



Promoting Social Considerations into Public Procurement Procedures for Social Economy Enterprises

Matrix explaining how social considerations have been embedded in the Greek law transposing Directive 24/2014/EU



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Article 18(2) of the Directive ► Article 18 (2-5) “Principles of procurement” (par. 2 -5) of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services (transposition of Directives 2014/24/EU and 2014/25/EU) as amended

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>2. <i>In the performance of public contracts, economic operators comply with obligations applicable under the provisions of environmental, social insurance and labour legislation, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X of Appendix A. Compliance with aforementioned obligations is audited and certified by bodies supervising performance of public contracts and by the competent public authorities and agencies acting within the limits of their responsibility and competence.</i></p> <p>3. <i>Economic operators performing public contracts are included as priority subjects of control in the control and inspection schedules of the Labour Inspectorate, according to Presidential Decree 113/2014 (A' 180), and the Environment, Construction, Energy and Mines Inspectorate, according to Presidential Decree 100/2014 (A' 167), provided that they fulfil the special criteria defined in the provisions regulating the operation of these agencies.</i></p> <p>4. <i>The obligation of paragraph 2:</i> <i>(a) is indicated in the contract documents, according to article 53 and</i> <i>(b) constitutes a special condition for performance of the contract, according to article 130.</i></p> <p>5. <i>Failure to comply with the obligation of par. 2 constitutes a grave professional misconduct of the economic operator within the meaning of number 9 of paragraph 4 of article 73, in line with what is</i></p>		<p>Article 18 (2) of the Directive is transposed in par. 2 of art. 18 of the law and a set of special measures ensuring the compliance of contractors with environmental and social obligations are established in par. 2-5 of the same article.</p> <p>More particularly, par. 2 of article 18 of the law introduces what is known as the “<i>horizontal clause of article 18</i>”, imposing, during performance of public contracts,: (a) on economic operators the general obligation to comply with their obligations under labour, social insurance and environmental law and (b) on national authorities (both those competent for the supervision of contract performance, as well as those with special relevant competencies in the areas of environmental and social legislation) the general obligation to audit and certify compliance.</p> <p>Par. 3 further enhances the audit context by introducing a special obligation of competent inspection agencies to prioritize inspection of economic operators performing public contracts.</p> <p>Par. 4 introduces the special obligation of awarding authorities to indicate the “horizontal clause” obligations in procurement documents (also see article 53 par. 2 of Law N. 4412/2016 mentioning in letter (xviii) the horizontal clause of art. 18 par. 2 as one of the elements of the minimum content of procurement documents). Also, in virtue of par. 4, the horizontal clause is rendered automatically into a condition for performance of the contract (see also par. 1 of article 130 on conditions for performance of Law No. 4412/2016).</p> <p>Finally, par. 5 (as amended by article 107 (1) of Law No. 4497/2017), stipulates that failure of economic operators to comply with obligations of par. 2 constitutes a “grave</p>	<p><u>Hellenic Constitution</u></p> <p>(a) Right to work / General obligation of the state to care for the social insurance of working population/ collective agreements as a means of regulating industrial relations: article 22</p> <p>(b) General obligation of the state to act for the protection the natural and cultural environment: article 24</p> <p>(c) General principle of the “social state of law”: article 25.</p> <p><u>Law No. 3863/2010</u> on the New Social Insurance System and relevant provisions and on regulating industrial relations (art. 68 for special measures ensuring the compliance of public providers of cleaning and/or security services with their labour / social security obligations)</p>

<p><i>specified in applicable provisions. Especially in the process of concluding a public contract for the provision of cleaning or/and security services, there is grave professional misconduct particularly in the cases listed in the second subparagraph of the letter (c) of paragraph 2 of article 68 of Law No. 3863/2010 (A' 115).</i></p>		<p>professional misconduct” - the latter being a situation which may lead to their exclusion from another public contract awarding procedure [according to par. 4 of article 73 (exclusion grounds) of Law No. 4412/2016 “grave professional misconduct” is one of the situations which may be considered by awarding authorities as an exclusion ground from awarding procedures].</p> <p>Especially in case of public contracts for cleaning and security services, par. 5 makes reference to the special circumstances which, according to the second subparagraph of the letter (c) of paragraph 2 of article 68 of Law No. 3863/2010, may lead to the exclusion of tenderers from awarding procedures for these types of services. Thus, for cleaning and/or security contracts specifically, there is “grave professional misconduct” (and, therefore, potential exclusion ground from other awarding procedures) in case: (a) The economic operator has been declared in default in virtue of par. 7 of article 68 of Law No. 3863/2010 (automatic termination of contract in case of two consecutive fines for serious or highly serious labour law violations during performance of the contract) during the 3 years preceding the tender submission deadline (b) The economic operator has been sentenced with temporary shutdown of parts or the total of his enterprise in virtue of par. 1B of article 24 of Law No. 3996/2011 (administrative sanctions for labour law violations) during the 3 years preceding the tender submission deadline.</p> <p>Regarding compliance audit for obligations of art. 18 (2) during procurement see also below about article 71 of Law No. 4412/2016 last subparagraph (art. 56 (1) of Directive).</p>	
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>	<p>The “horizontal clause” of art. 18 (2) is inserted in a standardized way by all awarding authorities in procurement documents and as a special standardized clause in all public contracts – enhanced with reference to art. 68 of Law 3863/2010 in cleaning/security services contracts. However, monitoring compliance remains a challenge in practice due to understaffing and overload of both contracting authorities and special inspection bodies.</p>		

Article 20 of the Directive ► Article 20 of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services (transposition of Directives 2014/24/EU and 2014/25/EU) as amended

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. Awarding authorities may reserve, under the particular conditions of this article and of the presidential decree of paragraph 4, the right to participate in public procurement procedures to:</p> <p>(a) Sheltered Production Workshops of article 17 of Law No. 2646/1998 (A' 236),</p> <p>(b) Limited Liability Social Cooperatives of article 12 of Law No. 2716/1999 (A' 96)</p> <p>(c) Integration Social Cooperative Enterprises of letter a' of par. 2 of article 2 of Law No. 4019/2011 (A' 216) and</p> <p>(d) any other economic operator whose main aim, according to its statute, is the professional and social integration of disabled or disadvantaged persons, provided that at least 30 % of the employees of the operator are disabled or disadvantaged workers.</p> <p>2. Awarding authorities may provide for public contracts to be performed in the context of sheltered employment programmes, provided that at least 30 % of the persons employed in these programmes are disabled or disadvantaged workers.</p> <p>3. The selection of contractors among the aforementioned categories of economic operators is performed by virtue of relevant call addressed to all of these operators. The call for competition shall make reference to this article.</p>	<p>Issuance of the presidential decree, provided in paragraph 4 of this article, is still pending.</p>	<p>Par. 1 provides awarding authorities with the discretionary power to reserve the right of participation to procurement procedures (of all sorts and types with no limitation) to sheltered employment workshops and work integration social enterprises.</p> <p>Regarding the particular target group of economic operators that may benefit from the procedure of art. 20, the law makes reference to:</p> <p>1) economic operators who have one of the three Greek legal forms mentioned in the law [sheltered production workshops regulated by Law No. 2646/1998, Social Cooperatives Ltd known as "KoiSPEs" regulated by art. 12 of Law No. 2716/1999 and Integration Social Cooperative Enterprises known as "KoinSEPs Entaxis" of letter a' of par. 2 of article 2 of the pre-existing Law No. 4019/2011 on Social Economy.</p> <p>2) any economic operator whose main statutory aim is the social and professional integration of disabled or disadvantaged persons, and whose personnel is comprised, at least in 30 %, by disabled or disadvantaged workers.</p> <p>Regarding the reference of art. 20 par. 1 to the old Law No. 4019/2011 on social economy, one cannot consider it as being automatically assimilated with a reference to article 14 of the new Law No. 4430/2016 (regulating new types of Integration KoinSEPs).</p> <p>Integration KoinSEPs of letter a of par. 2 of art. 2 of the pre-existing Law No. 4019/2011 (mentioned here) was the legal form for work integration social enterprises targeting workers from vulnerable groups. This form does no longer exist as such and the aforementioned article has been abolished by art. 35 of the new Law No. 4430/2016 on Social & Solidarity Economy. The latter in its art. 14 establishes two different types of Integration KoinSEPs: the Vulnerable Groups Integration KoinSEP ("vulnerable" defined by L. 4430/2016 as those facing obstacles in socio-economic integration due to physical or</p>	<p><u>Hellenic Constitution</u></p> <p>(a) General principle of freedom in personality development and social, political and economic participation (covering freedom of economic / entrepreneurial activity as well): articles 5 par. 1, 25 par. 2 and 106 par. 2</p> <p>(b) General principle of equality of treatment: article 4 par.1</p> <p>(c) Right of disabled persons to enjoy measures which promote their self-reliance, work integration and social, political and economic participation: article 21 par. 6</p> <p><u>Law No. 2646/1998</u> on the National Social Care System (art. 17)</p> <p><u>Law No. 2716/1998</u> on the modernization of national mental health system (art. 12)</p> <p><u>Law No. 4430/2016</u> on Social & Solidarity Economy (which replaced previous Law No. 4019/2011) – particularly art. 2 (definitions) and 14 par. 1 and 2 (types of Integration KoinSEPs).</p>

