



Informal Network of Social Services Providers Seminar “Impact of EU legislation on social services”

Brussels

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Contents:

I. INTRODUCTION

II. OBSERVATIONS

III. RECOMMENDATIONS

ANNEX 1: EXAMPLES

ANNEX 2: GLOSSARY

ANNEX 3: PROGRAMME OF SEMINAR

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I. INTRODUCTION

During the last few years, the impact of EU policies and regulations on the provision of social and health services has grown. EU legislation and a set of Community rules in relation to competition and internal market (public procurement) are being applied to the social and health sector since social services as a rule have been classified as economic activity following ECJ rulings.

The European Commission is of the opinion that EU legislation in this field is neutral and that potential problems are mainly due to lack of knowledge and misunderstanding on the part of national, regional and local authorities in relation to the application of the above mentioned legislation (Biennial report on SSGI 2008)¹. The European networks of social service providers know from their memberships and have collected considerable evidence that the application of EU competition and procurement rules to health and social services can in many cases impact in a negative manner on the sector of social NGOs, part of the social economy, and specifically on the quality of social services.

Consequently, the Informal Network of Social Service Providers (INSSP) organised on 29 September 2009, in Brussels, a seminar with the key aim to collect concrete examples of how EU policies and legislation impact on social services at national and local level. The seminar focused on procurement rules and tendering procedures; questions related to state aid and the transposition of the Services Directive of 2006 were also raised. Representatives of the members of the various European Networks of social service providers and staff of the Brussels offices presented and discussed positive and negative impacts in different countries and in different social sectors.

The Informal Network of Social Service Providers consists of 8 European umbrella organisations representing not-for-profit providers of social and health care services: Caritas Europa, Eurodiaconia, the European Association of Service Providers for Persons with Disabilities (EASPD), European Council for Non-profit Organisations (CEDAG), European Federation of National Organisations Working with the Homeless (FEANTSA), European Platform for Rehabilitation (EPR), SOLIDAR and Workability Europe, all members of the Social Platform.

All networks bring together members from many countries across Europe, providing services to people in need and to disadvantaged and vulnerable groups, in the general interest, based on specific commitments to society and rooted in a set of values. For all networks, access to social services is a fundamental right and necessary to uphold human dignity. This is supported by Part 1 article 14 of the European Social Charter² and Article 34 1 of the Charter of Fundamental Rights³. Social services uphold such rights in providing essential assistance to many, whether for a long or short term need, covering the main risks of life, such as ageing or homelessness, as well as for specific circumstances, such as disability. They enable people to integrate or reintegrate in society, to access and retain employment, offer a path out of poverty and social exclusion and enable personal empowerment. Due to the personal nature of social services,

¹ European Commission Biennial Report on Social Services of General Interest (2008) http://ec.europa.eu/employment_social/spsi/docs/spsi_gpa/commnatsecdoctrav_en.pdf

² Everyone has the right to benefit from social welfare services

³ The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment

quality is essential in order for the services to achieve their goals of meeting a need in an individualised way.

One of the outcomes of the seminar was a better understanding of the actual effects of EU legislation on the social sector as well as some factual evidence and examples concerning open questions, challenges, and problems with the application of Community rules in relation to competition and the internal market. The results of the seminar have been summarised in this report to highlight our concerns and positions in view of further discussions with the European Commission, the European Parliament and other stakeholders.

This report contains observations from the seminar, conclusions and recommendations. Summary information from examples and cases presented as well as a glossary with core terms and concepts, and the seminar programme, have been added in an annex.

II. OBSERVATIONS

a. Implementation and understanding of Community law

Examples: 2, 4, 6, 12

Observations:

The rules on contract award procedures under the Public Procurement Directives do not provide a comprehensive set of rules on how Member States should apply them. Directives are in fact binding in the result to be achieved, but Member States can choose the form and method to be adopted in order to reach the result. As a result there is great diversity in how these rules are effectively applied at Member State level. European Commission regulations offer possibilities for public authorities to procure social services using processes other than tendering, but some public authorities do not feel this is the case or introduce tendering systems in order to avoid legal uncertainty about whether tendering is necessary in a given situation (also given the complex nature of the “Monti-Kroes package” criteria relating to state aid). The effects at local level are not only due to EU rules but are also linked to the way national and local authorities implement these rules. Some authorities misunderstand the rules or implement them in a way that is more restrictive than necessary; there is a significant knowledge gap when applying the public procurement directives at local and regional level.

Conclusions:

Public procurement could work better if there was better coordination between the local level and the national level of government. In a situation where local authorities work individually to develop social services without consistent guidance from the national or regional governments, there will be differences in the quality of services provided, the financing mechanisms for such services, the way Community law is understood and the way tendering is carried out. Sound management is therefore needed at a more centralised level.

It would be appreciated by tendering authorities if the European Commission could better inform them of the possibilities allowed by EU rules, especially if tendering procedures are compulsory. Work needs to be done to clarify the definition of procurement, and to examine the impact of different forms of procurement, such as concessions, on-going procurement, subsidies and grants, and their applicability.

The European Commission FAQs and the IIS are helpful to a certain extent, but these are not legally binding and therefore not always considered useful by public authorities. In addition, these European Commission initiatives are difficult for local authorities to relate to in their practical day-to-day situation, since local authorities’ main reference is the national procurement legislation which is the national transposition of the EU rules that can vary from Member State to Member State.

b. The impact of tendering on quality in social services

Examples: 1, 2, 4, 11, 12

Observation:

Evidence described in the case studies shows that the use of competitive tendering procedures has a significantly negative impact on the quality of social services in a number of significant ways.⁴ Main aspects are listed below:

-Cost over quality

Despite the possibility to use quality criteria when tendering for social services (see Directive 2004/18/EC, article 53 (1) a), in reality cost is often the determining factor [Example 1, 2, 4]. This is often due to the fact that unrealistically low budgets are set for the provision of social services – contracts for which are assigned following competitive tendering procedures. Some authorities say that quality criteria are too difficult to formulate [Example 2]. Authorities may not be very knowledgeable about different types of services, and requirement levels are set so low that it is really easy to achieve “full points” for quality, thus effectively making cost the determining factor to award a contract. Others appear to consider foremost the price of a contract because of a decision to cut costs. Finally, it must be noted that since about 80% of the costs of running a social service are staff costs, the pressure to reduce costs that providers are under in order to win or maintain business has a direct consequence on the wages that staff can be paid; on the contract type that they are offered; on the working conditions and training opportunities that they can be provided with. In effect, the increased *misuse* of competitive tendering has created, in practice, a “casual” workforce in several countries, and experienced staff has been pushed out of the sector because of this situation. For further information, see also section on working conditions and staff.

