and the green profile of the purchase, including CO2 emissions.





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**Market consultations on sustainable public procurement**

Before a public authority initiates a specific tender, it is perfectly legal for the authority to have a dialogue with potential suppliers on how to best incorporate sustainability in the tender. This dialogue can take place in the form of a market consultation, and the initiative to start-up such a consultation may come from the public authority but also from potential suppliers.

Thus, market consultations may be your 3D printing business's opportunity to elaborate on Additive Manufacturing's potential for sustainability and lead the procurement in a direction towards more sustainability. When doing so, it can be a good idea to use the recommendations of the position paper of the Confederation of Danish Industry, or other recognised sources which support the inclusion of sustainability in public procurement, as a point of departure.

There are very few specific rules governing the way in which a market consultation may take place, so the public authorities have much flexibility in arranging and carrying out such consultations. Market consultations may, for instance, be held in writing (e.g. by e-mail exchange), in meetings, in telephone conversations, etc., and they may be held with one or more actual or potential suppliers or third parties.

However, public authorities must always observe the basic principles of equal treatment and transparency. Therefore, they must take appropriate measures to ensure that competition is not distorted by the market consultations.

Such measures will be to ensure that information which has been exchanged in the market consultations will be included in the tender documents in so far as the information is relevant for the tenderers to submit a competitive offer. The public authorities must ensure that no tenderer has received information in the market consultation which will give such tenderer an undue advantage in the subsequent tender, unless such information has been made available to all tenderers as part of the tender material. Further, the public authorities must ensure that deadlines for submitting applications to participate in a tender and/or tender offers are set reasonably to allow all tenderers to have equal opportunities in the tender.

In practice, market consultations, often held on the initiative of potential suppliers, are an effective way of promoting innovative ideas for sustainable procurement. The legal framework for market consultations presents perfect opportunities for your AM business to elaborate on additive manufacturing's potential for sustainability and lead the procurement in a direction towards more sustainability.

# How to avoid legal pitfalls when marketing sustainability



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Reaping the fruits of your sustainable business solutions by highlighting sustainability in product marketing is a tempting and valuable tool to enhance competitive advantages and to make your 3D printing business stand out in the market. However, when emphasising sustainability in product marketing you need to make sure that the marketing is within the legal scope. This can be particularly complicated in relation to sustainability claims.

**Documenting sustainability claims**

Sustainability claims are statements which give the impression that the manufacturer of a product and the business behind it have been particularly mindful of social and environmental considerations. Marketing and use of sustainability claims must support reliable information for consumers and must not exploit consumers' environmental concerns or potential lack of knowledge about environmental and social matters.

Therefore, sustainability claims must always be documented and must not be misleading. Wording claims in a precise and specific manner may be difficult and the requirements often depend on the specific claim. The lack of a universal legal definition of "sustainability" and of general legal requirements for marketing sustainability only adds to complexity. As a result, the legitimacy of sustainability claims is subject to a specific assessment in each case.

Some assistance can be found in [The Danish Consumer Ombudsman's Guidelines on the use of environmental and ethical claims in marketing](#), which outlines some general requirements for sufficient marketing of sustainability claims. Some of the most important takeaways from the guidelines are:

**Documenting sustainability claims**

- Document that the product in general is less harmful to the environment or more socially responsible than similar products (e.g. through labelling schemes such as the Nordic Swan Label)
- Document that the product and your business comply with generally accepted high standards for environmental, social and economic aspects of manufacturing
- Assess the product's life cycle (an assessment of the environmental and social impact of acquiring materials, manufacture, use and disposal steps)

Additional steps to ensure compatible marketing of sustainability

In addition to ensuring documentation for sustainability claims, you may engage in more general considerations when contemplating to engage in marketing sustainability:

**Takeaways for using sustainability in product marketing**

1. Consider whether your business cares for sustainable development of the local community regarding climate, environment, living conditions, ethical relations and health.
2. Practice what you preach: make sure that sustainability is part of the whole process – are (sub)suppliers and contractors held to the same standards as you require for your own business?
3. Your products should be continuously improved in a sustainable manner. Therefore, always consider how the life cycle of products could be improved in a sustainable way.



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