

EASPD Policy Paper

Reply to the European Commission Call for Evidence for an Impact Assessment of the Public Procurement Directives



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Introduction

EASPD is the leading voice of disability services across Europe. Representing over 20,000 services in 50 countries, we promote human rights & equal opportunities for people with disabilities (PwD) through effective and high-quality support. Our work focuses on key areas essential to quality support provision.

EASPD welcomes the revision of the Public Procurement Directive (PPD) as an **opportunity to better align it with EU social objectives, including rights of PwD.** Drawing on the experience of disability service providers, we believe that **while PPD enables socially responsible public procurement (SRPP), its potential is underused.**

In social services, contracting authorities continue to rely on lowest-price criteria, instead of Most Economically Advantageous Tender (MEAT), which undermines service quality, continuity of support, workforce conditions, and generates higher costs. **EASPD recommends making MEAT/BPQR (Best-Price-Quality-Ratio) the default award method** in social services. Also, we recommend **including a reference to social economy as part of the award criteria (Art. 67)** and fully applying **quality principles (Art. 76)** when procuring in social, health, employment, or housing services.

Social and horizontal social clauses (Art. 18 (2)) should be strengthened and effectively enforced, including compliance with labour law, collective agreements & international standards. EASPD highlights a risk-averse culture among contracting authorities, which discourages the use of SRPP. **Clearer legal obligations, guidance and training** could reverse this trend. The **use of reserved contracts (Art. 20) could also be reinforced** by providing guidance & training, promoting division into lots, and clarifying that MSs may set additional eligibility criteria.

Accessibility relevant to PwD must be systematically integrated in procurement, rather than treated as optional (Art. 42, 62, 67, 76 and recitals 99, 101). The **cross-border dimension of social services procurement is minimal**, so the European Commission needs to reassess its application to social services, given no evidence for the risk of market distortion.

Alternative models such as authorisation systems, licensing, reserved markets and user-led funding should be clearly recognised as legitimate alternatives to procurement.

EASPD calls for **improved use of reserved contracts for certain services (Art. 77) and the removal of restrictive limitations** that disrupt continuity and quality of care & support for PwD and penalise experienced providers. Moreover, due to inflation, **mandatory price-revision should be introduced (Art. 72)**, as well as **regular reassessment of thresholds**, including automatic indexation.

Finally, EASPD calls to **expand contract performance clauses (Art. 70) to support inclusive labour markets and transitions for disadvantaged workers, including PwD.**

Overall, these recommendations would **reduce public costs, improve service quality, support disability inclusive employment** and better **align procurement with EU social commitments.**

In addition, EASPD supports its position by attaching two complementary position papers developed by **Social Services Europe (SSE)** and the **Sustainable Public Procurement Network**, of which EASPD is an active member. EASPD also supports the position of the **Social Platform** developed for this consultation, however, it is not attached below. EASPD has contributed substantively to the development of these joint positions, which further explore key aspects of the revision of the Public Procurement Directives and provide concrete, actionable recommendations. Together, these papers offer a coherent and in-depth contribution from EASPD and other civil society and social economy actors, reinforcing the need for a procurement framework that is socially responsible, and fully supports quality, continuity, and social impact in public services.

Social Services Europe

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I. Introduction and Summary

Social Services Europe (SSE) is **Europe's leading organisation representing non-profit social service providers**, amounting to around **200.000** social and health-care organisations.

Building on its considerable experience and broad representation, SSE wishes to contribute to the current call for evidence for an impact assessment of the Public Procurement Directives, in order to **draw attention to their shortcomings** and **propose necessary revisions**.

Under the current public procurement regime, non-profit social service providers have successfully participated in public tenders falling within the scope of Directive 2014/24/EU on Public Procurement (PPD). While the latter provides a framework allowing social services to be delivered under a lighter regime, its **excessively flexible design** has led to **fragmented and divergent national transpositions**, preventing the full achievement of its *effet utile* across the EU. This, in turn, results in public administrations not making full use of the possibilities offered by the PPD in the social services sector, **negatively affecting the provision of social services overall and, ultimately, people in need**.

The outcome is an EU-wide public procurement regime **running at different speeds**, with certain Member States making use of the full potential of the MEAT criteria (e.g, Spain), while others lag behind.

