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Response to the "Public Procurement" Consultation

Philea



I. Who we are

Philea, the Philanthropy Europe Association, connects 7,500 philanthropic organisations from across Europe, united in contributing to pluralistic, just and resilient societies that centre people and planet. Philanthropy refers to foundations, philanthropic organisations, corporate and individual funders using their own financial and non-financial resources for the public good. Philanthropic organisations support programmes in areas from which we all benefit, such as education, health, science, research, environment, culture and international development. They work alongside and in partnership with other civil society organisations, governments and private sector initiatives. A unique characteristic of philanthropic organisations/foundations is the ability to respond with agility to the critical challenges facing our societies, while simultaneously taking a longer-term view of their causes.

Some philanthropic organisations also engage in public procurements and others are concerned how public procurement processes contribute to a society that works for people and the planet. The Philea Legal Affairs Committee, with technical input from its member ONCE Foundation, has drafted this contribution, which was approved by the Philea Legal Affairs Committee.

As Philea, we are also actively engaging as a board member of Social Economy Europe (SEE) around the wider social economy agenda and also with the wider civil society community on issues of common concern. We are a member of the European Commission Expert Group on Social Economy (GECES) and have also been contributing to the social economy agenda from the perspective of philanthropy and foundations in this context. This paper will focus on the specific philanthropy/foundations perspective, while we are also supporting a separate contribution from Social Economy Europe.

II. Comments

Philea is pleased to contribute to this important European Commission consultation on the public procurement directive. At Philea we are committed to pluralistic, just and resilient societies that centre people and planet. Our cross-cutting themes are democracy, climate and equality and, in this spirit, we consider that the public procurement policy should contribute to maintaining high social, participatory and environmental standards.



We echo the political guidelines 2024-2029 of European Commission President von der Leyen as well as recent reports by Enrico Letta and Mario Draghi stating that creating a truly integrated single market is critical for the European Union's future. We welcome that the political guidelines call for a new momentum to complete the single market **preserving the social market economy model and strengthening the EU founding principles.**

Our main call is that the public procurement policy should take the perspective of philanthropy/foundations and disadvantaged groups into account.

Public procurement is a fundamental tool to deliver on the EU's sustainability ambitions, from an environmental, social and innovation perspective.

1. Considering the social dimension next to the green dimension

While great progress has been made in the promotion of the Green Procurement, much more can still be done to reflect the same level of ambition when it comes to supporting social strategies by reinforcing the social dimension of EU legislation on Public Procurement.

As already stated in the European Commission's guidelines on 'Buying Social'^[4], Socially Responsible Public Procurement (SRPP) allows public authorities to mobilise the buying of services to *"strategically deliver positive social outcomes, such as promoting employment opportunities, decent work, social inclusion, accessibility, and compliance with social and labour rights in the EU and worldwide, while delivering high quality social services and facilitating the access of social businesses to public tenders"*.

2. Considering dividing contracts into lots and recognise social responsibility

Furthermore, the abovementioned Commission guidelines clearly demonstrate the link between Public Procurement and the promotion of social economy organisations, which include foundations, which "help to deliver the employment opportunities and social inclusion mentioned above, providing social returns from your spend". The same guidelines suggest *"inviting public buyers to consider dividing contracts into lots, which may be more accessible to social economy organisations and social enterprises"*.

Building on the abovementioned Commission guidelines, future Public Procurement Directives should explicitly recognise and promote Socially Responsible Public Procurement (SRRP), since it has proven to be a powerful tool both for advancing sustainable development and for achieving international, national, regional or local social objectives. In this regard, social criteria and dimensions should be streamlined across the Procurement Directives on an equal basis with any other sustainability considerations,

including explicit provisions for offers made by social economy enterprises, such as foundations, as defined by the Social Economy Action Plan.

3. Addressing challenges that foundations and NPOs face as service providers

Some of the challenges that foundations and NPOs as service providers experience should be addressed such as:

- Considering offers excluding VAT (as a general rule in some Member States) is causing discrimination for NPOs. According to the VAT Directive, foundations and other NPOs are exempt of VAT when they provide social, education or cultural services. This is not necessarily an advantage since it limits deduction of supported VAT that is assumed as a cost in the final price of the service. Hence, when comparing offers of non-profit (VAT exempted) and commercial companies (without VAT) frequently this one is lower priced, despite public administrations not deducting this VAT when contracting, assuming a higher cost at the end.
- Some foundations providing personal services to public administrations are seeing how mandatory increases of employment costs resulting from collective labour agreements are not being considered to actualise the price of the contracts. This is affecting not only NPOs – also companies - but especially affects social economy entities since the benefits are tight and reimbursed and they play with very low margins due to the fact that they work for vulnerable persons. It could be beneficial to demand that Public Administrations automatically reflect the increase in prices resulting from collective bargaining, inflation, etc in the contracting.