<p>4. A presidential decree issued on a proposal of the Ministers of Interior and Administrative Reconstruction, Economy, Development and Tourism, Labour, Social Insurance and Social Solidarity and Finance defines:</p> <p>a) the minimum percentage of contracts which awarding authorities are obliged to award in virtue of the present article and its calculating method,</p> <p>b) the types and categories of the contracts of this Article,</p> <p>c) the particular conditions for awarding the contracts of this Article,</p> <p>d) the different minimum percentage of workers belonging to vulnerable population groups, in case a percentage exceeding 30% is defined and any other relevant issue.</p> <p>5. Until the issuance of the presidential decree provided in paragraph 4, provisions of paragraphs 1 to 3 are applied.</p>		<p>mental problems or delinquent behavior: disabled, mentally ill, persons with addiction problems, ex-prisoners and minor offenders) and the Special Groups Integration KoinSEP ("special" defined by L. 4430/2016 as those having disadvantage in entering the labour market due to economic, social, cultural factors: persons in poverty, migrants, refugees, long term unemployed aged 50+ etc.). Pre-existing KoinSEPs of Law No. 4019/2011 had to transform into one of these two new types of KoinSEP. KoiSPEs, on the other hand, are automatically treated in the same way as Vulnerable Group Integration KOINSEPs.</p> <p>Contrary to the old law on social economy which required 40% of the employees of the Integration KoinSEP to belong to vulnerable groups (and 35% for the KoinSEPs), the new Law No. 4430/2016 on Social & Solidarity Economy, requires 30% of both employees and members of the Vulnerable Groups Integration KoinSEPs to belong to vulnerable groups (and 35% for the KoinSEPs) and 50% of both employees and members of the Special Groups Integration KoinSEPs to belong to special groups. This leads to the conclusion that there is a different calculation method for the minimum "vulnerable" or "special" personnel in social economy legislation and in procurement legislation.</p> <p>Par. 3 of art. 20 is describing the process of calling for competition. However, its ambiguous wording is open to two different interpretations: call to all categories of enterprises and then choose provider from one category OR call all enterprises from one category and then choose one of these enterprises as provider.</p> <p>Par. 4 provides the issuance of a presidential decree which will regulate implementation in more detail and render reserved contracts an obligation for awarding authorities at a specific minimum percentage.</p> <p>Par. 5 was not included in the initial legal text but was added later (art. 22 par. 4 of Law No. 4441/2016). During the first months after issuance of the law and before the addition of par. 5, the lack of the PD foreseen in par. 4 had led awarding authorities to completely refrain from implementation. In December 2016, after pressure exercised by the Greek WISEs' community, par. 5 was added giving the possibility for a</p>	<p>Law No. 4443/2016 transposing Directive 2000/78/EC (equal treatment of disabled persons at work)</p>
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		“transitional implementation formula” until the P.D. of par. 4 gets issued.	
Open questions	<p>There is no national jurisprudence or legal contestation yet regarding this article.</p> <p>Major factors of legal uncertainty:</p> <p>Par. 1 –a) Lack of definition of the term “disadvantaged worker” mentioned in letter (d) and b) lack of proper coordination between art. 20 of Law No. 4412/2016 and the new legislation on Social Economy (Law No. 4430/2016) which has introduced important changes into legal forms of work integration KoinSEPs and the way they calculate percentage of vulnerable / disadvantaged workers.</p> <p>Par. 2 - Lack of definition of term “disadvantaged worker” (same as above)</p> <p>Par. 3 – Ambiguous wording which is open to two different interpretations and may raise concerns in terms of compliance with general principles (equal treatment / transparency etc.) in all contracts and cross-border dimension for over threshold contracts</p> <p>Par. 4 – Lack of the presidential decree foreseen to further specify implementation context. However, thanks to transitional par. 5, the omission to issue the PD has not damaged implementation. In fact, there are concerns for the opposite: that if the P.D. gets issued, it would rather limit than expand the scope. In any case, it is doubtful that it will ever be issued since it is extremely difficult if not impossible in practice to determine centrally and in an homogenous way what each and every awarding authority has to do in this field.</p>		
Example of application from the national level (where applicable)	<p>In Greece, reserved contracts for work insertion is the only type of socially responsible public procurement procedure applied in practice. Both central awarding authorities (ministry of labour, ministry of health, Hellenic Ombudsman, public social security funds, Single Procurement Authority etc.), as well as regional and local awarding authorities (hospitals, municipalities, universities etc.) are awarding their cleaning and catering services under article 20. The strongest and most active providers belong to the category of KoiSPEs (the Greek legal form of Limited Liability Social Cooperatives established by article 12 of Law No. 2716/1999), which employ mainly persons with mental illness. Also, there are a few KoinSEPs (the Greek legal form of Integration Social Cooperatives established by the first Law on Social Economy No. 4019/2011), which employ disabled persons and/or ex-prisoners, which are also doing well as public providers under article 20 but they don’t have the geographical coverage of KoiSPEs or their experience.</p> <p>Until recently, all contracts awarded under article 20 were below thresholds. In 2018, there were the first two calls for competition for contracts above thresholds. The first one was launched in February 2018 by the National Social Insurance Fund (EFKA) for the cleaning services of its headquarters and regional offices nationwide (contract value 1,3 million Euros excl. VAT) and the second was launched in March 2018 by the National Organization of Health Services (EOPYY) for the cleaning services of its headquarters and regional offices nationwide (contract value 369.000 Euros excl. VAT). Both awarding procedures were based on the criterion “most economically advantageous tender on the basis of the price” and both contracts were divided into lots (division based on geographical location). Both resulted into several contracts (based on geographical lots) with 1 year duration. The contracts were awarded to several groups of KoiSPEs (of article 12 of Law No. 2716/1999) which teamed up and bided as groups of economic operators for the lots which were corresponding to their geographical area. Implementation of the contracts is undergoing.</p>		

Article 40 of the Directive ► Article 46 “Preliminary consultations with the market” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><i>Before launching a procurement procedure, awarding authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.</i></p> <p><i>For this purpose, awarding authorities may for example seek or accept advice from independent experts or authorities, such as the Authority and Monitoring Unit for Competitions and Contracts (MO.PA.Di.S) of the Centre for International & European Economic Law (CIEEL) or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.</i></p>		<p>The article transposes art. 40 of the Directive. Par. 1 allows (does not oblige) awarding authorities to conduct preliminary market consultations, in order to better prepare the procurement and inform economic operators of their intentions and requirements.</p> <p>Par. 2 provides awarding authorities with examples of organizations which could be asked for preliminary advice. A special reference is made to EAADHSY (the Single Independent Procurement Authority – in the legal text mentioned as “the Authority”) and to CIEEL. The latter is a research and legal / policy advice centre, established by the state in 1977 (but operating as an independent legal person under private law) and specializing in international and European economic law issues. It is based in Thessaloniki and, among its other activities, it operates MO.PA.Di.S., a specialized research unit on public procurement (see www.cieel.gr). According to par. 2, advice sought by awarding authorities under this article must not have the effect of distorting competition or resulting to violation of the fundamental procurement principles (non-discrimination / transparency). In order to guarantee this outcome, the law specifies procedural rules in its article 47 (see below).</p> <p>ATTENTION: Detailed rules for the conduct of preliminary market consultations are specified in article 47 of Law No. 4412/2016. The process can be summarized as follows:</p> <ul style="list-style-type: none"> - Consultations are launched by a special invitation of the awarding authority for an open non-binding participation of interested economic operators, published on the website of the awarding authority and on the website of the National E-Procurement System (ESIDIS – www.eprocurement.gov.gr) and accompanied by a document providing all necessary information to participants (exception: in case of contracts where the awarding authority cannot publish information due to reasons of confidentiality, the invitation is not published but sent by any available means). Further publication is at the discretionary power of the awarding authority. 	<p>Law No. 717/1977 (establishing CIEEL)</p>

		<ul style="list-style-type: none"> - The duration of the consultation can be no shorter than 15 days and no longer than 60 days (extension can be provided in case of very complicated procurement subjects or very high contract value) - After the end of the consultation period, the awarding authority collects, processes and publishes all observations received by participants on its own website. 	
Open questions			
Example of application from the national level (where applicable)			

Article 42(1) of the Directive ► Article 54 (1) “Technical specifications” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services			
Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. <i>The technical specifications as defined in point 1 of Annex VII of Appendix A shall be set out in the procurement documents and lay down the characteristics required of works, services or supplies.</i></p> <p>(...)</p> <p><i>For all procurement which is intended for use by natural persons, whether general public or staff of the awarding authority, the technical specifications shall be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.</i></p> <p><i>Where mandatory accessibility requirements are adopted by a legal act of the Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.</i></p> <p>(...)</p>		<p>Art. 42 par. 1 of the Directive is transposed in the Greek legal order by art. 54 par. 1 of Law No. 4412/2006.</p> <p>Subparagraph 1 obliges awarding authorities to respect transparency principle by setting out technical specifications in the procurement documents.</p> <p>Subparagraph 4 of par. 1 of article 54 obliges awarding authorities to take into account accessibility criteria for persons with disabilities or design for all users when drawing technical specifications for procurement intended for use by natural persons (staff or general public).</p> <p>Subparagraph 5 obliges awarding authorities to define technical specifications, as far as accessibility criteria for persons with disabilities or design to all users are concerned, by reference to relevant mandatory accessibility requirements, where such requirements have been adopted by an EU legal act.</p>	
Open questions			
Example of application from the national level (where applicable)			

Article 43 of the Directive ► Article 55 “Labels” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. Where contracting authorities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics, provided that all of the following conditions are fulfilled:</p> <p>(a) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;</p> <p>(b) the label requirements are based on objectively verifiable and non-discriminatory criteria;</p> <p>(c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;</p> <p>(d) the labels are accessible to all interested parties;</p> <p>(e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.</p> <p>Where contracting authorities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements are referred to.</p> <p>Contracting authorities requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements.</p> <p>Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting authority or an equivalent label within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall accept other appropriate means of proof, which may include a technical dossier from the manufacturer, provided that the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority.</p> <p>2. Where a label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities shall not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label,</p>		<p>Par. 1 provides that, in order for contracting authorities to require a label or part of a label’s requirements, labels and their requirements must fulfil a set of conditions (under letters a, b, c, d and e of subparagraph 1) cumulatively.</p> <p>Also, when requiring a specific label, awarding authorities are obliged to accept all labels that confirm that the works, supplies or services meet equivalent label requirements.</p> <p>Par. 2 regulates the case where a label exceeds the requirements those linked to the subject-matter of the contract.</p> <p>It should be noted that exchange of information regarding issues relevant to labels through administrative cooperation between Greece and other member states is performed through the Single Procurement Authority (EAADHSY) according to article 343 of Law No. 4412/2016 (transposing art. 86 of the Directive).</p>	

<i>or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.</i>			
Open questions			
Example of application from the national level (where applicable)			