Against this background, **SSE calls for a number of key revisions to the PPD in relation to social services**, including making the use of the Most Economically Advantageous Tender (MEAT) criteria as the default award criteria (rather than price- or cost-based criteria) (Article 67); remove overly restrictive conditions for reserved contracts for certain services (Article 77); reinforcing the use of reserved contracts (Article 20); and providing legal certainty for the use of alternative models to procurement (Section III below). Such revision proposals are accompanied by certain **additional considerations** (Section IV below).

The proposed revisions have been already pointed to by the **European Parliament in its [Resolution of 9 September 2025 on public procurement \(\(2024/2103\(INI\)\)](#)** as well as other sectoral organizations.

SSE is grateful for the opportunity to provide input and would **welcome further dialogue** about these proposals with the European Commission.

II. SSE's Role and Representation

SSE is the leading European network representing **non-profit providers of social and health services**. Through its **numerous affiliated European networks** – i.e., Caritas Europa; the European Confederation of Industrial and Service Cooperatives (CECOP); the European Council of Associations of General Interest

(CEDAG); the European Anti-Poverty Network; the European Association of Service Providers for Persons with Disabilities (EASPD); the European Platform for Rehabilitation (EPR); Eurodiaconia; the European Federation of National Organisations Working with the Homeless (FEANTSA); and the Red Cross EU Office – SSE brings together a wide range of civil society organisations active across Member States.

Collectively, these networks and their national, regional and local members **employ more than 11 million people in the European Union and support millions of people at different stages of their lives.** Their activities cover a broad spectrum of social services, including services for children and families, older persons, persons with disabilities, people at risk of or experiencing poverty and social exclusion, homeless people, migrants and asylum seekers, and other vulnerable groups. Through this extensive presence on the ground, SSE members play a central role in delivering essential services of general interest and contributing to social cohesion across the EU.

Further information about Social Services Europe is available at: <https://www.socialserviceseurope.eu/>

III. SSE's Proposals for the Revision of the PPD

SSE puts forward the following proposals for the upcoming revision of the PPD.

1) Make MEAT or BPQR (Best Price Quality Ratio) the default award criterion (Art. 67)

The previous reform of the PPD strengthened the possibility to use public procurement in a strategic way to achieve social objectives, notably through **Socially Responsible Public Procurement (SRPP)**, allowing public buyers to **look beyond the mere price/cost of products or services.** This reform was very much welcomed by SSE, which fully supports its further and more consistent implementation.

The possibility to take qualitative, environmental and/or social aspects into account when awarding contracts is laid out in **Article 67 of the PPD**, establishing the **MEAT criteria.** The Directive therefore provides, in principle, an adequate legal framework for public procurement to be socially oriented across sectors in the EU.

However, evidence from the study commissioned by the Employment Committee of the European Parliament, "[The social impact of public procurement. Can the EU do more?](#)", suggests that **the lowest price or cost criterion is still predominantly used to award contracts** above EU thresholds, instead of MEAT. In 2021, ten Member States awarded between 82% and 95% of their above-threshold tenders solely based on the lowest price or cost; six Member States awarded between 60% and 80% on this basis; and the remaining fourteen Member States between 1% and 56%.

The systematic use of the lowest price or cost criterion erodes the quality of goods and services and promotes a **race-to-the-bottom approach among bidders.** Most importantly, in areas such as labour market integration of vulnerable groups, it also undermines **trust among all stakeholders.** This preference for lowest price or cost over MEAT criteria has been repeatedly observed by non-profit social service providers.

Although the Directive allows for flexible and innovative procurement approaches, public authorities rarely make use of them in practice. A **risk-averse culture**, reinforced by supervisory bodies and audit institutions, discourages innovation and leads to a "**chilling effect**". As a result, SRPP remains underused,

despite being legally permitted.

Many contracting authorities continue to feel uncertain about applying SRPP due to a **lack of error tolerance**, which results in procurement practices focused primarily on low cost rather than innovation or sustainability. In the field of social services, where quality is essential, this approach **undermines the objectives of Recital 114 and risks excluding high-quality providers from the market**.

For these reasons, SSE considers that the revised PPD should establish the use of the full extent of MEAT criteria as the default approach for the award of contracts, with recourse to the lowest price or cost criterion permitted only where duly justified by the contracting authority.

Relatedly, SSE proposes **strengthening Article 76(2)** this provision so that contracting authorities **must take into account the specific characteristics of social services**, including quality, continuity, accessibility and user needs – rather than merely being allowed to do so. Leaving this choice to the discretion of Member States and contracting authorities has proved to be **ineffective**. These principles are consistent with existing national frameworks and with the European Quality Framework for Social Services.