-Standardisation of social services

Tendering procedures demand a price bid and an exact definition and description of all services covered for comparability. This has led to a trend towards the submission of standardised lists of services, where there is little or no room for measures to support individual needs, empowerment and personal support plans, such as in the field of services for people with disabilities. [Example 2, 4 8]

In some cases, also due to the unrealistically low budgets made available by contracting authorities, there have been worrying moves backwards towards institutionalisation of users, by grouping people with different needs in a same unit, based on the amount of care needed rather than specific needs, such as housing elderly people and people with intellectual disabilities together. Staff ratio may also be inadequate as a consequence, for example having only one staff member available for night shifts in an entire unit. Services focus on basic needs only. [Example 4] This is clearly against the agenda on deinstitutionalisation and the right to live in the community.⁵

-Integrated and continuous service delivery is affected

Integrated and very complex services may be split into different parts for tendering for comparability and making the tendering process easier which means that the coherence and

⁴ This is further exemplified by the findings of a survey carried out in August 2008 by members of Community Care Providers Scotland (CCPS), member organisation of EASPD, which could not be presented during the seminar <http://www.cvsfife.org/tendering/retenderingsurveyfinal.pdf>

⁵ See on this point, the Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care Settings, convened by former EU Commissioner Vladimír Špidla.

continuity of these services are jeopardised, therefore the user might not receive services that meet all their needs, in a coordinated and holistic way. [Examples 6 and 8]

An inability to ensure the continuity of the provision of services may be further affected by the common occurrence of contracting services only for short periods. This might lead to contracts being taken over by other providers who can have different staff, working methods, and values. Short term contracts are however not legally necessary. Long-term developments and investment are made difficult or impossible.

Personal relationships based on trust and understanding, which are built up over time, may be lost, with detrimental effects to successful rehabilitation [Example 2].

Conclusions:

Tendering is inappropriate for social services working with people having multiple needs if it leads to a more standardised offer of services. It is essential to adapt public procurement to the specificities of the social services sector and to explore alternatives to tendering which could avoid the risk of standardisation of the services on offer.

Tendering authorities' understanding of the necessity to ensure quality in social services must also improve, and quality must be taken into account in tendering social services. This can be promoted by the use of the "most economically advantageous offer" as a criterion for contract award, rather than lowest price offer. There is a need to have tenders for longer term time periods. It is also important to incorporate the view of service users to understand what type of service they need, and prepare the tendering exercise based on their inputs as a starting point.

c. The impact of tendering on innovation in social services

Examples: 4, 8, 11

Observations:

A "market" for services and a competitive approach in developing social services can sometimes reduce the incentive to innovate and be creative.

-Loss of innovation in social services

Public tendering often has a negative impact on innovation, in that tendering tends to drive service providers towards traditional service models: local authorities only tender social services which are known in advance and are easy to compare (because they are standardised); hence there are increasingly less opportunities for providers to propose technological innovations and to adapt services to the evolving needs of service users. In order to make their bids more competitive, some organisations have decided to cut their research and development budgets (rather than staff budgets, for instance), which will inevitably have an impact on their ability to innovate and be competitive in the long-run.

Evidence also shows that within a competitive tendering system, not-for-profit social service providers often innovate, only to see their innovation used, taken over by other providers (also for-profit/commercial providers) who win public procurement contracts. [Example 11]

Conclusions:

As well as taking into account quality criteria, innovation would be encouraged if the tendering authorities were to use performance-based specifications in their procurement exercises. These possibilities are offered by the so-called 'Procurement Directives' (see Article 23 of Directive 2004/18/EC and Article 34 of Directive 2004/17/EC), as explained in the draft Guide on social considerations in public procurement that the European Commission is preparing. To quote a

draft version of the Guide, “A performance-based approach usually allows more scope for market creativity and in some cases will challenge the market into developing innovative technical solutions. If the Contracting Authority uses this approach, it does not need to express the technical specifications in too much detail.”⁶

d. Changing modes/ways of organisation, provision and financing of services

Examples: 1, 2, 3, 4, 5, 6, 7, 11

Observations:

A number of issues were raised in relation to the delegation of services to third parties, the use of vouchers, and the involvement of volunteers.

Specific modalities, e.g. the triangular relationship (*sozialrechtliches Dreiecksverhältnis*) in German social law, based on user choice in the context of a plurality of service offers by different providers, can neither be subsumed under what Community rules define as “public procurement” nor under what they see as “service concession”. The same is true for the Swedish new “Act on Free Choice” which may be regarded as either an on-going procurement or a service concession according to community law.

-Changing nature of non-profit organisations

There is the challenge of how non-profit providers can combine the double role of service provision and advocacy, both of which are supported by members and volunteers, in particular in branches of social services that are “politicised” and where there is no “general” agreement concerning the right approach to address a social risk, problem, etc. [Example 3, 11]

In some countries non-profit service providers are starting to change their legal status or even have to become a commercial entity in order to be involved in the tendering process (for bigger lots or lots reaching beyond regions. In Finland, many not-for-profit service providers set up a commercial branch of their operations to participate in public tendering, so that the not-for-profit organisation would not lose public funding. Non-profit actors may be “forced into” structures that are neither designed for nor effective for their activities [Example 4].

Due to the nature of social service provision and the infrastructure necessary, the activity of small- and medium-sized providers is limited locally. The option of mergers with other providers, to give more tendering options or for economies of scale, is difficult, especially for faith-based organisations. Not winning a tender or a sufficient number of tenders threatens the existence of a provider.

- Outcome related payment for services

The use of new forms of financing or services can lead to “negative selection” or “cherry picking behaviour” due to institutionally and politically set incentives to achieve visible service outcomes, with negative consequences for service users. Services for the most vulnerable groups of beneficiaries, those with the highest “risks” or multiple disadvantages, are very seldom retained/selected by private (for profit providers) and therefore it is often non-profit organisations which have to deal with the more costly services required to provide for groups with more complex needs. [Example 5] The provider may become responsible for service outcomes under “malus clauses” over which they do not have full control, such as payment being dependent on finding jobs for users, and may consequently not be able to continue to provide services. [Example 2]

⁶ Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement, Draft, 3 April 2009, p. 29.

-Involvement of volunteers

The involvement of volunteers in the field of rescue services/emergency medical care is being threatened in cases where an organisation loses a call for tender, as these entry points for active involvement of citizens with the activities of local organisations would no longer exist [Example 6]

Conclusions:

There must be the possibility to factor in the added-value that non-profit social service providers bring through their provision of services in contracts. The impact of tendering on small, particularly non-profit organisations needs to be mitigated and alternative funding methods considered to ensure successful services run by such organisations are not lost through tendering.