4. Impact on vulnerable groups including people with disabilities

As outlined below, the role that Public Procurement can play for the social inclusion of vulnerable groups - such as persons with disabilities - through employment has yielded great benefits both for public authorities, for the economy (including through support of the social economy) and for persons with disabilities themselves.

Our experience has shown that socially inclusive Public Procurement - easing access to contracts to social economy enterprises and foundations - can support the creation of high-quality employment opportunities for vulnerable and disadvantaged groups, including persons with disabilities. This is why the 2014 Public Procurement Directive set a number of mechanisms that have proven to be valuable catalysts for the employment of persons with disabilities.

5. Next to full implementation of European Pillar of Social Rights

It is also important to note that SRPP cannot be used as a replacement for dedicated social initiatives. While the use of Public Procurement can be a great catalyst for social change, it needs to be devised as an instrument of support to ambitious employment and social policies. In this regard, we call for the **explicit recognition of the future Public Procurement Directives as tools for the full implementation of the European Pillar of Social Rights, the Social Economy Action Plan** and any other initiatives aimed at the support and promotion of the social economy.

6. Most Economically Advantageous Tender

In light of the above, the revised Public Procurement Directives should give more prevalence to the social aspects of the criteria to award contracts. The Directive should therefore assume the **Make the Most Economically Advantageous Tender (MEAT) as the default standard for the awarding of contracts**, instead of the "lowest price option". This methodology would prioritise value (economic, social and environmental) over cost. To truly promote equality, social, and environmental goals, this should include specific social indicators (, e.g. employment of vulnerable groups) and apply strict criteria to identify and exclude abnormally low tenders.

Besides the general inclusion of a stronger social dimension, the Directives should maintain their valuable contribution to supporting the employment of disadvantaged groups and persons with disabilities, an area where social economy organisations - including foundations - can deliver unprecedented results.

7. Maintain reserved contracts

'Reserved contracts' are the cornerstone of these existing provisions supporting the employment of persons with disabilities through Public Procurement. The possibility for Member States to reserve contracts to *"sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons"* has been key for sustaining the competitiveness of some alternative employment models for persons with disabilities. However, it is also important that public contracts are awarded under these terms exclusively to companies or operators that are fully aligned and compliant with all the provisions of the UN Convention on the Rights of Persons with Disabilities, with special regard to its Article 27 on Work and Employment.

In view of the upcoming review of the Public Procurement Directive, Philea calls on the European Commission to **maintain the Directive's provisions on Reserved contracts (Article 20)**, ensuring the coherence between EU Public

Procurement legislation and the UN Convention on the Rights of Persons with Disabilities. Art. 20 from **Directive 2014/24/EU on public procurement**, establishes the possibility for Member States to *"reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes"*.

These same principles should also apply to Reserved contracts for health, social and cultural services (Article 77). Philea believes that giving preferential access to these contracts to companies whose profits are reinvested with a view to achieving the organisation's "social" objective will contribute to **supporting the social economy across the EU**.

8. Accessibility at all stages of public procurement

Lastly, Philea calls for the streamlining of **accessibility requirements at all stages of public Procurement**, from the communication from the contracting authorities, technical specifications, award criteria and quality assurance of the services delivered. This would ensure consistency with the EU acquis on accessibility, including the EU Accessibility Act as well as the EU Web Accessibility Directive.

These changes will not only promote quality employment opportunities in line with the UNCRPD but also stimulate social and professional integration, transforming public spending into a driver of economic and social inclusion of persons with disabilities across the EU.

9. Capacity building for public authorities and social economy organisations and foundations

To reinforce the capacity of social economy organisations and foundations to access public markets, it is important to create learning opportunities about public procurement entry points for social economy organisations and foundations and for public authorities to better understand the social dimension and added value of working with social economy.

Philea supports the review of the EU Public Procurement Directive and calls for:

- The inclusion of MEAT methodologies and the reinforcement and expansion of social award criteria, with special regard to the social economy and the inclusion of persons with disabilities (Article 67)

- The maintenance of reserved contracts for sheltered employment, as long as they are aligned with Article 27 of the UN Convention on the Right of Persons with Disabilities (Article 20)
- The inclusion of specific reference to social economy enterprises in the provisions on reserved contracts in specific sectors (Article 77)
- The streamlining of mandatory accessibility requirements in all stages of public procurement, including Technical Specifications (Article 42), Quality assurance standards (Article 62), and other communications aspects of Public Procurement.

