

Report update - Assessing the impact and uptake of social criteria in Public Procurement

This brief report is taking stock of the transposition into national legislation of [Directive 2014/24/EU](#) on public procurement and the uptake of the opportunities created by the newly introduced social dimension. Based on a study conducted among our members, we assess if the social clauses have been taken up by commissioning authorities, how this affects the provision of services by our members and formulate recommendations to improve socially responsible public procurement practices.

Eurodiaconia is a network of 54 organizations in 32 European countries providing social services and working for social justice. Founded in the Christian tradition we work to ensure that our societies provide opportunities for all people to live in dignity and reach their full potential. As not-for-profit social services providers, our members usually engage with public procurement procedures as a relevant form of funding. Thus, they have an on-the-ground understanding enabling them to take fair stock of the transposition of Directive 2014/24/EU into national legislation, especially as regards the effects of the strengthened social dimension for social service provision.

The Directive 2014/24/EU was adopted in February 2014 and since then, its rules have been transposed into all national legislations. The aim of the directive was to establish simpler and more efficient procurement rules, while respecting the principles of transparency and competition between providers. This legislation is very relevant for social services, as it recognises their special characteristics and limited cross-border dimension, thus creating a lighter, more flexible regulatory framework for them and a higher threshold, as for service contracts under 750.000 euros the procurement rules do not apply. Also, the Directive recognises Member States' freedom to choose how to organise their social service provision, thus using public procurement is not mandatory.

Moreover, the Directive introduced some noteworthy opportunities for the incorporation of a greater social dimension in public procurement. Concretely, it establishes that the Most Economically Advantageous Tender (MEAT) should be the main basis for contract criteria, and no longer the cost/price element alone. This gives the possibility to contracting authorities to include social factors as well as considerations of quality and sustainability of the services in the procurement process. Additionally, Member States are obliged to take appropriate

measures to ensure that in the performance of public contracts, operators comply with environmental, social, and labour law obligations.

Equally, under the Directive, Member States can allow contracting authorities to reserve contracts for the provision of health and social services to social enterprises, as well as for sheltered workshops and economic operators whose main aim is the integration of persons with disabilities or disadvantaged persons.

Three years after its adoption, in 2017, the Commission noted that the uptake of strategic - including social- criteria remained underdeveloped, with 55% of public procurement procedures still using the lowest price as the only award criterion¹. Earlier in 2021, the Commission confirmed the preference in the use of lowest price as an award criterion and informed of difficulties for the contracting authorities to formulate meaningful quality criteria for socially responsible public procurement (SRPP)². In light of the above, the Commission has put forward some initiatives to foster the uptake of social criteria and the use of best price-quality ratio in procurement, such as the [Public Procurement Package \(2017\)](#)³ or the second guidance note- [Buying Social \(2021\)](#), addressed to European contracting authorities to foster the introduction of social criteria into public tenders⁴. This guidance was built on a 2018 EC targeted consultation where Eurodiaconia took part and produced [key messages to boost social progress through public procurement in Europe](#).

The social potential of public procurement: not sufficiently used.

Eurodiaconia accompanied its members throughout the transposition of Directive 2014/24/EU into national legislations and delivered some guidance⁵ for a transposition that fostered a thriving ecosystem for social operators and an enabling approach towards social criteria, particularly for social services procurement. However, seven years after the enactment of the Directive, the information we receive from our members is that the social potential of the Directive has not been sufficiently tapped in procurement practice despite the Commission's efforts, and the implementation of EU rules on public procurement still represents a challenge.