Due to the specificities of social services and their users, a “one fits all” approach for the organisation and financing of social services is not appropriate. “Malus clauses” should be avoided. There is a need for Community law to be more explicitly open to different modalities of organisation and financing of services.

e. Impact on working conditions, pay, qualification of staff, training opportunities

Examples: 2, 4, 5, 6, 7, 8, 11, 12

Observations:

In the social service sector, the prices of services have often decreased mainly by reducing salaries included in offers (and later paid), as staff costs account for the largest share of running costs. Yet the quality of services in the social sector is heavily dependent on the performance, qualification and motivation of staff. [Example 11]

It is impossible to secure proper financing of wages negotiated in collective bargaining in a tender procedure because of the posting of workers rulings of the ECJ. If a public authority offers no valid and practical criteria for the evaluation of wages, where price is the only or main criteria, tenders are won by providers paying lower wages. [Example 2, 6]

This leads to less attractive working conditions and wages for qualified and experienced professionals who are increasingly pushed to leave of the social services sector. This in turn also means that users/beneficiaries will be cared for by less qualified staff which can have a direct negative effect on the quality of their care and consequently their life, and less efficient service provision. [Example 8, 11]

New concepts of social work (and changes in the management and organisational frame of social work) put new demands on the staff employed. Staff fluctuation is at a considerable level, also linked to more demanding working conditions. [Example 4]

We are witnessing an increasing number of unemployed social workers moving from one social service to another according to which provider wins contracts. This can be, and empirically is, often related to a deterioration of pay and working conditions [Example 4, 5]

Staff training becomes impossible or unattractive due to such short term contracts. Assuming the perspective of a provider as employer, the question is whether to invest in staff who will only stay for a short time or who is employed on fix-term contracts and cannot be employed for longer periods. [Example 4, 5]

Conclusions:

Tendering procedures are having a negative impact on staff training and qualifications in the social services sector, which will ultimately diminish the capacity of social services to fulfil their

role of providing quality support to users. Fair wages and decent work must be ensured in tendering procedures; the posting of workers legislation needs to be re-examined to prevent the impact described above. Service contracts should be for longer time periods than at present. In a service sector where the personal dimension (i.e. relations between staff and clients) is crucial to ensure lasting and effective outcomes, the lack of staff continuity and quality will inevitably have an impact on the quality of life of service users. The importance of well trained staff on the quality of social services and therefore the success of the service must be more widely accepted.

f. Some positive effects of public procurement/tendering procedures

Examples: 9

Observation:

Tendering can have positive effects for some types of social services. The experience of Pluryn is based in the Netherlands, a country where tendering has already been in place for some time. Here, public procurement mechanisms in the social services sector have needed a 'learning curve' whereby some problems get (partially) solved after some years of experience and where tenders are awarded based on quality. The introduction of public procurement in the Netherlands in early 2000 had a difficult start, but now there is more transparency, the system is more efficient and quality of the services is high.

Conclusion:

In the medium and long term, public procurement systems can provide some advantages for social services in terms of transparency and cost-effectiveness. These can only have an overall positive impact, however, when tendering is based on quality.

g. The impact of EU state aid rules

Examples: 10

Observations:

The amount of time and effort needed to justify entitlement to and the correct use of state aid is very onerous. It took many years and several rounds of negotiations between the European Commission and national stakeholders in Germany to set up a detailed catalogue of criteria to justify the general interest orientation, to clarify the public service obligations and the mandating – a precondition to comply with Community state aid rules – for one sub-type of service (in the German example: family vacation centres) and institutions in one field of social services.

It is unclear whether the criteria spelled out in the decision of the European Commission on state aid as part of the state aid package of November 2005 also apply retroactively. This would mean that enterprises would have to explain retroactively, up to the year 2001, if and how far those criteria are met. If so, this would raise major challenges for enterprises, apart from the fact that this would challenge the principle of the rule of law (prohibition of retroactive effect).

There are open questions and challenges as to how to take into account and assess disadvantages stemming from having a public utility/general interest status (*Gemeinnützigkeit*) linked to the fact that activities are aimed at the pursuit of a social policy objective to ensure the general interest objective of a service provided by a non-profit organisation can be attained. For example, tax breaks may be taken into account in calculating whether financing is unfair or not but the special fiscal treatment of non-profit institutions (e.g. prohibition of distribution of profits

and timely use of profits according to tax-concessionary purposes; no entitlement to deduct input tax; longer periods of earmarking for subsidies to NGOs compared to commercial providers) is not.

Conclusion:

A comprehensive but less time and resource-consuming approach than currently exists is needed to come to this catalogue of criteria, (in French: *faisceau d'indices*) to justify the general interest orientation of social services. Authorities at local, regional and national level would welcome guidance on how to come to a list or catalogue of criteria that define the "general interest" feature of various types of services and institutions. It should replace the current approach of drawing up these "*faisceau d'indices*" for specific types of services which require a lot of time and human resources to compile and are not easily translatable from one service type to the other. There is a need to ensure that the disadvantages of being a non-profit organisation are taken into account when funding non-profit providers. It could be useful to address the question of the interplay between Community state aid rules and the public utility status of providers, in particular with regard to the issue of overcompensation.

III. RECOMMENDATIONS

The evidence gathered from representatives of social services working at local level has led to a number of observations on the following issues:

- Impact of tendering of services on innovation
- Implementation and understanding of Community law
- Changing modes/ways of organisation, provision and financing of services
- Impact on working conditions, pay, qualification of staff, training opportunities
- Impact of new systems on the quality of social services
- Impact of EU state aid rules on social services
- Some positive effects of public procurement/tendering procedures

Organisations within the INSSP intend to use the evidence gathered at the seminar to take further action to ensure that the general interest objectives and special characteristics of social services are not threatened by EU competition and internal market laws nor their implementation. On the basis of the observations above, we would make the following recommendations for further initiatives and action.

To the European Commission

-To publish a more formal (or legally binding) document than the FAQ documents⁷ that can clarify issues raised in this report which are currently misunderstood or at least not properly implemented by national/regional/local authorities. In their current state, the FAQ documents need to be available in all official languages. The same is valid for the IIS web service, so it will be accessible and a useful instrument for all concerned actors in all Member States.

-To explicitly allow for different modalities of organisation, delivery and financing of social services, and stress their compatibility with Community rules (ways of financing not involving tendering). They should be assessed by Commission services without subsuming them under a limited set of modalities accepted or understood by Community law. [Example 2]

-To ensure that the European Commission training programmes on public procurement and state aid, which are currently being piloted and will be offered to all public authorities, are available to other stakeholders as well, such as not-for-profit service providers. In addition, these training programmes should include a social dimension with a focus on SSGI, given their special characteristics.

-To carefully develop and promote a European approach to quality involving all relevant stakeholders, using a bottom-up approach which takes into consideration the realities in the field.

-To promote the “economically most advantageous” (best value) tendering mechanism as spelled out in article 29 and recital 46 of the EC directive 2004/18/EC to contracting authorities when tendering for social services, and that it is based on independently verified quality criteria.

-To introduce additional specific conditions in Community competition law, entitling the Member States to classify services as Social Services of General Interest under conditions other than the

⁷ http://ec.europa.eu/services_general_interest/faq_en.htm

Altmark criteria, such as funding mainly from public sources (taxes; social contributions); SSGI that are carried out by not-for-profit actors.

-To recognise Member States' own definitions of the "Act of Entrustment" fulfilling certain minimum requirements consistent with Community Law as legitimate.

-To initiate a comparative study on the Member States' varied interpretations and applications of the EU Public Procurement Directives. The objective would be to map the varied approaches in relation to the original text of the EU directives and to share this learning among Member States to better understand the directives and opportunities for better procurement at Member State level taking into account these different modalities of service organisation, delivery and financing as well as the conclusions and lessons learnt from the INSSP seminar.

