

## **EASPD: Impact of the new framework for public procurement on services for Persons with Disabilities**

Thanks to MEPs Pietikäinen and Torvalds for inviting us and giving us the opportunity to share with them our assessment results of the new proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on public procurement.

SSGI are set to achieve a variety of essential goals: they are personalised services set up to respond to essential needs of European Citizens. They play a very important role in the building of socially cohesive communities, and in ensuring everyone's full participation in a just and equal society.

EASPDs members strive to promote the provision of high quality services for people with disabilities across Europe that respond to the specific need of every person in an individual and personalised way. To aim standardisation in this field of services is almost not possible since every person has different needs. Tailor-made services are difficult to procure precisely, because they are tailor made. This is, what makes public procurement procedures difficult to implement properly in this field. Additionally, support needs to evolve according to changing circumstances and personal plans of the people involved.

High quality service providers invest considerably in the development of innovative service systems to address evolving needs, using new technologies and methodologies. Public procurement processes often hinder innovation because of the

strict guidelines governing them, that bind providers to deliver services as described in the contracts.

Procuring authorities often request “traditional services”, simply because they are what they know.

Public procurement, therefore, might have negative effects on the modernisation process and on the person-centeredness of service delivery.

Another characteristic of social services is the strong partnership between user and provider. Procurement of social services cannot facilitate this crucial relationship, given that, by definition, it promotes only short term commitments. This has a further detrimental effect, i.e. the loss of skills and knowledge of professional and informal carers who cannot develop their careers based on short term working assignments. A further degradation of the working conditions could be triggered in a period of shortage of staff in the sector.

Representing around 10.000 service providers in 33 European countries across disability and across the lifespan of persons with disabilities providing all types of services, family support, education, daycare, supported and sheltered employment, housing, medical services, support in leisure time, ... EASPD advocates for the adoption of a legal framework and systems, that promote quality of services and recognise the specificities of our sector:

- Individualisation
- Partnership
- Innovation of services rooted in society.

The existing public procurement rules have often generated opposite outcomes.

During the years 2009 – 2010 EASPD and its members made an evaluation on the impact of the existing public procurement directive on Social Services of General Interest, and in particular on services for persons with disabilities. We formulated 6 recommendations for a new directive. With the focus on these recommendations we assessed the consolidated text of the proposal for the new public procurement directive.

**RECOMMENDATION 1:** *the implementation of the UN Convention on the Rights of Persons with Disabilities is everyone's responsibility. The principles outlined therein should guide the work of social services for people with disabilities but this is only possible if an adequate legislative framework is in place.*

This was taken on board. Recital 2a talks about the need to implement the UNCRPD.

**RECOMMENDATION 2:** *Recognise the specificities of the sector and include them in all tendering exercises. These entail long-term commitment, partnership between authorities, providers and consumers, social added value and social cohesion.*

The specificity of social services is recognised, they are entitled to a special regime and they have a higher threshold, which allows freedom in contracting services under € 750.000. Member States have **wide discretion to organise the choice of the service providers in the way they consider most**

**appropriate.** However, long-term commitment is not mentioned as 3 years is the maximum duration of a contract. Nothing is mentioned about social cohesion and partnership between authorities, providers and consumers.

**RECOMMENDATION 3: *Develop good standards involving service users and service providers before the tender procedure, to ensure that their needs are understood and taken into consideration and that joint decision-making is respected; develop indicators and service delivery standards based on quality principles, to support quality in social services rather than awarding decisions on the basis of costs;***

Recital 11 specifies that *‘contracting authorities should be 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** of the European Union’s Social Protection Committee’*. References are made to Protocol (No 26) on Services of General Interest and Article 14 Treaty on the functioning of the EU in the award of contract.

In terms of privileging quality rather than cost in the award criteria there is more ambiguity.

Article 76.2 talks about **quality, continuity, accessibility, affordability, availability and comprehensiveness of the services**, but using the expression ‘Member States shall ensure that contracting authorities may’, giving no obligation to member states.

The same goes for the quality requirements in the tendering process: as *‘States **may** also provide that the choice of the service provider **shall** be made on the basis of the **most***

***economically advantageous tender, taking into account quality and sustainability criteria for social services.'***

**RECOMMENDATION 4: *Develop a system that facilitates innovation and modernization of services through contracts allowing services to adapt according to needs and technological advancements.***

Recital 17 talks about the need of spurring innovation, including social innovation. Recital 17a institutes a specific tool to boost innovation: innovation partnerships for the development and subsequent purchase of a new, innovative product, service or works; regulated by Article 29.

**RECOMMENDATION 4: *Consider the overall costs incurred to set up procurement exercises and ensure that they will be offset by long term benefits and savings to be achieved as a result of the tendering procedure; consider the cost implications of tendering and re-tendering exercises not only in budgetary terms, also in terms of distress caused to service users who are liable of changing their support service and of staff members who face redundancy or transfer as a result of the procedure;***

Recital 11 talks about simplification and alleviating the administrative burden for contracting authorities and economic operators. However, Article 76a states that the awarded '*organisation shall not have been awarded a contract for the services concerned by the contracting authority within the past three years*'. And that '*The maximum duration of the contract shall not be longer than three years.*' This is clearly contradicting the continuity principle and the EASPD recommendations.

**RECOMMENDATION 5:** *Promote the know-how of contracting authorities on quality services based on users' needs. Good service provision is based on personalised services that put the individual at the centre, and in a position to decide what happens to their lives and support systems;*

Article 76 states that 'Member States shall ensure that contracting authorities may take into account the need to ensure that (...) **specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation.**'

Again, the principle is included, but there is no obligation for Member States.

**RECOMMENDATION 6:** *Value the local context and seek to promote services that are rooted in society and linked to local communities, respecting their values and traditions;*

This was included by recital 11, saying that certain kind of social, health and education services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. This is the reason why they have a higher threshold and a special regime.

## **GENERAL CONCLUSIONS:**

The overall approach of the proposal for a new directive is welcomed by EASPD, as it is recognising the specificities of SSGI, ensuring them a higher threshold and giving them specific award criteria including quality, affordability, accessibility, availability and comprehensiveness of the services, with specific references to the European Voluntary Quality Framework. We also welcome the fact that a higher threshold is set for social services and that it is clearly stated that member states are free to provide these services

themselves or to organise social services in a way that does not entail the conclusion of public contracts.

Coming to disability specific issues, we welcome

- the reference to UNCRPD,
- the users' involvement principle and
- the fact that the accessibility criteria for persons with disabilities and
- reference to design for all

are present in many of the Articles of the directive.

We also welcome the possibility of reserved contracts, in particular for sheltered workshops, but we find that there is some ambiguity in the conditions, which don't mention the need for the organisation to have a social objective and which includes the possibility for the organisation to redistribute profit on a vague '*basis of participatory considerations*'.

We regret it is not compulsory for Member States to follow the quality criteria, the users' involvement principle and to award contracts on the basis of *mostly economic advantageous tender*. This implicitly leaves open the possibility for public authorities to award social services only on a cost-basis.

We also regret that the maximum duration of a contract is of three years, this being against the principle of continuity of services.

And at last: we ask the European Commission to work with Member States towards a correct implementation of this directive, in line with its overall approach and to the importance given to quality of SSGI.