



RehabGroup

Investing in People, Changing Perspectives

Rehab Group Submission to European Commission Public Consultation on Review of Procurement Directive 2014/24/EU

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As one of the largest disability service providers in Ireland and one of the largest non-governmental employers of people with disabilities, Rehab welcomes the opportunity to contribute to the European Commission's review of the Procurement Directive 2014/24/EU

Our submission focuses specifically on Article 20 of the Directive

Article 20 of the EU Public Procurement Directive allows public procurers to reserve contracts to encourage the employment of people with disabilities and disadvantage

Reserved contracts under the EU directive come with two main clauses

1. *Member States may 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, provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.*
2. *The call for competition shall make reference to this Article.*

In essence reserved contracts permits a public body to 'reserve' whole contracts, or parts of a contract to certain types of suppliers. However, these contracts must still be open to competition in accordance with national procurement guidelines and must make reference to this in the invitation to tender.

Member States as the largest purchasers of goods and services should consider how social needs are also met by public spending.

A recent EU Court of Justice ruling stressed in particular that Article 20 pursues a social policy objective relating to employment and that Member States have a wide margin of discretion in defining the measures likely to achieve a given social and employment policy objective¹.

There are significant benefits for public authorities using reserved contracts including:

- Allows public bodies to reach and exceed their ESG/CSR targets in a way that is both sustainable and cost effective.
- Aligns with broader EU policy goals related to social inclusion, employment, and sustainable development.
- Enables countries meet its legal obligations established in the United Nations Convention for the Rights of Persons with Disabilities (UNCRPD)
- Complements the achievement of the public sector quota for the employment of people with disabilities (which in Ireland will increase to 6% in 2025).
- Supports the viability and development of locally based community led based SMEs
- Prepares public sector organisations for the introduction of the Corporate Sustainability Reporting Directive (CSRD)
- Promotes the business case for employing people with disabilities as they are also customers and consumers of public services.

There are also significant advantages for social enterprises who can secure contracts under Article 20 such as:

- **Inclusion of Social Criteria:** Article 20 allows contracting authorities to consider social criteria, such as the employment of disadvantaged or disabled persons, when awarding public

¹ [The Court of Justice clarifies the conditions under which Member States may exclude economic operators from reserved procurement procedures | & DE BANDT](#)

contracts. This creates opportunities for social enterprises that prioritise the integration of persons with disabilities into the workforce.

- **Competitive Advantage:** Social enterprises that actively engage in social inclusion initiatives may gain a competitive advantage in public procurement processes. By demonstrating their commitment to social responsibility and employing individuals from marginalised groups, they can differentiate themselves from other suppliers and appeal to contracting authorities seeking to promote social objectives.
- **Access to Contracts:** The directive encourages contracting authorities to consider social and environmental criteria alongside economic factors when awarding contracts. This broader approach to procurement opens doors for social enterprises to participate in public tenders and secure contracts that align with their mission of promoting the inclusion and well-being of persons with disabilities.
- **Support for Social Enterprises:** Article 20 recognises the importance of supporting businesses that contribute to social objectives. Social enterprises focused on rehabilitation and inclusion, can benefit from this recognition and receive support from contracting authorities looking to engage with socially responsible suppliers.
- **Promotion of Inclusive Practices:** By incentivising the inclusion of social criteria in procurement decisions, Article 20 promotes inclusive practices within the business community. Social enterprises can lead by example, demonstrating the positive impact of integrating persons with disabilities into the workforce and fostering an inclusive society.
- **Alignment with EU Policy Goals:** The directive aligns with broader EU policy goals related to social inclusion, employment, and sustainable development. Social enterprises that align their operations with these policy goals not only benefit from procurement opportunities but also contribute to the achievement of EU priorities.

In 2023 the Irish Government commissioned the OECD to report on the effectiveness of the public purchasing of goods and services in Ireland, which is worth €22 billion per year. The OECD Report², Procurement for Better Value – A Case Study of Ireland, concluded that that Irish Government was not availing of instruments such as Article 20 to help increase the number of people with disabilities in employment, despite the fact that Ireland has the highest disability employment gap in the EU and the lowest number of people with disabilities in employment. It noted that one in four disabled people in Ireland is at risk of poverty – significantly higher than the OECD average. Greater implementation of Article 20 could offer life-changing opportunities to people with disabilities to help bring them out of poverty.

The OECD report specifically decried the lack of data on the number of people with disabilities employed through framework agreements. The report states that public procurement could be a valuable tool to address societal challenges but underscores that this will require a profound change in measurement frameworks, going beyond immediate outputs to look at outcomes and impacts

Article 20 was intended to herald a new dawn for employment opportunities for people with disabilities. However, it has not gained traction in Ireland with little evidence of systemic take up among procurement agencies. A survey of local authorities conducted by Rehab in 2021 found no evidence of take up of the Directive since 2017. Some said they were not even aware of it. Others told us they are seeking “leadership” from the Office of Government Procurement on the issue.

Available statistics indicate that take-up of the use of reserved contracts under Article 20 has been persistently low. In 2017, there were 294 procurement procedures involving reserved contracts,

² https://www.oecd.org/en/publications/procurement-for-better-value-a-case-study-of-ireland_ca1e6c47-en.html

which represented only 0.24% of the total number of public procurement contracts in the EU. These numbers were slightly lower in previous years: 223 in 2016 (0.21%), 169 in 2015 (0.15%), and 183 in 2014 (0.13%). It is difficult to ascertain more recent data which again points to a problem

One of the key findings of the European Commission 'Buying for Social Impact'³ project report, was that while transposition of the EU Directive was necessary to promote and implement socially responsible public procurement, it was not sufficient in itself. They recommended the establishment of legal frameworks coupled with initiatives to increase knowledge and build capacity amongst public authorities. This proactive approach to embedding the use of Article 20 in the procurement processes in Ireland could significantly increase the number of jobs that Rehab, and other similar social enterprises across the EU could create and sustain for people with disabilities and those who are disadvantaged.

This will necessitate a strong lead from national Public Procurement Offices, and their downstream procurement agencies to develop new robust systems and processes of reserving contracts to include

- Establishing panels of supported businesses across a range of business sectors to facilitate the use of Article 20 by procurement agencies.
- Identifying and carving out contracts areas of operation that could be served by enterprises that employed large numbers of people with disabilities and marginalised groups.
- Require public procurers to monitor, record, track and report on their use of reserved contracts
- Set progressive targets on the use of reserved contracts ensuring that every public body would have at least one contract with "a supported business"
- Encourage the use of reserved contracts within private companies by making it a criterion in the awarding of public contracts.

The review of the EU Procurement Directive should seek to strengthen Article 20, ensure effective monitoring and reporting on its use and provide a framework to ensure that National Procurement Offices promote its use. The European Commission should provide support to National Procurement Offices to promote socially responsible procurement.

³ <https://op.europa.eu/s/z4jd>