Article 46 of the Directive ► Article 59 “Division of contracts into lots” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. Contracting authorities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots.</p> <p>Contracting authorities shall, except in respect of contracts whose division has been made mandatory pursuant to paragraph 4 of this article, provide an indication of the main reasons for their decision not to subdivide into lots, which shall be included in the procurement documents or the individual report referred to in Article 341.</p> <p>2. Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders may be submitted for one, for several or for all of the lots.</p> <p>Contracting authorities may, even where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall indicate in the procurement documents the objective and non-discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.</p> <p>3. Where more than one lot may be awarded to the same tenderer, contracting authorities may award contracts combining several or all lots where they have specified in the contract notice or in the invitation to confirm interest that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.</p> <p>4. Central purchasing bodies shall divide the contracts they award in the form of separate lots, determining the size and subject-matter of such lots. In these circumstances, the first subparagraph of paragraph 2</p>		<p>Par. 1 (transposition of par. 1 of art. 46 of the Directive) provides contracting authority with the discretionary power to divide contracts they award into lots in order to facilitate access to SMEs and social enterprises. When awarding authorities do not make use of this possibility, they must indicate the reasons of their decision.</p> <p>Par. 2 (transposition of par. 2 of art. 46 of the Directive) lays down the two basic rules when awarding authorities make use of the possibility of par. 1:</p> <ul style="list-style-type: none"> (a) The maximum number of lots tenderers may submit for must be indicated. (b) Awarding authorities may limit the number of lots that may be awarded to one tenderer. <p>Par. 3 (transposition of par. 3 of art. 46 of the Directive) provides that contracting authorities may award contracts combining all or several lots, provided that they have specified that this possibility is reserved and they have defined the mode of combination of the lots in the contract notice or in the invitation to confirm interest.</p> <p>Par. 4 transposes par. 4 of art. 46 of the Directive (mandatory division of contracts into lots) in the case of central purchasing authorities. CPAs do not have the possibility of NOT dividing their contracts into lots, unless such possibility is provided to them for a specific contract by a ministerial</p>	

<p><i>and, where appropriate, paragraph 3 of this article shall apply. Notwithstanding the provisions of the first subparagraph of this paragraph, by virtue of a decision of the Minister of Economy, Development and Tourism and the in concreto competent Minister, a Central purchasing body can be allowed to award a specific contract non divided into separate lots.</i></p>		<p>decision issued jointly by the Minister of Economy, Development & Tourism and the Minister competent for the specific contract.</p>	
<p>Open questions</p>	<p>Regarding participation guarantees (regulated by art. 72 of Law No. 4412/2016), in case of a tender for one or several lots of a contract, the amount of the guarantee is estimated on the basis of the estimated value of the lot(s) for which the tender is submitted. However, the Administrative Appeal Examination Authority (AEEP) has dealt with the question of how to define the amount of participation guarantee for a tender for lots when there is a call option right and an extension right reserved by the awarding authority but the way of exercising the call option right is not clearly described in the contract notice. According to its Decision No. 153/2017 (Rec. 15), AEEP stated that when in a contract divided into lots the estimated contract value includes the call option right and the extension right, the call option right must be clearly described so that it becomes clear which amount for which right (option or extension) corresponds to which lot of the contract.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>In 2018, two major (above thresholds) contracts were awarded under article 20 of Law No. 4412/2016 (transposing art. 20 of the Directive – Reserved Contracts for Work Insertion) for the first time in Greece. In both cases, awarding authorities (Unified Social Insurance Fund “EFKA” and National Organization for the Provision of Health Services “EOPYY”) were seeking to purchase cleaning services for their nationwide network of offices and, by dividing contracts into lots, they made it possible for WISEs to participate successfully. The lots were divided with the use of the geographical criterion (each lot was about cleaning services for the local offices in a different area of the country). The division of the contract into lots and its ratio (geographical scope of service provision corresponding to each lot) was indicated in the call for competition, as well as the possibility of tenderers to submit for one, several or all lots. Both procurement processes were successful and resulted to several contracts being awarded to several participating WISEs.</p>		

Article 56(1) of the Directive - General principles ► Article 71 “General principles” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><i>Contracts shall be awarded on the basis of criteria laid down in accordance with articles 86 to 89, provided that the contracting authority has verified in accordance with articles 79 to 81 that all of the following conditions are fulfilled:</i></p> <p><i>(a) the tender complies with the requirements, conditions and criteria set out in the contract notice or the invitation to confirm interest and in the procurement documents, taking into account, where applicable, article 57;</i></p> <p><i>(b) the tender comes from a tenderer that is not excluded in accordance with articles 73 and 74 and that meets the selection criteria set out by the contracting authority in accordance with articles 75 to 77, and, where applicable, the non-discriminatory rules and criteria referred to in article 84.</i></p> <p><i>Contracting authorities may decide not to award a contract to the tenderer submitting the most economically advantageous tender where they have established that the tender does not comply with the applicable obligations referred to in paragraph 2 of article 18.</i></p>		<p>This article transposes par. 1 of art. 56 of the Directive by fully copying the text of the Directive.</p> <p>Regarding references to other articles of Law No. 4412/2016:</p> <ul style="list-style-type: none"> - Articles 86-88 of the law transpose art. 67 to 69 of the Directive respectively (art. 89 of the law provides some specifications on abnormally low tenders). - Articles 79-81 of the law transpose art. 59 to 61 of the Directive respectively - Article 57 of the law transposes art. 45 of the Directive - Article 73 of the law transposes art. 57 (1-6) of the Directive - Article 74 of the law transposes art. 57 (7) of the Directive - Article 75 of the law transposes art. 58 of the Directive (art. 76 and 77 also concern selection criteria) - Article 84 of the law transposes art. 65 of the Directive - Article 18 (2) of the law transposes art. 18 (20) of the Directive. 	
Open questions			
Example of application from the national level (where applicable)			

Article 56(2) of the Directive ► Article 101 “Reversal of assessment stages in open procedure” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. <i>In open procedures, contracting authorities may decide to examine tenders before verifying the absence of grounds for exclusion and the fulfilment of the selection criteria in accordance with articles 73 to 83. Where they make use of that possibility, they shall ensure that the verification of absence of grounds for exclusion and of fulfilment of the selection criteria is carried out in an impartial and transparent manner so that no contract is awarded to a tenderer that should have been excluded pursuant to articles 73 and 74 or that does not meet the selection criteria set out by the contracting authority.</i></p> <p>2. <i>The use of the procedure referred to in the previous paragraph is excluded:</i></p> <p>a) <i>in procurement procedures of public contracts for works, except where the award criterion is the most economically advantageous tender based solely on price or cost,</i></p> <p>b) <i>in procurement procedures of public contracts for studies, technical and other relevant scientific services and</i></p> <p>c) <i>in procurement procedures of public contracts for supplies or provision of general services.</i></p>		<p>This article transposes par. 2 of art. 56 of the Directive. Regarding the first subparagraph of par. 2 of art. 56, the Greek law fully copies the Directive text (the articles 73-83 of the law mentioned here are those transposing art. 57-64 of the Directive). Regarding the second subparagraph, the law adopts the exclusion of this procedure for the greatest part of contracting activity.</p> <p>As a conclusion, it could be said that the possibility of reversal of assessment stages is permitted to awarding authorities only in two cases of procurement procedures:</p> <p>(a) those regarding public contracts for works when the awarding criterion is the MEAT based on the price and</p> <p>(b) those regarding public contracts for “works with study assessment” (the subject-matter of the contract is simultaneously the study and the construction under specific conditions laid down in article 50 of Law No. 4412/2016).</p>	
Open questions			
Example of application from the national level (where applicable)			

Article 56(3) of the Directive ► Article 102 “Completion – clarification of information and documentation” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. <i>During the assessment of tenders or participation requests, the awarding authority may invite in writing economic operators to clarify or supplement the information or documentation submitted, within an appropriate time limit, which cannot be shorter than seven (7) days from the date of notification of the relevant invitation to them. Supplement or clarification submitted by economic operators, without prior request of the awarding authority, shall not be taken into account.</i></p> <p>(...)</p> <p>3. <i>Request for supplement or clarification shall not introduce discrimination, unequal treatment between economic operators or result in favourable treatment of particular economic operator in the procurement procedure.</i></p> <p>(...)</p> <p>5. <i>The provision to the economic operator concerned of the possibility to clarify, in accordance to par. 1-4, is mandatory for the awarding authority, where the exclusion of the economic operator is eminent due to ambiguity of the tender certificates and documents.</i></p>		<p>This article transposes par. 3 of art. 56 of the Directive.</p> <p>Awarding authorities are permitted to ask economic operators concerned for supplements or clarifications in the information or documents they have submitted in a specific timeline and by means of an invitation in writing. In case the ambiguity of the submitted documents or information can result in the exclusion of the economic operator, awarding authorities are obliged to ask for clarifications.</p>	
Open questions			
Example of application from the national level (where applicable)			

57(1-6) of the Directive ► Article 73 “Exclusion grounds” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services			
Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. Awarding authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with articles 79 to 81 or are otherwise aware that that economic operator has been the subject of a conviction by final judgment for one of the following reasons:</p> <p>(...)</p> <p>(f) child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of the 5th of April 2011,, which was transposed into national legislation by Law No. 4198/2013 (A 215).</p> <p>The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein. The obligation of the previous subparagraph concerns:</p> <p>aa) regarding limited liability companies (E.P.E.), private companies (I.K.E.) and personal companies (O.E. and E.E.), the executive managers,</p> <p>bb) regarding anonymous companies, the managing director and all members of the Board of Directors,</p> <p>cc) regarding cooperatives, the members of the Board of Directors.</p> <p>2. An economic operator shall be excluded from participation in a procurement procedure where the awarding authority:</p> <p>a) is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority or/and</p> <p>b) can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.</p> <p>c) is aware or can demonstrate by any appropriate means that, during the period of two (2) years preceding the deadline for submission of tenders or participation request, the economic operator has been imposed with: aa) three (3) fining penalties by the competent inspectors of the Labour Inspectorate for breach of labour law obligations which are defined, in accordance to ministerial decision No. 2063/Δ1632/2011, as amended, as “highly severe” or “severe” and result</p>		<p>Par. 1-7 of this article transpose par. 1-6 of article 57 of the Directive, whereas par. 8-10 of this article regulate further implementation and procedural details. It should be noted that, according to the last paragraph (11), this article applies for all contracts of a value over 2.500 Euros.</p> <p>Par. 1 and 2 define the compulsory exclusion grounds (always mentioned in procurement documents), related to criminal offences (including child labour and trafficking), non-payment of taxes and social security contributions and repeated serious breaches of labour law obligations [the latter being applied for contracts with a value over 20.000 Euros - see par. 2 (c) of the article].</p> <p>Par. 3 allows derogations from compulsory exclusion grounds (due to reasons of public interest or disproportionality) to be provided by awarding authorities.</p> <p>Par. 4 defines non-compulsory exclusion grounds. If an awarding authority chooses to indicate</p>	<p><u>Law No. 4198/2013</u> (transposition of Directive 2011/36/EU on child labour and other forms of trafficking in human beings)</p> <p><u>Law No. 4472/2017</u> – art. 118 (enterprises registered with the registry of technical public works providers are subject to disciplinary control in case of breaches of public contracts)</p> <p><u>Law No. 3863/2010</u> – art. 68 (control of compliance to labour and social security obligations by providers of public contracts for cleaning services)</p>