To public authorities in EU Member States

-To set incentives to actively promote socially-responsible procurement and to encourage the use of social preferences and social clauses, using the European Commission's Guide on socially responsible public procurement. [Example 12] Options and advantages were clearly highlighted in a contribution by Mark Vanhumbecq, VLAB, Belgium, during the INSSP seminar. Socially-responsible procurement includes the social considerations stipulated in the Directive 2004/EC/18 and other objectives, including the support of social inclusion for disadvantaged persons or vulnerable groups, the improvement of the accessibility of buildings and the design of services, the promotion of equal opportunities, non-discrimination, gender equality and mainstreaming and the promotion of decent working conditions.

- To develop sector-specific quality frameworks which take into account the specificities of the different social services (emergency, short-term, transitional, long-term), using a bottom-up approach which takes into consideration the realities in the field.

-To include independently verified quality criteria in the procurement of social services.

-To promote the use of longer term contracts with interim evaluations.

-To use alternative models of public procurement [Example 1, 2] such as a system building on choice of users and pre-negotiated conditions for submission of offers for service provision (including quality criteria), specially adapted tenders or restricted tenders for services tailored to individual needs [Example 2].

-To ensure the service user has the freedom to choose the service - design tenders in a way to guarantee the right to choose the provider and to some extent also the form of the services, whilst ensuring that all of the providers have the legal and financial framework conditions to operate according to objectives of social policy and defined public service missions [Example 7].

Annex 1: Examples referred to in the report

Overview

Nr	Topic	Organisation	Country
1	Social services	Famna	Sweden
2	Social services	Diakonisches Werk der Evangelischen Kirche in Deutschland	Germany
3	Institutionalised care and housing services for asylum seekers	Volkshilfe Österreich	Austria
4	Services for disabled persons	ASPA	Finland
5	Introduction of public procurement for services in the field of labour market inclusion	SOLIDAR	Germany
6	Rescue services/emergency medical care	ASB	Germany
7	Services for persons with disability	AWO	Germany
8	Services for young people with disabilities in vocational training and rehabilitation measures	Josefs-Gesellschaft	Germany
9	Social services in the home care sector	Pluryn	The Netherlands
10	Social services, in particular services for persons with disability	AWO	Germany
11	Social services for homeless people	Edinburgh Cyrenians	United Kingdom
12	Public procurement in sheltered workshops in Flanders	VLAB	Belgium

Summary information on case studies

1

CEDAG

Famna, Sweden

The Swedish CEDAG member Famna presented the current situation concerning public procurement for non-profit social services. Sweden is a country where public services still are dominant. However, the share of social and health care services provided by non-profit or profit actors are growing. Social services in Sweden can be financed the following ways:

1. In-house provision by public authorities
2. Supplier agreement under public procurement act - simplified procurement; selective procurement or direct procurement
3. Supplier agreement under Act on Free Choice Systems - new legislation 1/1 2009

Some examples of issues Famna's members are facing were presented at the INSSP seminar. The first example was from a national organisation working with rehabilitation of drug addicts where they experience difficulties with framework agreements. The main problem with framework agreements is the very burdensome process with which the provider has no guarantees to be awarded a contract. Many providers have experienced that the number of framework agreements are increasing while "sales" are actually decreasing, since despite the open call "preferred" suppliers are chosen. A more simplified process would help this situation. . The second example was from a large organisation working with the elderly where they lost a large contract to a private (commercial/for profit) enterprise due to procurement on lowest cost instead of quality or a unique treatment method/conceptual approach. But there are also good examples with public procurement where a large organisation working with rehabilitation and homeless people is growing thanks to public procurement contracts.

Kerstin concluded by presenting the new Swedish system based on the Act on Free Choice Opportunities with the new act:

- There is a high demand to deliver services.
- No price competition between suppliers.
- Competition based on quality rather than price.
- Long-term agreements.

Difficulties with the new act:

- The payment and the design of the payment. To give an example - the payment level is based on three levels of care need and a personal budget then determined based on the required care for the individual. However an individual with a high care need and budget may improve quickly when treated and after a new care need evaluation the care budget is reduced leaving the provider with a smaller budget. This is often the case with elderly moving from home care to institutional care, they improve quickly with proper care. The effect for the provider is a smaller budget than agreed to, which impacts on the financial management of the organisation. Another possible negative effect could be the unethical approach of not giving the adequate care.
- Difficulties for start-ups or new enterprises to enter the market.
- Information to the users about the different options regarding the choice of provider varies by locality.

It is impossible to secure proper financing of wages negotiated in collective bargaining in a tender procedure because of the posting of workers rulings of the ECJ. Public authorities do not offer other valid and practical criteria for the evaluation of wages which means that tenders are won by providers paying lower wages. Yet the quality of services in the social sector is heavily dependent on the performance, qualification and motivation of staff.

There are difficulties of formulating sound quality criteria for social services. In tendering procedures individually tailored services are not procured; to make offers comparable, the description and therefore provision of services are standardised which means that users receive services that offer only part of what they (would) need. Public procurement is explicitly forbidden by German courts for some branches of social services due to its structural specificities.

There is a lack of legal clarity in some tendering procedures; often it takes a court case to correct a mistake in procedure but providers are shy to protest too often against procedural mistakes, not wanting to risk their relationship with the funding authority.

As a rule the activity of small- and medium-sized providers is limited to a municipality, district or a region. The option of mergers with other providers, for economies of scale, is difficult for a faith-based organisation. Not winning a tender or a sufficient number of tenders threatens the existence of a provider. Diaconal organisations are losing areas of provision to cheaper providers.

Some other options than tendering of services are being used:

- Commissioning: Services for long term unemployed (This mode of provision is only used in very few cases up to date).
- Specially adapted tender: For services that demand a personalised approach tailored to individual needs (such as for the delivery of medical devices § 127 Sozialgesetzbuch Buch V), choice of provider by the user is deemed necessary and the public health service has devised a set of rules to specifically adapt tenders to the conditions of social services with highly individualised demands. Yet it is unclear if this is compatible with EC law.
- Direct negotiation/restricted tender: This is the case of services for young people in training – standardisation does not work and it is not economically attractive to tender out such a service.
- “Malus”-clause is increasingly introduced: payment is dependent on the provider achieving a given success in finding jobs for users, shifting responsibility away from the state/public authorities.

Tendering prevails: practical and easy; using tendering in the eyes of public authorities prevents potential conflict with EU law.

