

Social Services Europe

Reply to the EC Call for Evidence
for the Evaluation of the Public Procurement Directives
(4 March 2025)

1) Evaluation & Evidence for the Impact Assessment

- Overall, **Directive 2014/24/EU establishes a broadly appropriate legal framework for public procurement across the broad range of economic sectors and across the EU**. There are, however, at least **three caveats/limitations** to this general statement above which applies when looking at the main purposes and objectives of public procurement markets and procedures:
 - **Scope for action and starting points for flexibility in public procurement law:** It is positive that Directive 2014/24/EU brings flexibility for public procurement procedures and the design of public contracts. **In practice, however, this leeway cannot be realised sufficiently and to satisfactory level in view of the actual use of the features of socially responsible public procurement (SRPP)**. A more flexible and “innovative design-oriented” application of public procurement law would require a culture of error that leaves room for testing different design options for call for tenders and public contracts. **Such a “positive error culture” is, however, neither encouraged nor tolerated in practice**. Contracting authorities, supervisory bodies and Courts of Auditors have in their DNA to avoid unclarity as well as “new designs” of services at all means. Thus, **even though Directive 2014/24/EU has opened some doors for the better use of SRPP, this option is much too little used within the EU MS at the different levels of administration and across all types of contracting authorities**. This has been proven again by the Study ["The social impact of public procurement – Can the EU do more?"](#) (2023) commissioned by the European Parliament’s Employment Committee. In other words – and this is a **serious shortcoming in practice**: A “chilling effect” prevails, an avoidance to exploit the full potential of provisions supportive of socially responsible public procurement “on paper”, given the risk averseness of contracting authorities fearing mistakes, delays or recourses, and given the “control and assessment practice” by both supervisory bodies for local governments and/or by court of auditors.
 - Members of SSE members from **Germany** conclude: *“In the eight years since the implementation of the directives, **many contracting authorities still take the view that there is insufficient legal certainty and experience with SRPP**. An important reason for*

this attitude is the **lack of an error culture**. This has a detrimental effect not only on procurement, but also on the projects to be implemented with the procurement. **What is demanded and procured is not what is innovative and/or sustainable, but what is cheap and risk-free.** Instead of cost efficiency, many contracting authorities prioritise short-term cost savings effects. Particularly in the area of social services, for which Art. 74ff was intended to ensure socially acceptable and responsible public procurement, the rigid, dominantly price-/cost-oriented procurement practice has the effect that all the objectives specified in Recital 114 of Directive 2014/24/EU¹ are not attained. **Social service providers with qualified personnel and prioritising socially and ecologically sustainable offers are withdrawing from a procurement market which neither demands nor rewards their high-quality work.** For SSE it is important to underline that this “assessment” from one EU MS reflects many similar experiences in the last nearly 10 years from a number of other countries, too.

- It is questionable to which extent the requirements of Directive 2014/24/EU can and should appropriately be transferred to actors governed by private law which are not contracting authorities – including most national members of members of SSE – which receive, e.g., funding from the ESF/ESF+ Programmes if they do purchase themselves with this money. **For those organisations governed by private law, there is a significant imbalance between requirements, access to qualified assistance and the risk of errors in the application of the provisions and procedures of Directive 2014/24/EU.**
- In the field of social services there is a **very insignificant (or close to zero) share of cross-border procurement**. From this follows a close to zero/no effective risk of distortion of trade in the internal market. A report issued by [Monitor Deloitte “Study on regulatory burden and level of cross-border dimension of public procurement of social health services”](#) in April 2020 concludes that **the application of Directive 2014/24/EU in the sector of social services entails time-consuming and costly procedures and a disproportionate regulatory burden for both public authorities and the service providers which implies ineffectiveness and inefficiency**. Another key finding is that the cross-border dimension of public procurement in the sub-sectors of home care and youth care/welfare, based on EU-wide data from the years 2016 to 2018 amounted to 0,5% for cases where a foreign provider was winning at least 1 lot out of X lots and to 0% when looking to public contracts won by foreign providers for the majority or totality of lots. There is neither any convincing reason (see below) nor any new data to believe that this evidence should have substantially changed in the last years or will change in any relevant way in the years to come. This result had been considered as very likely by not-for-profit social service providers in the years prior to the revision of the EU public procurement legislation to eventually become Directive 2014/24/EU, given the numerous specificities of the sector, the services and the users of social services and given that that social services are a core part of SGEl and, thus, in many EU MS, a highly regulated