<p><i>cumulatively from 3 inspections, or bb) two (2) fining penalties by the competent inspectors of the Labour Inspectorate for breach of labour law obligations which concern undeclared labour and result cumulatively from 2 inspections. The penalties referred to in aa) and bb) must have a final and binding effect. The exclusion ground shall not be applied when the estimated value of the contract, without VAT, is equal or less than the amount of twenty thousand (20.000) Euros.</i></p> <p><i>Where the economic operator concerned is a Greek citizen or is established in Greece, its obligations regarding social security contributions cover main and supplementary social insurance.</i></p> <p><i>This paragraph shall no longer apply when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines.</i></p> <p><i>3. Awarding authorities may provide in procurement documents for a derogation:</i></p> <p><i>a) from the mandatory exclusion provided for in paragraphs 1 and 2, on an exceptional basis, for overriding reasons relating to the public interest such as public health or protection of the environment or/and</i></p> <p><i>b) from the mandatory exclusion provided for in paragraph 2, where an exclusion would be clearly disproportionate, in particular where only minor amounts of taxes or social security contributions are unpaid or where the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions at such time that it did not have the possibility of taking measures as provided for in the last subparagraph of paragraph 2, before expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender.</i></p> <p><i>4. Awarding authorities may exclude from participation in a procurement procedure any economic operator in any of the following situations:</i></p> <p><i>(a) where the awarding authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Article 18(2);</i></p> <p><i>(...)</i></p> <p><i>(f) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions;</i></p> <p><i>(...)</i></p> <p><i>(i) where the awarding authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;</i></p>		<p>one of these reasons as exclusion grounds in a specific procurement, it also has to indicate the appropriate means of proof. In any case, the choice of these exclusion grounds must be done in accordance with principles of non-discrimination, proportionality and development of conditions promoting healthy competition.</p> <p>However, the non-compulsory exclusion ground related to violations of obligations of art. 18 (2), is converted into compulsory exclusion ground in the case of repeated serious breaches of labour law obligations [see above about par. 2 letter (c) of this article].</p> <p>Par. 5 transposes the 2nd subparagraph of par. 4 of article 57 of the Directive, whereas par. 6 and 7 of this article transpose par. 5 and 6 of art. 57 of the Directive.</p>	
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<p>5. By derogation from the provisions of point (b) of the par. 4, the awarding authority does not exclude an economic operator which is in one of the situations referred to in that point, where the awarding authority has established that the economic operator in question will be able to perform the contract, taking into account the applicable national rules and measures on the continuation of business in the case of the situations referred to in point (b).</p> <p>6. Awarding authorities shall at any time during the procedure exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs 1 and 2.</p> <p>At any time during the procedure, awarding authorities may exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraph 4.</p> <p>7. Any economic operator that is in one of the situations referred to in paragraphs 1, 2c and 4 may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure.</p> <p>For this purpose, the economic operator shall prove that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.</p> <p>The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered to be insufficient, the economic operator shall receive a statement of the reasons for that decision.</p> <p>An economic operator which has been excluded by final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for under this paragraph during the period of exclusion resulting from that judgment in the Member State where the judgment is effective.</p> <p>8. The decision of the awarding authority verifying the sufficiency of restoring measures in accordance with the previous paragraph is issued after an agreeing opinion of the committee referred to in the next paragraph, which is issued in a deadline of thirty (30) days from the date of reception of the draft decision of the awarding authority to the committee accompanied with all relevant</p>			
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<p>documentation. After the lapse of the deadline without the committee issuing an opinion, the awarding authority shall exclude the economic operator concerned from the procurement procedure. The decision of the awarding authority, as well as the decision accepting legal remedies against it, is notified to the Single Independent Public Procurement Authority.</p> <p>9. For the needs of par. 7 and 8, a committee is established with the participation of representatives of the Minister of Economy, Development and Tourism, the Minister of Justice, Transparency and Human Rights, and the Minister of Infrastructure, Transport and Networks. The committee is set up by virtue of a decision of the Minister of Economy, Development and Tourism, which will be issued in a month after the entering of this Law into force and regulate all necessary details for its organization and operation. The committee is presided by the representative of the Ministry of Economy, Development and Tourism.</p> <p>10. Where the period of exclusion has not been set by final judgment, that period shall not exceed five (5) years from the date of the conviction by final judgment in the cases referred to in par. 1 and three (3) years from the date of the relevant event in the cases referred to in par. 4.</p> <p>11. The present article shall not be applied in public contracts with an estimated value equal or less than two thousands five hundred (2.500) Euro, without VAT.</p>			
<p>Open questions</p>	<p>Par. 3 point (b) - there is no specification of the concept “<i>minor amounts of taxes or social security contributions</i>”</p> <p>Par. 10 – “from the date of the relevant event”: two interpretations are argued 1) date when the event took place or 2) date when the taking place of the event was verified by ex. the issuance of relevant a convicting court decision.</p>		
<p>Example of application from the national level (where applicable)</p>			

Article 57(7) of the Directive ► Article 74 “Exclusion of economic operator from procurement procedures” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. <i>If during a procurement procedure it is established that there is an exclusion ground of those referred to in par. 1, 2c and 4 of article 73 regarding an economic operator and the economic operator concerned does not take measures, as those measures are defined in par. 7 of article 73, to demonstrate its reliability, this economic operator may be imposed with exclusion from participation to ongoing or future procurement procedures for a reasonable period of time.</i></p> <p>2. <i>The exclusion period is defined, in accordance with the principle of proportionality, taking mainly into account the gravity of the offence or of the misconduct, the time passed since the offence or the misconduct took place, its duration, relapse, the intent or the degree of negligence of the economic operator concerned and the measures the latter is taking in order to avoid such offences or misconduct in the future. Where the period of exclusion has not been set by final judgment, that period shall not exceed five (5) years from the date of the conviction by final judgment in the cases referred to in par. 1 of article 73 and three (3) years from the date of the relevant event in the cases referred to in par. 2c and 4 of article 73.</i></p> <p>3. <i>The exclusion is imposed by a joint decision of the Ministers for Economy, Development and Tourism, for Justice, Transparency and Human Rights, competent for issues regarding combatting corruption, and the Ministers of Infrastructure, Transport and Networks, which is issued after a justified recommendation by the awarding authority which establishes the existence of exclusion grounds and (a) in case of procurement procedures of contracts for supplies and general services, after opinion of the body referred to in par. 5 of art. 41, and (b) in case of procurement procedures of contracts for works, studies and technical and other relevant scientific services, after opinion of the competent Technical Council of the General Secretariat for Infrastructure. Before the issuance of the exclusion decision against an economic operator, the latter is provided with the possibility to be heard.</i></p>		<p>In its first two paragraphs, this article transposes par. 7 of art. 57 of the Directive, while in its par. 3-6 specifies further implementing conditions regarding the procedure of exclusion from ongoing or future procurement procedures of the economic operator, which does not take the measures specified in art. 73 of the law (transposing par. 1-6 of art. 57 of the Directive) in order to demonstrate its reliability.</p> <p>Par. 1 provides that this penalty may be imposed in cases of specific exclusion grounds which are generally compulsory by law (criminal offences or breaches of labour legislation) or non-compulsory by law but compulsory for the participants of specific procurement procedure (indicated as such by the awarding authority) and for which the economic operator concerned had the possibility of taking measures specified in the law (art. 73).</p> <p>Par. 2 defines the way of setting the period of exclusion based on the principle of proportionality and its maximum duration.</p> <p>Par. 3 provides that such a penalty is imposed by virtue of a joint ministerial decision after recommendation of the awarding authority and opinions by competent central authorities (art. 41 par. 5 establishes a committee specialized in providing opinions to national central purchasing authorities). In any case, the economic operator has the right to be heard before the issuance of such a decision.</p>	<p><u>Law No. 4413/2016</u> (concession contracts) – art. 42</p> <p><u>Law No. 4472/2017</u> – art. 118 (enterprises registered with the registry of technical public works providers are subject to disciplinary control in case of breaches of public contracts)</p> <p><u>Law No. 2472/1997</u> (on personal data protection)</p>

<p>4. The decision referred to in the first subparagraph of par. 3 is notified to the awarding authority and to the economic operator concerned.</p> <p>5. The exclusion of an economic operator from procurement procedures of the present Book, in accordance to previous paragraphs, automatically leads to the exclusion from future or ongoing procurement procedures of public contracts for works, supplies, services of Book II (articles 228-338) or concession contracts for works and services of Law No. 4413/2016 (A 148) for an equal time period.</p> <p>6. Decisions issued by virtue of par. 3 are announced to the Single Independent Public Procurement Authority, the General Secretariat for Commerce and Consumer Protection of the Ministry of Economy, Development and Tourism and to the General Secretariat for Infrastructure of the Ministry of Infrastructure, Transport and Networks. In the National Database of Public Contracts, a list of excluded economic operators is kept, including the details and exclusion period for each of them, without prejudice to provisions of Law No. 2472/1997 (A 50).</p>		<p>Par. 5 provides that the exclusion penalty automatically extends to procurement procedures for concession contracts and for contracts of Book II of Law No. 4430/2016 (articles transposing Directive 2014/25/EC).</p> <p>Par. 6 imposes the publication of a list of excluded economic operators in order to ensure transparency.</p>	
Open questions	Par. 2 – “from the date of the relevant event”: two interpretations are argued 1) date when the event took place or 2) date when the taking place of the event was verified by ex. the issuance of relevant a convicting court decision.		
Example of application from the national level (where applicable)			

