



*Samaritan International is a European network of 22 non-profit non-governmental organisations from 20 European countries (full list of members organisations at the end of the document). We are politically and religiously unaffiliated and cooperate across borders within our network, on a regional, bilateral, and multilateral basis. Our members are active in the areas of social services, first aid and rescue services, disaster prevention and response, civil protection, humanitarian aid, youth work, and volunteer management. Our work is conducted with the support of about three million individual members and almost 150.000 volunteers.*

## Introduction

Samaritan International welcomes the opportunity to provide input to the consultation in preparation of the revision of Directive 2014/24/EU. Strategic public procurement plays a critical role in shaping the social, economic, and environmental landscape of the European Union. As a network of public benefit organisations committed to advancing socially responsible practices both in the area of social services and civil protection, we believe the upcoming revision of the EU Public Procurement Directive presents an important opportunity to align procurement policies with broader societal objectives and to improve the access of social economy actors to public procurement.

Socially responsible public procurement (SRPP) allows public authorities to leverage their purchasing power to promote fairness, inclusion, sustainability, and innovation. It is not merely a tool for acquiring goods and services but a strategic mechanism for addressing pressing challenges such as inequality, climate change, and social exclusion. By further streamlining social considerations into procurement practices, the EU can reinforce its commitment to a values-based economy that prioritizes people, communities, and the planet.

**With regards of the functioning and implementation of the current Public Procurement Directive, Samaritan International remarks the following shortcomings:**

- **The potential of socially responsible public procurement as a strategic tool is not utilised enough by the Member States. The lack of data availability, both on the national and at EU-level, makes effective monitoring and evaluation impossible;**
- **Except for the 'horizontal social clause', any provisions on socially responsible public procurement are optional. Therefore significant differences exist between Member States;**
- **Even though the 'horizontal social clause' includes a mandatory adherence to collective agreements, the provision lacks proper implementation and monitoring. It is important that the respect of collectively agreed wages is strictly enforced;**
- **The distinction between emergency ambulance services and patient transport ambulance services is not practical, creates legal uncertainty and disadvantages non-profit organisations offering these services. The ECJ ruling (C-424/18) only increases the legal uncertainty and clearly demonstrates that an objective separation of these services is not possible;**
- **The maximum duration of three years for reserved contracts in the field of social services is not sufficiently long to make the necessary investments and ensure qualified staff and volunteers to provide high-quality services.**



While the study “*The social impact of public procurement*”<sup>1</sup> acknowledges that Directive 2014/24/EU on public procurement already strengthens the possibilities for using public procurement in a strategic way, it also reveals that the practice of awarding contracts on the basis of the lowest price or cost is still commonly used to award contracts in the EU.

In its Social Economy Action Plan, the European Commission further notes that public authorities do not fully use the existing possibilities to facilitate the access of social enterprises to public procurement, and calls on Member States and other competent public authorities to foster and monitor the uptake of socially responsible public procurement in their territory in cooperation with social economy stakeholders.

In this position paper, we do not only advocate for a strengthened Directive that considerably improves the implementation of SRPP in the Member States, but also raise concrete points **in need of revision**, which are important for the work of our member organisations. These points concern Article 10 *Specific exclusions for service contracts*, Article 18 *Principles of procurement*, as well as Article 77 *Reserved contracts for certain services*.

The revision of the Public Procurement Directive is a unique opportunity to enhance the EU’s role in promoting social responsibility and to improve the framework conditions of the social economy.

### Better implementation of Socially Responsible Public Procurement

The current Public Procurement Directive 2014/24/EU enables Member States to use public procurement in a strategic manner by setting, among others, social criteria. However, except for the 'mandatory horizontal social clause' (Article 18), which requires Member States to ensure compliance with applicable environmental, social and labour laws (obligations established by EU law, national law, collective agreements and the eight specified core ILO conventions) in the performance of public contracts, all other instruments for social procurement are optional.