¹ [COM\(2017\) 572, Making public procurement work in and for Europe](#), p. 5

² [Explanatory Memorandum to COM\(2021\)245 - Implementation and best practices of national procurement policies in the Internal Market](#)

³ See here our reaction to the package: [BRIEFING FOR MEMBERS -EUROPEAN COMMISSION PACKAGE AIMED AT MAKING PUBLIC PROCUREMENT WORK IN AND FOR EUROPE](#)

⁴ See here our reaction to the guide: [BRIEFING FOR MEMBERS "Buying Social- a guide to taking account of social considerations in Public Procurement \(2nd edition\)"](#)

⁵ [BRIEFING FOR MEMBERS- KEY POINTS FOR THE TRANSPOSITION OF DIRECTIVE 2014/24/EU ON PUBLIC PROCUREMENT](#)

For instance, our German member **Diakonie Deutschland**, has explained that procurement law leaves the application of the social clauses to the discretion of the contracting authorities. Due to its federal structure, the influence of the federal level on the procurement practice of the different districts and municipalities is limited. While there are municipalities that have taken steps towards a socially responsible public procurement (SRPP), overall the social dimension of the procurement Directive has not had an important impact in the social sector.

Moreover, public procurement is only one way of organising social services in Germany. Our member explains that many municipalities have a lot of leeway to either use or not use procurement for social services. But when they do use it, they are not ambitious to apply the social potential of the reformed procurement law, as doing so is seen as somehow problematic. In fact, according to our member, contracting authorities often chose to award the contract to the cheapest offer, as they fear lawsuits because of procedural mistakes when using differentiated award criteria such as quality. This situation is problematic particularly for established providers such as Diakonie, who offer standard wages and working conditions. In this context, Diakonie Deutschland has been advocating to influence regulations so social service providers are strengthened through this leeway in procurement law. Also, they make use of other forms of funding as options to public procurement, such as State Aid.

Similarly, one of our Swedish members, **Bräcke Diakoni**, has not observed that social causes have made any difference in the procurement of social services in Sweden. They explained that these clauses are mainly used in procurement of other services, such as building of properties but not for the social sector. Moreover, they find the time limit of public procurement contracts challenging. Tenders in public procurement for social services have a duration of a maximum three years. This is a problem for our member, it challenges the continuity of service provision, and they will prefer when contracts are awarded in the frame of the free choice model.⁶

Slezská Diakonie, one of our Czech members, has expressed that they have considerable experience with public procurement, as services with a social focus are the ones that the regional authorities want to develop. While this system has worked relatively well for them, they recognise a lack of quality criteria in the selection process, and when quality criteria are included, they are not ambitious, as they require, for example, the fulfilment of the quality standards set by law. Very often, the assignment criterion is the lowest price only. Thus, they

⁶ This model foresees an agreement between the public authority and the service provider without a fixed duration which allows a longer provision of services and introduces changes only after a few years.

advocate for changes to include quality and social criteria in procurement, such as the involvement of people with reduced opportunities on the labour market.

Moreover, **Diakonie Austria** has explained that the lack of quality criteria in public procurement is also a problem in their country, thus they are advocating for quality standards at a federal level which are appropriate to the social services they provide. Finally, our Finnish member, the **Deaconess Foundation**, has expressed that the social aspects are somewhat taken into account in public procurement, particularly in relation to social responsibility and job inclusion of people with disabilities. However, tendering procedures are still heavily evaluated on the basis of price (which is weighted at 90% of the total score). Likewise, usually contracting authorities' real interest in the compliance with social aspects during the contract execution is regrettably low.

Eurodiaconia position and recommendations.

From our members input it comes clear that the uptake of social criteria in public procurement legislation and practice is not fulfilling expectations. The prevailing of the lowest price criterion affects our members chance to be successful tenderers and can have a negative impact on the quality of their services. This is why Eurodiaconia has welcomed and supported the European Commission's efforts and initiatives to increase the uptake of social criteria in public procurement and mainstream SRPP.

We strongly agree with the Commission on the fact that SRPP is a powerful instrument to address social and environmental challenges and that can help achieve key EU social and employment policy objectives if promoted accordingly. Thus, where public procurement is chosen to organise the delivery of social services, socially responsible public procurement - including strong quality criteria- should be greatly promoted.