[11 C 2021 3573 F1 OTHER AUTONOMOUS ACT EN V3 P1 1156678 \(1\).PDF](#)

III. About the role of philanthropy and foundations and conclusions

The important role of philanthropy and foundations

The foundation/philanthropy sector plays a critical role in the implementation of the SDGs and in supporting Europe's social and economic resilience and promote innovation. There are around 186,000 philanthropic organisations in Europe with an estimated €54 billion expenditure and millions of individual and corporate donors contributing with private resources for public good. European philanthropy is a key contributor to a more equitable and sustainable world and now has a critical role to play in fostering greater resilience and well-being and promoting diversity and inclusion. Enterprise Foundations also play an important role as owners of companies while also promoting other public-benefit purposes.

Conclusion

We hope that our recommendations will be considered in the design of a review of the public procurement policy that builds an economy that works for people and the planet.

About Philea

Philea - Philanthropy Europe Association nurtures a diverse and inclusive ecosystem of foundations, philanthropic organisations and networks in over 30 countries that work for the common good. We unite over 7,500 public-benefit foundations that seek to improve life for people and communities in Europe and around the world.



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Annex 1: List of relevant papers referring to social economy and public procurement

- The 2021 European Commission's Social Economy Action Plan ensures the Commission will *"Reinforce its efforts to raise awareness, foster the exchange of good practices and train both public procurement officials and social economy entities on how to use public procurements and concessions procedures to achieve social policy objectives."*
- The Council Recommendation of 27 November 2023 underlines the necessity of *"providing guidance at the appropriate administrative level(s) to facilitate access to public procurement by social economy entities"* and of *"raising awareness of the added value of socially responsible public procurement among contracting authorities and enterprises and making expertise available to contracting authorities and social economy entities"*.
- The Council supports the strategic use of public procurement in its 2023 Recommendation on developing social economy framework conditions, when it recommend Member States to *"encourage their contracting authorities to purchase goods and services strategically, pursue social objectives, also taking into consideration social innovation and environmental goals"*.
- The EESC opinion on Public Procurement/ Social Economy Enterprises (18/1/2024) affirms *"the provision of goods and services cannot be based on the erosion of social, societal, health and sustainability principles"*. Including social clauses would guarantee quality jobs in coherence with European standards and the European Pillar of Social Rights, a positive impact and a quality service.
- The EESC in its opinion on Public Procurement/ Social Economy Enterprises (18/1/2024) also underlines *"the importance of establishing innovative criteria with real, non-market value such as the commons, social (quality employment, inclusion and integration of vulnerable people) and ecological added value (environmental impact) and territorial proximity."*
- The Committee of Regions in the Opinion, 8-9 February 2023 Creating an enabling environment for the social economy – the local and regional perspective supports *"promoting socially responsible public procurement and the inclusion of social requirements in tenders"* and *"asks for facilitation of access by the social economy to public procurement using opportunities provided already by the European Public Procurement Directive, and to promote capacity-building both*



in relation to civil servants and in relation to the social economy" (art 54). And "calls for policies promoting socially responsible public procurement and the inclusion of social requirements in tenders as a means to help develop the social economy sector" (art 53).

- The **2024 Liège Roadmap for Social Economy** signed by **20 MS** also encourages public authorities to *"incorporate more sustainability and inclusivity criteria in public procurement procedures"*.
- The **Draghi Report** *The future of European competitiveness: A competitiveness strategy for Europe* recommends boosting EU economy by mobilising public and private investment for green transition
- The **Letta Report** *More than a Market: Speed, security, solidarity* calls for *"a focus on the strategic use of public procurement to support the social economy"*.

Annex: List of relevant Philea papers

2024 Philea new edition of legal country profiles

<https://philea.eu/philea-releases-first-batch-of-2024-update-of-legal-and-fiscal-country-profiles/>

2023 Philea Policy recommendations – the Manifesto

<https://philea.eu/how-we-can-help/policy-and-advocacy/european-philanthropy-manifesto/>

2021 Philea comparative analysis of foundation laws

<https://philea.issuelab.org/resource/comparative-highlights-of-foundation-laws-the-operating-environment-for-foundations-in-europe-2021.html>

2021 Philea contribution to the Social Economy Action Plan

<https://philea.eu/wp-content/uploads/2021/12/Social-Economy-Action-Plan.pdf>