



Promoting Social Considerations into Public Procurement Procedures for Social Economy Enterprises

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

Prepared by



Author: Ivan Serdarušić
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Article 18(2) of the Directive ► Article 4 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 4 Public procurement principles</p> <p>Economic operator must ensure that in the performance of public contracts they comply with applicable obligations in the fields of environmental, social and labour law, including collective agreements, and in particular obligations of payment of agreed wage, or international environmental, social and labour law provisions listed in Annex XI. of the PPA.</p>		<p>The provision requires economic operators to comply with environmental, social and labor obligations established by European and national legislation, collective agreements and international provisions as set out in Annex XI. of the PPA.</p> <p>The international conventions referred to by the provision are the most important conventions in force in the social field, concerning the protection of workers' rights and the protection of the environment.</p> <p>Recitals 39 and 40 from the Directive confirm that the obligation of compliance with social provisions exists at all relevant stages of the procurement procedure (award, exclusion criteria, abnormally low tenders), and that Member States should take appropriate measures to ensure compliance with obligations referred to in Article 18(2) of the Directive.</p> <p>In this respect, article was transposed directly, and within different parts of the procurement process.</p> <p>In the first instance, it is related to the principles of public procurement and represent general requirement for the Contracting Authorities within article 4.</p> <p>The provision of paragraph 4 is further elaborated and provides Contracting Authorities with the possibility to exclude economic operator from the participation in public procurement procedure when they do not comply with mentioned applicable obligations (article 254., optional grounds for exclusion), to exclude economic operators based on the abnormally low priced offer if it is established economic operators do not comply with mentioned applicable obligations (article 289., abnormally low tenders), and to directly exclude from the participation in public procurement procedure at any moment if it is established economic operators do not comply with mentioned applicable obligations (article 295., grounds for rejection of offers).</p> <p>The obligation to comply with existing law already existed under previous Public Procurement Act (since 2012). This provision made explicit and emphasizing the obligation to comply with applicable legislations in the fields of environmental, social and labour law.</p> <p>However, the most important addition is provided in article 295., stating that economic operators will be excluded from the participation in public</p>	<p>Environmental laws:</p> <ul style="list-style-type: none"> • Environmental law • Law on air protection • Law on spacial planning • Law on water protection • Law on chemicals • Law on forest protection • Law on nature protection • Maritime Law • Law on noise protection • Law on sustainable waste management • Etc. <p>Labour law and agreements:</p> <ul style="list-style-type: none"> • Labour law • Collective bargaining agreements • Law on obligatory health insurance • Law on pension insurance • Law on protection at work • Law on minimal wage • Decree on minimal wage for 2019. • Etc.

		<p>procurement procedure at any moment if it is established economic operators do not comply with mentioned applicable obligations.</p> <p>The provision also allows a contracting authority to decide to not award a contract to the tenderer submitting the most financially advantageous tender, if the contracting authority can prove that the tender is not in accordance with certain obligations under environmental, social or labour law, under grounds for exclusion.</p> <p>Finally, the provision obliges a contracting authority to reject a tender, where the tender is abnormally low if it is established economic operators do not comply with mentioned applicable obligations in force in the field of environmental, social or labour law.</p>	
Open questions	Contracting authorities do not have a possibility to check if offeror regularly pays salaries, social security fees, if workers rights are met in line with collective agreements, etc.		
Example of application from the national level (where applicable)	Clauses may not go against national or EU/law. Contracting authorities cannot select economic operators if it is established economic operators do not comply with mentioned applicable obligations in force in the field of environmental, social or labour law.		

Article 20 of the Directive ► Article 51 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 51 Reserved contracts</p> <p>(1) Contracting Authority may reserve the right to participate in public procurement procedures to:</p> <ol style="list-style-type: none"> 1. sheltered workshops 2. economic operators whose main aim is the social and professional integration of disabled persons, or 3. economic operators whose main aim is the social and professional integration of disadvantaged persons 4. may provide for such contracts to be performed in the context of sheltered employment programmes. <p>(2) In the cases referred to in paragraph 1. of this article, minimum 51 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.</p> <p>(3) Contracting Authority must indicate in the invitation to tender that the reserved contract is awarded in accordance with this article.</p> <p>(4) Economic operator referred to in paragraph 1. of this article must prove their status required under paragraph 2 of this article by enrolling in the appropriate register, by a certificate issued by the competent authority or in another appropriate manner.</p> <p>(5) Exceptionally, the economic operators referred to in paragraph 1 of this Article for which the right to participate in public procurement procedures is reserved, may award up to 20% of the value of the reserved contract to subcontractors who do not meet the conditions prescribed by the same paragraph</p>		<p>The provision allows a contracting authority to reserve participation in a procurement procedure for sheltered workshops or for economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, whereas they may provide for such contracts to be performed in the context of sheltered employment programmes.</p> <p>Minimum 51 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.</p> <p>Such economic operators prove their status by enrolling in the appropriate register.</p> <p>Exceptionally, the economic operators may award up to 20% of the value of the reserved contract to subcontractors who do not meet prescribed conditions.</p> <p>This provision allowed for exclusive participation in procedure and performance of contracts for such workshops, economic operators and programmes into national law, with the aim to foster participation of procurement contracts for sheltered workshops and economic operators active in social and professional integration of disabled or disadvantaged persons.</p> <p>Old threshold of 50% was retained, but mentioned threshold is actually aligned with other national acts in force (Law on professional rehabilitation and employment of persons with disabilities, article 20).</p> <p>Therefore, the PPA actually allowed for the exception by which the economic operators may award up to 20% of the value of the reserved contract to subcontractors who do not meet</p>	<p>Law on professional rehabilitation and employment of persons with disabilities.</p> <p>The purpose of the article main goal is social and professional integration of disabled and disadvantaged persons.</p> <p>The percentage allowed is aligned with Law on professional rehabilitation and employment of persons with disabilities.</p>

		prescribed conditions, therefore total percentage could theoretically fell to 31% and thus still be above the percentage required in the Directive.	
Open questions	<p>It is not prescribed what are the exceptions under which the economic operators may award up to 20% of the value of the reserved contract to subcontractors who do not meet prescribed conditions. However, total percentage could theoretically fell to 31% and thus still be above the percentage required in the Directive.</p> <p>Legal scopes of sheltered workshops, sheltered employment programmes and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, close to the above-mentioned definitions in Regulation (EU) 651/2014 must be defined, as well as precise definition of disadvantaged persons (in line with recital 36 of the Directive 2014/24/EU - unemployed, minorities and socially marginalized), otherwise it could leave room for interpretation (it should be more precisely defined by national strategies, action plans, i.e. it should be noted that way).</p> <p>According to the Law on professional rehabilitation and employment of persons with disabilities, there is a registry of the persons with disabilities and within Republic of Croatia, and excerpt from mentioned registry constitutes a proof on the number of employed people with disabilities, therefore making it possible for the contracting authorities to determine exact status of the economic operator.</p> <p>However, ground for legal uncertainty presents the fact that for the economic operators not established in the Republic of Croatia contracting authorities would not have proof for the number of employed persons with disabilities (or would in such case had to accept statements from the economic operator). State Commission confirmed in its decisions that it would be against principle of discrimination for the contracting authorities to request and accept only the proof from Croatian registry of employed persons with disabilities.</p> <p>Additionally, disadvantaged persons are not defined (with the exception of the Law on state aid for education and training, however the definition this law provides is for the “disadvantaged worker”, not any person, therefore its applicability present uncertainty).</p>		
Example of application from the national level (where applicable)	The provision does not allow the possibility of reserved contracts or concessions in cases where the economic operator has a share of disabled or disadvantaged workers of less than 51%.		