Both the study “*The social impact of public procurement*” and the Council Recommendations for Social Economy Framework Conditions<sup>2</sup> acknowledge that most tenders are still awarded solely on the basis of price. Public benefit organisations provide their services prioritising the societal and collective benefit and as a result in most cases not for the lowest price, which can make it difficult to compete in regular public procurement processes, despite the fact that they can provide broader added value to the procurement process.

In order to improve the implementation of SRPP, Samaritan International supports the following policy tool recommendations to Member States from the Council Recommendations for Social Economy Framework Conditions:

- adopting policy guidance and procurement strategies, including official targets, with a commitment from the political level through to key decision-makers and budget managers;
- providing guidance at the appropriate administrative level(s) to facilitate access to public procurement by social economy entities;

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<sup>1</sup> Caimi, V., Sansonetti, S., 2023, *The social impact of public procurement*, publication for the Committee on Employment and Social affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg

<sup>2</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C\\_202301344](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202301344)

- 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;
- encouraging a structured, transparent and non-discriminatory dialogue with the social economy stakeholders to design a socially responsible public procurement strategy.

In order to enable the monitoring of the implementation of SRPP, data collection needs to be streamlined into the European Commission's Tenders Electronic Daily system, to transform it into a tool that can be used to monitor and report on SRPP, including common indicators. According to the study "*The social impact of public procurement*" key findings, data about the volume and value of socially responsible public procurement in the EU does not exist, not even about the economic sectors in which it is used. Only anecdotal evidence exists.

Another obstacle to the implementation of SRPP is its voluntary nature in the current Directive, as well as missing targets. The European Commission and Member States should carry out a structured, meaningful and inclusive dialogue with social economy actors to set up binding targets and discuss mandatory social clauses for specific sectors, especially those in which public benefit organisations are providing services which have societal and collective benefits.

### Specific exclusion for patient transport ambulance services

Article 10 of Directive 2014/24/EU governs the specific exclusions for service contracts, including in the field of civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, in the CPV categories of fire-brigade and rescue services, rescue services, as well as ambulance services, except patient transport ambulance services.

Samaritan International welcomes and fully supports the exemption of these service sectors from the application of the Directive. However, Samaritan International considers the distinction between "*ambulance services*" and "*patient transport ambulance services*" for the scope of the Directive unreasonable, contrary to general public interests and, as such, in need of revision.

Emergency and scheduled patient transport services comprise both a medical service (medical treatment or monitoring) and a transport component, the balance of which can be different, depending on each patient, which cannot be easily classified *a priori* and needs to be assessed on a case-by-case basis. In any such case, the most relevant element that differentiates a scheduled ambulance patient transport services from any other (public) transport service is the focus on "care" and "prevention of further damage" for someone who is ill, particularly sensitive or in a state of vulnerability and – as a consequence – is awarded protection or assistance by public healthcare systems.

The objective of the provision in Article 10 is to exempt sectors serving 'civil protection', 'civil defence' or 'emergency response'. The defining element of the services covered by the exemption is therefore undoubtedly hazard prevention, whether in the context of extreme situations ('disaster control' and 'civil defence') or in the context of the use of rescue and ambulance services to avert everyday dangers to life or the health of the population, including preventative measures to avoid emergencies. In any such case, the capacity of public authorities in Member States to properly respond to prominent public needs and protecting fundamental human rights, such as the right to health, is at stake.

The current wording of Article 10(h) introduces an artificial distinction between services that necessarily belong to the same sector and are have the same medical, health care or assistance service character. In fact, all ambulance services provided by public healthcare authorities in Member States (and, therefore, awarded by means of a public contract), irrespective of their emergency or non-emergency nature, are characterised by the defence against dangers to life and health of patients that have already occurred or, according to medical assessment, can potentially occur without special care or monitoring of their condition and thus require a qualified medical patient transport, not just a transport service. In any case a public healthcare system deems it appropriate to provide a patient transport service by means of ambulance, it is exercising a public function aimed at preventing (further) danger to occur.

The ECJ Judgment in case C-424/18 (and subsequent case-law) broadened the scope of “ambulance service” according to Article 10(h) of Directive 2024/14, providing that a patient transport by ambulance could fall within the scope of the exclusion if “*it is necessary to transport a patient whose state of health is at risk of deterioration during that transport*”.