3

SOLIDAR

Volkshilfe Österreich, Austria

Tendering institutionalised care and housing services for asylum seekers

Facts

- In February 2003, German commercial provider European Homecare (EHC) wins public tender of Austrian Federal Ministry of Interior Affairs concerning the institutionalised care and housing services for asylum seekers within the system provided for by the federal government.
- Remark: The decision was (also) politically motivated, social NGOs having issued critical statements concerning the main lines of policies for refugees and asylum seekers beforehand => There is the challenge how to combine the double role of service provision and advocacy, also supported by members and volunteers, in particular in branches of social services that are “politicised” and where there is no “general” agreement concerning the right approach to address a social risk, problem, etc.
- The price was the main selection criterion, with a weight of 60%.
- The consortium of social NGOs, amongst them Caritas, Diakonie, Red Cross and Volkshilfe, came second.
- Their offer of the NGO consortium had included the following aspects increasing the quality of the institutionalised care: focus on unaccompanied minors, elderly and psychologically ill asylum seekers, with special offers of social care and psychological counselling; splitting up big institutions (1,000 people) in several smaller units to improve living and housing conditions and prevent conflicts. The offer was more expensive than the offer of EHC, but would have cost less than the actual expenditure of the Federal Ministry of Interior Affairs for these services back then.
- The offer of European Homecare meant a daily rate of about 13€ per person and did not include psychological counselling except for a very small number of persons (whereas many asylum seekers are traumatised due to violence and military conflicts); the social NGOs’ consortium offer was submitted with a daily rate of 15€ per person.
- Prior to and parallel to the tendering of institutionalised care and housing services for asylum seekers as described above, social NGOs had issued critique regarding the bad management of money and asylum seekers’ files, inhumane sanitary standards and catering based on frozen food (in general implementing systems and procedures that exclude local service providers); EHC started law suits having felt attacked by social NGOs.

Assessment

- Social NGOs continued counselling services for asylum seekers following their concept oriented towards the respect of human rights and a certain quality of life.
- Social NGOs called upon the Austrian government – requests in particular addressed to the Human Rights Council of the Federal Ministry of Interior Affairs – to comply with minimum standards for the care for asylum seekers according to an EU directive to be transposed into national legislation by 2005
- These EU-wide unified minimum standards concern the following aspects: housing, catering, care, coverage by health insurance.
- In 2003, only one third of asylum seekers were included under the system provided for by the federal government; no obligatory standards as to the accommodation of asylum seekers existed.

- Case primarily highlights consequences of different approaches in a politically sensitive field, namely policies for refugees and asylum seekers.
- Case on a second level highlights negative consequences of public procurement not sufficiently taking into account issues related to human rights, human dignity, quality of services and procedural rights => can all these elements be well dealt with within a framework of tendering of social services or only some of them, concerning the “basic services”?

4

EASPD

ASPA, Finland

Study on the effects of tendering for services in Finland

The procedure of public procurement for social services was introduced in 2003 in Finland, when it replaced the previous methodology of partnership and negotiation between municipal authorities and providers.

The first major effect of this change has been a clear shift towards the creation of a commercial system, given the fact that NGO providers would have lost the right to receive public funding if they participated in tendering exercises. Moreover, many big, often international, for-profit companies are now offering services in Finland even though they do not necessarily have good knowledge of the local communities, culture, and values.

A procurement procedure usually guarantees a three-year secured period for a service provider to carry out and develop services. In some cases, there is an option for an added two-year period - after that, a new procurement process must be carried out – this is compulsory.

A Negotiation procedure (i.e. no procurement) is possible in principle under certain circumstances, but rarely used. In Finland, the implementation of public procurement for social services proceeds moderately, and the situation seems to be best for people with intellectual disabilities.

Procurement has become almost the only option available for municipal authorities in Finland, given that the financial situation is now rather challenging: given that the money set aside for a yearly period per person accessing services is largely insufficient to cover all costs, tendering is perceived as a mechanism to keep costs low. To lower operating costs effectively amounts to providing services with less employees, as in Finland salary levels are fixed under collective bargaining, the results of which are accepted by a vast majority of employers in the sector.

The effects on the sector have been dramatic given that providers can offer minimum quality standards and still be awarded the maximum awards for quality, making it a virtually irrelevant factor in award decisions. As a consequence, standards in service provision have suffered in many cases: the individual needs of service users are not taken into consideration, and often people with different needs have been forcibly moved together (e.g. elderly people and people with intellectual disabilities sharing a room in the same institution).

Consequences on staff working conditions, salary and training opportunities have also been harsh. As of yet, there is no statistical evidence of how procurement affects the ‘mobility’ of employees in the care sector, either within or across service provision units. In single cases,

though, dramatic changes have been experienced as a direct result of public procurement: in one example, 70% of employees of a service provider decided to leave their employer.

Some suggestions for improvements were put forward:

1. The knowledge of public authorities concerning factors of importance for quality services that must be achieved and secured in tendering customer services should be improved;
2. There should be reasonable tendering conditions;
3. There should be room for quality and new, innovative solutions;
4. There should be room for clients' own choice of provider and/or type of service offer;
5. There should be higher limits and quality standards for competition; higher ratios of employees per service users should be accepted in bids;
6. Tendering should be based on good quality care and great service rather than on monetary considerations
7. The focus should not primarily be on possible short-term savings for public authorities;
8. Individual and customer centred services should be the top priority;
9. Tendering experiences should serve to develop services for the long term.

5

SOLIDAR

Introduction of public procurement for services in the field of labour market inclusion
Germany

In the framework of the reform of the system of unemployment protection and the functioning of labour market services implemented since 2004 in Germany the introduction of public procurement procedures had different effects. The list below highlights some of the consequences this had on users, service providers and qualified staff employed by NGO providers offering labour market inclusion and professional training services.

- At the level of service provision, the risk of discontinued service provision has become obvious, as contracts have to be renewed and are being tendered on an annual basis.
- Tendering procedures initially did not adequately or at all into account the importance of the knowledge of the local situation (needs of target group) and of involvement in networks.
- The use of public procurement also impacts on the forms of cooperation and partnership between public authorities, and providers of labour market inclusion services and vocational training. There is the risk that existing networks of youth welfare and labour market inclusion for disadvantaged persons at local and regional level are endangered. Tendering of specific services structurally also is not oriented towards configurations of support building on networks and needing cooperation between partners around different tasks and in the context of integrated services.
- Evidence shows that when selecting proposals, the decisions are being taken predominantly based on the price, and not taking sufficiently into account criteria related to service quality.
- Finally, as regards qualified staff, one could witness a general reduction of staff, a strong increase in fixed-term working contracts and lower wages. On average, pay/wage schedules for qualified staff were lowered by about 15%, equaling 400€ to 500€. The monthly gross/net salary for a specialised social worker came down to about 1,480/1,000€ in 2006, equaling an hourly wage of about 7€ to 9€ (to compare with the minimum wage of 8.90€/7.50€ in the postal sector in Western/Eastern Germany).
- Also highly qualified staff partially were replaced by staff with lower formal qualifications level or from other professions. Or salary grids were readapted "to the bottom", resulting

in lower pay levels for tasks that had before been classified under a higher salary group (also due to changes in regulations for classification of jobs and tasks in the public sector for those newly starting a position).

Some of the effects broadly perceived as negative and not intended have been addressed since 2005 by implementing changes on the legislative, administrative and procedural level, without, however, structurally reversing the impact on working and pay conditions described above.