Article 40 of the Directive ► Article 198, of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 198. Preliminary market consultations</p> <p>(1) Before launching a procurement procedure, contracting authority generally conducts market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.</p> <p>(2) For this purpose, contracting authorities may seek or accept advice from independent experts or authorities or from market participants which contracting authorities may use 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.</p> <p>(3) Before the start of open or restricted public procurement procedure for works, or public procurement procedure of high value for services or supplies, contracting authority must perform public consultations with interested economic operators by publishing description of subject-matter of the procurement, technical specifications, selection criteria, award criteria and particular contract conditions for not less than 5 days.</p> <p>(4) After performing public consultations Contracting Authority must consider all remarks and recommendations made by the interested economic operators, and prepare a report containing information of accepted and rejected recommendations and publish this report on the internet</p> <p>(5) Content of the report, procedures and deadlines, as well as other questions regarding preliminary public consultation and preliminary market consultation is prescribed by the ordinance</p>	<p>Regulation on procurement plan, contract register, preliminary market consultations and market analysis in public procurement (NN 101/2017):</p> <p>Regulation prescribes the procedure for conducting preliminary consultation. Tender documentation with description of subject-matter of the procurement, technical specifications, selection criteria, award criteria and particular contract conditions is published in the official electronic public procurement journal (EOJN). Any economic operator may submit its recommendations and objections through EOJN, and contracting authority may reply immediately. In any case contracting authority must answer to all objections and recommendations within the report, and the report must be published in the EOJN before actual procurement procedure is initiated. During public consultations contracting authority may also invite economic operators for a meeting.</p> <p>After the conclusion of the public consultation contracting authority may modify description of subject-matter of the procurement, technical specifications, selection criteria, award criteria and particular contract conditions, insofar modifications are not substantial.</p> <p>If contracting authority decides not to conduct public procurement procedure, contracting authority will state this in the report on public consultation.</p> <p>If public procurement procedure, for which public consultation was held, was cancelled, contracting authority does not have to repeat public consultation if modifications regarding description of subject-matter of the procurement, technical specifications, selection criteria, award criteria and particular contract conditions were not substantial.</p> <p>The public procurement act is applicable above values of 200.000,00 HRK for procurement of services and supplies (around 26.500,00 EUR) and 500.000,00 HRK (around 66.500,00 EUR) for works. Procurement above stated value is considered "low-value" procurement, and procurement</p>	<p>Provision gives contracting authorities the possibility to conduct preliminary market consultations, provided that such practice does not distort competition and does not result in a violation of the principles of non-discrimination and transparency.</p> <p>Article of the directive was transposed, made additionally transparent (by being published in EOJN), and ensuring possibility of organizing meetings with prospective economic operators.</p> <p>Thus, provision fulfils the purpose of preparing the procurement and informing economic operators, while ensuring that any information which an economic operator receives in the setting of a preliminary market consultation is shared with other participants.</p>	<p>Regulation on procurement plan, contract register, preliminary market consultations and market analysis in public procurement (NN 101/2017)</p>

<p>passed by the head of the central body responsible for the public procurement policy.</p>	<p>procedures above Directives thresholds are considered “high-value” procurement. Publication levels are the same, the difference for low-value procurement being shorter deadlines for submitting tenders (20 days in open procedures) and tenders not being published in the official journal of the EU (being published only in the national official journal – however, being freely accessible to any economic operator regardless of the country of establishment).</p>		
<p>Open questions</p>	<p>In principle no. The principle of transparency is assured by publication of the documents and publication of the consultation report. Documentation for public consultation is in practice prepared de facto in the same way and containing all information as for invitation to tender / tender documentation.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>The use of preliminary market consultations should not distort competition between potential candidates and should not lead to the violation of the principles of non-discrimination and transparency.</p> <p>Contracting authorities are not allowed, during or after preliminary market consultation, to change the description of subject-matter of the procurement, technical specifications, selection criteria, award criteria and particular contract conditions, if modifications would be substantial.</p>		

Article 42(1) of the Directive ► Article 206-208 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 206. Technical specifications</p> <p>(1) The technical specifications as defined in Annex VII, point 1 of this Act, lay down the characteristics required of a works, service or supply to be procured.</p> <p>(2) Technical specifications must allow equal access to the procurement to all economic operators, and must not have an effect of creating unjustified obstacles for opening public procurement to market competition.</p> <p>Article 207.</p> <p>(1) Contracting Authority must set out Technical Specifications in the Tender Documentation.</p> <p>(2) Requested characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.</p> <p>(3) The technical specifications may also specify whether the transfer of intellectual property rights will be required.</p> <p>Article 208.</p> <p>(1) Contracting Authority must for all procurement which is intended for use by natural persons, whether general public or staff of the contracting authority, draw up technical specifications so as to take into account accessibility criteria for persons with disabilities or design for all users, except in duly justified cases.</p> <p>(2) Where mandatory accessibility requirements are adopted by a legal act of the European 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.</p>		<p>Mandatory clause was directly transposed into technical specifications taking into account accessibility criteria for persons with disabilities or design for all users. If any legal act of the European Union provides for mandatory accessibility requirements relevant for accessibility criteria for persons with disabilities or design for all users, technical specifications must refer to them.</p> <p>Technical specifications must be linked to the subject-matter of the contract and proportionate to its value and its objective.</p>	<p>Article 268. of the PPA regulates the means of proof of compliance with the requirements of the technical specifications.</p> <p>Building law and related legislation define accessibility criteria for persons with disabilities or design for all users related to works.</p>
Open questions	The element of legal uncertainty concerns the limit of the term “ <i>duly justified cases</i> ”, ie the cases of exclusion of the accessibility criteria for people with disabilities.		
Example of application from the national level (where applicable)	Contracting authorities may not exclude technical requirements that take into account accessibility criteria for persons with disabilities or design for all users, except in duly justified cases.		

Article 43 of the Directive ► Article 212 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 212. Labels</p> <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> <ol style="list-style-type: none"> 1. 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 2. the label requirements are based on objectively verifiable and non-discriminatory criteria 3. 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 4. the labels are accessible to all interested parties 5. the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence <p>(2) 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>(3) Contracting authorities requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements.</p> <p>(4) 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</p>		<p>Mandatory provision was transposed in its entirety.</p> <p>If Contracting authority requests or requires labels, the label requirements must be necessary and related to the subject-matter of the procurement.</p> <p>There are two important limitations to the possibility:</p> <ol style="list-style-type: none"> 1. 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 2. Where a label fulfils the conditions provided in paragraph 1, points 2.-5. Of this Article, but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may (please note that in the directive it is a “shall” provision) not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, 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. <p>Therefore, contracting authorities must pay special attention that they set only the requirements that are surely related to the subject-matter of the procurement, and excludes criteria and conditions relating to general corporate policy, which cannot be considered as a factor characterising the specific process of production or provision of the purchased works, supplies or services.</p> <p>Also, 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</p>	

<p>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>(5) Where a label fulfils the conditions provided in paragraph 1, points 2.-5. Of this Article, but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may (please note that in the directive it is a “shall” provision) not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, 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.</p>		<p>specific label or the specific requirements indicated by the contracting authority. This provision allows a contracting authority to reject other relevant documentation if the required label has been obtainable for the tenderer within the time limit stipulated.</p> <p>References to labels requirements cannot have the effect of narrowing competition, nor restricting innovation.</p> <p>Labels may provide for environmental characteristics and social or other characteristics (for example, Contracting authorities may require a specific label in five conditions as <i>means of proof</i> that the works, services or supplies purchased correspond to the required social characteristics). Labels can be used in technical specifications, award criteria and contract performance conditions. Labels may be used in all types of public procurement. However, Contracting authorities requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements.</p> <p>Labels and certification schemes can help by providing third party verification. this can facilitate a decision on whether a certain product meets the requirements or not.</p>	
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<p>Open questions</p>	<p>It must be made clear that contracting authorities may not set criteria and conditions relating to general corporate policy.</p> <p>Further, the means of proofs by the economic operator which 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 him, and which contracting authority has to accept, may produce uncertainty.</p>
<p>Example of application from the national level (where applicable)</p>	<p>The provision does not allow the contracting authorities to use labelling as a means of proof that the works, services or supplies correspond to the characteristics required, if the five conditions set out in Article 212 are not met.</p> <p>Decision by the State Commission for Supervision of Public Procurement Procedures (further: DKOM, Decision 18166, http://pdf.dkom.hr/18166.pdf) states that certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to technical specifications or standards (in this case: « CE mark, accompanied by identification number one of the bodies authorised by the European Commission »), do represent evidence of the economic operators’ technical abilities, and do not represent Label requirement in the sense of Article 212.</p> <p>Decision by the DKOM (Decision 18131, http://pdf.dkom.hr/18131.pdf) states that, in the case where a Contracting Authority required Blue Angel label, it must have been clearly stated in the tender documentation who, how, and for which exact products must deliver Blue Angel label. DKOM also states that in the Tender Documentation it must have been made clear how equivalent label requirements are proven, i.e. met. Thus, Contracting Authorities must have defined precise specification in the first place, and then must have allowed the equivalent. DKOM decided that tender documentation is illegal since it did not satisfy the conditions mentioned, and that the documentation must be changed.</p>