While the attempt of the ECJ to provide a more proportionate interpretation of Article 10(h) should be welcomed, in practice it did not resolve, but in some cases worsened, the above mentioned problems for public healthcare systems and non-profit organisations providing ambulance services under public contracts, fostering legal uncertainty. In fact, it is hard (if not impossible), in medical terms, to draw a net *a priori* and objectively-grounded distinction between cases where the state of health is at risk of deterioration during transport, and cases where such risk is not relevant. Furthermore, a question is legitimately asked as to why a person whose health would not be – otherwise – in potential danger should benefit of an ambulance transport provided by public authorities.

Another element is worth noting, which is potentially impairing non-profit organisations capability to provide efficient, quality oriented and cost-effective public ambulance services, in accordance with the principle of subsidiarity enshrined in the Treaties.

Following the current legislation and the court’s ruling:

- (a) ambulance service providers would need to set up at least two organisational units , one for transporting patients “*whose state of health is at risk of deterioration*” during transport, and one for a small quantity of “other” services, with unnecessary duplications in terms of personnel and vehicles and the consequent increase in costs;
- (b) health professionals who arrange for the transport of a patient must establish *a priori* (and take responsibility for) the risk of worsening of the patient’s health during transport, for the sole purpose of a formal, bureaucratic and medically irrelevant compliance, thus losing focus on the protection of the patient;
- (c) public healthcare services would necessarily need to establish and manage two or more contracting, organisational and logistic systems for ambulance services, based on different criteria applied for tendering contracts, worsening efficiency and increasing public spending without a reasonable upside in terms of competition, given the small relevant market that may exist for the “residual” part of ambulance transport services.

Samaritan International points out that patient transport ambulance service is an indispensable resource for large-scale operations and disaster response (e.g. COVID-19 pandemic) and is a central component of professional medical care and therefore must be considered as ‘emergency response’ and ‘civil protection’ within the meaning of Article 10(h). The coordination between a separated emergency service and patient transport sector in the event of an emergency would be extremely difficult, which is not in the interests of patients. Moreover, only a comprehensive exemption of ambulance services makes it possible to safeguard the special character of non-profit organisations providing these services.

A further commercialisation of ambulance services would lead in particular to a drastic reduction in the number of volunteers (who are a central element in the service provision of non-profit organisations) and thus to a lower density of medical care, as well as a decline of solidarity in society.

In addition, the many synergies between rescue and ambulance services and disaster relief could no longer be utilised. A strict separation of ambulance emergency services and ambulance patient transport services would make synergies impossible and lead to an enormous increase in the cost of all these services, and thus to a significantly higher financial burden on society.

On the other hand, removing the distinction of ambulance services and ambulance patient transport services, and thus including ambulance patient transport services in the ‘sector exemptions’ of Article 10 would be very advantageous in terms of:

- Increased efficiency: Joint coordination of emergencies and planned transports optimises the use of resources and improves patient care;
- Reducing bureaucracy: Clear legal regulations create more flexibility for organisations;
- Promoting cooperation in the emergency and healthcare sector: Non-profit organisations are already integrated into networks and ensure seamless care.

### Mandatory application of collectively agreed wages

Directive 2014/24/EU includes the 'mandatory horizontal social clause' (Article 18), which requires Member States to take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X of the Directive.

Samaritan International notes that the application of collectively agreed wages is not a reality in all Member States or regions for social services which are awarded following a tender. We call on the Commission and Member States to jointly ensure the enforcement and adherence to collective agreements and especially the collectively agreed wages to avoid a race to the bottom.

The study *“The social impact of public procurement”* notes a lack of data and evaluation of SRPP in general, and recommends the launch an evaluation study by the European Commission to thoroughly assess the implementation of the social aspects of the Directive in all EU Member States, with particular focus on the horizontal social clause. In addition, the Council Recommendations for Social Economy Framework Conditions recommend to Member states to encourage contracting authorities to refer in tender documents to specific obligations under social and labour law and collective agreements, as well as social and environmental criteria, that apply to the procurement and to ask bidders to confirm compliance and set up monitoring measures.