Further reading

Maucher, Mathias (2008): *Socio-demographic trends, structural changes and modernisation processes in the field of SSGI: Challenges in relation to employment creation, qualification, recruitment and working conditions in the field of SSGI. Contribution to 2nd Forum on SSGI, 28 and 29 October 2008, Paris*, <http://cms.horus.be/files/99931/MediaArchive/2008-FPEU+DG-EMPL-2nd-Forum-SSGI-28.+29.10.08-Paris-text-MM.pdf>, in particular Section 2.4.4 and Chapter 3.

Maucher, Mathias (2008): *Le cas allemand: Attribution de marchés publics dans le secteur de l'insertion sur le marché du travail – Eléments clé et expériences pratiques depuis 2004. In: La formation continue: un service d'intérêt général. Comment protéger ce service public régional de seules forces du marché? RAPC et al. (2008): 57-75*, http://cms.horus.be/files/99931/Newsletter/Actes_Colloque_Formation_Continue_SSIG.pdf

6

SOLIDAR

Arbeitersamariterbund (ASB), Germany

Use of public procurement in the field of rescue services/emergency medical care

The German Federal Court of Justice (*Bundesgerichtshof*) end of 2008 ruled that public procurement has to be applied in regions (*Bundesländer*) using the delegation system; pending a court case with the ECJ concerning the applicability of public procurement in regions using the concession system.

Mixed service provision: Rescue services are wrongly classified in the German Social Security Code as “transport services”, not “medical/health services”, even though the bigger share of costs and activities falls under the second category, in other words the economic counter-value of the share of the medical treatment exceeds the economic counter-value share of the transport service. This inappropriate classification entails the application of the full range of European public procurement rules.

There a lack of clarity concerning the relevant national and European legal frameworks to apply; to be on the safe side, public authorities tend to tender out all services independently from the obligation to do so. They also are increasingly inclined to introduce a system where municipalities become again providers of services (i.e. more in-house provision, more public-public partnerships)

Potential and actual negative consequences of applying public procurement rules in general and of rules and procedures not adapted to the specificities of the services and their users include:

- Danger of destroying the “multi-layer system” of civil protection
- Danger of destroying local networks
- Pressure on prices (i.e. mainly on cost of qualified personnel) and on quality of services
- The involvement of volunteers in the field of rescue services/emergency medical care is being endangered if an organisation loses a call for tender as these fields of identification with the activities of local organisations would no longer exist.

7

SOLIDAR

AWO Bundesverband, Germany

Use of public procurement in the field of services for people with disabilities (PwD)

In 2005/2006, out-patient services were put out to tender in North-Rhine Westphalia. An evaluation declared the inadmissibility of this procedure in this field. Since then, public procurement is no longer used. A paper of the Standing Committee of Ministers of Labour and Social Affairs of end of 2008 mentioned the idea/intention of (re-)introducing public procurement in the field of services for PwD. This suggestion, however, was taken out again in November 2009.

In the field of labour market services, however, public procurement has already been used (since 2004). It also applies concerning issues/elements dealing with labour market inclusion for PwD (e.g. supported employment/*unterstützte Beschäftigung* or diagnosis of degree of disability in view of labour market inclusion/*Diagnose der Arbeitsmarktfähigkeit*)

An instrument of contract award procedures was introduced to ensure more transparency, which in principle constitutes a good and important approach with regard to public policy and money.

Problems/Challenges

- If contracts are awarded with the decisive criterion of profitability, the quality of the service becomes of secondary importance. Will criteria linked to price obtain/have precedence on criteria linked to quality (understood in a broad sense) of the service?
- Services for PwD are strongly person-centred and need to be tailored to individual needs of support and empowerment. Public tenders can work for standardised good and services. As services are often tendered for a short period, their logic runs counter to appropriate framework conditions also in this regard.
- How can it be guaranteed that the right to choose (the provider and to some extent also the form of the services) will not be jeopardised if only ONE provider per municipality/district/region is retained? If only one service provider is retained, there is no variety to choose anymore for the users. The user's freedom to choose is essential with regard to their self-determination and must therefore not be undermined

8

EPR

Josefs Gesellschaft, Germany

The representative of Josefs-Gesellschaft in Germany shared some relevant conclusions derived from their experience with competitive tendering in the branch/sector of occupational orientation and advancement of young people.

Among the effects of EC laws in this sector is the deterioration of prices mainly by reducing salaries. This is due to the fact that private companies, not bound by collective wage agreements, are able to submit tenders with significantly lower prices so to meet the new demands with lower wage costs. This brings high expertise professionals to leave the companies and in the long run, young people with disabilities in vocational training and

rehabilitation measures will be faced with a much lower qualified staff, less offers to improve the situation of the beneficiaries and less efficient service provision

An interesting question highlighted regards the resolution of the European Parliament on social economy (19/02/2009) stating that social economy enterprises should not be subject to the same application of competition rules as other undertakings, and need a secure legal framework that does not fall under the normal European competition law. In this regard the fundamental question resulting from this resolution: “Is it legitimate to implement the European Public Procurement Act through the procuring authorities in respect of social economy enterprises?”

9

EPR

Plurn, The Netherlands

Plurn, EPR member from The Netherlands, showed the Dutch situation in relation to tendering and procurement of social services in the home care sector. They also demonstrate that mainstreaming the participation of private companies which are not specialised in the provision of social services in the tendering procedure for home care services for people with disabilities results in traditional and specialised service providers facing difficulties in winning tenders (too high prices, due to more specialised expertise). Furthermore, tendering includes the tendency to compare offers on the basis of so-called objective criteria such as client satisfaction and quality. The problem/risk is that the criteria to assess ‘client satisfaction’ and ‘quality’ are often formulated in a general way, and consequently are not relevant for some specific and/or difficult target groups which are addressed by specialised service providers.

However, in The Netherlands tendering had also positive effects for some types of social services. Here, public procurement mechanisms in the social services sector followed a ‘learning curve’ whereby some problems were (partially) solved after some years of experience. The introduction of public procurement in the Netherlands in early 2000 had a difficult start, but now there is more transparency, the system is more efficient and quality of the services is high.

10

SOLIDAR

AWO Bundesverband, Germany

Issues and challenges related to application of Community state aid rules to SSGI, more specifically in the field of family vacation centres

Strategy

Support for approach to reach maximum transparency on state aid and obligations to report on state aid received; these requirements are also set in national law (needed: documents proving the receipt of state aid)

Consequences for enterprises receiving public grants/state aid:

- The entrustment of an enterprise with social services of general interest has to be laid down in a catalogue of criteria which goes beyond legislative regulations.
- Grants are to be paid only to those costs arising from the fulfilment of a task of general interest. Therefore enterprises have to ensure a separate account system.