In this context, the revised Directive should also clarify that, within the MEAT framework, contracting authorities should include **award criteria reflecting the contribution of social economy actors to social objectives**, where such criteria are linked to the subject matter of the contract and applied in a transparent and non-discriminatory manner.

2) Remove overly restrictive conditions for reserved contracts for certain services (Article 77)

Article 77 of the Directive contains a **double time limitation that is unnecessary and counterproductive** to quality social services provision. Article 77(3) sets a maximum contract duration of three years, while Article 77(2)(d) provides that an organisation may only be awarded a reserved contract if it has not been awarded a contract for the services concerned within the previous three years.

In practice, these two conditions operate together as an **implicit ban on contract renewal**. They discourage quality work being carried out and prevent longer-term investment, planning and workforce stability, which are essential for the delivery of social, health, employment and housing services.¹

Most importantly, the compulsory three-year time limitation is **difficult to reconcile with the objectives of quality and continuity of care**. It restricts organisations that have previously delivered services under Article 77 from participating in subsequent tenders, effectively **penalising successful providers** and risking **interruptions in the continuity of service provision for people in need**.

For these reasons, SSE calls for the **removal of the double restriction set out in Article 77(2)(d) and Article 77(3)**, in order to ensure that reserved contracts can effectively support high-quality, continuous and sustainable social service provision.

Moreover, it is problematic that, under the current framework, the successful tenderer may **subcontract the entirety of a reserved contract**. This weakens direct accountability and oversight, increases the risk of poor quality and non-compliance, and undermines transparency, thereby calling into question the

¹ European Economic and Social Committee (2024) [The potential of Public Procurement for Social Economy enterprises](#), point 3.11.

achievement of the social objectives underpinning reserved contracts. SSE therefore proposes that the revised Directive clarify that, in the case of reserved contracts, contracting authorities may **require that core tasks and essential elements of the contract be performed directly by the reserved contractor itself**, while allowing subcontracting only for ancillary.

3) Recognise alternative models to procurement in the social services sector (Article 74)

The revised PPD – in its **operative part** – should provide **greater legal clarity** by explicitly recognising that certain models for organising and funding social services – such as the mere financing of social services, authorisation and licensing systems, public-private partnerships, reserved frameworks and user-led funding mechanisms (including personal budgets, and vouchers) – constitute **legitimate alternatives to public procurement** in line with the jurisprudence of the EU Court of Justice.

Clarifying the conditions under which such models fall outside the scope of public procurement law would help contracting authorities choose the most appropriate organisational model and would **support solidarity and cooperation-based approaches alongside competition**, in line with the specific nature of social services.

In 2022, EASPD conducted a study on alternatives to public procurement in the social services sector, analysing several existing legal options across Europe.²

4) Ensure accessibility is systematically integrated and not treated as optional, by using the existing tools of the Directive (Art. 42, 62, 67 and 76 and on recitals 99 and 101)

The Public Procurement Directives already provide a range of legal tools enabling contracting authorities to integrate accessibility requirements throughout the procurement process, including in technical specifications (Article 42), quality assurance standards (Article 62), award criteria (Article 67) and, in the case of social services, in the application of the light regime (Article 76). Recitals 99 and 101 further underline the importance of accessibility, in particular for persons with disabilities and other users with specific needs.

Despite this existing framework, **accessibility requirements are still too often treated as optional in practice**, rather than as a necessary element, particularly in the field of social services. The revised Directive should therefore strengthen the systematic integration of accessibility requirements by clarifying that, where relevant, contracting authorities are expected to make effective use of these existing provisions, in line with the objectives of inclusiveness, equal access and quality of service provision.

5) Strengthen the use of reserved contracts (Art. 20)

Reserved contracts constitute an important instrument for promoting the social economy and facilitating the participation of organisations whose primary objective is the social and professional integration of persons with disabilities or disadvantaged persons. However, their **use remains limited in practice**, in part due to **legal uncertainty and a lack of awareness among contracting authorities**.

The effectiveness of reserved contracts can be strengthened, first, by requiring contracting authorities,

² EASPD, “[Developing Alternatives to Public Procurement in Social Services: what legal options exist?](#)”.

in line with Article 46, to **consider dividing contracts into lots**, particularly for contracts of a certain size. This is particularly relevant in the field of social services, where providers are often SMEs and services are delivered at local level.