Article 46 of the Directive ► Article 204 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 203. Determining subject-matter of the procurement Contracting Authority determines subject-matter of the procurement in such a way it represents technical, technological, formative, functional or other objectively verifiable whole.</p> <p>Article 204. Division of contracts into lots (1) Contracting authorities may decide to award a contract in the form of separate lots based on objective criteria such as type, characteristics, purpose, place or time of delivery, in case it determines the size and subject-matter of each lot, taking into account possibilities of access of small and medium enterprises to public procurement. (2) If Contracting authority, in high-value procurement procedure, does not divide subject-matter of the procurement into lots, Contracting Authority shall 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 on public procurement. (3) Contracting authorities shall indicate, in the invitation to tender, whether tenders may be submitted for one, for several or for all of the lots. (4) 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 invitation to tender. (5) 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. (6) Where more than one lot may be awarded to the same tenderer, contracting authorities may award contracts</p>		<p>The public procurement act is applicable above values of 200.000,00 HRK for procurement of services and supplies (around 26.500,00 EUR) and 500.000,00 HRK (around 66.500,00 EUR) for works. Procurement above stated value is considered “low-value” procurement, and procurement procedures above Directives thresholds are considered “high-value” procurement. Publication levels are the same, the difference for low-value procurement being shorter deadlines for submitting tenders (20 days in open procedures) and tenders not being published in the official journal of the EU (being published only in the national official journal – however, being freely accessible to any economic operator regardless of the country of establishment).</p> <p>Article allows the division of the contract into lots. If contracting authority does not divide subject-matter into lots, they must 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 on public procurement.</p> <p>The article states that the purpose is to take into account possibilities of access of small and medium enterprises to public procurement. This provision encourages contracting authorities to award contracts where feasible, in the form of separate lots, in order to facilitate the participation in public procurement of small and medium sized enterprises (SMEs) - it is not particularly stated that provision encourages participation on civil society organisations (CSOs) or social economy enterprises (SCEs).</p> <p>If authorities decide to divide the contract into lots, Contracting authorities shall indicate the maximum number of lots tenderers may submit for and may limit the number of lots that may be awarded to one tenderer.</p> <p>Contracting authorities must indicate, either in the contract notice published in the Official Journal of the European</p>	<ul style="list-style-type: none"> - Article 4. of the PPA states that contracting authorities must, in implementation of the PPA perform procedures efficiently, and in a way that is economical and purposeful in regards to public funds. - Articles 23-24 of the PPA establish the methods for calculating the value of the contract divided into lots.

<p>combining several or all lots where they have specified in the invitation to tender that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.</p>		<p>Union (OJEU) or in the invitation to confirm interest, whether a tender may be submitted for one, several or all lots. They may award contracts combining several or all lots.</p>	
<p>Open questions</p>	<ul style="list-style-type: none"> - The law does not specifically provide for definition of small and medium enterprises (CSOs or social enterprises are not mentioned in the law). - Although clarification must be provided on why division into lots was not performed, the article is of instructive and not binding nature and there are no consequences if division has not been made. - In practice there are many examples of tender documentation in which division into lots was not performed, and many examples that grounds for not dividing into lots are generic and not substantiated (e.g. division was not made since subject-matter of the procurement is considered a whole, is complex, and division would make contract implementation unjustifiably harder), i.e. they de facto go per se against original argument of the Directive on why the division into lots should be made at all. - In regards to the article 204, paragraphs 4 and 5 (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 invitation to tender. 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): <ul style="list-style-type: none"> - It is stated that Contracting authorities may award contracts combining several or all lots, where contracting authorities should conduct a comparative assessment by first determining which tenders best fulfil the award criteria laid down for each individual lot and then comparing it with the tenders submitted by a particular tenderer for a specific combination of lots, taken as a whole – there is uncertainty on how this should be performed, what are objective criteria, etc. - It is not clear what would be the purpose of this division and it is not clear how this provision is in line with basic principles of free provision of services and goods, and principles of market competition. Any criteria set out is de facto discriminatory and against mentioned principles. - Such provision de facto allows for manipulations by the contracting authorities - It is not clear how in practice contracting authorities would deal with certain situations (and, again, prevent manipulations) – for example, if maximum one lot could be awarded to one tenderer, what are objective criteria to set out the rules, and how to prevent manipulations with withdrawal or acceptance of the contract by selected tenderers. - Similarly, taking the example of alternative offers - it is not clear whether tenderer can make different bids for each lot separately on the one hand and a different and probably lower one if he or she is awarded all or several lots on the other hand. 		
<p>Example of application from the national level (where applicable)</p>	<p>It is not allowed for a contracting authority to decide not to divide a contract into lots without providing the reasons for its decision.</p> <p>In regards to the article 204, paragraphs 4 and 5 (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 invitation to tender. 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) - there are very few examples of such division, which may be attributed both to the fact contracting authorities do not find it useful or legal uncertainties.</p>		

Article 56 of the Directive ► Articles 290-293, 295, 296, 302 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 302 Award Decision</p> <p>(1) Contracting Authority adopts an award decision based on the results of the verification of the offers and award criteria.</p> <p>(2) By adopting award decision Contracting Authority selects most economically advantageous tender, with the exception of the case defined under article 204. Paragraph 5. of this Act.</p> <p>Article 296</p> <p>(1) Suitable tenders are ranked according to the award criteria based on the results of the verification of the offers in line with this section.</p> <p>Article 295</p> <p>(1) Contracting Authority must reject a tender for which, based on the results of the verification of the offers, Contracting Authority determines it is irregular, ineligible or unacceptable, and further selects most economically advantageous tender based on the award criteria.</p> <p>(2) In the small-value procurement procedure, Contracting Authority must reject a most economically advantageous tender if Contracting Authority determines that the price of the offer is higher than high-value procurement thresholds.</p> <p>(3) Contracting Authority may reject a most economically advantageous tender if Contracting Authority determines offer does not comply with applicable obligations in the fields of environmental, social and labour law, including collective agreements, and in particular obligations of payment of agreed wage, or international environmental, social and labour law provisions, as stated in Annex XI. of this Act, with the exception of the case stated in article 289. paragraph 5. of this Act, in which case the tender must be rejected.</p> <p>Article 293.</p> <p>(1) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities</p>	<p>The law sets out in article 4 related to public procurement principles that economic operators must in the implementation of contracts respect the rules in the fields of environmental, social and labour law.</p> <p>In the tender documentation, contracting authority may include exclusion criteria related to the same obligations.</p> <p>In the evaluation of the offers, contracting authorities follow prescribed steps in prescribed order (article 291):</p> <ol style="list-style-type: none"> 1. Tender Guarantee 2. Exclusion criteria 3. Selection criteria 4. Requirements related to the subject-matter of the procurement and technical specification and award criteria 5. Arithmetical correctness. <p>Contracting Authorities may reverse the order, but must ensure that verification of the exclusion criteria and selection criteria in conducted impartially and transparently.</p> <p>Suitable tenders are ranked according to the award criteria based on the results of the verification of the offers, and this is followed by the adoption of the award decision.</p> <p>Contracting Authority may in any case reject a most economically advantageous tender if Contracting Authority determines offer does not comply with applicable obligations in the fields of environmental, social and labour law.</p> <p>On the article 293, where information or</p>	<p>Contracts are to be awarded in accordance with the award criteria set at the beginning of the procedure</p> <p>Obligation for the contracting authority to check the tender and bidder compliance with all requirements and selection criteria during evaluation of the tenders.</p> <p>The compliance checks are extended with the obligations in regards to environmental and social considerations.</p> <p>Contracting authorities may reject the tender considering the principle of proportionality (in open procedures, tenders may be examined before verifying the absence of grounds for exclusion and the fulfilment of the selection criteria).</p> <p>It is allowed that contracting authorities may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.</p>	<p>Environmental laws:</p> <ul style="list-style-type: none"> • Environmental law • Law on air protection • Law on spatial planning • Law on water protection • Law on chemicals • Law on forest protection • Law on nature protection • Maritime Law • Law on noise protection • Law on sustainable waste management • Etc. <p>Labour law and agreements:</p> <ul style="list-style-type: none"> • Labour law • Collective bargaining agreements • Law on obligatory health insurance • Law on pension insurance • Law on protection at work • Law on minimal wage • Decree on minimal wage for 2019. • Etc. <p>Regulation on the tender</p>