¹ Recital 114 of Directive 2014/24/EU reads: “The rules of this Directive take account of that imperative, imposing only the observance of basic principles of transparency and equal treatment and making sure that contracting authorities are able to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services, published by the Social Protection Committee. When determining the procedures to be used for the award of contracts for services to the person, Member States should take Article 14 TFEU and Protocol No 26 into account. In so doing, Member States should also pursue the objectives of simplification and of alleviating the administrative burden for contracting authorities and economic operators; it should be clarified that so doing might also entail relying on rules applicable to service contracts not subject to the specific regime (...)”.

sector. For SSE, this implies a **need for the EC to reassess the cross-border dimension for the sector of social services** – given the lacking evidence for any risk of distortion of competition in the internal market in this sector – and, thus, a **reversal of the burden of proof**: Those advocating for an extension or broad application of public procurement in the field of social services are asked to provide evidence for the contrary.

- For SSE the above also implies that the **insistence of Art. 76.2 “Social and other specific services: Principles of awarding contracts” of Directive 2014/24/EU to ensure that contracting authorities take into account the criteria stemming from the organisation, regulation, financing and institutional embeddedness of social services as SGEI² is fully justified across the EU if and where national legislation requires the application of public procurement procedures**. SSE proposes that the wording of this Art. 76.2 should be adapted from *“Member States shall ensure that contracting authorities may take into account the need (...)”* to *“Member States shall ensure that contracting authorities take into account the need (...)”*, i.e., by **taking out the verb “may”**. The above-mentioned list of criteria reflects a broad range of quality criteria which should as a rule be applied in the field of social services and which are included in sector-specific legislations governing the organisation, regulation, financing and quality of social services in many EU MS. These quality criteria are also included in the [European Voluntary Quality Principles for Social Services](#) (of General Interest) (2010).
- Given experiences with the use of public procurement procedures in the field of social services, SSE considers it **important for the competent government authorities or administrative entities in the EU MS to encourage contracting authorities to actually realise SRPP** given generally risk-averse public buyers/tenderers by providing clear guidance and by offering training to them.

2) Proposals

2a) More general points for the revision of Directive 2014/24/EU (in line with the proposals/asks/requests of the [NSDPP Letter of 24 January 2025](#) signed by SSE)

- **Make the use of the Most Economically Advantageous Tender (MEAT)/Best Price Quality Ratio (BPQR) criteria the standard/default logic for public procurement**, at least/in particular in economic sectors where staff costs make up for a big share of the total costs, such as in the sector of social services (where the share of the staff costs on average makes up more than 50% of total operational costs, often between 60% and 70%). **Awards of contracts based on the lowest price/cost are at the expense of the quality of the social services for their users**. The use of the lowest price criterion in the different fields of SGIE is economically questionable as it is not based on an overall economic assessment of costs and benefits for the – in the case of SSE: social – service users and for the society, given the non-consideration of positive externalities. It does not take into account whether the one-off cheap purchase of a service may have follow-up costs for users – due to deficits as to their quality, etc. – or service providers when executing the public contract. Where contracting authorities do not adequately define the requirements for the quality of social services –

² Art. 76 of Directive 2014/24/EU explicitly lists the following criteria: *“quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation”*.

which often is the case in practice when tendering social services – a lowest price-based legal certainty is attained at high costs for the service users and the social infrastructure.