- In the future it is imperative to define already in advance which clearly defined costs should be compensated to what extent in order to avoid overcompensation.
- Apart from this, regulations are needed which determine how already effected payments are paid back in cases of overcompensation.
- Problem: Adequacy of time and effort to justify entitlement to and correct use of state aid (detailed catalogue of criteria; AWO would wish a comprehensive approach)

Questions

- What would have happened if the enterprise had not produced deficits (as the presentation with respect to overcompensation would have been considerably more difficult)?
- How to take into account and to assess in the examination procedure disadvantages stemming from public utility status (*Gemeinnützigkeit*) – linked to the fact that activities are aimed at the pursuit of a social policy objective; intensity of public support – and special/extraordinary depreciations in fiscal legislation.
- How to take into account disadvantages of special fiscal treatment (e.g. prohibition of distribution of profits and timely use of profits according to tax-concessionary purposes; no entitlement to deduct input tax; longer periods of earmarking for subsidies to NGOs compared to commercial providers; of non-profit institutions.
- Do criteria applied in the decision of the Commission on state aid as part of the state aid package of November 2005 also apply retroactively? This would mean that enterprises have to explain retroactively up to the year 2001, in how far the above mentioned criteria are met. This question is still not clarified in Germany. If yes, this would raise major challenges for enterprises also not compatible with the principles of the rule of law (prohibition of retroactive effect)

Further reading

Maucher, Mathias (2008): Notes on a case from Germany concerning state aid in the field of personal social services (AWO SANO gGmbH, Rerik, Mecklenburg-Vorpommern), <http://cms.horus.be/files/99931/Newsletter/decision-case-AWO-SANO-gGmbH-summary-info-MM-08.04.08.pdf>

11

FEANTSA

Edinburgh Cyrenians, United Kingdom

Extract from [FEANTSA Magazine \(Summer 2009\)](#)

Edinburgh Cyrenians was established in 1968 as a response to growing concern about homelessness across the UK. The charity is entrepreneurial in style – with a track record of developing innovative approaches which work, and scaling them up for replication.

During 2008, the City of Edinburgh Council made clear its plans to put all of its homelessness services out to competitive tender. Its main reasons were: it needed to become more efficient in purchasing as it had less money to spend; it was keen to ensure it was getting the best value for money through testing quality in relation to spending; it felt that tendering would provide the best approach to achieve this. It designed a tendering process which: focused 70% on quality, 30% on cost; aimed to link operational outcomes with a wider homelessness strategy and; maximised opportunities for added value.

The tendering process began in August 2008. The size of the contracts being offered was a surprise. Whereas previously there were 28 organisations providing services, there were only 9 contracts on offer – consolidating many of the existing smaller services into larger «lots».

This highlights a difficulty for organisations with both a campaigning/lobbying function as well as service delivery. If seen as criticising their main customer, they may be viewed as difficult to work with, despite good services. In addition, it may be difficult for both commissioners and bidders to put aside disagreements and differences from the past and only take into account the specific content of the tenders. Our sense is that it may be possible to straddle both areas of work by providing good quality evidence of issues and problems, an understanding of the wider strategic environment, and a willingness to participate in finding solutions.

During the process, there was a constant temptation to bring down costs and be more competitive. A major factor here is front-line staff wages. Our research during the process indicated evidence of wages in the sector which were 30% - 40% below those of Cyrenians' equivalent. The quality of staff has a significant impact on the quality of services. The danger is that some of the most vulnerable people in our society are receiving services delivered through posts with unattractive wages and limited requirements for experience and qualifications. Cyrenians has maintained its salary levels for all staff.

For us, the result of the process was an overall gain in our business. We were awarded a large contract to significantly scale-up our work in homelessness prevention – a strategic priority area for us. The contract will provide secure funding to deliver a large and very efficient service which allows for some innovation. However, we did not win the contract to deliver an existing service to enable access to the private rented sector in Edinburgh (although we continue to run this service in two other local authority areas).

For us, this has raised three interesting issues about the process:

1. The contract was awarded to a private sector supplier. The distinctions between the private and voluntary sector are becoming more and more blurred – perhaps replicating the business environment in the employment training sector in the UK. Funding opportunities which may have previously been seen as the reserve of voluntary organisations are now open to the organisation best able to demonstrate value for money, regardless of their status.
2. An aspect of the contract reflected work piloted by Cyrenians in another local authority area. Although the charity has developed practice and expertise during the pilot, we have no patent or copyright for the work. Voluntary organisations have a strong role alongside the public sector in innovation and the development of new approaches. However, if they do not protect their ideas they may find them included in a mainstream tender and delivered by a competitor. This may see the end of voluntary organisations freely disseminating good practice and information about new developments.
3. Although our contract has provided us with financial security and scale, there is no budget for research and development. Therefore our scope for continuously improving and developing homelessness prevention is limited and we will need to identify additional resources to undertake this work. Although this may not immediately appear to be a matter of concern for purchasers, innovation is seen to provide a competitive edge for bidders.

1. Some numbers

- 68 workshops do a range of activities (such as packing, assembly, wood, printing, recycling) and receive a subsidy to compensate for the loss of productivity of the people with a work disability (equivalent to 45% of the total revenues and a subsidy for additional staff needs).
- 15.000 persons with a work-disability employed there have a full-fledged employment contract, belong to a separate Social Committee (for purposes of collective bargaining) and receive at least the official minimum wage.

2. The sheltered workshop as a customer and the legislation of public procurement

- Sheltered workshops have a wide range of activities. Most clients of the sheltered workshops are regular businesses. To a lesser degree the governments are customers of the sector. In green care, this means maintenances of community parks and lawns, the sheltered workshops are faced with governments, and public procurement.
- When a government organisation wants to introduce a social dimension to their public procurement policy, they have several instruments for this. The most important are the social preference and the social clause. These possibilities are implemented in Belgium in transposition of the European directive 2004/18/EG.
- The social preference gives the government organisation the possibility to reserve a particular job to sheltered workshops or other initiatives for social employment. This means that only sheltered workshops or other initiatives for social employment can sign in. Although this is a very simple procedure the social preference option is not often made use of.
- When a government uses a social clause in a public procurement procedure, they set special requirements for the realisation of the project. A public authority can e.g. require that 50% of the workers in the project retained in the tender are persons with a disability (PwD). This allows all sheltered workshops to apply and do the project, but also commercial enterprises can participate in the tender process and be retained. However, they also would/will have to employ (the required percentage of) PwD, a clause that is neither popular within public authorities that also have to comply with it.

3. The sheltered workshop as a supplier and the legislation of public procurement

The sheltered workshops have to obey the rules of public procurement when they have been granted a subsidy (amounting to more than 50% of the total cost) for a specific project.

4. Currently there is an ongoing discussion and dispute in Belgium concerning the scope of the public procurement legislation, mainly concerning the type and share of activities of organisations (also) pursuing objectives of social, health, employment, etc. policy and being part of the social economy. Some lawyers claim that the sheltered workshops have to apply the rules of public procurement for all their expenses.

5. If private enterprises including organisations from the social economy comply with the following conditions the Belgian public procurement law stipulates that public procurement rules have to be applied. This means there is a non exemption also for organisations

- that are set up with the specific aim in line with objectives of the public/general interest
- having a legal status

- the activities of which are mainly financed by public money (that can come from different government levels), being under the supervision of public authorities or having an executive board with more than half of the members stemming from government bodies
VLAN currently examines how to best make use of these stipulations for sheltered workshops that combine social and economic objectives.