<p>may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit not shorter than 5 days, provided that such requests are made in full compliance with the principles of equal treatment and transparency.</p> <p>(2) Acting in accordance with paragraph 1. of this article may not result in negotiations related to the award criteria or related to the subject-matter of the procurement.</p> <p>(3) If Contracting Authority within the public procurement procedure does not act in line with paragraph 1. of this article, Contracting Authority must justify its proceedings in the Evaluation report.</p> <p>Article 290.</p> <p>(1) After the opening of the tenders, Contracting Authority evaluates the offer based on the conditions and criteria set out in the Tender documents, and prepares evaluation report.</p> <p>(2) Proceedings of the Contracting Authority are kept confidential until the adoption of the Award decision of the Contracting Authority.</p> <p>Article 291.</p> <p>Contracting Authority conducts evaluation of the offers, verifying in the following order:</p> <ol style="list-style-type: none"> 1. If the Tender Guarantee is submitted (when requested), and if the delivered Tender Guarantee is acceptable. 2. tenderer is not in any of the exclusion criteria 3. tenderer has fulfilled selection criteria, and, if applicable, criteria for reduction of number of qualified candidates 4. fulfillment of the requirements related to the subject-matter of the procurement and technical specification, and other requirements, conditions and criteria set out in the invitation to tender and tender documentation, taking into account, if applicable, variants 5. if offers are arithmetically correct. <p>Article 292.</p> <p>(1) In the open tender procedure Contracting Authorities may evaluate offers against the conditions and requirements related to the subject-matter of the procurement and technical specifications before verification of the exclusion criteria and</p>	<p>documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit not shorter than 5 days, provided that such requests are made in full compliance with the principles of equal treatment and transparency.</p> <p>Such proceedings may not result in negotiations related to the award criteria or related to the subject-matter of the procurement. If Contracting Authority within the public procurement procedure does not act in line with article 293(1), Contracting Authority must justify its proceedings in the Evaluation report.</p> <p>This provision is further clarified in Regulation on the tender documentation and offers in public procurement procedures (NN 65/2017), art. 20(8) which states that tender form, bill of quantities and tender guarantee are the documents that could not be additionally delivered if they were not initially delivered at all (although, if initially delivered but being incomplete or erroneous they could be clarified and modified).</p> <p>In practice, this means that technical specifications must be complete, as well as documents concerning award criteria (since their supplement would be against article 293(2) in the sense that it could be considered negotiation), and tender form, bill of quantities and tender guarantee are the documents that could not be additionally delivered if they were not initially delivered at all. All other documents could be clarified, and in practice they are always clarified – since practice of the State Commission is</p>		<p>documentation and offers in public procurement procedures (NN 65/2017), art. 20(8)</p>
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<p>selection criteria.</p> <p>(2) In case Contracting Authority applies possibility set out in paragraph 1. of this article, Contracting Authority must ensure that verification of the exclusion criteria and selection criteria is conducted impartially and transparently in order to prevent that the contract is awarded to the tenderer that should have been excluded from the public procurement procedure since they are under any exclusion criteria or to the tenderer that does not satisfy selection criteria set out by the Contracting Authority.</p>	<p>such that not clarifying tenders is against the principle of economy and is generally not the way in which public funds are spent economically and purposely (article 4(3) of the PPA). Theoretically Contracting Authorities could prove their proceedings are in line with article 4(3), but in practice their arguments were failing as a rule.</p>		
<p>Open questions</p>	<p>Theoretically, as per article 4, economic operators are obliged to follow obligations in the fields of environmental, social and labour law, including collective agreements, and in particular obligations of payment of agreed wage, or international environmental, social and labour law provisions – however, it is only optional ground for exclusion, whereas the offer of the tenderer acting against mentioned obligations shall be excluded.</p> <p>The compliance check includes performance of the contract, therefore having a broader scope of application than just the tender itself</p> <p>There is a clear problem of verification since Contracting authorities do not have a possibility to check if offeror regularly pays salaries, social security fees, if workers rights are met in line with collective agreements, etc.</p> <p>On the clarification and supplements of the offer, legal uncertainty of to which extent offers may be supplemented or clarified has been dealt with by the State Commission for appeals. According to the decisions of the State Commission, technical specifications must be complete, as well as documents concerning award criteria (since their supplement would be against article 293(2) in the sense that it could be considered negotiation), and tender form, bill of quantities and tender guarantee are the documents that could not be additionally delivered if they were not initially delivered at all. All other documents could be clarified, and in practice they are always clarified – since practice of the State Commission is such that not clarifying tenders is against the principle of economy and is generally not the way in which public funds are spent economically and purposely (article 4(3) of the PPA). Theoretically Contracting Authorities could prove their proceedings are in line with article 4(3), but in practice their arguments were failing as a rule.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>In practice tenderers are not excluded in the evaluation stage for reasons set out in article 18(2) of the Directive, because burden of proof is on Contracting Authorities and they de facto cannot prove tenderers do not fulfil their obligations. This makes the optional ground for exclusion completely obsolete (ineffective).</p> <p>Clarifications, based on article 293 and explanation provided above, are common and cause longer duration of the procedures. However, because of consistent practice of the State Commission and contracting authorities, there is very small amount of tenders being excluded at all, let alone for small administrative reasons.</p>		

Article 57 of the Directive ► Articles 251-255 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 251 Grounds for exclusion</p> <p>(1) Contracting authority shall exclude an economic operator from participation in a procurement procedure where they have established that:</p> <p>1. economic operator or any person being a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein and is a citizen of the Republic of Croatia 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</p> <ul style="list-style-type: none"> - article 106. (trafficking) of the Criminal Code - article 175. (trafficking and slavery) of the Criminal Code (»Narodne novine«, no. 110/97., 27/98., 50/00., 129/00., 51/01., 111/03., 190/03., 105/04., 84/05., 71/06., 110/07., 152/08., 57/11., 77/11., 143/12.) <p>2. economic operator not established in the Republic of Croatia or any person being a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein not being a citizen of the Republic of Croatia has been the subject of a conviction by final judgment for one of the reasons stated in point 1. sub-points a) to f) of this paragraph, and for equivalent criminal offenses which, according to national regulations of the country of establishment of the economic operator or the country of citizenship of natural persons constitute grounds for exclusion stated under article 57. paragraph 1. points (a) to (f) of the Directive 2014/24/EU</p> <p>(2) Contracting Authority shall exclude economic operator at any time during the procedure if where Contracting Authority that economic operator is under any ground for exclusion stated under paragraph 1. points 1. and 2. of this article.</p>	<p>Article 252. (Article 57(2) of the Directive) applies when economic operator is in breach of its obligations relating to the payment of social security contributions. The ground was transposed directly and if any obligation is due (with the exception of case described in article 252(2) economic operators are excluded.</p> <p>There is no option for requiring that this has been established by a judicial or administrative decision having final and binding effect (any amount due is considered having binding effect).</p> <p>Also, Republic of Croatia did not provide a derogation from this mandatory exclusion where an exclusion would be clearly disproportionate, for example where only minor amounts of taxes or social security contributions are unpaid (Article 57(3)) (cf. Recital 101 of the Directive).</p> <p>Regarding facultative grounds for exclusion (Article 254 of the PPA and Article 57(4) of the Directive):</p> <ul style="list-style-type: none"> - ground set out in article 254(1)1. states that economic operator will be excluded where the Contracting Authority can demonstrate by any appropriate means a violation of applicable obligations in the fields of environmental, social and labour law, including collective agreements, and in particular obligations of payment of agreed wage, or international environmental, social and labour law provisions listed in Annex XI. of the PPA - ground set out in article 254(1)3. states that economic operator will be excluded where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional 	<p>Articles 251-255 of the PPA set out rules and grounds on which an economic operator can or must be excluded from the procurement procedure.</p> <p>The law, which directly transposed the directive, set out mandatory and facultative grounds for exclusion (relating to social and labour law).</p> <p>Mandatory ground of exclusion (Article 251.(1)1.f transposing Article 57(1)(f) of the Directive) concerning the situation where the contracting authority has established that the economic operator has been the subject of a conviction by final judgment for child labour and other forms of trafficking in human beings. The provision stipulates that the ground applies to the economic operators and members of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.</p>	<ul style="list-style-type: none"> - Criminal Code - Criminal Code (»Narodne novine«, no. 110/97., 27/98., 50/00., 129/00., 51/01., 111/03., 190/03., 105/04., 84/05., 71/06., 110/07., 152/08., 57/11., 77/11., 143/12.) - Labour law - Collective bargaining agreements - Law on obligatory health insurance - Law on pension insurance - Law on protection at work - Law on minimal wage - Decree on minimal wage for 2019. - Law on Value added tax - Law on income tax - Etc. - Regulation on the tender documentation and offers in public procurement procedures (NN 65/2017), art. 20(10)