- **Social clauses & horizontal social clause (Art. 18.2 of Directive 2014/24/EU)**
 - a) **Better enforce social clauses which prescribe the respect of collective agreements**, including by criteria allowing for an exclusion of bidders not respecting them, **labour law and/or the ILO Core Labour Standards and by referring to the ILO Convention 94 (1949) on Labour Clauses in Public Contracts**.
 - b) **Social criteria should remain mandatory and not be seen as discriminatory against economic operators**, provided accommodations are made to ensure/facilitate the access to public contracts for SMEs. This is important in the field of social services where the dominant share of (not-for-profit/social economy) providers are SMEs.
- **Modification of contracts during their term (Art. 72 of Directive 2014/24/EU)**: In the face of inflation price revision clauses are crucial. The Public Procurement Directives, however, lack an obligation for the EU Member States to provide price-revision mechanisms for public contracts. This can constitute a serious problem in situations where an inflation-driven erosion of profit margins from public contracts, including in the field of social services, would risk a suspension of the contract performance to avoid providing services at a loss.

2b) Issues more specific for the sector of social services or for the social economy

- **Elaborate (e.g.) an interpretative communication by the EC to underpin a full (legal) recognition of alternative models to public procurement** – e.g., authorisation or licensing procedures, reserved markets, or user-led funding models such as personal budgets – **which promote cooperation and a partnership culture between public authorities, social care providers, service users and other stakeholders**.
- **Promote SRPP in the area of social services as the “standard procedure” if and where national legislation prescribes the use of public procurement**, building on existing EC publications and the Study (2023), commissioned by the Employment Committee of the European Parliament. As highlighted in the La Hulpe Declaration “the directives on public procurement could be evaluated and, if needed, further steps could be taken” (40.), to improve their sustainability.
- **Introduce a legal obligation to regularly evaluate the effects of the existing thresholds** (e.g., 5,186,000 € for public works contracts or 750,000 € for public service contracts for social and other specific services listed in Annex XIV) **on the internal trade**, in line with Recital 134 of Directive 2014/24/EU³ and – in this context – **assess the relevance and success rates of cross border procurement procedures**, including in the social service sectors.
- **Make regular adaptations of the thresholds to account for the effects of inflation**. SSE asks the Commission to review the thresholds and to increase them for contracts for supplies and services established in Articles 4(b) and 4(c) as well as for public service contracts for social and other specific services listed in Annex XIV laid out in Article 4(d) of the Directive. In the

³ Recital 134 of Directive 2014/24/EU reads: “The Commission should review the effects on the internal market resulting from the application of the thresholds and report thereon to the European Parliament and the Council. In so doing, it should take into account factors such as the level of cross-border procurement, SME participation, transaction costs and the cost-benefit trade-off.”

experience of our members, the current thresholds are often too low to have an effect on the internal market. At the same time, participating in and/or conducting a tender falling under the Directive poses an extensive administrative burden for relatively low-value tenders, resulting in tender processes with only one or few bidders and discouraging SMEs from participating – ultimately hindering competitiveness and risking lowering the quality of the supplies and services provided.

- **Support actors from the social economy which prioritises social, environmental, and cultural impact over profit by further leveraging the Social Economy Action Plan (SEAP) and the 2023 Council Recommendation’s public procurement dispositions** as this type of support would be beneficial for promoting these models.
- **Accessibility:** Encourage the comprehensive use of the provisions of Directive 2014/24/EU in relation to the accessibility of products or services procured, building in particular on articles 42, 62, 67 and 76 and on recitals 99 and 101.
- **Art. 20 of Directive 2014/24/EU (Reserved contracts): Better enforcement of rules on reserved markets**
 - **Provide support, based on mutual learning, training and guidance, for an improved implementation of reserved markets which benefit the work integration of disadvantaged groups**, including persons with disabilities. This could be done by offering technical assistance to contracting authorities – by expanding their knowledge about the social economy – and by introducing social value criteria in public procurement evaluations. This could also be done by illustrating the use of reserved markets/contracts for different target groups, e.g. based on good practice cases as published on the [WeBuySocialEU Project Webpage](#) and [Good Practice Examples section of the Green Public Procurement Webpage](#)), by illustrating how contracting authorities can work with market consultations – not least to also better understand what social economy organisations/social enterprises can offer in terms of services, works or products – and by showcasing how contracting authorities could better target their call for tenders for target groups, such as persons with disabilities, long-term unemployed, persons without school certificate, etc.
 - **In initiatives supported by the EC, e.g., in view of the elaboration of guidance or training courses, encourage contracting authorities to more systematically use a division into lots to improve the access of SME, including (most of) the organisations of the social economy/not-for-profit sector to procurement markets.** This holds in particular in sub-sectors and for call for tenders where organisations are present which support the work/labour market integration and social inclusion of different categories of vulnerable persons, including PwD.
 - Taking up the consideration of the [Judgment of the ECJ of 6 October 2021](#), **introduce in the recitals of Directive that the EU Member States have the freedom to define more clearly the scope of the reserved contracts** and that contracting authorities can impose additional criteria – defined in national (or regional) legislation – beyond those laid down by Art. 20.1 of Directive 2014/24/EU, provided they comply with the general principles of EU law and they are in line with the EU-level social and employment policy objectives⁴

