



Social Services Europe Position Paper

Social Services Europe initial position on the Proposal for a Directive on Public Procurement (COM)2011/896 Final

Social Services Europe brings together seven Europe-wide networks of not-for-profit providers of social and health care services who each have a track record in providing value-driven services for the most vulnerable in our societies. Recognising the increasing pressures on social and health care service providers around Europe, Social Services Europe aims to ensure that the specificity of not-for-profit social and health care service providers is recognised and that economic, social and legal conditions exist for quality social and health care services.

Social Services Europe members have analysed the implementation of the current directive on public procurement (2004/18/EC) and its impact on social services. Examining the proposal (COM)2011/896 in the light of this analysis, Social Services Europe has come to the positions outlined in this document.

Social Services Europe welcomes the recognition of the specific characteristics of social services in the proposal for a directive and the special regime that follows from this recognition (Title III: Particular procurement regimes; CHAPTER I Social and other specific services). Social Services Europe agrees that “social, health and education services have specific characteristics which make them inappropriate for the application of the regular procedures for the award of public service contracts” (Explanatory Memorandum) and that they deserve a higher threshold. These special characteristics include that they are delivered directly to the person, need to be tailor-made to the individual, and certain characteristics are especially important in the provision of social services, such as those mentioned in Article 76§2, such as continuity and comprehensiveness, the specific needs of different categories of users and the involvement and empowerment of users.

Social Services Europe supports the approach of the Commission as highlighted above but would like to suggest some changes to the proposal that would strengthen the declared aim of the revision to better meet “common societal goals” as well as “ensuring the best possible conditions for the provision of high quality social services”.

➔ Definition of social services

Annex XVI lists “social and other specific services” for which the special regime applies. The list refers to health and social services, administrative, educational, healthcare and cultural services, compulsory social security services, other community, social and personal services, services provided by Trade Unions and religious services. Recital 11 refers to “services to the person, such as certain social, health and educational services”, while the explanatory memorandum refers to “social, health and education services”.

Social Services Europe members believe that there is a lack of clarity and consistency in defining what services exactly fall under the special regime. Definitions of social services exist in other Commission documents (Communication on Social Services of General Interest [COM\(2006\) 177](#) for example). In

addition the non-economic services, social security services, religious services, trade union services, are listed under Annex XVI.

➔ **Wide discretion of public authorities in organizing social service provision**

Social Services Europe recalls that public authorities should have “wide discretion to organize the choice of the service providers in the way they consider most appropriate” (recital 11), as laid down in the Protocol on Services of General Interest in Treaty on the Functioning of the European Union.

The text of the directive should explicitly state this “wide discretion”; it should not just be a reference in the recitals.

➔ **Quality: Most Economically Advantageous Tender (MEAT)/Lowest Cost**

Social Services Europe welcomes the increased emphasis on and therefore recognition of the importance of “high” quality services through numerous references in the text of the proposal, including the explicit reference to the Voluntary European Quality Framework for Social Services of the European Union’s Social Protection Committee. It gives the Voluntary European Quality Framework a higher profile and it takes into account many of the main elements of quality Social Services Europe sees as important. Social Services Europe, believes that in the field of social services in particular, high quality service provision is essential for the service to meet its goal of meeting the need of an individual.

However, article 76§2, states that “contracting authorities **may** take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation. Member States **may** also provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service”.

Awarding a contract based on the MEAT aims to identify the tender that “offers the best value for money” (Article 38). In Article 46 of the current Directive (2004/18/EC) contracting authorities “shall determine the...quality criteria” to determine the MEAT, but in the proposal for a directive quality criteria are only listed as part of an indicative list. Social Services Europe believes that “best value”/MEAT must take into account social considerations and quality criteria.

Social Services Europe calls for references to the possibility to award contracts based on lowest price or cost in the directive to be removed.

Social Services Europe calls for quality to be a mandatory element of MEAT.

Article 76§2 should be binding on contracting authorities and not optional (“shall” rather than “may take into account”).

➔ **Social production characteristics**

The working conditions and “qualification and experience of the staff” (Article 66 2 b) has a direct impact on the ability of a service provider to provide a quality service, as well as on the ability to meet the goal of decent work. We believe that this is “closely related to the specific production or provision of the good or service purchased” (Explanatory Memorandum).

Social Services Europe believes therefore that wider “social production characteristics”, including working conditions and “qualification and experience of the staff”, should be permissible as technical specifications, and not just contract award criteria.

Social Services Europe therefore proposes changing all the references to social services to only “social services” and to eliminate the non-economic services: social security services, religious services, trade union services from Annex XVI.

➡ **Reserved markets for not-for-profit organisations**

In the Sodemare Case the ECJ ruled that a public service contract or concession might be reserved to non-profit organisations if such a restriction is provided by a national law that is compatible with Community law; if it is necessary and proportionate to attain certain social goals of the national welfare system.

Social Services Europe calls for this ruling to be codified in the text of the directive, explicitly allowing public services contracts to be reserved for non-profit organisations.

➡ **Independent oversight body**

Social Services Europe believes that it is important for Member States and particularly contracting authorities to be supported in the implementation of the new directive. However it is not convinced of the need and cost-effectiveness to create independent oversight bodies at national level to do this.

Social Services Europe therefore proposes that the Commission creates a support, training and monitoring mechanism for the relevant public authorities and stakeholders to ensure full understanding and correct implementation of the directive.

➡ **Bidders’ positive past performance**

The experience and knowledge gained in the previous provision of services contribute to the ability of a provider to provide a quality service. In addition, relationships built up during social service provision between the service user and the provider and its staff have a positive impact on service users.

Therefore Social Services Europe calls for the possibility for contracting authorities to take into account relevant information on the bidders’ positive past performance.

Social Services Europe would like to reiterate that it supports the aims of the directive. This includes the reasoning behind promoting social considerations and creating a special regime for social services. The above proposals serve to strengthen these aims and will be further developed in order to propose concrete amendments to the Commission text.

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Social Services Europe brings together seven Europe-wide networks of not-for-profit providers of social and health care services who each have a track record in providing value-driven services for the most vulnerable in our societies. Recognising the increasing pressures on social and health care service providers around Europe, Social Services Europe aims to ensure that the specificity of not-for-profit social and health care service providers is recognised and that economic, social and legal conditions exist for quality social and health care services. Social Services Europe represents 100,000 social and health services active across Europe promoting social inclusion and social cohesion. The sector, employing 10% of the EU workforce, has a long term commitment to vulnerable people and is constantly searching for innovative and cost effective solutions to providing services. The Network is made up of the following European organisations: SOLIDAR, Eurodiaconia, the European Platform for Rehabilitation (EPR), Workability Europe, European Federation of National Organizations Working with the Homeless (FEANTSA), the European Association of Service Providers for Persons with Disabilities (EASPD) and the European Platform for National Non-Profit Umbrella Organizations and for National Associations of General Interest (CEDAG).