<p>Article 252. (1) Contracting Authority shall exclude economic operator from participation in a procurement procedure where the contracting authority is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions:</p> <ol style="list-style-type: none"> 1. In the Republic of Croatia if economic operator is established in the Republic of Croatia 2. in the Republic of Croatia or country of establishment of the economic operator if economic operator is not established in the Republic of Croatia. <p>(2) Exceptionally in regards to paragraph 1. of this article, Contracting Authority shall not exclude economic operator from participation in a procurement procedure when the economic operator has entered into a binding arrangement with a view to paying the taxes or social security contributions due, or payment delay has been approved.</p> <p>Article 253. Contracting Authority may decide not to exclude economic operator being under grounds for exclusion stated under articles 251. and 252. of this Act, on an exceptional basis, for overriding reasons relating to the public interest such as public health or protection of the environment.</p> <p>Article 254. (1) Contracting Authority may exclude economic operator from participation in a procurement procedure:</p> <ol style="list-style-type: none"> 1. where the Contracting Authority can demonstrate by any appropriate means a violation of applicable obligations in the fields of environmental, social and labour law, including collective agreements, and in particular obligations of payment of agreed wage, or international environmental, social and labour law provisions listed in Annex XI. of the PPA (...) 3. where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable (...) 7. where the economic operator has shown significant or persistent 	<p>misconduct, which renders its integrity questionable</p> <p>- and ground set out in article 254(1)7. states that economic operator will be excluded 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.</p> <p>If any of the grounds set out in article 254 are chosen and set out in the tender documentation (voluntary grounds for exclusion), contracting authority must exclude any tenderer in any phase of the procurement procedure based on those grounds.</p> <p>Finally, Contracting 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>Article 252. (Article 57(2) of the Directive) applies when economic operator is in breach of its obligations relating to the payment of social security contributions. The ground was transposed directly and if any obligation is due (with the exception of case described in article 252(2) economic operators are excluded.</p>	
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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.

(...)

(2) Exceptionally, Contracting Authority may, if Contracting Authority states so in the tender documentation, not exclude an economic operator which is in one of the situations referred to in paragraph 1. point 2. of this article, where the contracting authority has established that the economic operator in question will be able to perform the public procurement contract, taking into account the applicable national rules and measures on the continuation of business.

Article 255.

(1) Any economic operator being under one of the grounds for exclusion set out in article 251. paragraph 1. and article 254. paragraph 1. of this Act may provide evidence to the Contracting Authority 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.

(2) Economic operator proves that the measures, set out in paragraph 1. of this article, are being taken:

1. by paying compensation or undertaking other equivalent measures in respect of any damage caused by the criminal offence or misconduct
2. by clarifying the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities
3. by undertaking concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

(3) The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct, and Contracting Authority must elaborate on the grounds for acceptance or non-acceptance of the measures taken.

(4) If measures taken by the economic operator are considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure.

(5) An economic operator which has been excluded by final

<p>judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for under paragraph 1. of this Article during the period of exclusion resulting from that judgment in the Member States where the judgment is effective.</p> <p>(6) Period of exclusion from participating in procurement procedures of the economic operator based on the grounds for exclusion set out in article 251. paragraph 1. Shall be five years from the date of the conviction by final judgment.</p> <p>(7) Period of exclusion from participating in procurement procedures of the economic operator based on the grounds for exclusion set out in article 254. paragraph 1. Shall be two years from the date of the relevant event.</p>			
<p>Open questions</p>	<p>Since in practice official court registers in Republic of Croatia do not cover all grounds for exclusion stated in article 251 (Article 57 of the Directive), in practice a statement is required. For the reasons that those grounds for exclusion refer to all persons being members of administrative, management or supervisory body of that economic operator or have powers of representation, decision or control therein, the question was who should sign the statement of not being in one of the exclusion situations (for if all such persons must sign the statement for themselves in practice it would be completely impossible and not economical and could lead to (unjustified) exclusions of economic operators (who submitted most economically advantageous tenders). Therefore, in the Regulation on the tender documentation and offers in public procurement procedures (NN 65/2017), art. 20(10) it was clarified that the statement may be issued and signed by one person (authorized by the law to represent economic operator) for all persons being members of administrative, management or supervisory body of that economic operator or have powers of representation, decision or control therein.</p> <p>Since optional provision (article 57(3) of the Directive) was not transposed (where Member States may also provide for a derogation from the mandatory exclusion provided 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 third subparagraph of paragraph 2 before expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender) it is questionable if small amount of taxes due remain unpaid constitute ground for exclusion in line with the principle of economy (although decisions from the State Commission confirm that such amounts due could be paid at any period before the adoption of the award decision even though there were unpaid at the moment of expiration deadline for the delivery of tenders).</p>		
<p>Example of application from the national level (where applicable)</p>	<p>Contracting authorities are not allowed to choose an economic operator for which the grounds for exclusion provided for in the articles 251-254 are established, nor can these be subcontracted.</p> <p>If any of the grounds set out in article 254 are chosen and set out in the tender documentation (voluntary grounds for exclusion), contracting authority must exclude any tenderer in any phase of the procurement procedure based on those grounds.</p>		

Article 67 of the Directive ► Articles 283-286 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 283. Award criteria in public procurement procedures is the most economically advantageous tender</p> <p>Article 284. (1) The most economically advantageous tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with sub-section 2 of this section, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. (2) Such criteria may comprise, for instance: 1. quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions 2. organization, 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, or 3. after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion. (3) 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. (4) Contracting Authority may not use price only or cost only as the sole award criterion, and in this case relative weight of the price or cost criterion may not be higher than 90%. (5) Exceptionally, relative weight of the price or cost criterion may be higher than 90% in case of negotiated procedure without prior publication, contracting within the framework agreement, contracts for</p>	<p>The provision states that the award criteria is most economically advantageous tender on the basis of the price or cost, using a cost-effectiveness approach, and may include the best price-quality ratio. Criteria may include qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question, such as quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions. The law provides that in open and restrictive procedures price or cost criterion may not be higher than 90%,¹ but otherwise the law does not prescribe what criteria or their relative weighting should be, nor does it give any examples (with the exception of article 284(7) which relates to the purchase of agriculture and food products).</p>	<p>Best Price-Quality Ratio - BPQR (most economically advantageous tender gives relative weighting to price/cost and quality). If the best price-quality ratio is used, social considerations can be included among the different award criteria to be weighed, together with the price or cost and other criteria such as social, quality and environmental considerations. Any criteria must be linked to the subject matter of the public contract in question. Contracting authorities are free to define the subject of the contract in any way that meets their needs, as long as they do not distort the market competition. The social considerations can include factors such as job creation, decent work, democratic ownership, social and professional inclusion of persons with disabilities and disadvantaged persons, integration of disadvantaged groups in the democratic process of the enterprise and accessibility of the service (particularly for those living in remote areas). Article 285. defines that the award criteria (including social award criteria) must not be discriminating, must be related to the subject-matter of the</p>	<p>Web page of the Ministry of Economy and Entrepreneurship contains:</p> <ul style="list-style-type: none"> - Most economically advantageous tender – guidelines with examples - Guidelines for preparation of most economically advantageous tender criteria

¹ Faculty offered by the directive – Croatia implements it for all contracts (though the directive provides for: *restrict their use to certain categories of contracting authorities or certain types of contracts*), which is very ambitious. In Croatia about 98% of tenders used to use price as award criterion.