⁴ This includes full employment and social progress, combatting social exclusion and discrimination, promotion of social justice and protection, equality between women and men, solidarity between generations or promotion of

pursued by a specific provision. This proposal is based on the wide margin of discretion the EU Member States have according to the EU Treaties in defining the measures likely to achieve a given social and employment policy objective (such as the social and professional integration of disabled or disadvantaged persons in the labour market and in the society).

- **Include references to the social economy as part of future award criteria (Art. 67 of Directive 2014/24/EU),** in addition to the MEAT/BPQR criteria.
- **Extend Art. 70 of Directive 2014/24/EU (Contract performance clauses) in a way to facilitate their use to promote the inclusive labour markets, workplaces and jobs and the transition of PwD and other disadvantaged workers into the open/regular labour market.**
- **Art. 76 of Directive 2014/24/EU (Social and other specific services: Principles of awarding contracts): Where and if national legislation prescribes the use of public procurement in the field of social, health, employment and housing policies, make full use of the quality principles included in Art. 76.2 and e.g., in the [European Voluntary Quality Principles for Social Services](#) (of General Interest) (2010).**
- **Abolish Art. 77 of Directive 2014/24/EU (Reserved contracts for certain services):** SSE cannot see the usefulness for the double restriction of 3 years in Art. 77 (2)(d) and Art. 77(3). The logic behind this double restriction of Art. 77 is even counter-productive in the context of the sectors the reservation of contracts is defined for. Art. 76 includes sufficient safeguards for the social services sector. The provision of Art. 77 of Directive 2014/24/EU has – to the knowledge of SSE – neither been systematically transposed across the EU MS nor used to a relevant extent by contracting authorities. SSE’s view as to the actual effect of Art. 77 is underpinned by the [EESC Opinion “Potential of public procurement for social economy enterprises”](#)⁵ [INT/1056] (23 October 2024).

[Social Services Europe](#) (SSE) is a **network of eight European umbrella organisations** – comprising [Caritas Europa](#), [CEDAG](#), [E.A.N.](#), [EASPD](#), [EPR](#), [Eurodiaconia](#), [FEANTSA](#) and the [Red Cross EU Office](#) – **representing over 200,000 not-for-profit social and health care organisations**. They provide **care, training, support and guidance** to millions of people across Europe – such as children, older persons, persons with disabilities, people at risk or experiencing poverty and social exclusion, homeless people, migrants and asylum seekers and other vulnerable groups – and this in various stages in life. The national members of the 8 EU-level networks being members of SSE are **active in a sector employing over 11 million people in the EU 27, of which about half are employed by social economy organisations**.

economic, social and territorial cohesion (Art. 3.3 TEU).

⁵ It calls “for a more flexible approach to address the three-year maximum duration of the contracts (Article 77)”, and states that this “double restriction effectively amounts to an implicit ban on contract renewal and discourages quality work being carried out. The application of these rules has proven to be too rigid and has reduced the concrete incentives to provide quality work during the last year of the contract which often means that good service providers have to be replaced, even if they are appreciated by the contracting authority and end users.” (point 4.6, pp. 6-7)