Second, greater legal clarity is needed to confirm that **Member States may define additional criteria for reserved contracts** within the framework of Article 20, provided that such criteria remain objective, transparent and non-discriminatory and are aligned with EU procurement principles and social policy objectives. This would enable Member States to **adapt reserved contracts to national contexts**, enhance their practical use, and ensure that they effectively support inclusive labour markets and high-quality social service provision.

6) Strengthen social clauses and horizontal social clauses (Art. 18 (2))

The revised PPD should strengthen the **effective enforcement of social clauses and horizontal social clauses**, in particular to ensure compliance by economic operators with applicable collective agreements, labour law and international labour standards, including ILO conventions, in line with Article 18(2).

Compliance with these social and labour obligations **should remain mandatory** and should not be regarded as discriminatory against economic operators, provided that contracting authorities apply them in a proportionate manner and put in place appropriate measures to ensure and facilitate access to public contracts for SMEs.

This is particularly important in the field of social services, where the majority of non-profit providers qualify as SMEs and where respect for social and labour standards is intrinsically linked to the quality and sustainability of service provision.

7) Improve rules on contract modification (Art. 72)

In the context of **inflationary pressures**, there is a clear need to require the **inclusion of price-revision mechanisms** in public contracts, in particular in labour-intensive services, in order to prevent service providers from being forced to **operate at a loss** and to safeguard the continuity of service provision.

To ensure that such price-revision clauses are effective and legally sound, they should explicitly take into account cost increases resulting from mandatory changes in labour law and collective agreements, in line with Article 18(2). Clarifying this obligation in the revised Directive would enhance legal certainty for both contracting authorities and service providers.

8) Make the regular evaluation of thresholds mandatory, including an automatic indexation due to inflation (Article 4)

EU public procurement thresholds should be subject to **regular and systematic evaluation** to ensure that they continue to **capture contracts with genuine cross-border internal market relevance**. In the absence of automatic indexation, inflation progressively lowers the real value of thresholds, extending the application of EU procurement rules to contracts with limited cross-border interest.

9) Expand contract performance clauses to support inclusive labour markets and transitions for disadvantaged workers, including persons with disabilities (Article 70)

Article 70 of the PPD allows contracting authorities to include social and employment-related conditions in contract performance. This can in principle include including measures supporting the employment, training and integration of disadvantaged workers, including persons with disabilities. However, such clauses remain **underused in practice**.

The revised Directive should therefore **strengthen and clarify the use of social contract performance clauses**, encouraging their systematic consideration where relevant and confirming their compatibility with EU procurement principles when linked to contract performance and applied in a transparent and non-discriminatory manner.

IV. Additional considerations

In support of the above proposals, the following additional considerations should be made.

1) Minimal cross-border dimension of public procurement in social services

In the field of social services, the **cross-border dimension of public procurement is negligible or close to zero**. As a result, there is little to no effective risk of distortion of trade within the internal market. This reality provides important **validation for the proposals set out above**. Where social services fall within the scope of the PPD, it becomes essential to ensure that Member States are required to apply the derogated and proportionate regime specifically designed for such services, rather than defaulting to the standard procurement rules intended for services with genuine cross-border interest.

This assessment is supported by the "[Study on regulatory burden and level of cross-border dimension of public procurement of social health services](#)", published by Monitor Deloitte in April 2020. The study concludes that the application of the PPD to social services entails **time-consuming and costly procedures and creates a disproportionate regulatory burden** for both contracting authorities and service providers, leading to inefficiencies and limited effectiveness, without delivering corresponding benefits.

The study further shows that, based on EU-wide data from 2016 to 2018, the **cross-border dimension** of public procurement in sub-sectors such as home care and youth care/welfare amounted to only **0.5%** in cases where a foreign provider won at least one lot, and to **0%** in cases where foreign providers won the majority or the totality of lots. There is no convincing reason, nor any new evidence, to suggest that this situation has changed significantly in recent years or is likely to change in the foreseeable future.

These findings confirm long-standing expectations expressed by non-profit social service providers even prior to the adoption of the PPD, given the specific characteristics of social services, their strong local dimension, the close relationship with users, and their classification as services of general economic interest (SGEI), which are often subject to extensive national regulation. In this context, SSE considers that the **limited cross-border relevance of social services procurement further justifies strengthening existing exemptions, flexibilities and alternative organisational models under EU public procurement law**.