Article 67 of the Directive ► Article 86 “Contract award criteria” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. Without prejudice to national provisions of laws or administrative acts concerning the price of certain supplies or the remuneration of certain services, awarding authorities shall base the award of public contracts on the most economically advantageous tender.</p> <p>2. The most economically advantageous tender from the point of view of the awarding authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 87, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including, among others, qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, especially:</p> <p>(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;</p> <p>(b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract;</p> <p>(c) after-sales service and technical assistance;</p> <p>(d) delivery conditions such as delivery date, delivery process and delivery period or period of completion;</p> <p>(e) provision of guarantee referred to in paragraph 2 of article 72;</p> <p>(f) extension of the duration of guarantee provided in procurement documents.</p> <p>3. The social aspects, referred to in the previous paragraph, are mainly specified as follows:</p> <p>a) employment of workers who belong to sensitive population groups within the meaning of par. 4 of article 1 of Law No. 4019/2011 (A 216), for a time period of at least twelve (12)</p>		<p>This article transposes art. 67 of the Directive in full, including the last parts of par. 2, and also sets relevant implementing conditions as follows:</p> <ul style="list-style-type: none"> - Par. 1 transposes par. 1 of art. 67 of the Directive in full. - Par. 2 transposes the 1st and 2nd subparagraphs of par. 2 of art. 67 of the Directive in full. Reference is made to art. 87 of the law, which transposes art. 68 of the Directive, as well as article 72 par. 2 of the law referring to guarantees for good operation. - Par. 7 transposes the 3rd subparagraph of par. 2 of art. 67 of the Directive. - Par. 8 transposes par. 3 of art. 67 of the Directive. - Par. 9 transposes par. 4 of art. 67 of the Directive. - Par. 10 transposes par. 5 of art. 67 of the Directive. <p>Furthermore, par. 3 contains implementing conditions for the use of social aspects as award criteria.</p> <p>Par. 6 limits the use of price /cost as sole award criterion, in the case of contracts for studies, to specific cases. On the other hand, regarding public contracts for works, studies and technical / scientific services, par. 15 allows the Minister of Infrastructure, Transport & Networks to issue a ministerial decision to ban the use of price or cost as the sole award criterion or to limit its use for specific types of</p>	<p><u>Law No. 4430/2016</u> on Social & Solidarity Economy (which replaced old social economy Law No. 4019/2011) – mainly no 8 of art. 2 (definitions).</p>

<p><i>months before the participation of the economic operator to the procurement procedure,</i></p> <p><i>b) facilitation of social and/or work integration of persons belonging to sensitive population groups,</i></p> <p><i>c) combatting discriminations and/or</i></p> <p><i>d) promotion of gender equality.</i></p> <p><i>(...)</i></p> <p><i>6. Regarding public contracts for studies (whole study or parts of it), awarding authorities may use price or cost as the sole award criterion only in the cases mentioned below and after receiving opinion from the competent technical council of the awarding authority:</i></p> <p><i>a) when no other technical elements are required than those already included in the Public Contract File, as mainly in the case of site plans or geotechnical research or</i></p> <p><i>b) when technical elements included in the Public Contract File are sufficient, such as particularly approved studies from previous stages and an environmental requirements approval decision has been issued or</i></p> <p><i>c) when the contract is for a study of a small or simple work or work without uncertainties as to the technical solution or</i></p> <p><i>d) when the contract is for studies which, in accordance with applicable standards, are elaborated in one stage and their approval does not require any sort of licensing procedure or legally established public consultation procedure, such as mainly site plans, traffic studies or economic studies.</i></p> <p><i>7. The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.</i></p> <p><i>8. Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of its life cycle, including factors involved in:</i></p> <p><i>(a) the specific process of production, provision or trading of those works, supplies or services; or</i></p>		<p>contracts or awarding authorities (see 4th subparagraph of par. 2 of art. 67 of the Directive).</p> <p>This article allows award authorities, when using the “Best Price-Quality Ratio - BPQR”, to include social aspects among the different award criteria to be weighed, provided that those criteria are linked to the subject matter of the public contract in question.</p> <p>In par. 3, an indicative list of such social considerations is provided including job creation for workers belonging to vulnerable and disadvantaged population groups (the workers in question must belong to a vulnerable or special group for at least 12 months before the participation of the economic operator to the procurement process), social and professional inclusion of vulnerable and disadvantaged population groups, combatting discrimination and promotion of gender equality.</p> <p>Regarding the definition of the term “sensitive population groups” the article makes reference to the definition of art. 1 par. 4 of the old social economy Law No. 4019/2011. According to the latter, “sensitive” population groups were defined as those who have difficulties in their socio-economic participation either due to socio-economic characteristics or due to a disability or due to unforeseeable events affecting the smooth functioning of local or broader regional economy and were distinguished into two categories: (a) “Vulnerable population groups” (integration problems due to physical or psychological reasons or due to delinquent behaviour) and (b) “Special population groups” (disadvantage regarding their</p>	
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<p><i>(b) the specific process for another stage of its life cycle, even where such factors do not form part of its material substance.</i></p> <p><i>9. Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the awarding authority. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, awarding authorities shall verify effectively the accuracy of the information and proof provided by the tenderers.</i></p> <p><i>10. The awarding authority shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone. This weighting may be expressed by providing for a range with an appropriate maximum spread. Where weighting is not possible for objective reasons, the awarding authority shall indicate the criteria in decreasing order of importance.</i></p> <p><i>(...)</i></p> <p><i>15. Regarding public contracts for works, studies, technical and other relevant scientific services, the Minister of Infrastructure, Transport and Networks may issue a decision providing that awarding authorities may not use price only or cost only as the sole award criterion or restrict their use to certain categories of contracting authorities or certain types of contracts...</i></p> <p><i>(...)</i></p>		<p>integration into the labour market due to economic, social or cultural reasons).</p> <p>After the abolition of Law No. 4019/2011 and the adoption of the new social & solidarity economy Law No. 4430/2016, the term “sensitive” population groups is not used anymore, but its sub-groups (vulnerable and special) are once again used and defined in no 8 of art. 2 of the Law No. 4430/2016 as follows:</p> <p>(a) “Vulnerable population groups” correspond to groups with integration problems due to physical or psychological reasons or due to delinquent behaviour including people with disability or mental illness, people facing or having faced addiction problems, minor offenders and ex-prisoners.</p> <p>(b) “Special population groups” correspond to groups with disadvantage regarding their integration into the labour market due to economic, social or cultural reasons including victims of domestic violence, victims of human trafficking, homeless, persons living in poverty, economic migrants, refugees and asylum seekers, heads of single parent families, people with cultural particularities, long-term unemployed of age under 25 and over 50 years of age.</p>	
Open questions			
Example of application from the national level (where applicable)			

Article 69 of the Directive ► Article 88 “Abnormally low tenders” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. <i>Where tenders appear to be abnormally low in relation to the works, supplies or services, awarding authorities shall require economic operators to explain the price or costs proposed in the tender, within a time limit of maximum ten (10) days from notification of the relevant invitation of the awarding authority.</i></p> <p>2. <i>The explanations referred to in paragraph 1 may in particular relate to:</i></p> <p><i>(a) the economics of the construction method, the manufacturing process or the services provided;</i></p> <p><i>(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or for the provision of the services or for the execution of the work;</i></p> <p><i>(c) the originality of the work, supplies or services proposed by the tenderer;</i></p> <p><i>(d) the compliance with obligations referred to in paragraph 2 of article 18, in accordance with paragraph 2 of article 89;</i></p> <p><i>(e) the compliance with obligations referred to in article 131;</i></p> <p><i>(f) the possibility of the tenderer obtaining State aid, in accordance with paragraph 1 of article 89.</i></p> <p>3. <i>The awarding authority shall assess the information provided, by consulting the tenderer. It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed taking into account the elements referred to in paragraph 2.</i></p> <p><i>Awarding authorities shall reject the tender, where they have established that the tender is abnormally low</i></p>		<p>Par. 1 establishes the obligation of economic operators to provide explanations to awarding authorities in case their tenders appear abnormally low in relation to the subject-matter of the contract. In this way, submission of abnormally low tenders is not prohibited by rule but generates the obligation for provision of explanations. It is up to the awarding authorities to judge (having a broad margin for this) if a tender can be defined as “abnormally low”.</p> <p>Par. 2 provides an indicative list of types of explanations which are considered as appropriate for the justification of an “abnormally low tender”. This list is indicative in the sense that the tenderer can provide extra types of explanations as well, but not in the sense that awarding authorities can completely derogate from it and freely define the types of explanations they require.</p> <p>Par. 3 provides that awarding authorities cannot reject an abnormally low tender automatically but they are obliged to assess explanations provided (assessment being susceptible of control by the courts). In case explanations provided do not satisfy the awarding authority, the latter has the discretionary power (not the obligation) to reject the abnormally low tender. However, in case where it is</p>	

<p><i>because it does not comply with applicable obligations referred to in paragraph 2 of article 18.</i></p> <p><i>4. Where an awarding authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the awarding authority, that the aid in question was compatible with the internal market within the meaning of Article 107 TFEU. Where the awarding authority rejects a tender in those circumstances, it shall inform the Commission thereof.</i></p> <p><i>5. Upon request, the Authority shall make available to other Member States, by means of administrative cooperation, any information at its disposal, such as laws, regulations, universally applicable collective agreements or national technical standards, relating to the evidence and documents produced in relation to details listed in paragraph 2.</i></p> <p><i>6. In public contracts for works, studies, technical and other relevant scientific services, the Minister of Infrastructure, Transport and Networks may issue circulars, specifying the conditions for considering a tender abnormally low per category of work and study and per estimated contract value and for the assessment of provided explanation in accordance with the aforementioned. The awarding authority may derogate from the aforementioned circulars, provided that the competent technical council is in agreement.</i></p>		<p>established that the low price/cost results from non-compliance with the obligatory requirements of environmental, labour and social security legislation (art. 18 par. 2 of the law transposing art. 18 par. 2 of the Directive), the awarding authority is obliged to reject the tender.</p> <p>Par. 4 describes the case where a tender is abnormally low because the tenderer has obtained State aid (copying par. 4 of art. 69 of the Directive).</p> <p>Par. 5 transposes par. 5 of art. 69 of the Directive – the term “Authority” corresponds to the Single Independent Public Procurement Authority (EAADHSY).</p> <p>Par. 6 authorizes the Minister of Infrastructure, Transport & Networks to issue circulars specifying the conditions for considering a tender abnormally low in different categories of contract subject-matters and values and also specifying appropriate types of explanations.</p>	
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>			