<p>social and other specific services, and in case of public procurement for defense and security, and public procurement for diplomatic missions and embassies of the Republic of Croatia abroad.</p> <p>(...)</p> <p>Article 285.</p> <p>(1) Award criteria must not be discriminating, must be related to the subject-matter of the procurement and must enable competitive tendering.</p> <p>(2) 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 their life cycle, including factors involved in:</p> <ol style="list-style-type: none"> 1. the specific process of production, provision or trading of those works, supplies or services; or 2. a specific process for another stage of their life cycle, even where such factors do not form part of their material substance. <p>(3) Contracting Authority must set out award criteria in such way that allows 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, contracting authorities shall verify effectively the accuracy of the information and proof provided by the tenderers.</p> <p>Article 286.</p> <p>(1) The contracting 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.</p> <p>(2) Those weightings may be expressed by providing for a range with an appropriate maximum spread, and where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.</p>		<p>procurement and must enable competitive tendering and must 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.</p> <p>Thus criteria must not relate to criteria and conditions relating to general corporate policy or requirement to have a certain corporate social responsibility policy in place.</p>	
<p>Open questions</p>	<p>The law provides that price cannot be more than 90%, but does not provide minimum relative weighting to price or to the specific other criteria - which could theoretically be very low and thus effectively eliminated. State Commission in its practice did not deal with these issues. Also, by the law definition or from the practice, it is as a rule not clear what is the basis for calculation of relative weighting of any criteria (both price and quality or any sub-criteria) which de facto enables manipulation with the weightings and effective elimination or setting up effective winning position based on one or more exclusive criteria.</p>		

Example of application from the national level (where applicable)

The provision allows contracting authorities to social award criteria that are not linked to the subject matter of the public contract. However in practice, since criteria must be related to the subject-matter of the procurement and must not relate to general policies of the economic operators, the criteria is rarely used.

Article 69 of the Directive ► Article 289 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 289. Abnormally low tenders</p> <p>(1) Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services, within the appropriate deadline, not shorter than five days.</p> <p>(2) The explanations referred to in paragraph 1 may in particular relate to:</p> <ol style="list-style-type: none"> 1. the economics of the manufacturing process, of the services provided or of the construction method 2. the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work 3. the originality of the work, supplies or services proposed by the tenderer 4. compliance with obligations in the fields of environmental, social and labour law, including collective agreements, and in particular obligations of payment of agreed wage, or international environmental, social and labour law provisions listed in Annex XI. of the PPA 5. compliance with obligations referred to in part G, section 2, head III of this part of the Act 6. the possibility of the tenderer obtaining State aid. <p>(3) If during evaluation of the offers information is unclear, Contracting Authority may request additional clarification.</p> <p>(4) Contracting Authority 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 of this article.</p> <p>(5) Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations in the fields of environmental, social and labour law, including collective agreements, and in particular obligations of payment of agreed wage, or international</p>	<p>This provision allows contracting authorities to reject abnormally low tenders if the tenderer is unable to provide sufficient explanation as to why the tender is abnormally low because economic operator does not comply with the obligations in the fields of environmental, social and labour law, including collective agreements, and in particular obligations of payment of agreed wage, or international environmental, social and labour law provisions (since abnormally low tender may imply that binding social and labour law are not correctly applied).</p> <p>If the tender is abnormally low because the tenderer or the tenderer's sub-contractor has disregarded obligations in force in the field of environmental, social or labour law etc., the contracting authority is obliged to reject the tender.</p> <p>Regulation on the tender documentation and offers in public procurement procedures (NN 65/2017), art. 22 additionally sets out that contracting authority may require explanation if following conditions are fulfilled:</p> <ol style="list-style-type: none"> 1. minimum 3 offers were received 	<p>Provision on abnormally low tenders is used to ensure compliance with labour and social laws in the procurement process.</p> <p>It confirms that control of the observance of the social and labour law provisions should be performed at the relevant stages of the procurement procedure, including when applying the provisions concerning abnormally low tenders.</p> <p>Where tenders appear to be abnormally low, contracting authorities shall require economic operators to give explanations.</p> <p>Contracting authorities are not allowed to reject a tender that appears to be abnormally low without having allowed the tenderer to give explanations. And they are not allowed to accept a tender where it has been established that the abnormally low price or costs proposed result from non-compliance with (international or national) social or labour law provisions.</p>	<ul style="list-style-type: none"> - Labour law - Collective bargaining agreements - Law on obligatory health insurance - Law on pension insurance - Law on protection at work - Law on minimal wage - Decree on minimal wage for 2019. - Law on state aid - Regulation on the tender documentation and offers in public procurement procedures (NN 65/2017), art. 22

<p>environmental, social and labour law provisions listed in Annex XI. of the PPA</p> <p>(6) Where a contracting 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 contracting authority, that the aid in question was legal.</p> <p>(7) Where the contracting authority rejects a tender in high-value procurement in circumstances described under paragraph 6. of this article, it shall inform the Commission thereof.</p>	<p>2. price of the “low” offer is more than 20% lower than second lowest offer</p> <p>3. price of the “low” offer is more than 50% lower than the average of the valid offers.</p> <p>However, the same article states that Contracting authority may require clarification also for other reasons.</p>		
<p>Open questions</p>	<p>It is not clear that a contracting authority is not allowed to award a contract to a tender without having verified the relevant explanations as to the low level of the price or costs, since the provision actually states (article 289) that a contracting authority is only “obliged to ask for clarification” if the offer seems abnormally low (later when contracting authority establishes breach or non-compliance with required obligations then the provision is clear that such offer must be rejected).²</p> <p>Regulation on the tender documentation and offers in public procurement procedures (NN 65/2017), art. 22 sets out that contracting authority may require explanation if following conditions are fulfilled:</p> <ol style="list-style-type: none"> 1. minimum 3 offers were received 2. price of the “low” offer is more than 20% lower than second lowest offer 3. price of the “low” offer is more than 50% lower than the average of the valid offers. <p>However, the same article states that Contracting authority may require clarification also for other reasons.</p> <p>This provision provides for clarification on when the offers may be considered abnormally low, but the provision is arithmetically arbitrary and is not actually related to grounds on which abnormally low offers are questioned. The provision also may cause manipulation or be misleading since e.g. two offers may be abnormally low or contracting authority may be manipulating with exclusion of potential valid offers in order (not) to include them in calculation for average price of the valid offers.</p> <p>Also, explanations provided by the economic operators in practice are pure promises – and if they can be calculated in regards to minimum or average wage it is still at least partly arbitrary decision of the contracting authority.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>Contracting authorities are not authorized to reject a tender which appears to be abnormally low without allowing the tenderer to provide explanations.</p> <p>Contracting authorities are not allowed to accept a tender where it has been established that the abnormally low price or costs proposed result from non-compliance with the obligations in the fields of environmental, social and labour law, including collective agreements, and in particular obligations of payment of agreed wage, or international environmental, social and labour law provisions.</p>		

² By contrast, the directive states that the CA shall assess the information provided by consulting the tenderer.