Accordingly, SSE calls on the European Commission to reassess the internal market relevance of public procurement in the field of social services and to ensure that any extension or broad application of EU procurement rules in this sector is justified by **clear and up-to-date evidence demonstrating a genuine risk of distortion of competition within the internal market**.

2) Need for Guidance and Training

To ensure that the above proposed legislative changes are effective in practice, it is essential to address the **persistent risk aversion among contracting authorities** when procuring social services. Even where EU procurement law allows for flexibility, uncertainty about legal compliance often leads contracting authorities to rely on **conservative, price-driven approaches**.

To support the effective implementation of the revised framework and promote the confident use of SRPP, the **European Commission should provide clearer, more practical and more systematic guidance**, accompanied by **targeted training for contracting authorities** at national, regional and local level. Such measures would help translate the revised legal framework into day-to-day procurement practice.

Guidance and training should focus in particular on the lawful use of quality-based award criteria, social clauses, contract performance conditions, reserved contracts, alternative methods to public procurement, and the flexibilities available under the light regime.

Network for Sustainable Development in Public Procurement (NSDPP)

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A new Public Procurement Act serving Europe's workers, sustainable businesses and social economy actors

The **Network for Sustainable Development in Public Procurement (NSDPP)** is a coalition of social and environmental NGOs, trade unions, social economy networks, and procurers advocating for a just, future-proof procurement system.

The EU spends approximately 15% of its GDP on procuring goods and services. The way taxpayers' money is spent profoundly shapes the social, environmental, and economic fabric of the Union. **We strongly believe that the forthcoming Public Procurement Act offers a historic opportunity to address persistent problems of race-to-the-bottom bidding, social dumping, and underuse of procurement as a strategic lever to secure a competitive, decarbonised and socially minded European economy.**

The recently published evaluation report says it clearly: the implementation of strategic procurement across Member States is uneven, with green, innovative, and social procurement continuing to be strategic priorities (p. 71).

For the EU public procurement to align with the promises of the Clean Industrial Deal and the European Pillar of Social Rights, five **key changes must be prioritised** in the coming revision:

- 1. To ensure the best value for public money, the Most Economically Advantageous Tender (MEAT) must be the default criterion when awarding public contracts, leaving out the possibility to procure based on the lowest price.** This will provide public buyers with a clear legal mandate in moving beyond procurement on the lowest price. For too long, focusing

solely on the “lowest price” has hurt quality, workers’ rights, and sustainable businesses. Public procurement must serve long-term public interest.

- 2. Mandatory non-price criteria – social and environmental – must be gradually phased in EU legislation**, to ensure fair wages, decent jobs, decarbonisation and social inclusion. Yet, this does not happen in practice, as [indicated by the European Court of Auditors report](#) and the most [recent Commission’s evaluation report](#). To support best value for public money, EU-level mandatory minimum criteria - including through sectoral legislation - will provide authorities with the clarity to act fairly and confidently, thus simplifying processes. Mandatory social criteria should include collective bargaining and align with ILO conventions. Contracts must ensure supply chain due diligence, limit subcontracting to one or two sub-layers, and enforce shared responsibility for violations.
- 3. Enhance social economy access to public procurement through the explicit inclusion of targeted measures for public procurement access.** The EU social economy, with over 4.3 million entities and 11.4 million employees, delivers vital services, strengthens communities, and prioritises social and environmental goals. Aligning public procurement with specific support for the social economy helps foster social innovation and a resilient and more inclusive European social market. The [related 2023 EU Council recommendation](#) further emphasises the importance of social economy access to public procurement, including through reserving contracts to support the work integration of labour market underrepresented groups, such as persons with disabilities, in line with the UN CRPD and EU social inclusion objectives.
- 4. The updated framework must align with existing EU provisions** to enable their implementation while ensuring coherence. Direct reference to existing and soon-to-be requirements – from the Ecodesign for Sustainable Products Regulation and the forthcoming Circular Economy Act to the European Pillar of Social Rights, the Quality Jobs Roadmap, Social Economy Action Plan and Corporate Sustainability Due Diligence Directive – is pivotal.
- 5. Evaluating and enforcing public procurement depends on robust and transparent monitoring.** We call for mandatory national data collection on Sustainable Public Procurement, better publication, and improved tender traceability to spot issues, and monitoring of its impacts to ensure value for money and uphold social and environmental goals.