Article 70 of the Directive ► Article 130 “Conditions for performance of contract” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. Contracting authorities impose on contractors a condition to comply, during performance of the contract, with obligations in the areas of environmental, social security and labour law, which are established in Union law, national law, collective agreements or provisions of international environmental, social security and labour law, as listed in Annex X of Appendix A. Especially:</p> <p>a) Contracts for cleaning or security services, additionally to the condition of the first subparagraph, also include the elements mentioned in letters a-f of paragraph 1 of article 68 of Law No. 3863/2010 (A' 115), as amended, as well as the special condition of paragraph 3 of the same article.</p> <p>b) Contracts of supplies which fall under the implementation scope of Law No. 2639/2001, additionally to the condition of the first subparagraph, also include a condition under which the contractor is obliged to comply with obligations applicable under paragraphs 2 and 11 of article 4b or and of paragraph 1 of article 12 or and of paragraph 1 of article 16 of Law No. 2636/2001, upon contract signature and throughout contract performance. Obligations compliance audit is performed by the contracting authority through the publication record of registered producers in the National Producers Registry (EMPA) available on the website of the Hellenic Recycling Organization (EOAN) in the deadline of paragraph 4 of article 105 and it is a requirement for contract signature, the contract mentioning the liable producer's EMPA registry number. Failure to comply with obligations of previous subparagraph leads to the consequences laid down in paragraph 5 of article 105.</p> <p>The conditions of this paragraph are contained in the contract documents.</p> <p>2. Contracting authorities may as well impose other special conditions relating to the performance of the contract, provided that they are linked to the subject-matter of the</p>	<p>Issuance of common ministerial decision, provided in par. 4 of this article, is still pending.</p>	<p>Par. 1 relates to the “horizontal clause of article 18 (2)” as a special condition for performance of public contracts (see analysis of article 18 par. 2-5 of Law No. 4412/2016 transposing art. 18 (2) of the Directive).</p> <p>Especially in case of cleaning and security services public contracts, par. 1 letter (a) makes specific reference to special provisions existing for auditing compliance of contractors with labour/social security obligations in labour law legislation (art. 68 of Law No. 3863/2010), established due to the negative history of this specific sectors in the violation of basic labour and social security rights in Greece (see Konstantina KOUNEVA case).</p> <p>According to these special provisions, tenderers of cleaning and security services public contracts are obliged to include in their tender (upon penalty of exclusion) a special chapter where they analyse the price they offer against specific cost strands set by this law (number of workers, number of work days and hours, collective agreement applicable to workers, the part of the proposed budget corresponding to wages, the sum of social insurance contributions corresponding to the mentioned wages, the number of square meters per worker in case of cleaning services). According to letter (a) par. 1 of art. 130 of Law 4412/2016, these elements must be included in the contract as well, along with an extra condition (special condition of par. 3 of art. 68 Law No. 3863/2010) which imposes the contractor's compliance with obligations under legislation on occupational health and safety and prevention of occupational hazards. As stipulated in par. 3 of art. 68 Law No. 3863/2010, a public contract for cleaning or security services which does not include all the aforementioned is void and the payment of the contractor cannot be authorized by competent authorities.</p> <p>Also, according to par. 5 of article 68 of Law 3863/2010, in case infringements relevant to this article are noted by</p>	<p>Hellenic Constitution</p> <p>(a) Right to work / General obligation of the state to care for the social insurance of working population/ collective agreements as a means of regulating industrial relations: article 22</p> <p>(b) General obligation of the state to act for the protection the natural and cultural environment: article 24</p> <p>(c) General principle of the “social state of law”: article 25.</p> <p>Law No. 3863/2010 on the New Social Insurance System and relevant provisions and on regulating industrial relations (art. 68 on special obligations and audit for providers of cleaning / security services under public contracts)</p> <p>Law No. 2636/2001 on the Packaging and Alternative Management of Packaging and Other Products – Establishment of the National Organization for Alternative Management of</p>

<p>contract within the meaning of article 86 par. 8, and are indicated in the call for competition or in the contract documents. Those conditions may include economic, environmental, social considerations or innovation and employment-related considerations.</p> <p>3. Social considerations mainly concern:</p> <p>a) employment of workers belonging to vulnerable population groups within the meaning of par. 4 of article 1 of Law No. 4019/2011 (A 216),</p> <p>b) facilitation of social and/or work integration of persons belonging to vulnerable population groups,</p> <p>c) combatting discriminations and/or</p> <p>d) promotion of gender equality.</p> <p>4. Minimum percentage of workers from vulnerable groups to be employed and any other issue relevant to the implementation of paragraph 3 is defined by a common ministerial decision issued by Ministers of Interior and Administrative Reconstruction, Economy, Development and Tourism, Labour, Social Insurance and Social Solidarity and Finance.</p>		<p>competent authorities during the performance of the contract, awarding authorities terminate the contract.</p> <p>Especially in case of supply contracts, par. 1 letter (b) makes specific reference to special provisions related to packaging & other products waste management legislation (Law No. 2639/2001). The compliance with the requirements laid down in the mentioned provisions of Law No. 2639/2011 take the form of special condition for performance of the contract. Failure to comply upon contract signature, automatically leads to the successful tenderer being declared in default and the contract awarded to the second best tenderer (article 105 par. 5 of Law No. 4412/2016).</p> <p>Par. 2 of article 130 transposes art. 70 of the Directive referring to the introduction of environmental / social etc. considerations as conditions for performance of contracts. Particularly regarding social considerations, par. 2 allows contracting authorities to lay down relevant elements as conditions for performance of the contract, provided that they are relevant to the subject matter of the contract and are indicated in the call for competition or in contract documents. For the relevance of the condition to the subject matter of the contract, reference is made to par. 8 of article 86 of Law No. 4412/2016 on award criteria stipulating that: <i>“Award criteria are considered to be linked to the subject-matter of the public contract, where they relate to the works, supplies or services to be provided under that contract in any respect and in any stage of its life cycle, including factors involved in (a) the specific process of production, provision or trading of those works, supplies or services or (b) the specific process of another stage of its life cycle, even where such factors do not form part of its material substance.”</i></p> <p>Par. 3 provides an indicative list of types of social considerations which may take the form of conditions for contract performance. It should be noted that for the definition of the term “vulnerable groups”, reference is made to the definition given by par. 4 of art. 1 of the old law on social economy (Law No. 4019/2011), which has been replaced by the new Law No. 4430/2016. The latter defines the term “vulnerable groups” in its article 2 (for the content</p>	<p>Packaging and Other Products (EOESDAP) and other provisions (articles 4b, 12 and 16)</p> <p><u>All provisions of national legislation imposing labour, social insurance and environmental obligations</u></p>
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		<p>of the definition see analysis matrix of art. 20 of Law No. 4412/2016 transposing article 20 of the Directive).</p> <p>For the rest, implementation details are expected to be defined through an implementing act (common ministerial decision) provided in par. 4. However, since issuance of this act is still pending, implementation context remains vague.</p>	
Open questions	<p>There is high degree of legal uncertainty regarding the introduction of social considerations as conditions for performance of contracts. The relevant provisions in par. 2 and 3 are extremely vague and the omission to issue the implementing act foreseen in par. 4 has led awarding authorities to refrain from implementation altogether. Most importantly, there are concerns about an implementing act being the most appropriate tool in this case. Perhaps, a different (more specific) wording of the article setting out crucial general principles for implementation (imperative when the national awarding authorities are so weak and inexperienced in this field) in combination with practical guidelines could be a more effective method.</p> <p>However, there is no national jurisprudence or legal contestation on the matter since there is no actual implementation.</p>		
Example of application from the national level (where applicable)	<p>As far as par. 1 (compliance with labour, social security and environmental obligations) is concerned, it is implemented by awarding authorities in all contracts (regarding concerns for monitoring mechanism's efficiency in practice see analysis in matrix for art. 18 par. 2 of the Directive).</p> <p>Par. 2 and 3 regarding social considerations has not been implemented due to the vagueness of the legal text and the omission of competent ministries to issue the implementing act provided in par. 4.</p>		

Article 71 (1, 3-6 and 8) of the Directive ► Article 131 “Subcontracting” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. Observance of the obligations referred to in paragraph 2 of article 18 by subcontractors is monitored and controlled by the competent national authorities.</p> <p>2. Awarding authorities may provide in procurement documents that, at the request of the subcontractor and where the nature of the contract so allows, it shall transfer due payments directly to the subcontractor for supplies, services, or works, provided to the main contractor in virtue of subcontracting agreement. In this case, the procurement documents define the particular measures or mechanisms permitting the main contractor to object to undue payments, as well as the arrangements concerning that mode of payment.</p> <p>3. Paragraphs 1 to 2 and article 58 shall be without prejudice to the question of the main contractor’s liability.</p> <p>4. In the case of works contracts and in respect of services to be provided at a facility under the direct oversight of the awarding authority, after the award of the contract and at the latest when the performance of the contract commences, the main contractor is obliged to indicate to the awarding authority the name, contact details and legal representatives of its subcontractors, involved in such works or services, in so far as known at this point in time. The main contractor is obliged to notify the awarding authority of any changes to this information during the course of the contract as well as of the required information for any new subcontractors which it subsequently involves in such works or services.</p> <p>The first and second subparagraphs shall not apply to suppliers.</p> <p>Obligations referred to in the first and second subparagraphs are extended to: (a) supply contracts, service contracts other than those concerning services to be provided at the facilities under the direct oversight of the awarding authority or to suppliers involved in works or services contracts; (b) subcontractors of the main contractor’s subcontractors or further down the subcontracting chain.</p> <p>5. With the aim of avoiding breaches of the obligations referred to in paragraph 2 of article 18, awarding authorities may, in accordance with articles 79 to 81, verify whether there are grounds for exclusion</p>		<p>This article transposes par. 1, 3-6 and 8 of art. 71 of the Directive.</p> <p>Par. 1 provides that competent national authorities (not just awarding authorities but also Environment Inspectorate, Labour Inspectorate etc.) shall ensure compliance of subcontractors with obligations referred to in article 18(2) of the law (transposing art. 18 par. 2 of the Directive on compliance of providers with environmental and social obligations).</p> <p>Par. 2 allows awarding authorities to provide mechanisms for direct due payments to subcontractors.</p> <p>Par. 4 imposes on the main contractor the obligation to provide the awarding authority with full transparency regarding subcontractors in the cases of contracts referred within it.</p> <p>Par. 5 allows contracting authorities to verify whether there are grounds for exclusion of subcontractors pursuant articles 73 and 74 of the law (which transpose article 57 of the Directive). In such cases, awarding authorities are obliged to require the replacement of a subcontractor, if there are compulsory exclusion grounds, and have the discretionary power to require the same, if there are non-compulsory exclusion grounds.</p> <p>The possibility of par. 5 becomes an obligation for awarding authorities, according to par. 6, in case where the part of the contract which has been</p>	<p>Law No. 3863/2010 on the New Social Insurance System and relevant provisions and on regulating industrial relations (art. 68 for special measures ensuring the compliance of public providers of cleaning and/or security services with their labour / social security obligations)</p>