Also, we believe some good practices such as pre-market consultation with potential suppliers should be further encouraged. For instance, our member Slezská Diakonie has developed a continuous cooperation with regional authorities and regularly engaged in preparatory meetings at the beginning of the projects, where they are asked to provide the criteria that are important for them as possible providers. These instances can be an opportunity to bridge the distance between contracting authorities and smaller providers or social enterprises with less capacity to undertake procurement processes but able to offer greater added value through social criteria.

Nonetheless, we have also observed that public procurement is not necessarily the most appropriate mechanism for organising and financing social services. Even when some social

elements from the public procurement Directive are applied, contracting authorities sometimes fail to understand the holistic social aims behind it. For instance, in the past, some of our members which have used opportunities offered by reserved contracts have referred that these contracts have sometimes served as an excuse to increase pressure on prices, which affects quality of services and contradicts the spirit of social provisions.

Additionally, reserved contracts have a three-year limit after which contracting authorities can reserve the contract to another organisation or do an open tender. This limitation hinders the continuity of services, ultimately affecting end recipients. Likewise, our Romanian member, **Filantropia Timisoara** described that public contracts last just one year in their country and there is usually a big delay in payments. This is very difficult for not-for-profit providers and detrimental for beneficiaries. Also, public procurement is not the adequate funding tool to deliver quality services in compliance with the Voluntary European Quality Framework for Social Services (2010). For instance, public authorities funding social services through public procurement are usually not promoting freedom of choice of the users.

Thus, we believe that the Commission should also promote the use of alternative models of financing social services by public authorities. For example, user-based modalities such as the personal budgets or service vouchers, which allow service users to decide how they should be supported, are a better-suited, person-centred alternative for social services funding and provision. Equally, public-private collaboration agreements, and the use of public grants for selected service providers having the authorisation, accreditation, or license to deliver social services has worked well in many countries, such as Germany.

Therefore, Eurodiaconia and its members make the following recommendations:

1. To the European Commission:

- a) Continue its efforts to encourage Member States, regional governments, and local authorities to increase the uptake of the social dimension of public procurement for instance, through training and other appropriate support measures for buyers and bidders.
- b) Organise a stock-taking exercise of the transposition of the Directive with specific emphasis to social elements, to underpin an assessment of procurement legislation and to steer further action, both immediate and future, after concrete areas for development have been identified.

- c) Support Member States in developing an appropriate policy architecture that enables the professionalisation of public buyers, including on SRPP and other aspects of strategic procurement.
- d) Conduct a review of the effectiveness and adequacy of public procurement in funding social services and introduce revisions where needed. Moreover, the European Commission should promote the use of other models of financing social services such as user-based modalities (personal budgets or service vouchers), public-private collaboration agreements, and the use of public grants.

2. To national, regional, and local authorities:

- a) Organise training seminars, develop guidelines, disseminate good practice, set up help desks, support structures, capacity building projects to provide advice and information on SRPP, in particular on the light regime and quality criteria for social services.
- b) Develop strategies and annual work plans on SRPP. Disseminate SRPP good practices implemented in the country and from other countries, including those gathered in publications by the European Commission.
- c) Make more extensive use of pre-market consultations and of social and quality considerations in award criteria and contract performance clauses, to enable the participation in public procurement contracts of small suppliers, including NGOs and social enterprises.

3. To service providers:

- a) Engage in a regular dialogue with contracting authorities, at all levels, to spread the information about SRPP good practices, especially on the light regime and quality criteria for social services, but also social considerations, reserved contracts, and pre-market consultations.
- b) Collect and exchange good practices among countries and organise hearings with the EU institutions and Member States on the challenges encountered in the implementation of the public procurement directive and the solutions put forward to overcome them.

Eurodiaconia will continue to report and follow the development of public procurement rules and practices across the European Union. By working together with our members and reflecting on their needs and experiences on the ground, we aim at making a difference and push for improvements in the quality, accessibility, and affordability of social services provision.

For further information, do not hesitate to get in touch with our Policy Officer, Kewan Mildred Kewan.Mildred@eurodiaconia.org or our Policy Assistant, Magdalena Bordagorry Magdalena.Bordagorry@eurodiaconia.org.