Annex 2: Glossary of Terms

1. Altmark judgment of the Court of Justice

According to the Altmark jurisprudence compensation for the provision of services of general interest does not amount to State aid and is therefore not subject to prior notification and approval by the Commission only if the following four criteria are met:

1. The beneficiary must be entrusted with a clearly defined public service mission;
2. The parameters for calculating the compensation payments must be established in advance in an objective and transparent manner;
3. Compensation must not exceed the cost incurred in the discharge of the public service minus the revenues earned with providing the service (the compensation may, however, include a reasonable profit);
4. The beneficiary is chosen in a public tender or compensation does not exceed the costs of a well-run undertaking that is adequately equipped with the means to provide the public service.

On this basis, compensation for public service provision is not to be considered as State aid if the beneficiary is chosen by virtue of an open and transparent tender procedure. There is also no aid involved if the State can show that the beneficiary of public compensation receives no more than the net extra cost after subtracting revenue that any well-managed and reasonably equipped company would incur in providing the service.

According to this Court judgement, all other forms of compensation remain State aid and are thus subject to the rule of prior notification. The proposed Commission decision aims at exempting smaller public service companies from this notification obligation.

2. Entrustment

The beneficiaries of the state aid have to be entrusted to undertake the service of general interest by way of official acts.

3. Public Procurement

Public procurement contracts cover supplies, services and works purchased by the public sector.

Those over a certain value are subject to Community rules and procedures.

This legislation ensures fair treatment for businesses and openness in the handling of invitations to tender (see definition below). It is to be seen in the context of greater competition and the freedom to provide services within the European common market.

Certain contracts remain a matter purely for the Member States, irrespective of their value, when they affect specific state interests. This particularly applies to defence contracts.

In 2004, the Council and the European Parliament enacted a new package of legislation which simplifies and modernises the procedures for awarding public-sector contracts. This package

consists of two directives, one covering public works, supply and services contracts and the other public contracts in the water, energy, transport and postal sectors.

Two more directives govern the appeals procedures concerning the award of public works and supply contracts and the procedures for award of contracts by operators in the water, energy, transport and telecommunications sectors.

The Community legislation requires contracts over certain thresholds to be advertised in the Official Journal. The public procurement information system (SIMAP) provides the public procurement industry with information on European and international business opportunities.

4. Request (invitation) for tender

Initiating step of a competitive tendering process in which qualified suppliers or contractors are invited to submit sealed bids for construction or for supply of specific and clearly defined goods or services during a specified timeframe.

5. State aid

State aid means action by a (national, regional or local) public authority, using public resources, to favour certain undertakings or the production of certain goods. A business that benefits from such aid thus enjoys an advantage over its competitors. Control of state aids thus reflects the need to maintain free and fair competition within the European Union.

Aid which is granted selectively by Member States or through state resources and which may affect trade between Member States or distort competition is therefore prohibited (Article 87 of the Treaty establishing the European Community). State aid may nonetheless be permitted if justified by objectives of general interest: aid to promote the development of disadvantaged areas or for services of general economic interest, small and medium-sized enterprises, research and development, environmental protection, training, employment and culture.

The European Commission has the task of keeping under review state aid granted by the Member States, whether planned or already operational, in order to ensure that it does not distort competition.

The Commission and the Court of Justice have placed a very broad interpretation on the concept of "aid" as regards the body granting it (the state itself, a regional or local authority, a body over which the state exercises a dominant influence, directly or indirectly, a private company or a publicly owned company operating under private law, etc.), its form (direct or indirect aid, such as relief of a firm's financial burdens) and its purpose.

A reform of the rules and procedures concerning state aid is in hand. It proposes that state aid should be less frequent and better targeted in order to make a greater contribution to raising the competitiveness of European industry and creating lasting jobs.

6. State aid for employment

(Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment. [And amending acts])

'State aid for job creation and aid to promote the recruitment of disadvantaged and disabled workers are exempt from any obligation to notify'.

The Regulation applies to two categories of employment aid: aid for job creation and aid to promote the recruitment of disadvantaged and disabled workers. Other types of employment aid are not prohibited, but they must be notified to the Commission in advance.

In accordance with Article 87(1) of the EC Treaty, aid exempted by the Regulation must have as its object and effect the promotion of employment, while leaving trade unaffected. Export aid is not covered by the Regulation.

Aid granted to an individual enterprise and aid which does not lead to an overall increase in the number of employees (e.g. aid to help convert temporary contracts into permanent ones) remains subject to the prior notification requirement.

Annex 3: Programme of seminar

Informal Network of Social Service Providers Seminar on the impact of EU legislation and EU policies on social services in Europe

Brussels, Tuesday 29th September 2009

Programme

9:00 Welcome and Coffee

9:30 Plenary opening session: Introduction to the day's proceedings

Heather Roy, Eurodiaconia

9:45 Parallel Workshops: Public procurement and tendering, State aid, Mandating in relation to social services

Public procurement - 2 parallel sessions

Workshop 1 (with simultaneous translation English-French and French-English)

Speakers

1. Michel Mercadié, FNARS/FEANTSA member, France
2. Mark Vanhumbecq, VLAB/Workability Europe member, Belgium
3. Daniel Gelbke, ASB/SOLIDAR member, Germany

Shorter interventions

1. Mathias Maucher, on behalf of Volkshilfe Österreich, SOLIDAR member, Austria
2. Wolfgang Egert and Karin Bumann, Josefs Gesellschaft/EPR member, Germany

Facilitator: Mathias Maucher, SOLIDAR

Minutes: Liz Gosme, FEANTSA

Workshop 2

Speakers

1. Raija Mansikkamäki, ASPA/EASPD member, Finland
2. Laura Jones, Eurodiaconia, on behalf of Dr Friederike Mussgnug, Diakonisches Werk der EKD /Eurodiaconia, Germany
3. Kerstin Eriksson, FAMNA, Sweden
4. Cees Jonkheer and Maarten Boon, Pluyn/ EPR member, The Netherlands

Facilitator: Patrick de Bucquois, Caritas Europa

Minutes: Simona Giarratano, EPR

State Aid and Public Procurement – 1 combined session

Workshop 3

Speakers

1. Barbara Dieckmann, AWO/SOLIDAR, Germany – State Aid

Shorter intervention

1. Barbara Dieckmann, AWO/SOLIDAR, Germany – Public Procurement
2. Piotr Sadowski, CSV/SOLIDAR, UK – Public Procurement

Facilitator: Freek Spinnewijn, FEANTSA

Minutes: Henner Sorg, Workability Europe

11:00 Coffee break

11:15 Parallel Workshops (cont'd)

12:30 Lunch break

14:00 Plenary session: Reports from the workshops, followed by discussion

Chair: Luk Zelderloo, EASPD

15:30 Coffee break

15:45 Overall conclusions and next steps

Jan Spooren, EPR

16:30 End of seminar