

# Albania: The new law on public procurement paves the way for the procuring and contracting of social care services

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ELIRA JORGONI – EUROPEAN SOCIAL POLICY NETWORK

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*Albania's procurement legal framework used to be more business-oriented and contained a number of provisions that inhibit the participation of non-profit organisations in service delivery. These issues are addressed in the new procurement law, which was adopted on 27 July 2020. The new law amends the procurement framework to ensure that both for-profit and not-for-profit operators can participate in public tenders related to social care services.*



## Description

The Law on Local Self Government (Law 139/2015) and the Law on Social Care Services (Law 121/2016) set out local government responsibilities for the provision of social care services. These services can be provided directly by municipalities or in partnership with relevant civil society organisations (CSOs). However, a number of barriers in the existing framework have hindered the procurement of social care services. Municipalities have tried to find different modalities to cooperate with CSOs and fill some of the needs and service gaps. Yet these solutions have been ad hoc in nature and, moreover, have created confusion, uneven practices, as well as partial and limited coverage. They have also raised questions on transparency and compliance with the existing legal framework.

CSOs play a crucial role in social care service delivery, as they run about 46% of these services, whereas 54% of them are provided by public providers. The existing services are unevenly distributed across the country, with a high concentration in the capital (nearly 40%). The range of services provided is limited and only about 10,000 people use them, or 0.35% of the total population.

The provision of social care services by CSOs and other non-public service providers would reduce service costs and provide more flexibility. The procurement of services through a sound financial mechanism would result in better service coverage and

provision. The previous Law on Public Procurement (Law 9643/2006) hindered the outsourcing of social care services to non-public providers, forcing municipalities to find artificial, insufficient and unsustainable solutions for financing a few essential care services.

The Agency for Public Procurement (APP) worked on the revision of the Law on Public Procurement and shared its views with key stakeholders (public agencies and non-public actors, including civil society). Although the legal and institutional framework of the public procurement system in Albania has improved over the last few years, the section on procurement of social services has been somehow overlooked. The APP recognises that the procurement system was facing a number of issues, such as the low use of framework agreements, the way winning bids were determined, complaints review, inefficient decentralised procurement as well as the need for more transparency.

The new law, transposing EU directives, aims to increase the efficiency and transparency of the use of public funds. The procedure used so far (the outright selection of the lowest financial offer) was not appropriate for social services; weightings should be based on service delivery standards alongside technical and financial capacities.

The new law guides the contracting parties towards selection of a service provider based on the best price-quality ratio. It requires parties to guarantee the quality, continuity, accessibility, cost-effectiveness, availability and

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inclusiveness of services, as well as the specific needs of different categories of users (including people in need and vulnerable groups), user inclusion and empowerment, and innovation. The secondary legislation will detail the sectorial procedures for procurement. This approach is expected to bring flexibility in the procedures and enable a more appropriate procurement of social care services.

The revision was guided by Directive 2014/24/EU on public procurement. Based on this directive, the APP has introduced into the new law the concept of a “reserved contract”. In line with Articles 20 and 77 of the directive, these contracts can only be assigned to operators whose main aim is the social and professional integration of disabled or disadvantaged persons. Such contracts must be linked to sheltered employment programmes, where at least 30% of the employees of the related workshops, economic operators or programmes are disabled or disadvantaged workers. Unlike the EU directive, the new law also enables organisations providing healthcare, social and cultural services to participate in public procurement.

## Outlook and commentary

The procurement practices used so far have created ambiguities regarding the procedures for the procurement of social care services, at both central and local level. Challenges start from the planning phase of a given outsourced service, such as drafting the Terms of Reference, technical specifications as well as budget requirements in the absence of unit costs. Municipalities even faced challenges in procuring food and medication for the social care centres under their responsibility.

Difficulties were also noted during the evaluation of procurement processes, due to the decisive weight given to the financial aspects compared with the technical side of bids. In the social sector, the quality of services should be given greater weight during the evaluation process. A number of municipalities had signed cooperation agreements with non-public service providers (such as CSOs), so they could bypass these procurement challenges, but these initiatives were not unified, and legal guidance was inadequate.

The new procurement law (27 July 2020) focuses on regulating the procurement of goods, works and services from “economic operators”. It does not prohibit CSOs from participating in the procurement process, but participation must respect the Law on CSOs, which allows them to establish economic operations without having to institute a different entity. This is not yet made clear enough, as the new law does not acknowledge fully the public role of CSOs; furthermore, the definition of “economic operators” could again limit the participation of CSOs in the procurement process. Nonetheless, some of these issues may be addressed with the drafting of secondary legislation setting out procurement procedures for each sector.

The new law provides more flexibility and room for details, and sets out the sectorial procurement procedures. It is an opportunity for social care service provision in particular, as it will enable better resourcing and planning, and more even service delivery across the country. However, the drafting of secondary legislation will have to take account of previous challenges and of the views of

different actors and service providers. Bylaws will need to determine the evaluation criteria

especially related to the methodology, management and oversight procedures of a procured service, as well as staff experience.

Apart from the secondary legislation, the Ministry of Health and Social Protection needs to address other substantial elements concerning the sector. The Law on Social Care Services can only be effectively implemented in the context of a clear regulatory framework that ensures separation between the commissioning and provider functions. This framework will need to be accompanied by inspection and quality assurance structures to ensure that services delivered by CSOs meet public accountability and professional standards.

Ensuring institutional cooperation, and addressing the lack of technical capacities at the municipal level, are some of the remaining challenges. These challenges and the provisions of the new law will require adequate preparation and training of officials involved in public procurement procedures. Training should be based on concrete working practices of social care services. In addition, clear licensing procedures, strengthened inspections and the setting of unit costs for services should be the next objectives for the social sector. Last but not least, the successful implementation of social care services will require the clarification of VAT issues for CSOs.

### Further reading

[Government of Albania, Law on Public Procurement, 27 July 2020](#)

### Author

[Elira Jorgoni](#) (independent social policy expert)

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