Article 70 of the Directive ► Articles 218 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 218. Conditions for performance of contracts</p> <p>(1) Contracting authority may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of Article 285. paragraph 2. of this Act and indicated in the call for competition or in the procurement documents.</p> <p>(2) Conditions set out in paragraph 1. of this article may include economic, innovation-related, environmental, social or employment-related considerations.</p>		<p>This article stipulates that contracting authorities may require particular conditions regarding the performance of the contract in the manner and within the time limits set by the provisions on the criteria for the award of the contract.</p> <p>The provision also stipulates that the conditions for the performance of a contract must be indicated in the invitation to tender or in the tender documents.</p> <p>With regard to the specific nature of these conditions, the provision in question also refers to economic needs linked to innovation, as well as environmental and social considerations.</p> <p>By submitting their offers, economic operators confirm they agree with all conditions set out in the tender documents / draft contract. Conditions may not be modified in later stage (neither to the damage of the contracting authority nor to the damage of the economic operator / contractor). Conditions for the performance of a contract are designed to establish specific requirements regarding the performance of the contract and can contribute to the achievement of social policy objectives.</p> <p>Contract performance clauses can contribute to achieving social policy objectives, as they allow contracting authorities to go beyond the standards set by binding legislation.</p> <p>Which specific conditions contract authorities can choose are not regulated; however, they have to be linked to their subject matter of the contract (and meet the criteria of equal treatment and transparency).</p> <p>Condition of a link with the subject matter of the contract excludes criteria and conditions relating to general corporate policy.</p>	
<p>Open questions</p>	<p>The condition of a “link to the subject matter” may be unclear as to what extent a contract performance clause may be considered as connected to the subject matter of the contract.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>The provision also stipulates that the conditions for the performance of a contract must be indicated in the invitation to tender or in the tender documents. With regard to the specific nature of these conditions, the provision in question also refers to economic needs linked to innovation, as well as environmental and social considerations.</p> <p>By submitting their offers, economic operators confirm they agree with all conditions set out in the tender documents / draft contract. Conditions may not be modified in later stage (neither to the damage of the contracting authority nor to the damage of the economic operator / contractor).</p>		

Article 71 of the Directive ► Articles 220-223 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 220. Contracting Authority may not require from the economic operators to subcontract any part of the public contract or to entrust part of the contract to the specific sub-contractors or may not restrict economic operators in this respect, unless otherwise provided by a special regulation or international agreement.</p> <p>Article 221. (1) Contracting Authority must apply ground for exclusion set out in article 252. paragraph 1. to the sub-contractors. (2) Contracting Authority may apply other grounds for exclusion to the sub-contractors if the Contracting authority sets out this condition in the tender documentation. (3) Contracting Authority may apply conditions set out in paragraph 1. and paragraph 2. of this article to the sub-contractors of the sub-contractors or to the economic operators being subordinated in the sub-contractor chain if the Contracting authority set this out this condition in the tender documentation, and in that case the provisions of this Article shall be appropriately applied. (4) If the Contracting Authority establishes there are grounds for exclusion of sub-contractors, Contracting Authority shall require replacement of the sub-contractor from the economic operator within the appropriate deadline, not shorter than 5 days.</p> <p>Article 222. (1) Economic operator that intends to sub-contract a part of the contract must in its tender: 1. indicate any share of the contract it may intend to subcontract (subject-matter, quantity, value or</p>		<p>The provision prescribes that Contracting Authority must apply ground for exclusion set out in article 252. paragraph 1. to the sub-contractors, and may apply other grounds for exclusion to the sub-contractors if the Contracting authority sets out this condition in the tender documentation. If they are in any such exclusion situations, sub-contractors must be replaced.</p> <p>Conditions for sub-contractors may be required also for sub-contractors of the sub-contractors or to the economic operators being subordinated in the sub-contractor chain if the Contracting authority set this out this condition in the tender documentation.</p> <p>ESPD is required as a preliminary proof for all sub-contractors.</p> <p>Economic operator that intends to sub-contract a part of the contract must in its tender indicate any share of the contract it may intend to subcontract (subject-matter, quantity, value or percentage) and data on sub-contractors (name, address, identification number, account number, legal representatives) which are later stated in the public contract.</p> <p>Obligatory direct payments to subcontractors are prescribed.</p> <p>In performance of public contracts, economic operators must comply with applicable social and labour law, which competent national authorities must ensure.</p> <p>The practice of subcontracting may lead to abuses, particularly since it could result in using subcontractors which do not comply with social and labour legislation. Conversely, it may happen that sub-contractors themselves do not get paid (from the contractors). Therefore, the PPA requires direct payments to subcontractors.</p> <p>Economic operators must state information relating to</p>	<ul style="list-style-type: none"> - Labour law - Collective bargaining agreements - Law on obligatory health insurance - Law on pension insurance - Law on protection at work - Law on minimal wage - Decree on minimal wage for 2019.

<p>percentage)</p> <p>2. indicate data on sub-contractors (name, address, identification number, account number, legal representatives)</p> <p>3. deliver ESPD for the sub-contractor.</p> <p>(2) If the economic operator sub-contracted a part of the contract, data set out in paragraph 1. points 1. and 2. of this article must be stated in the public contract.</p> <p>Article 223.</p> <p>(1) Contracting Authority shall transfer due payments directly to the subcontractor for services, supplies or works provided, except in duly justified cases related to the nature of the contract or specific conditions for contract implementation if applicable, and only in case such reasons were previously stated and justified in the tender documentation or contractor proves payments to subcontractor have been made.</p> <p>(2) When submitting its invoice, Contractor shall attach invoices from its sub-contractors that Contractor has verified.</p>		<p>subcontracting.</p>	
<p>Open questions</p>	<p>It is not specified if subcontracting may not be further subcontracted.</p>		
<p>Example of application from the national level (where applicable)</p>	<p>Contracting Authority may not require from the economic operators to subcontract any part of the public contract or to entrust part of the contract to the specific sub-contractors or may not restrict economic operators in this respect, unless otherwise provided by a special regulation or international agreement.</p> <p>Subcontracting may constitute any part of the tender, but in the contract implementation, if new subcontractors are introduced, their involvement may not exceed 30 % of the total amount of the contract.</p> <p>The payments to subcontractors are made directly. This assures subcontractors are paid, but influences the market in the sense that the contract margins are made public.</p>		

Article 74 of the Directive ► Article 323 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 323. Public procurement contracts for social and other specific services listed in Annex X of this Act shall be awarded in accordance with this Chapter, where the value of the contracts is equal to or greater than the threshold indicated in article 12. paragraph 1. of this Act.</p>		<p>The public procurement act is applicable above values of 200.000,00 HRK for procurement of services and supplies (around 26.500,00 EUR) and 500.000,00 HRK (around 66.500,00 EUR) for works. Procurement above stated value is considered “low-value” procurement, and procurement procedures above Directives thresholds are considered “high-value” procurement. Publication levels are the same (electronic official journal), but tenders are not being published in the official journal of the EU (being published only in the national official journal – however, being freely accessible to any economic operator regardless of the country of establishment).</p> <p>The provision is thus applicable to any procurement procedures above “small value” thresholds.</p> <p>Rules are generally the same as for the other procurement procedures (more explained in the next article below).</p> <p>This provision recognizes that services to the person, such as social, health, educational and other services, are endowed with particular characteristics such as limited cross-border interest, distinctive goals, can address users in a vulnerable situation and openly contribute to social cohesion and inclusion, as well as to the enjoyment of fundamental rights.</p> <p>This provision introduces a particular procurement regime dedicated to public contracts for social and other specific services when they are equal to or greater than 200.000 HRK (in the Directive: 750.000 EUR).</p> <p>Public procurement rules are de facto the same as for “regular” procedures with minor simplifications.</p>	<p>Legislation on social enterprises:</p> <ul style="list-style-type: none"> - Accounting act for non-profit organisations (NN 10/2008, 7/2009, 121/2014) - Act on Institutions (NN 76/1993, 29/1997, 47/1999, 35/2008) - Act on Vocational Rehabilitation and Employment of Disabled Persons (NN 157/2013) - Act on Associations (NN 70/1997, 106/1997, 88/2001, 11/2002, 74/2014) - Act on Companies (NN 111/1993, 34/1999, 121/1999, 52/2000, 118/2003, 107/2007, 146/2008, 137/2009, 152/2011, 111/2012, 144/2012, 68/2013, 76/2014) - Act on Cooperatives (NN 36/1995, 67/2001, 12/2002, 34/2011, 125/2013, 76/2014) - Act on Credit Institutions (NN 159/2013) - Act on Credit Unions (NN 141/2006, 25/2009, 90/2011) - Directive on the criteria, standards and procedures of financing and contracting programs and projects of interest to the public good (general interest) implemented by associations (NN 26/2015) - Act on Trusts and Foundations (NN 36/1995, 64/2001) - Act on Profit Tax (NN 177/2004, 90/2005, 57/2006, 146/2008, 80/2010, 22/2012) - Act Personal Income Tax (NN 177/2004, 73/2008, 80/2010, 114/2011, 22/2012, 144/2012, 43/2013, 120/2013, 125/2013, 148/2013) - Regulation on reporting in non-profit accountancy and Register of non-profit organizations (NN 31/2015) - Regulation on non-profit accounting and account plan (NN 1/2015) - Regulation on the system of financing management and control and financial plan drafting and reporting of non-profit organizations (NN 119/2015) - Ordinance on setting quotas for employment of persons with disabilities (NN 44/2014, 2/2015)
<p>Open questions</p>	<p>n/a</p>		