<p><i>of subcontractors pursuant to articles 73 and 74. In such cases, the awarding authority: a) shall require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion and b) may require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.</i></p> <p><i>6. In derogation from the previous paragraph, if the part(s) of the contract which the main contractor has indicated in its tender, in accordance to article 58 or when the performance of the contract commences or during the course of the contract, in accordance with paragraph 4, that it will be subcontracted to third parties, exceeds the percentage of thirty per cent (30%) of the total value of the contract, as the latter has been amended, in accordance to article 132, the awarding authority:</i></p> <p><i>a) shall verify whether there are grounds for exclusion of subcontractors pursuant to articles 73 and 74 and</i></p> <p><i>b) shall require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are grounds for exclusion.</i></p> <p><i>7. In cases of verification of exclusion grounds in respect of subcontractors, in accordance with paragraphs 5 and 6, the required information shall be accompanied by the subcontractors' self-declarations as provided for in article 79. However, when subcontractors are presented after the award of the contract, they shall provide the certificates and other supporting documents instead of the self-declaration.</i></p> <p><i>8. Especially during performance of public contracts for cleaning and/or security services, paragraph 4 of article 68 of Law No. 3863/2010 (A 115) is applicable.</i></p>		<p>indicated in the tender that it will be subcontracted is over 30% of the total contract value.</p> <p>It should be noted that the standardized contract documents, the use of which – according to art. 53 of Law No. 4412/2016 - is obligatory for awarding authorities after approval by the Single Independent Procurement Authority “EAADHSY”, include special provisions adapted to the implementation needs of this article.</p>	
Open questions			
Example of application from the national level (where applicable)			

Article 71 (2) of the Directive ► Article 58 “Subcontracting” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services			
Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<i>In the procurement documents, the awarding authority shall ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.</i>		<p>This article transposes par. 2 of art. 71 of the Directive, imposing on awarding authorities to ask the tenderer information relating to subcontracting.</p> <p>It should be noted that the standardized contract documents, the use of which – according to art. 53 of Law No. 4412/2016 - is obligatory for awarding authorities after approval by the Single Independent Procurement Authority “EAADHSY”, include special provisions relevant to information which must be offered by the tenderers on subcontracting.</p>	
Possible elements of legal uncertainty (better if already dealt with in national courts)			
Example of application from the national level (where applicable)			

Article 74 of the Directive ► Article 107 “Award of contracts for social and other specific services” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. <i>Public contracts above thresholds, for social and other specific services, listed in Annex XIV of Appendix A, shall be awarded in accordance with par. 3, articles 108, 109 and 110 as well as more specific provisions which define applicable procedural rules and are indicated in the contract documents.</i></p> <p>2. <i>Public contracts below thresholds, for social and other specific services, listed in Annex XIV of Appendix A, shall be awarded in accordance with par. 3, article 122 and articles 109 and 110 as well as more specific provisions which define applicable procedural rules and are indicated in the contract documents.</i></p>		<p>Par. 1 transposes article 74 of the Directive for the award of contracts regarding social and other specific services (as listed in Annex XIV of the Directive) above thresholds (750.000 Euro). In this way, the “light” regime for this category of contracts is established as laid down in par. 3 of the same article and articles 108, 109 and 110 of the law (transposing par. 1 of art. 76, article 75, par. 2 of article 76 and article 77 of the Directive respectively).</p> <p>Also, for this category of services, awarding authorities have the discretionary power to set their own procedural rules, meaning that they can choose whichever awarding procedure (open, restricted, competitive with negotiation, competitive dialogue, innovation partnership, direct award etc.) laid down in Law No. 4412/2016 or any other special procedure they can design according to their needs, as long as they respect principles of transparency and equal treatment. However, the chosen procedural rules must be clearly described in the contract documents and the awarding authority must abide with them throughout the entire awarding process.</p> <p>Par. 2 extends the application of the aforementioned “light” regime to contracts for social and other specific services below thresholds as well, with one difference: the means of publication in this case are the national means and especially the Central E-Registry for Public Contracts “KIMDIS” (instead of art. 108 mentioned in par. 1, in par. 2 art. 122 is mentioned because the latter refers to the publication of notices for contracts below threshold). Therefore, for contracts below the thresholds which are awarded according to the “light” regime, awarding authorities have free choice of procedures and are not bound by general rules (in terms of procedures, deadlines etc.) applicable for other types of contracts below thresholds but publication requirements are slightly stricter (enhanced transparency irrespective of the value of the contract).</p>	<p>Article 12 of Law No. 4455/2017 (application of the light awarding regime of articles 107-110 of Law No. 4412/2016 for the implementation of the public social action Programme “School Meals”)</p>
Open questions			
Example of application from the national level (where applicable)			

Article 75 of the Directive ► Article 108 “Publication of notices” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. Awarding authorities intending to award a public contract for the services referred to in article 107 shall make known their intention by any of the following means:</p> <p>(a) by means of a contract notice, which shall contain the information referred to in Annex V Part H of Appendix A, in accordance with the standard forms referred to in Article 65 or</p> <p>(b) by means of a prior information notice, which shall be published continuously and contain the information set out in Annex V Part I of Appendix A. The prior information notice shall refer specifically to the types of services that will be the subject of the contracts to be awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing.</p> <p>The first subparagraph shall, however, not apply where a negotiated procedure without prior publication could have been used in conformity with Article 32 for the award of a public service contract.</p> <p>2. Awarding authorities that have awarded a public contract for the services referred to in Article 107, shall make known the results of the procurement procedure by means of a contract award notice, which shall contain the information referred to in Annex V Part J of Appendix A, in accordance with the standard forms referred to in article 65. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within thirty (30) days of the end of each quarter.</p> <p>3. The notices referred to in this article shall be published in accordance with Article 65.</p>		<p>This article transposes article 75 of the Directive, laying down the publicity requirements for contracts of social and other specific services above thresholds (750.000 Euros).</p> <p>Par. 1 introduces the fundamental transparency requirement for these contracts before awarding. Thus, the intention to award such contracts must be publicly notified either (i) by means of a contract notice [using the standard form (21) of Annex XVIII of Regulation 2015/1986 (EU) and containing information such as mainly a short description of the contract, eligibility conditions for participation, deadlines for submission of tenders and short description of basic procedural characteristics] or (ii) by means of a prior information notice which will remain continuously published, mention the types of services forming the subject matter of the contract, mention that the contract will be awarded without further publication, call the economic operators to express their interest in writing and contain information (such as mainly a short description of the contract and total estimated value, the duration of the contract and the timeline for services provision, eligibility conditions for participation, deadlines for submission of tenders and short description of basic procedural characteristics].</p> <p>The last subparagraph of par. 1 introduces the only exception in the cases of article 32 of the law (transposing art. 32 of the Directive).</p> <p>Par. 2 introduces the fundamental transparency requirement for these contracts after awarding.</p> <p>Par. 3 makes referral to article 65 of the law (transposing article 51 of the Directive).</p>	
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>			

Article 76(1) of the Directive ► Article 107 (3) “Award of contracts for social and other specific services” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>3. <i>In all cases awarding authorities must respect the principles of transparency and equal treatment of all economic operators and procedural rules of paragraphs 1 and 2 must allow competent authorities to take under consideration the special characteristics of services in question.</i></p>		<p>Par. 3 provides that contracts for social and other specific services have a special awarding regime which, however, must be compatible with fundamental procurement principles. In other words, although general procedural rules are not binding for this type of contracts, other general (non-procedural) provisions of the law (ex. implementation scope, value thresholds, general principles, governance mechanisms) are applicable or can be applicable (depending on the case). Also, provisions of the procurement law regarding the right to legal protection of economic operators (articles 345 and following of Law No. 4412/2016) should be considered fully applicable in this category of contracts as well, since there is no provision imposing or implying the opposite.</p> <p>(see also above art. 107 (1) of the law transposing art. 74 of the Directive)</p>	
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>			

Article 76(2) of the Directive ► Article 109 “Principles of contract awarding” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services			
Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><i>Awarding authorities may take into account the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation. Awarding authorities may also provide that the choice of the service provider shall be made on the basis of the tender presenting the best price-quality ratio, taking into account quality and sustainability criteria for social services.</i></p>		<p>This article transposes par. 2 of art. 76 of the Directive, providing that, when procuring social and other specific services, awarding authorities are allowed (not obliged) to take under consideration the special requirements of these services and of their users. In this way, contracting authorities can introduce special quality aspects in the awarding procedure.</p> <p>However, according to the last subparagraph, choosing the service provider on the basis of the tender presenting the best price-quality ratio is not an obligation for awarding authorities but depends on their discretionary power.</p>	
Open questions			
Example of application from the national level (where applicable)			

Article 77 of the Directive ► Article 109A “Award Procedures” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services (transposition of Directives 2014/24/EU and 2014/25/EU) – article added to Law No. 4412/2016 by art. 43 par. 15 of Law 4605/2019

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. <i>Contracts with estimated value up to sixty thousands (60.000) euros are awarded according to par. 1-4 of article 118. Contracts over the sum of sixty thousands (60.000) euros, are awarded according to one of the procedures provided in article 26 of this law.</i></p> <p>2. <i>Particularly, for contracts referred to under the second subparagraph of the previous paragraph the following rules apply:</i></p> <p>a) (aa) <i>For contracts with estimated value below the threshold of letter d’ of article 5, the minimum time limit for the receipt of tenders in open procedure shall be ten (10) days from the date on which the call for tenders was published via the national e-procurement system. In restricted procedure, competitive procedure with negotiation, competitive dialogue and innovation partnership, the minimum time limit for the receipt of participation requests shall be eight (8) days from the date on which the notice was published via the national e-procurement system. In restricted procedure and competitive procedure with negotiation the minimum time limit for the receipt of tenders of preselected economic operators shall be eight (8) days from the date on which the invitation for the submission of tenders was sent to the preselected economic operators. In exceptional cases and if there are reasons justifying urgent award of the contract, shorter time limits can be defined for the receipt of tenders and participation requests, following reasoned opinion of the contracting authority.</i></p> <p>(bb) <i>For contracts with estimated value above the threshold of letter d’ of article 5, the minimum time limit for the receipt of tenders in open procedure shall be fifteen (15) days from the date on which the call for tenders was dispatched to the EU Publication Office or, if the means of invitation to tender is the preliminary notice, from the date on which the invitation for confirmation of interest was dispatched to the EU Publication Office. In restricted procedure, competitive procedure with negotiation, competitive dialogue and innovation partnership, the minimum time limit for the receipt of participation requests shall be eight (8) days from the date on which the notice was dispatched to the EU Publication Office or, if the means of invitation to tender is the preliminary notice, from the date on which the invitation for confirmation of interest was dispatched to the EU Publication Office. In restricted procedure and competitive procedure with negotiation the minimum time limit for the receipt of tenders of preselected economic operators shall be eight (8) days from the date on which the invitation for the submission of tenders was sent to the preselected economic operators. In exceptional cases and if there are reasons justifying urgent</i></p>		<p>This article specifies the procedural rules applicable for the award of contracts under the special (light) regime.</p> <p>According to par. 1, the law distinguishes between two categories of contracts depending on their estimated value:</p> <p><u>CATEGORY 1: Contracts for social and other special services with a value up to 60.000 Euros</u></p> <p>This category can be directly awarded with the direct awarded procedure provided in article 118 of the law.</p> <p>Note: This provision broadens the scope of application of the direct award procedure specifically for contracts relevant to social and special services, since for classical contracts (NOT relevant to social and special services) the direct award is permitted only for a value of up to 20.000 Euros according to art. 118.</p> <p><u>CATEGORY 1: Contracts for social and other special services with a value over 60.000 Euros</u></p> <p>For this category, awarding authorities can choose from the awarding procedures provided in art. 26 of the law (open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue and innovation partnership). However, regarding time limits for receipt of tenders and</p>	<p>This is a new article added to the Law No. 4412/2016 by Law No. 4605/2019 (OJ A 52/1.4.2019).</p>