Samaritan International fully supports the monitoring of the Article's application on both the EU level through an evaluation study by the European Commission and on the national level by ensuring the bidders' compliance through monitoring measures by the Member State or the contracting authority.

It is therefore crucial, that in all social service sectors in which contracts are awarded following a public procurement procedure, the adherence to (sectoral) collectively agreed wages is a binding selection criteria during the tender process and its application is followed-up and monitored.

In Member States, where certain social services are commercialized, the market for the respective services is characterised by extreme price pressure and ruinous competition, making it almost impossible for providers bound by collective agreements to survive.

### Longer duration for reserved contracts in the field of social services

Article 77 of Directive 2014/24/EU gives Member States the possibility to reserve contracts for certain services in the field of health, social and cultural services for non-profit organisations.

Samaritan International welcomes the support to non-profit organisations, but considers that the conditions are not fit for practice and are in need of reform. The contract term of three years in conjunction with a subsequent three-year contract block is not practicable and makes it impossible to guarantee adequate, needs-orientated, person-centered and efficient service provision in the important area of health and social services.

In the health and social sector, it is important to award long-term contracts to non-profit organisations both in view of the necessary investments and the service quality. Trust between the service providing organisation and patients of health services, as well as clients of social services needs to be established and stable relations are necessary to promote societal confidence in both the service provider, but also the health and social system in general. A long-term commitment is also essential to ensure the best possible qualification of the staff and volunteers, and thus the best service quality.

Samaritan International considers that the three year contract limit and the three year block prior to the award of a contract need to be deleted, or in dialogue with the concerned non-profit organisations substantially extended. This demand is in line with the recommendation by the study "*The social impact of public procurement*" to lower the threshold for reserved contracts for the social and professional integration of persons with disabilities and disadvantaged workers and cancel or extend the duration of three years for reservations of public contracts for social and other personal services.

### Conclusion

Samaritan International considers the upcoming revision of the Public Procurement Directive an important opportunity to both improve the legal framework for SRPP and to set up functioning data collection, evaluation and monitoring systems, in order to substantially improve the implementation and use of SRPP in the Member States.

Better access to public procurement is a key element to advance the EU's social economy and to support public benefit organisations, which not only provide high-quality services but also foster social cohesion and civic engagement, and do thus benefit society at large with their work.

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*Member organisations of Samaritan International:*

- *Alfar Centar (Ac), Montenegro*
- *Arbeiter-Samariter-Bund Deutschland (ASB), Germany*
- *Arbeiter-Samariter-Bund Österreichs (ASBÖ), Austria*
- *Asociace Samaritánú České Republiky (ASCR), Czech Republic*
- *Asociácia Samaritánov Slovenskej Republiky (ASSR), Slovakia*
- *Associazione Nazionale Pubbliche Assistenze (ANPAS), Italy*
- *Secouristes Français-Croix Blanche (CB), France*
- *Community Development Institute (CDI), North Macedonia*
- *Dansk Folkehjælp (DPA), Denmark*
- *Federatia Samaritenilor Romani (FSR), Romania*
- *Inicijativa Za Razvoj I Saradnju (IDC), Serbia*
- *Landesrettungsverein Weisses Kreuz (WK), Italy*
- *Latvijas Samariesu Apvieniba (LSA), Latvia*
- *Lietuvos Samarieciu Bendrija (LSB), Lithuania*
- *Malta Rescue Corps (MRC), Malta*
- *Országos Szamaritánus Társaság Szövetsége (USB), Hungary*
- *Pompiers Humanitaires Français (PHF) (France)*
- *Sakartvelos Samariteta Kavshiri (SSK), Georgia*
- *Samarytanska Federacja Organizacja Pozarządowych (SFOP), Poland*
- *Spilka Samaritian Ukraini (SSU), Ukraine*
- *Udruga Djece S Teškoćama U Razvoju, Osoba S Invaliditetom I Njihovihobitelji (SRCE), Croatia*
- *Žene Sa Une (ZSU), Bosnia And Herzegovina*