Example of application from the national level (where applicable)

This provision prescribes simpler (specific) regime for these specific services, however exclusively in line with the provisions of the PPA, including respect of the principles of public procurement (please see section on Article 76 of the Directive / Article 325 of Public Procurement Act below).

Article 75 of the Directive ► Article 324 of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 324.</p> <p>(1) Contracting authorities intending to award a public contract for social and other specific services shall make known their intention by publishing a contract notice, which shall contain the information referred to in Annex V, Part H of this Act, and in accordance with the standard forms referred to in Articles 243.-245.</p> <p>(2) Exceptionally from the paragraph 1. of this article, Contracting Authority may not publish invitation to tender where preconditions to use negotiated procedure without prior publication have been met.</p> <p>(3) Contracting authority that has awarded a public contract for the services 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 this Act, in accordance with the standard forms referred to in Article 243.-245. of this Act, within 30 days from the conclusion of public procurement contract or framework agreement.</p> <p>(4) Contracting Authority may group notices described in paragraph 3. of this article and publish them on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.</p>		<p>Contracting authorities are obliged to publish a contract notice.</p> <p>If the public contract for the services has been awarded contracting authorities shall make known the results of the procurement procedure by means of a contract award notice (additional to the Directive: within 30 days from the conclusion of public procurement contract or framework agreement).</p> <p>These rules are equal to the rules for regular public procurement process.</p> <p>This provision provides for rules applicable to publication of notices for contracts for social and other specific services. Contracting authorities have to comply with standard advertising of public procurements for social and other specific services.</p> <p>In the notice, they must refer to the types of services, and to the fact that there will not be any further publication. Invitation i.e. tender submission is electronic, through obligatory use of electronic official journal.</p>	<p>Same as above (article 323, i.e. article 74 of the Directive)</p>
<p>Open questions</p>			
<p>Example of application from the national level (where applicable)</p>	<p>(please see section on Article 76 of the Directive / Article 325 of Public Procurement Act below).</p>		

Article 76 of the Directive ► Article 325. of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 325.</p> <p>(1) Contracting authority intending to award a public contract for the social and other specific services must comply with the principles of public procurement and in particular principle of transparency and equal treatment of economic operators.</p> <p>(2) Contracting Authority 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.</p> <p>(3) Contracting Authority may determine that the choice of the service provider is made on the basis of the tender presenting the best price-quality ratio, taking into account quality and sustainability criteria for social services.</p> <p>(4) Minimal deadline for the delivery of request for participation and offers is 15 days from the date of sending invitation to tender for publication.</p> <p>(5) Contracting Authority may not use grounds for exclusion.</p> <p>(...)</p>		<p>Contracting Authorities must respect the national rules for the award of contracts and comply with the principles of transparency and equal treatment of economic operators.</p> <p>Within the procedures, it is emphasized that Contracting 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.</p> <p>Procurement procedure and contract award for contracts for the social and other specific services are simplified through article 325(4) and 325 (5) stating that minimal deadline for the delivery of request for participation and offers is 15 days from the date of sending invitation to tender for publication, and that Contracting Authority may not use any ground for exclusion. This article prescribes award procurement procedure for contract for the social and other specific services, putting in place rules taking into account a list of requirements to be met by contracting authorities, among which the specific needs of different categories of users, including disadvantaged and vulnerable groups.</p> <p>It is provided that contracts awards will be made either on the basis of price only or on the basis of the best price-quality ratio, which includes qualitative, environmental and / or social criteria linked to the subject-matter of the public contract in question, and taking into account quality and sustainability criteria for social services.</p>	<p>Same as above (article 323, i.e. article 74 of the Directive)</p>
Open questions			
Example of application from the national level (where applicable)	<p>Contracting authorities in practice use same procurement documents (tender documentation), as for open or restricted procedure, as long as they are above thresholds prescribed by the PPA which makes it obligatory to publish such documentation.</p> <p>Simplifications include shorter delivery deadlines and not obligatory use of exclusion criteria (as per article 325, paragraph 4 and paragraph 5).</p>		

Article 77 of the Directive ► Article 326. of Public Procurement Act (NN 120/2016)

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 326.</p> <p>(1) Contracting authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in Article 323. of this Act, 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 the organizations that fulfil conditions set out in paragraph 2. of this article.</p> <p>(2) An organisation referred to in paragraph 1. of this article shall fulfil all of the following conditions:</p> <ol style="list-style-type: none"> 1. its objective is the pursuit of a public service mission linked to the delivery of the services referred to in paragraph 1. of this Article 2. its profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this should be based on participatory considerations 3. the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders, and 4. the organisation has not been awarded a contract for the services concerned by the contracting authority pursuant to this Article within the past three years. <p>(3) The maximum duration of the specific reserved contract for services set out in paragraph 1. of this article shall not be longer than three years.</p> <p>(4) In the invitation to tender Contracting Authority shall make reference that the procurement procedure for those health, social and cultural services referred to in Article 323. of this Act, and covered by CPV codes set out in paragraph 1. of this article reserved exclusively for the organisations fulfilling conditions set out in paragraph 2. of this article.</p>		<p>A contracting authority can reserve the right to participate in the procurement procedure for organisations, which fulfill certain conditions.</p> <p>Those requirements are that organization objective is the pursuit of a public service mission linked to the delivery of the particular services, its profits are reinvested with a view to achieving the organisation's objective (where profits are distributed or redistributed, this should be based on participatory considerations) and the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders.</p> <p>Further, organization cannot be awarded the contract if it has previously been awarded a contract for the same service, by the same contracting authority, and the maximum duration of the specific reserved contract for services set out in this article may not be longer than three years.</p> <p>In the invitation to tender Contracting Authorities must make reference that the procurement procedure for those health, social and cultural services referred to in Article 323. of this Act, and covered by CPV codes set out in paragraph 1. Article was transposed in its entirety and gave option to contracting authorities to reserve the right to participate in public procurements for organisations under certain strict conditions, and such organisations must be based on employee ownership, active employee participation in their governance or is organised in the legal</p>	<p>Same as above (article 323, i.e. article 74 of the Directive)</p>

		<p>form of a cooperative.</p> <p>Right are reserved for specific 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.</p>	
Open questions	<p>General uncertainty seems to be translation throughout the languages on what is exactly the meaning of the "same service". Croatian PPA uses term that could be translated as "those services" rather than "same services" and in this respect could cause uncertainty and subjective scope of application of the provision.</p>		
Example of application from the national level (where applicable)	<p>Option is used only for services specifically listed. Duration of the awarded contract may not exceed three years.</p> <p>Organization that has obtained the award of a reserved public contract may not participate in any subsequent reserved selection, for three years.</p> <p>There is currently no specific law defining or regulating social enterprise, i.e. obligatory form in which organizations defined under this article would be recognizable. However, there can be distinguished a number of legal forms of organization in the sector of social economy - cooperatives, associations and foundations, social enterprises (registered as companies) and private social welfare institutions, and Croatian legal system allows the development of social entrepreneurship through various legal forms, which are easy to register.</p>		