<p><i>award of the contract, shorter time limits can be defined for the receipt of tenders and participation requests, following reasoned opinion of the contracting authority.</i></p> <p><i>b) Application of exclusion grounds of paragraphs 1 and 2 of article 73 is mandatory, under the terms and conditions provided in article 73.</i></p> <p><i>c) Selection criteria are stipulated in the contract documents and may include those mentioned in article 75, under the terms and conditions provided in article 75.</i></p> <p><i>d) For the proof of cases falling under letters b' and c' of the present paragraph, articles 79, 79A and 80 of the present law are applicable by analogy.</i></p> <p><i>e) Contracting authorities are obliged to use the national e-procurement system, according to article 36 of the present law.</i></p> <p><i>f) Regarding guaranties, rules provided in article 72 of the present law are applicable.</i></p> <p><i>3. Contracts of value over a thousand (1.000) Euros are published via the Central Public Contracts E-Registry.</i></p>		<p>participation requests, the law distinguishes between two sub-categories depending on value: contracts with a value between 60.000 - 750.000 Euros and contracts with a value over 750.000 Euros (threshold of letter d of art. 5 of the law).</p> <p>Regarding exclusion grounds, selection criteria, guarantees etc. the same rules apply as for contracts not relevant to social and other special services.</p>	
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>	<p>None available</p>		

Article 77 of the Directive ► Article 110 “Reserved contracts for certain services” of Law No. 4412/2016 on Public Contracts of Works, Supplies and Services

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>1. Awarding authorities may reserve the right to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in Article 107, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8 for Social Cooperative Enterprises which are registered with the Social Entrepreneurship Registry of paragraph 1 of article 14 of Law No. 4019/2011 (A 216) and have as their statutory purpose the professional and social integration of disabled or disadvantaged persons, provided that more than 30% of the enterprise’s employees are disabled or disadvantaged workers.</p> <p>2. Social Cooperative Enterprises referred to in paragraph 1 shall fulfil all of the following conditions:</p> <p>(a) their objective is the pursuit of a public service mission of the services referred to in paragraph 1;</p> <p>(b) profits are reinvested with a view to achieving the ownership objective of the Social Cooperative Enterprise referred to in paragraph 1. Where profits are distributed or redistributed, this should be based on participatory considerations;</p> <p>(c) the structures of management or ownership of the Social Cooperative Enterprise referred to in paragraph 1 performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and</p>		<p>This article transposes art. 77 of the Directive for all CPV codes mentioned in it and without restriction.</p> <p>Par. 1 provides awarding authorities with the discretionary power to reserve the right of participation to procurement procedures (for the specific types of services mentioned) for Social Cooperative Enterprises (SCE is a legal form regulated in social & solidarity economy Law No. 4430/2016) provided that the latter:</p> <ul style="list-style-type: none"> - are registered with the Social Entrepreneurship Registry of the Ministry of Labour, Social Insurance & Social Solidarity [established by the old social economy Law No. 4019/2011 art. 14 and, after the abolition of the latter, replaced by the new Social Entrepreneurship Registry of article 4 of new social economy Law No. 4430/2016 and its implementing acts of 2017), - have, as statutory purpose the socio-economic integration of disabled or disadvantaged workers, - have more than 30% of their employees belonging to either of these categories (disabled / disadvantaged) - fulfil a set of special conditions laid down in par. 2 of the article. <p>Par. 2 lays down a set of special extra conditions of “eligibility”, transposing par. 2 of art. 77 of the Directive.</p> <p>From the combination of par. 1 and 2, it is to be concluded that not all SCEs of Law No. 4430/2016 can benefit from the right to reserved participation (only those fulfilling conditions of par. 1 and 2), whereas other organizations which may fulfil the</p>	<p><u>Law No. 2716/1998</u> on the modernization of national mental health system (art. 12 regarding the special type of WISE under the legal form of KoiSPE which is automatically recognized as Integration KoinSEP according to art. 14 of Law No. 4430/2016)</p> <p><u>Law No. 4430/2016</u> on Social & Solidarity Economy (which replaced previous social economy Law No. 4019/2011) – art. 1-23 and 35.</p> <p><u>Regulatory framework of the Social Entrepreneurship Registry:</u></p> <ul style="list-style-type: none"> - Ministerial Decision (Deputy Minister of Labour, Social Insurance & Social Solidarity) No. 61621/Δ5.2643/2017 “Keeping and operating of the General Registry for SSE Organizations of Law No. 4430/2016” - Ministerial Decision (Deputy Minister of Labour, Social Insurance & Social Solidarity) No. 61986/3269/2017 “<i>Start of operation of the Special e-platform for the electronic submission of applications to the General SSE Organizations’ Registry of Law No. 4430/2016</i>”

<p>(d) the Social Cooperative Enterprise referred to in paragraph 1 has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this article within the past three years.</p> <p>3. The maximum duration of the contract shall not be longer than three years.</p> <p>4. The selection of contractors among the enterprises referred to in paragraph 1 is performed by virtue of relevant call for competition addressed to all of them and making reference to this article.</p> <p>5. A presidential decree issued on a proposal of the Ministers of Interior and Administrative Reconstruction, Economy, Development and Tourism, Labour, Social Insurance and Social Solidarity and Finance defines:</p> <p>a) the minimum percentage of reserved contracts and its calculating method,</p> <p>b) the types of the reserved contracts out of those referred to in paragraph 1,</p> <p>c) the particular conditions for awarding the contracts of this article, especially in case there are more tenders by enterprises of paragraph 2,</p> <p>d) any other issue relevant to the implementation of this article.</p> <p>6. Until the issuance of the presidential decree provided in paragraph 5, provisions of paragraphs 1 to 4 are applied.</p>		<p>conditions of par. 1 and 2 (according to law and to their statute) but do not have the legal form of SCEs cannot benefit from the right of reserved participation.</p> <p>Par. 3 establishes the maximum timeline of contracts awarded in accordance to this article (3 years).</p> <p>Par. 4 describes the obligation of awarding authorities to address the relevant call for competition to all enterprises mentioned in par. 1.</p> <p>Par. 5 provides the issuance of a presidential decree which will regulate implementation in more detail and render reserved contracts an obligation for awarding authorities at a specific minimum percentage (until December 2018 the P.D. had not been issued yet).</p> <p>Par. 6 was not included in the initial legal text but it was added later (art. 22 par. 30 of Law No. 4441/2016), giving the possibility for a “transitional implementation formula” until the P.D. of par. 5 gets issued.</p>	
<p>Open questions</p>	<p>The article has not been implemented so far and, thus, there is no national jurisprudence or legal contestation yet.</p> <p>Major factors of legal uncertainty:</p> <p>Par. 1 – Lack of definition of the term “disadvantaged worker”.</p> <p>Par. 2 – The requirement of the letter (a) [statutory purpose should be the “pursuit of a public service mission of the services referred to in paragraph 1” (health, social and cultural services)] is contradictory to the requirement of par. 1 [statutory purpose should be the “professional and social integration of disabled or disadvantaged persons”]. According to art. 14 par. 2 letter (b) of social economy Law No. 4430/2016, the KoinSEPs which have the “provision of social services of general interest” as their special statutory aim belong to the category of “Social & Collective Benefit KoinSEPs”, which is distinct from the category of “Integration KoinSEPs” (the latter having as special statutory aim the socio-economy integration of disabled / disadvantaged people through work integration). Also, according to the regulating framework of the Social Entrepreneurship Registry (art. 4 par. 2 of Min.Dec. No. 61621/Δ5.2643/2017), no KoinSEP can get registered in more than one category (they must choose a single special purpose and get registered accordingly: either as “Integration</p>		

	<p>KoinSEPs” or “Collective & Social Benefit KoinSEPs”). This is why, according to art. 35 of Law No. 4430/2016, the pre-existing “Social Care KoinSEPs” (special category of old social economy Law No. 4019/2011 specialized in the provision of social services to the elderly, the children etc.) could only re-register with the new Social Entrepreneurship Registry under the category of “Social & Collective Benefit KoinSEPs” (and not the category of “Integration KoinSEPs”). In this way, the possibility offered to awarding authorities by article 110 seems rather pointless (and perhaps contradictory to the Directive’s ratio), since it only allows them to reserve the right to participation in procurement process for social and specific services to the type of social enterprises which do not have the provision of such services as their special statutory purpose. A probable reason why the Greek legislator has made this choice is the confusion of the ratio of article 77 and the ratio of article 20 of the Directive.</p> <p>Par. 5 – Lack of the presidential decree foreseen to further specify implementation context. However, thanks to transitional par. 6, the omission to issue the PD does not affect the possibility of immediate implementation. In fact, there are concerns for the opposite: that if the P.D. gets issued, it would rather limit than expand the scope. In any case, it is doubtful that it will ever be issued since it is extremely difficult if not impossible in practice to determine centrally and in an homogenous way what each and every awarding authority has to do in this field.</p>
<p>Example of application from the national level (where applicable)</p>	